



Washington State Department of Ecology

Spill Prevention, Preparedness and Response Program

Concise Explanatory Statement

Oil Spill Contingency Rules

Chapter 173-182 WAC

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Rule Language from CR 102 to CR 103

Oil Spill Contingency Rules

Chapter 173-182 WAC

RULE LANGUAGE CHANGE FROM CR 102 TO CR 103

PART I: PURPOSE, AUTHORITY, APPLICABILITY AND DEFINITIONS

NEW SECTION

WAC 173-182-010 Purpose. The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan (Part II) and drill [and equipment verification](#) requirements (Part III), primary response contractor standards (Part IV) and [record keeping inspection](#) and compliance information (Part V). The provisions of this chapter, when followed, should be implemented and construed so that they will:

- (1) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;
- (2) Ensure continual readiness, maintenance of equipment and training of personnel;
- (3) Support coordination with state, federal, and other contingency planning efforts; and
- (4) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills.

NEW SECTION

WAC 173-182-015 Applicability. [\(1\) This chapter applies to owners and operators of onshore and offshore facilities and tank and nontank covered vessels vessel companies and Washington state nonprofit corporations \(plan holders\)](#) required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

~~(1) Vessels subject to this chapter are considered "covered" vessels and include the following vessels, other than public vessels, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities, when operating on the waters of this state:~~

- ~~(a) Tank vessels;~~
- ~~(b) Cargo vessels that are three hundred or more gross tons;~~
- ~~(c) Passenger vessels that are three hundred or more gross tons and have a fuel capacity of at least six thousand gallons;~~

~~(2) Facilities subject to this chapter are considered "covered" facilities and include:~~

- ~~(a) Those facilities that:~~
 - ~~(i) Transfer oil in bulk to or from a tank vessel or pipeline; and~~
 - ~~(ii) Are used for producing, storing, handling, transferring, processing, or transporting oil in bulk;~~
 - ~~(b) Those facilities that because of their location, could reasonably be expected to cause substantial harm to the environment if they were to discharge oil into or on the navigable waters of the state or the adjoining shorelines.~~
- [\(2\) This chapter applies to](#)

The changes made to this section corrected the titles of the five parts of this rule chapter.

This section has been clarified concerning the applicability of these rules. In this section and others, the rules are written to distinguish between the roles of the umbrella vessel plan holders and their members (potential responsible parties). There is additional explanation in responses #2 and #3.

Washington non profit corporations, their enrolled members, and agents that submit plans on behalf of onshore and offshore facilities and covered vessels.

(3) This chapter applies to ~~r~~Response contractors that must be approved by ~~the department~~ecology before they may serve as primary response contractors for ~~an onshore or offshore facility~~ contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

NEW SECTION

WAC 173-182-020 Authority. RCW 88.46.060, 88.46.070, 88.46.080, 88.46.090, 66.46.100, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.270, 90.56.280, 90.56.310, 90.56.320, 90.56.340, and chapter 316, Laws of 2006, provide statutory authority for the contingency plan preparation and review requirements, drill and response contractor standards established by this chapter for onshore and offshore ~~vessels and~~ facilities and covered vessels.

These changes were made to further clarify authority.

NEW SECTION

WAC 173-182-030 Definitions. (1) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(4) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(5) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that identifies personnel, equipment and services capable of being provided by the primary response contractor within stipulated planning standard times; acknowledges that the primary response contractor ~~oil spill removal organization~~ intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter of regulations. ~~Public vessels are not covered vessels for the purposes of this chapter.~~

(7) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(8) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(98) "Director" means the director of the state of Washington department of ecology.

(109) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(129) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(134) "Ecology" means the state of Washington department of ecology.

(142) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a ~~tank~~-covered vessel, in a single transaction.

(153) "Geographic Response Plans (GRP)" means response strategies ~~developed and approved by the Northwest Area Committee and~~ published in the *Northwest Area Contingency Plan*.

(164) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

~~(15) "High risk sites for planning standards" means an area determined by ecology to contain one or more navigational hazards, abuts or includes areas of critical environmental concern.~~

(17) Incident Command System (ICS) means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(1618) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and ~~ignitors~~ igniters.

This definition was added to clarify. The term is used in the definition of public vessel.

This term is no longer used in this chapter. There is further explanation in response #37.

