Washington State Department of Ecology
Spill Prevention, Preparedness and Response Program

WAC 173-182
Oil Spill Contingency Plan Rule

Small Business Economic Impact Statement (SBEIS)

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Small Business Economic Impact Statement
Proposed Chapter 173-182 WAC Contingency Planing Standards

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Introduction

If more than minor costs are imposed by proposed rules on businesses, Chapter 19.85 Revised Code of Washington (RCW) requires that a Small Business Economic Impact Statement (SBEIS) be completed. This SBEIS was done in compliance with this requirement.

The proposed chapter of rules has been reviewed and it has a disproportionate impact on small businesses. Cost minimizing features have been included in the rule development.

It should be noted that many, if not all, of the companies surveyed for this analysis and were treated as a small business in this study, are in reality large corporations with few or zero direct employees in Washington— In fact, Ecology believes that only less than 6% of the respondents are actually small businesses, if we were able to obtain total American employment. The state applies a narrow definition of small business.

Brief Description of Changes Affecting Small Businesses

The primary impact from the proposed rules will be shifting from requirements that have been in guidance into these rules. Most small businesses answering the 2003-2004 survey of plan holders are in compliance with the guidance and should be able to comply with the new rules.

The Baseline for Comparison

The baseline for comparison for this analysis is the shift from the existing state and federal requirements to the proposed chapter of rules. The draft CBA contains an explanation of this reasoning.

Changes in proposed rules

The proposed rules are extensive and complex, though much of the language is similar to both the existing rules and the federal requirements. The sections of the rules that create a change from the baseline are described here. A more detailed description can be found in the Cost Benefit Analysis available on line at www.ecy.wa.gov/programs/spills/spills.html.

Contingency Planning

The new rules provide some streamlining of plan requirements, for example Ecology no longer requires a system for categorizing spills by size and type, scenarios for small and worst case spills. The rules capitalize on the regional planning efforts by allowing references to the Northwest Area Contingency Plan (NWACP) for environmental sesitivites (GRPs), disposal plan, ICS job descriptions, ICS process, communications systems, and description of the relationships with other plans. The development of umbrella plans is encouraged; for example, a company with several facilities or multiple vessels can submit one plan and gain a savings in costs. Costs may be greater than the current rules with the new requirement that planholders submit yearly update or a letter to Ecology affirming no changes. Ecology believes this option would be a low cost feature for small businesses.

Equipment Planning Standards

As proposed, these standards either equal or exceed the federal contingency planning standards and address spill assessment, boom requirements, recovery and storage of oily waste, in-situ burn and dispersants, shoreline cleanup, aerial observation, and availability of workboats to support spill response. The proposed requirements will result in resources staged closer to the coastal entrances to state waters, to be more adequately prepared for offshore spills. The proposed rules drop the performance standard from the planning standards. This is a cost savings from the existing guidance and WAC.

The proposed rules also address planning for ground water spills and spills along pipeline corridors. Most of the pipelines and tank farms were able to meet the 2 hour standard before the guidance changed to proposed rules.

The cost of the equipment for individual companies was difficult to estimate. No plan holder directly owns sufficient equipment to cover their worst case spill. There is a reliance on contracting for assistance. Ecology therefore calculated the cost by subtracting the share of equipment required by the federal program from the total equipment needed under the proposed rules. This state share was divide by the existing equipment to get a percentage share of equipment for each type of equipment (boom, recovery, and storage). That percentage is then multiplied times the value of each type of equipment in the proposed rules. The value of the equipment is based on the annualized value of each type of equipment taken from 2003-2004 survey data.

Table 1: Estimating the Weighted Share of Equipment Costs for the Proposed Rules

Equipment Basis for Shares	**Boom**	**Removal**	**Storage**	**Weighted Share**
Equipment Type Share of Cost	4.38%	38.05%	57.57%	
State Share of Total Capacity	35.29%	31.68%	56.89%	
State Share of Cost	1.55%	12.05%	32.75%	46.4%

The reported annualized cost of existing equipment required by the state is $7 million. The reported total annualized cost of existing equipment is $24 million. The existing equipment in the state exceeds the requirements of both federal and state requirements.

Those who own the equipment will charge plan holders with insufficient equipment for the right to claim access to the equipment in their plans. Therefore, the cost of the agreements, may reflect the cost of access to this equipment.

