

SENATE BILL REPORT

SHB 1266

As Reported by Senate Committee On:
Energy, Environment & Telecommunications, March 23, 2017

Title: An act relating to petroleum storage tank systems.

Brief Description: Concerning petroleum storage tank systems.

Sponsors: House Committee on Environment (originally sponsored by Representatives Peterson, Young and Fitzgibbon).

Brief History: Passed House: 3/06/17, 98-0.

Committee Activity: Energy, Environment & Telecommunications: 3/09/17, 3/23/17 [DP].

Brief Summary of Bill

- Expands the scope of the Pollution Liability Insurance Agency (PLIA) to include petroleum storage tanks.
- Authorizes PLIA to require owners or operators to report suspected or confirmed releases from a heating oil tank that may pose a threat to human health or the environment.
- Requires PLIA to (1) consult with the city or county land use planning authority when requiring an environmental covenant as part of the remedial action, and (2) perform an initial investigation of a suspected release from a heating oil tank to determine if further remedial action is necessary.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Ericksen, Chair; Sheldon, Vice Chair; Carlyle, Ranking Minority Member; Brown, Hobbs, Short and Wellman.

Staff: Jan Odano (786-7486)

Background: Pollution Liability Insurance Agency (PLIA). In 1989, the Legislature created the PLIA. PLIA was initially established to meet the requirements of the U.S. Environmental

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Protection Agency (EPA) for owners and operators of underground storage tanks (USTs) to demonstrate financial responsibility for the clean-up of contamination from spills or releases of petroleum. In 1995, the duties of PLIA were expanded to owners and operators of heating oil tanks. PLIA offers insurance coverage for clean-up of contamination from active heating oil tanks that are registered with PLIA prior to a contamination event.

PLIA provides advice and technical assistance to owners and operators of heating oil tanks where contamination from an active or abandoned heating oil tank is suspected. The Director of PLIA may provide a written opinion and conclusion on results of investigations to owners and operators where there is no contamination or minor contamination that is not a threat to human health or the environment.

PLIA Program Funding. PLIA and its programs are funded through: (1) a pollution liability fee of \$0.012 per gallon of heating oil, imposed on dealers making sales of heating oil to a home owner or a consumer, which is deposited into the Heating Oil Pollution Liability Trust account; and (2) an excise tax of 0.3 percent on the wholesale value of petroleum—the Petroleum Products tax (PPT)—which is deposited into the Pollution Liability Insurance Program Trust account. Any balance in the Heating Oil Pollution Liability Trust account must be transferred to the Pollution Liability Insurance Program Trust account.

PLIA Grant and Revolving Loan Program. In 2016, the Legislature authorized PLIA to implement a UST revolving loan and grant program for remedial actions, investigations and cleanups of releases or threatened releases of hazardous substances at UST facilities.

Remedial Actions Undertaken by PLIA. PLIA may conduct remedial actions to investigate and clean up a release at a UST facility if the owner or operator received a grant or loan from the PLIA. The PLIA may request informal advice, assistance, and written opinions from the Department of Ecology (Ecology) regarding the sufficiency of the remedial action undertaken by PLIA. Remedial actions by PLIA must focus on maintaining the economic vitality of properties.

Model Toxic Control Act. Under MTCA, Ecology is directed to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. Liable parties must clean up sites contaminated with hazardous materials. In general, a person may cleanup a site with or without supervision by Ecology.

Independent Cleanups. A property owner may cleanup without any supervision or consultation by Ecology. However, Ecology will not provide an opinion on the sufficiency of the clean up. Independent cleanups do not require public notice.

As with an independent cleanup, under the Voluntary Cleanup Program (VCP) the property owner determines the clean up schedule as well as the scope and extent of the cleanup. However, through the VCP, a property owner may request technical assistance and an opinion on the sufficiency of the cleanup from Ecology.

Under the Uniform Environmental Covenants Act, environmental covenants establish requirements for land use restrictions to control future use of contaminated land.

Environmental covenants are defined as restrictions under environmental response projects that impose activity and use limitations. Environmental covenants:

- remain valid and protected from possible invalidation under common law doctrines;
- may not allow uses prohibited by zoning or other land use laws but may impose more stringent restraints; and
- are perpetual in duration, unless otherwise stated in the covenant or unless terminated or modified pursuant to specified procedures.

Ecology enforces environmental covenants it imposes as part of its cleanups of contaminated land under MTCA.

Summary of Bill: The scope of PLIA is expanded to include petroleum storage tanks identified by Ecology based on the relative risk posed by the release to human health and the environment.

PLIA must provide advice and technical assistance on the administrative and technical requirements of PLIA and MTCA to persons who are conducting or interested in conducting an independent remedial action for suspected or confirmed releases from petroleum storage tank systems. PLIA may provide a written opinion as to whether an independent remedial action or proposal has met the substantive requirements of MTCA. The advice or assistance is advisory only and is not binding on PLIA or Ecology.

PLIA is required to consult with the city or county land use planning authority for any written opinion requiring an environmental covenant as part of the remedial action. PLIA must periodically review environmental covenants where established as part of a remedial action. Additionally, an environmental covenant must be reviewed at least once every five years.

The Director of PLIA must establish requirements for reporting by owners or operators of heating oil tanks with suspected or confirmed releases that may pose a threat to human health or the environment. The deadline for reporting may not exceed 90 days. Within 90 days of receiving information and having a reasonable basis, PLIA must perform an initial investigation to determine at a minimum whether a release has occurred and if further remedial action is necessary. An initial investigation may include inspecting, sampling, or testing. PLIA may retain contractors to perform an initial investigation on its behalf.

PLIA may not expand its technical advice and assistance program to petroleum storage tank systems until January 1, 2018, however PLIA may provide interpretive guidance pending adoption of rules.

The terms of the Heating Oil Pollution Liability Trust account are revised so that the account may carry a balance from year to year.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This continues the work of PLIA. It will help to work through the backlog of cleaning up sites. There is broad support for this. This will advance the cleanup program. The majority of sites needing clean up are dominated by contamination by petroleum. This will give lower risk sites to PLIA and lets ecology address the larger site and put resources there.

Persons Testifying: PRO: Representative Strom Peterson, Prime Sponsor; David Ducharme, WA Oil Marketers Association.

OTHER: Russ Olsen, Director, Pollution Liability Insurance Agency; Jim Pendowski, Manager, Toxics Cleanup Program, Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.