(197) "Interim storage ~~site~~" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. ~~Interim storage sites include shoreside fixed and portable tanks, trucks, barges, and other vessels or vehicles used to store recovered oil or oily waste until transport begins.~~

(2018) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(2119) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(220) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(231) "Nondedicated" means those response resources listed by a ~~PRC~~ [primary response contractor](#) for oil spill response activities that are not dedicated response resources.

(242) "Nonpersistent or group 1 oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(a) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(b) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(253) "Northwest Area Contingency Plan (NWACP)" means the regional emergency response plan developed in accordance with federal requirements. In Washington ~~state~~ [State](#), the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(264) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(275) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(286) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(297) "Onshore facility" means any facility, as defined in subsection (1214) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

~~(3028)~~ "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be [determined using criteria](#) as found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

~~(3129)~~ "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

~~(329)~~ "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

~~(331)~~ "Persistent oil" means petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60 F, as follows:

(a) Group 2 - specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(b) Group 3 - specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(c) Group 4 - specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(d) Group 5 - specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

~~(342)~~ "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

~~(353)~~ "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection ~~(1214)~~ of this section.

~~(364)~~ "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

~~(375)~~ "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills ~~from the vessel or facility~~ into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

~~(36) "Plan holder" means a facility, vessel company or nonprofit company who has submitted an oil spill contingency plan to the Washington state department of ecology.~~

~~(387)~~ "Planning standards" means goals [and criteria](#) that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(3938) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(4039) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and ~~that~~ is not engaged in commercial service.

(419) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(42+) "Resident" means the spill response resources are staged at a location within the described planning area.

(43) "Responsible party" means a person liable under RCW 90.56.370.

(442) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(453) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(464) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

~~———— (45) "Systems approach" means an assessment of the infrastructure and the support resources that a plan holder or a PRC has to mobilize, transport, deploy, sustain, and support the equipment resources necessary for response.~~

(476) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

- (a) Operates on the waters of the state; or
- (b) Transfers oil in a port or place subject to the jurisdiction of this state.

(4847) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(4948) "Transfer site" means a location where oil is moved in bulk on or over waters of the state by to or from a covered vessel by means of pumping, gravitation, or displacement.

(5049) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(519) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(52+) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(532) "Waters of the state" means all lakes, rivers, ponds, streams, ~~inland~~ waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(543) "Worst case spill" means:

- (a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

This definition was added to help distinguish between the responsibilities of vessel umbrella plan holders and their members that might

This term was deleted because it was not used in the chapter. Further clarification can be found in response #23.

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(554) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

PART II: COVERED VESSEL AND FACILITY OIL SPILL CONTINGENCY PLANS

SECTION A--GENERAL PLANNING, INFORMATION AND TIMING

NEW SECTION

WAC 173-182-110 Authority to submit contingency plan. (1) For tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the tank vessel; or

(b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo; or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the tank vessel company.

(2) For covered nontank-vessels other than tank vessels~~regulated under this chapter~~, a plan may be submitted by any of the following:

(a) The owner or operator of the covered vessel; or

(b) The agent for the covered vessel provided that the agent resides in this state; or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the covered vessel owner or operator is a member; or

These changes were made to clarify the section. Additional explanation is found in response #4.

(d) A PRC contractually obligated to provide containment and cleanup services to the covered vessel company.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator of the facility; or

(b) A PRC contractually obligated to provide containment and cleanup services to the ~~vessel-facility~~company.

(4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.

NEW SECTION

WAC 173-182-120 Submitting a contingency plan. (1) Plan holders shall submit a plan to ecology no less than sixty-five days prior to the beginning of operations in Washington.

(2) The plan holder shall submit ~~three~~two copies of the plan and all appendices. However, if the plan and appendices are submitted with an acceptable use of electronic copy, the plan holder shall submit at least one paper copy.

(3) Once approved, plan holders shall resubmit their plans to ecology every five years for review and approval.

(4) The plans shall be delivered to:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

Preparedness Section, Contingency Plan Review

Mailing address:

P.O. Box 47600

Olympia, WA 98504-7600

Physical Address:

300 Desmond Drive

Lacey, WA 98503

This was changed to require two rather than three copies of plans to be submitted to Ecology for review and approval. Further explanation can be found in response #5.

NEW SECTION

WAC 173-182-130 Phase in language. (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications.