Drills

The proposed rules closely follows the exsting guidance in most cases. The rules call for one tabletop drill per year and two deployments. Once in a three year period, one of the tabletops must be a worst case drill. Twice in a three year period, a deployment drill must include verifying or testing of a geographic response plan strategy. Unannounced drills are on an "as necessary" basis, and do not constitute an additional drill. The number of unannounced drills is expected to be 2 out of every 3 year cycle for most plan holders. The scope and frequency of table top and deployment drills under the new rules is consistent with the federal requirements.

Current ongoing costs

Reported costs for drills required by the state were difficult to interpret. Some of the companies that have a small presence in Washington and must therefore be classified as small business, are in fact multinational corporations. They meet their drill requirements in other states. Thus much of the reported costs, especially for vessels, includes drills that were done out-of-state. It is unclear what share of the costs of out-of-state drills should accrue to the existing rules since the drills were intended to meet both the requirements of either the federal government or another state, and often not the requirements of Washington's rules. Some respondents reported the cost of doing unannounced drills that were not done in Washington and some reported doing many more drills than are required in Washington. Ecology has been unable to remove many of these issues, thus the drill costs are probably overstated.

Expected changes in costs

Most changes should be cost neutral. The largest cost change is created by dropping the requirement for a full scale unannounced deployment drill every year. Ecology expects that these will be focused drills, done for each company no more than 2 out of every 3 years. These drills are not common and the reporting on these costs was limited. These savings are prospective only. Ecology did not enforce the annual requirement for a full scale unannoucned drill in the existing rules. However it is the shift in the legal requirements that must be valued. Because they are not the norm, the data available on the cost of these drills is very limited. The estimated savings for vessel companies is $45 thousand every third year or $15 thousand per year. The estimated savings for facilities is $11,000 every third year or $3,700. The estimated savings for the response contractors ranges from $3,000 (small response contractors) to $18,000 (large response contractors) per drill. The response contractors report billing less than this to their plan holders, so these costs may be included elsewhere in the contract such as flat annual costs. An additional cost is imposed by an added limited deployment drill. These costs range from $4,000 to $8,000 per drill. These costs vary based on the company reporting. The net effect for most vessels and some large facilities is a net reduction in costs. response contractors are mandated to assist with drills and therefore should also see cost reductions. There is an expected small reduction in total existing drilling costs.

Training

The new rules require that plan holders commit to the training of personnel to implement the plan. The plan must describe the type and frequency of training that each individual listed in the plan receives. The key difference between the existing and new rules are the inclusion of a list of specific training topics: Incident Command System, Northwest Area Contingency Plan policies, use and location of Geographic Response Plans, the contents of the plan and worker health and safety as appropriate. There is also a requirement that new employees complete the training program prior to being assigned job responsibilities which require participation in emergency response situations. The new rules also allow the inspection of training records.

Training costs under the current rules and current federal requirements are $4 million per year. This training would be necessary for either the state or the federal requirements and are therefore not a direct cost of the proposed rules. However, given that a share of the equipment used is required by the state and given that the federal government requires training on all equipment, the training is prorated over to the state and federal requirements based on shares of equipment.

Overhead and Other Costs

Overhead costs such as insurance and indirect costs associated with management under the current rules and the federal requirements are $3.4 million per year. This cost would be necessary for either the state or the federal requirements and should not change. They are therefore not a cost of the proposed rules.

Comparison of Impacts to Small and Large Companies

Small companies bear a disproportionate share of the costs. Ecology has measured the disproportionate impact to business based on total costs divided by the number of employees. The ratio was calculated for all small companies taken together and for all large companies taken together.

Ratio = Total Cost for all companies/Total Employment for all companies.

Large employers pay nearly $1000 per employee and small companies pay $23,000 per employee. It should be noted here that the definition of a small company depends on the number of employees within Washington and that some of the companies treated as small companies are actually part of multinational corporations.

The primary difference for small and large employers is the fact that the larger companies have a substanial investment in equipment and rely less on contracts and letters of agreement. Given this, the totals for each have been handled differently.

- Large companies have a great deal of equipment and include the large response contractors. The cost of equipment is largely borne by response contractors and then charged out to the plan holders. Therefore, for the large employers, the response contractors costs were not summed into the total, in order to avoid double counting.
- Small companies tend to rely heavily on the response contractors and following this same procedure would tend to create a biased impression of lower costs. Therefore,

in this case the cost of equipment is not summed into the total in order to avoid double counting.

Note that much of the reported response contractors and letter of agreement cost for the small businesses is income on the large business side.