(2) For existing approved facility plan holders:

(a) Plans holders for onshore facilities capable of storing one million gallons or more of oil shall submit a revised contingency plan to ecology six months after the effective date of this chapter; except, plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In submitting the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other onshore facilities shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised

plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(3) For existing approved vessel plan holders:

(a) Plan holders for tank vessels submit a revised contingency plan to ecology six months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other covered vessels shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(4) PRCs shall submit new applications to ecology within twelve months.

NEW SECTION

WAC 173-182-140 Plan maintenance and reporting obligations. (1) At least [once](#) annually, plan holders shall review the plan for accuracy and either:

(a) Update and distribute the amended page(s) of the plan to ecology for review and approval; or

(b) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

(2) If there is a temporary, significant change to response readiness, the plan holder shall notify ecology in writing within twenty-four hours and provide a schedule for the prompt return of the plan to full operational status. Changes which are considered significant include loss of equipment that affects the planning standards provided in the plan, or [permanent](#) loss of initial response personnel listed in command and general staff ~~incident command system (ICS)~~ positions provided in the plan or changes in normal operating procedures. A facsimile or electronic mail will be considered [sufficient](#) written notice.

(3) Failure to notify ecology of significant changes shall be considered noncompliance with this chapter.

(4) If the change to the plan is permanent, the plan holder then shall have thirty calendar days to distribute the amended page(s) of the plan to ecology for review.

(5) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or revoke approval of the plan.

NEW SECTION

WAC 173-182-145 Plan implementation procedures. (1) Every plan holder, including each person whose vessel or facility enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan throughout the response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

(2) ~~The plan holder must receive approval~~ Approval from ecology must be received before any significant aspect of the spill response is conducted in a manner contrary to the plan unless:

- (a) Such actions are necessary to protect human health and safety; or
- (b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or
- (c) ~~The plan holder has been directed to perform such actions by the S~~state and federal on-scene coordinators have directed such actions.

There were several comments on this section, expressing concern about potential conflicts between federal and state plans. Since the same plan can be submitted to meet both federal and state requirements, there is no conflict. Further explanation can be found in response #8.

NEW SECTION

WAC 173-182-150 Post-spill review and documentation procedures. (1) Plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if:

- (a) Unified command has been established during a spill; ~~and are required~~ when
- (b) ~~When s~~Significant plan updates are identified or significant lessons can be ~~captured~~ recorded and implemented.

~~Plan holders must accurately track and account for the entire volume of oil recovered and oily wastes generated and disposed during spills.~~

~~(2) Plan holders must provide these records to ecology upon request.~~

The language on tracking oily waste was moved to Section 173-82-230. Additional explanation can be found in response #11.

SECTION B--CONTINGENCY PLAN FORMAT AND CONTENT

NEW SECTION

WAC 173-182-210 Contingency plan format requirements. (1) Plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans will contain job aids, diagrams and checklists for maximum utility.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

NEW SECTION

WAC 173-182-220 Binding agreement. (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by the owner or operator, or a designee with authority to bind the owners and operators of the facility or vessel covered by the plan. The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

- (a) Verify acceptance of the plan and commit to a safe andn aggressive immediate response to spills in Washington;
- ~~(b) Commit to notification of spills and significant threats of spills;~~
- ~~(eb)~~ Commit to having an incident commander in the state within six hours after notification of a spill;
- ~~(dc)~~ Commit to the implementation and use of the plan during a spill, and to the training of personnel to implement the plan; and
- ~~(ed)~~ Verify authority and capability of the plan holder to make necessary and appropriate expenditures in order to implement plan provisions.

The word aggressive was replaced with immediate, which is the statutory standard. More explanation can be found in response #10.

NEW SECTION

WAC 173-182-230 Contingency plan general content. (1) Contingency plans must include all of the content in this section.

(2) In Washington ~~state~~State, the ~~Northwest Area Contingency Plan (NWACP)~~ serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

- (a) Each plan shall state the federal or state requirements intended to be met by the plan.
- (b) Each plan shall state the size of the worst case spill.
 - (i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.
 - (ii) For vessel umbrella plans, a~~If vessel operations differ by areas, a~~ worst case volume for each port of operation area~~area~~ may be submitted to ecology for consideration, if the operations of enrolled vessels differ by port.
 - (iii) For multiple facilities using a single umbrella plan, separate one~~separate one~~ worst case spill volumes are is~~are~~ required for each facility location~~location~~.
- (c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.
- (d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter of rules~~regulation~~.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the ~~contract or letter summarizing the terms of the contract shall specifically identify that~~ commitment must be specified in writing.

~~(f) If applicable, a list of all other plans that are relied on for spill response and describe how coordination will occur.~~

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

The change was made to clarify that there should be a written commitment if a plan holder relies on either a PRC or professional spill management team ICS. Additional explanation can be found in response #11.

This language was moved from 173-182-150.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) List by group and amount the oil handled.

(iii) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(iv) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) Type of oil(s) handled (group);

(g) Oil volume capacity by group;

(h) Description of the operations covered by the plan.;

~~(i) List by group and amount the oil handled.~~

~~(ii)~~ Include a written description and diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) Special exemptions for vessel umbrella plans shall, at a minimum, include the following:

(a) In lieu of providing vessels names, call signs and country of registry, vessel umbrella plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall make the information available to ecology upon request.

This section was clarification to include the type of diagrams that vessel umbrella plan holders will need to provide.

(b) Umbrella plans for vessels shall include a list ~~by of the types of vessels and the typical oil types by~~ group and ~~volumes -amount the oil handled, by the types of vessels that are to be enrolled in the plan-~~ In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

NEW SECTION

WAC 173-182-240 Field document. (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that vessel umbrella plan holders shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.~~The locations where field documents are kept must be listed in the plan.~~

Umbrella vessel plans shall include procedures ~~in the plan~~ to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

WAC 173-182-250 Initial response actions. (1) Plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(2) The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery.

(3) The plan must state how safety assessment including initial air monitoring will be conducted for all types of spills, including spills to groundwater.

(4) The plan must list procedures that will be used to confirm the occurrence ~~of a spill,~~ and estimate the quantity and nature of the spill. An updated report is required if; ~~and to later correct or update~~ the initially reported estimated quantity or the area extent of the contamination ~~if it~~ changes significantly.

This section has been changed to distinguish between the roles of the umbrella vessel plan holders and their members (potential responsible parties). There is additional explanation in responses #12, #2 and #3.

Prior to entering waters of Washington, vessel operators must have the information needed to ensure that notifications will be

Both plan holders and responsible parties are required to document initial spills actions, for example, through vessel logs, notification call-out forms or using ICS form 201.

Should an initial spill notification later be found to differ significantly from the first report, the plans should contain procedures for making subsequent notifications. Further clarification will be found in the plan review manual that Ecology will publish.

NEW SECTION

WAC 173-182-260 Notification and call-out procedures. (1) ~~Plan holders must make immediate notifications and call-outs after spills. Each plan shall include procedures which will be taken to immediately notify appropriate parties that a spill has occurred. The plan shall identify the central reporting office or individuals responsible for implementing the notification process. Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, and establish the order of priority for notification.~~

(2) ~~The list shall also identify the name of a central reporting office or individuals who are responsible for implementing the notification and call-out process.~~

~~— (3) Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.~~

~~(3) The procedure shall establish a clear order of priority for immediate notification. This list need not be included in the plan, but shall be available for review by ecology upon request and verified during drills.~~

(4) In addition, facility plans holders shall also address how notifications will be made to required government agencies for spills to ground or into permeable secondary containment, and threatened or confirmed spills to ground water.

A contact list contains personal information such as home phone numbers. This list need not be included in the plan for that reason.

NEW SECTION

WAC 173-182-270 Maintenance records for response equipment. (1) Plan holders and PRCs are required to maintain response equipment in a state of constant readiness, ~~and~~ and in accordance with manufacturer specifications. ~~Each plan shall include the schedules, methods, and procedures for equipment maintenance.~~

(2) Plan holders and PRCs that own equipment shall develop schedules, methods, and procedures for equipment maintenance. Maintenance records shall be kept for at least five years and made available if requested by ecology ~~for inspection.~~

This section has been changed to clarify two issues. Both the plan holders and PRCs may own equipment, though not always. The owners must maintain the equipment, but it is not necessary to include the documentation in the plan.