Table 2: Comparing Impacts to Large and Small Businesses

Large Employers		**Small Employers**	
Items	**State Requirements**	**Items**	**State Requirements**
Planning	$ -	Planning	
Equipment Annualized	$ 4,045,524	Equipment Annualized	$ 536,804
PRC & Letter of Agreement	$ 1,254,066	PRC & Letter of Agreement	$ 3,175,078
Drill Costs	$ (192,098)	Drill Costs	$ (37,613)
Training	$ 1,580,572	Training	$ 117,535
Overhead	$ -	Overhead	$ -
Other Costs	$ -	Other Costs	$ -
Total: Net out PRC Overlap*	$ 5,433,998	Total: Net out PRC Overlap*	$ 3,255,000
Cost Per Employee	$ 988	Cost Per Employee	$ 23,167

The impact is disproportionate. The ratio of small business costs per employee to large business costs per employee is 23. If the equipment/ response contractors summation were treated the same way the ratio would still be 4. Finally, if the data were analyzed for the two companies, which may be small based on total US employment, and then the cost per employee for them would be $8,000. This is still larger than the $1000 per employee for the large companies and provides a ratio of $8 to $1.

NAICS Codes Affected

The plan holders have many different types of businesses, some of which only incidentally involve holding or transporting large quantities of chemicals or oil. The following NAICS codes have more than one entity in the state which will be affected by these proposed rules.

114100 Fishing
324110 Petroleum Refineries
325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing
422690 Other Chemical and Allied Products Merchant Wholesalers
234910 Oil and Gas Pipeline and Related Structures Construction
422710 Petroleum Bulk Stations and Terminals
483111 Deep Sea Freight Transportation
483112 Deep Sea Passenger Transportation
483113 Coastal and Great Lakes Freight Transportation
487210 Scenic and Sightseeing Transportation, Water
483211 Inland Water Freight Transportation

Business Survey

Ecology conducted a survey of affected businesses in late 2003 and early 2004. To some extent, these results may be out of date. For example, since the survey was conducted two of the large response contractors have merged and certain costs (such as overhead) reduced through efficiencies. Respondents are invited to revise their earlier survey responses. The survey requested information on the following costs[1] for the SBEIS:

1. reporting
2. record keeping
3. compliance costs
4. professional services that a small business is likely to need in order to comply
5. equipment
6. supplies
7. labor
8. increased administrative costs
9. lost sales or revenue

Changes to Reduce Costs

RCW 19.85.030 requires that the following methods to reduce costs be used if it is legal and feasible to do so. The bulleted items below fall into one of each of the listed categories (a) through (e) except that it is not possible to reduce or modify the fee schedule.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;
(b) Simplifying, reducing, or eliminating record keeping and reporting requirements;
(c) Reducing the frequency of inspections;
(d) Delaying compliance timetables;
(e) Reducing or modifying fine schedules for noncompliance; or
(f) Any other mitigation techniques.

The cost reducing features are laid out by the requirement sections to make it more familiar to plan holders. The following are areas where savings can gained over the current rules:

Contingency Planning

- No requirement to create a system for categorizing spills by size and type
- No requirement to create a scenario for small and worst case spills
- Allowing a reference to the Northwest Area Contingency Plan (NWACP) for environmental sesitivites (GRPs), disposal plan, ICS job descriptions, ICS process, and description of the relationships with other plans

[1] RCW 19.85.040 lists these costs as the costs that must be considered.

- Create a single plan for both federal and state requirements
- Encouraging the development of umbrella plans where costs can be shared
- No requirement to describe the response methods to clean up oil in various environments
- Equipment lists may be referenced from the response contractors or the Northwest Area Equipment Web site
- No requirement to describe and include the communication systems the plan holder will use
- No prevention requirements
- The proposed rules drop the performance standard from the planning standards. This is a cost savings from the existing guidance and WAC

Drills

- Unannounced drills will only be required in 2 out of 3 years.

Equipment

- During the rulemaking process businesses were concerned that storage requirements in the draft rules were not viable for some areas of the state. These have been reduced and should now allow for staging of existing equipment, if the businesses cooperate with each other.

Steps to Involve Business

Small businesses have had opportunities to be involved, informed and to advise the department on the outcome of the rules. During the rule process, an advisory committee was formed with representatives from small businesses appointed to the group. A survey of affected businesses offered them a chance to report their costs. There have been group and individual meetings with small businesses. We have used focus sheets, e-mails distribution lists, and PowerPoint presentations to communicate with small businesses about these rules.

We are also developing a separate media strategy to accelerate the outreach to persons who may be affected by the new rules.

Public hearings will be held July 11-19 in the following cities: Pasco, Vancouver, Port Angeles, Bellingham and SeaTac. Official public comment period will be June 7, 2006 through July 26, 2006. For more information visit our website at www.ecy.wa.gov/programs/spills.