NEW SECTION

WAC 173-182-280 Spill management teams. (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response ~~operation~~. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the ~~unit/branch~~ section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, ~~This list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must be from the state's approved PRC list agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.~~

This section was changed to clarify that names will be required for spill management teams to ensure depth, and drills will be used to verify the team.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) ~~A detailed description of t~~The planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety ~~as appropriate~~. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) ~~Covered v~~essel plan holders shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) ~~Covered v~~essel umbrella plans must ~~include~~ describe the transition from umbrella plan personnel to the vessel owner or operator's team.

SECTION C--PLANNING STANDARDS

NEW SECTION

WAC 173-182-310 Planning standards. (1) Ecology shall apply a planning standard when determining the ability of a plan holder to meet the purposes of the ~~these~~ regulations. Each planning standard is subject to being verified at scheduled or unannounced drills. In an actual spill event, initial deployment shall be guided by safety considerations. ~~T and~~ the responsible party must address the entire volume of an actual spill regardless of the planning standards.

(2) The planning standards described ~~below~~ in this chapter do not constitute cleanup standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this section does not constitute failure to comply with a contingency plan for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

NEW SECTION

WAC 173-182-315 Planning standards for nondedicated work boats and operators. Each plan holder shall ~~plan to have a system and describe it in the plan to~~ obtain nondedicated work boats and operators that will be available to deploy GRPs, enhance skimming, ~~to provide platforms~~ as vessel of opportunity skimming systems, logistical support or other uses during a spill. At a minimum, the plan shall describe a ~~system plan~~ that will support the worst case spill response with work boats and operators that could have arrived on scene beginning at ~~twelve-forty-eight~~ hours.

There is additional explanation for these changes in response #18.

NEW SECTION

WAC 173-182-320 Planning standards for aerial surveillance. (1) Each plan shall ~~provide for aerial oil tracking resources capable of being on-scene within six hours of spill awareness~~ ~~identify how aerial oil tracking resources will be located and procured.~~ At a minimum, ~~these resources must be capable of supporting oil spill removal operations for the plan shall describe resources capable of supporting oil spill removal operations for~~ three, ten-hour operational periods during the initial seventy-two hours of the discharge. ~~Resources could have arrived on scene beginning at six hours, except for the high risk areas on the Columbia River where the resources could have arrived on scene within three hours.~~

There is additional explanation for these changes in response #19.

NEW SECTION

WAC 173-182-325 Planning standards for dispersants. (1) Plan holders with vessels carrying group II or III persistent oil as a primary cargo that transit in any area where preapproval or case-by-case use of dispersants is available as per the ~~Northwest area contingency plan~~ ~~NWACP~~, must plan for the use of dispersants.

(2) The plan holder must identify the locations of dispersant stockpiles capable of dispersing the lesser of five percent of the worst case spill volume or twelve thousand barrels per day, using a dispersant to oil ratio of one to twenty.

(3) The plan holder must describe the methods of transporting equipment and supplies to a staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness.

(4) These resources must be capable of being on scene within twelve hours of spill awareness.

NEW SECTION

WAC 173-182-330 Planning standards for in situ burning. (1) Based on the NWACP, plan holders operating in areas where in situ burning ~~is feasible~~ ~~(has an expedited approval process)~~ must plan for the use of in situ burning.

(2) The plan holder must identify the locations of two fire booms, air monitoring equipment, igniters and aircraft or vessels to be used to deploy the igniters.

(3) The fire booms must be five hundred feet in length ~~each~~ and ~~each boom must~~ have an additional one thousand feet of conventional boom, tow bridles and work boats capable of towing the boom for burning operations.

(4) The plan holder must describe the methods of transporting the equipment to a staging area, and appropriate aircraft or vessels to monitor its effectiveness at the scene of an oil discharge.

(5) These resources must be capable of being on scene within twelve hours of spill awareness.

NEW SECTION

WAC 173-182-335 Planning standards for storage. Plan holders shall identify both on-water devices and shoreside interim storage locations. [For marine waters, s](#)Shoreside storage can be identified to meet fifty percent of storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage. [For freshwater environments, shoreside storage can be identified to meet 65 percent of the storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage.](#)

This change was made to acknowledge that for freshwater environments, a higher planning standard for shoreside storage is applicable. Additional explanation can be found in response #22.

NEW SECTION

WAC 173-182-345 Determining effectiveness of recovery systems. Plan holders [and PRCs that own equipment](#) shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. [To avoid duplication, plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by the department.](#) Ecology will use the criteria in ASTM International F 1780-97 (Reapproved 2002).:-

This section was separated into two sections for clarity. Additional explanation can be found in response #23.

(1) Determination of efficiency of recovery systems in varied operating environments and product types

(a) For all skimmers, describe how the device is intended to be transported and deployed. List the boom and work boats associated with each water based skimming system. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

(b) For all oil recovery systems that rely on a vessel of opportunity or nondedicated transport asset, include a statement on how the asset would be located and secured. Include in the plan the mobilization time needed to ensure the assets are available ~~and on scene in a timely manner~~, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations. [This may require longer mobilization time than those found in this chapter.](#)

WAC 173-182-348 Determining effective daily recovery capacity.

~~(12)~~ [Plan holders and PRCs that own recovery equipment shall request Determination of an effective daily recovery capacity \(EDRC\) using the following procedures and the criteria in Title 33 CFR 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices".](#)

~~When evaluating contingency plans and PRC applications, ecology will determine an effective daily recovery capacity (EDRC) of oil recovery devices in order to consider potential limitations from available daylight, weather, sea state, interim storage associated with the recovery device and percentage of emulsified oil in the recovered~~

~~material.~~ (2) When calculating the EDRC, the formula $R = T \times 24 \text{ hours} \times E$ will be used.

R = Effective daily recovery capacity

T = Throughput rate in barrels per hour (nameplate capacity)

E = 20 percent (efficiency factor).

(3) Equipment owners may request an alternative EDRC by providing all of the following information:

(a) A description of the recovery system which includes skimmer, boom, pump, work boats, and storage associated with the device;

(b) Description of deployment methods that will be used to enhance the recovery system to maximize oil encounter rate during spills;

(c) Documented performance during verified spill incidents; and

(d) Documentation of laboratory testing using ASTM standard methods (ASTM F 631-80) or equivalent test approved by the U.S. Coast Guard.

(4) The following formula will be used to calculate the effective daily recovery capacity for this alternative approach:

$R = D \times U$

R = Effective daily recovery capacity

D = Average oil recovery throughput rate in barrels per hour

U = 10 (hours of operation). 10 hours is used for potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material.

~~Additionally,~~ EDRC is limited to the storage capacity of the proposed recovery system.

For each skimming system identify the oil storage associated with each recovery system. State the storage capacity integral to the oil recovery system, if applicable. Describe how recovered oil is to be transported to/from interim storage.

NEW SECTION

WAC 173-182-350 Documenting compliance with the planning standards.

The plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) ~~For purposes of determining plan adequacy~~ ~~When computing planning standard calculations,~~ plan holders will include time for notification and mobilization of equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the plan holder, ~~the mobilization planning factor to be used by the plan holder, PRC and Ecology is thirty minutes~~ ~~mobilization equals thirty minutes~~. For all other dedicated response equipment ~~the mobilization planning factor is one hour~~ ~~mobilization equals one hour~~. ~~Non-dedicated resources shall have a mobilization planning factor of~~ ~~Non-dedicated resources shall have a mobilization time of~~ three hours.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land and five knots for water. Ecology will use standard nautical charts and street maps and available on-line mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Plan holders may request approval for ~~higher-~~ alternative notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills or unannounced drills.

(a) The request shall include date and time of performance or test, weather/sea state conditions and transportation information.

(b) If ecology accepts these alternative response times then these response times will be tested in unannounced drills to verify alternative calculations.

NEW SECTION

WAC 173-182-355 Transfer ~~locations-sites~~ for covered vessels at ~~places~~ locations where transfers occur, and for facilities with a vessel terminal.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage
6	Additional 10,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	2 times the EDRC
12	Additional 2 40,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	<u>Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived</u> Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC

This reference has been deleted. There are additional standards that must be followed in these locations that are described in separate rules.

48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response
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The reference to sensitive areas has been deleted. The boom needed for this timeframe could be used for any or all of these purposes.

NEW SECTION

WAC 173-182-360 General planning standards for covered vessel transit locations for all of Puget Sound.

<u>Time (hours)</u>	<u>Boom/Assessment</u>	<u>Minimum Oil Recovery Rate % of WCS volume per 24 hours</u>	<u>Minimum Storage Volume</u>
<u>3</u>	<u>A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived</u>		
<u>6</u>	<u>Additional 10,000 feet of boom appropriate for containment, protection or recovery could have arrived</u>	<u>Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived</u>	<u>1 times the EDRC</u>
<u>12</u>	<u>Additional 20,000 feet - combination of appropriate types of boom to be used for containment, protection or recovery could have arrived</u>	<u>Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived</u>	<u>1.5 times the EDRC</u>
<u>24</u>	<u>Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived</u>	<u>Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived</u>	<u>2 times the EDRC</u>

This section was moved for clarity.

48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response
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NEW SECTION

WAC 173-182-3650 Transmission pipelines and pipeline tank farms. (1) To determine the amount of boom necessary for the two hour standard the plan holder must identify by WRIA, ~~state surface waters~~[surface waters of the state](#) with the potential to be impacted by a spill from the pipeline.

(a) To determine the ~~initial two hour~~ booming requirements, select the widest ~~stream~~[river](#) within the WRIA.

(b) Determine the average river speed at this location.

(i) For ~~stream~~[rivers](#) with a current of two knots boom in the amount of three times the widest point in the ~~stream~~[river](#) that the pipeline could affect.

(ii) For ~~stream~~[rivers](#) with a current of three knots the requirement would be for five times the widest point in the ~~stream~~[river](#) that the pipeline could affect.

(iii) For ~~stream~~[rivers](#) with a current of five knots the requirement would be for seven times the widest point in the ~~stream~~[river](#) that the pipeline could affect.

(2) Or alternatively, the two hour standard will be two thousand feet of boom.

(3) Boom required for the two hour standard shall be dedicated to ~~the facility~~[spill response](#) and ~~may should~~ be staged in various locations along the pipeline.

This change was made to clarify that the boom needs to be available, but could either belong to the facility (pipeline) or be available from a PRC.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	Boom available at the spill source or downstream of the source could have arrived		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12, 500 barrels within 24-hour period could have arrived	1 times the EDRC

12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-37065 San Juan County Planning Standard. ~~Island National Wildlife Refuge.~~ Those covered vessel and facility plan holders that transit or operate within San Juan County must meet this standard. The resources to meet the two and three hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 10,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 240,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-3750 Padilla Bay National Estuary Research Reserve Planning Standard. Those covered vessel and facility plan holders that transit or operate north of State Highway 20, east of a line drawn from Shannon Point on Fidalgo Island to Kellys Point on Guemes Island, south of a line drawn from Clark Point on Guemes Island and William Point on Sammish Island must meet the following standards. Some of the GRPs may be deployed by land.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1.5	A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

2	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived on scene. At least 20% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional <u>240,000</u> feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-38075 Commencement Bay--Quartermaster Harbor Planning Standard. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°19'29"N Long. 122°27'23"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
1.5	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

2	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 2 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 2 40,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-3850 Nisqually ~~National Wildlife Refuge~~ Planning Standard.

Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°06'43"N Long. 122°41'53"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
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2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 12,000 feet of boom with at least 2,400 feet of boom being calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 10 20,000 feet of boom with at least 1,000 feet of boom calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-39085 Dungeness National Wildlife Refuge Planning Standard Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°10'56"N Long. 123°06'38"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived on scene		
6	Additional 7,000 feet of boom with at least 3,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1 times the EDRC
12	Additional 10 <u>20</u> ,000 feet of boom appropriate for all potential areas of impact for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC

48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response
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NEW SECTION

WAC 173-182-3950 Neah Bay Staging Area. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°23'06"N Long. 124°35'59"W (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs. The boom and recovery resources to meet the two, three and six hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the <u>or 4 times the length of the</u> largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 6,000 feet of boom with at least 4,000 feet of open water boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC

12	Additional 2 10,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 2 40,000 feet combination of appropriate types of boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-~~400~~395 Copalis, Flattery Rocks and Quillayute Needles National Wildlife Refuge Planning Standard. Those covered vessel and facility plan holders that transit or operate within the jurisdictional waters of Washington state east of the Three Nautical Mile Line and north of latitude 47°06'00"N, and south of latitude 48°09'00"N~~the jurisdictional waters of Washington state. (WGS 1984) from a point Lat. 48° 09'12.85"N Long. 124° 54'35.63"W and Lat. 47° 10'10.57.85"N Long. 124° 22'05.15"W (WGS 1984)~~ must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times <u>the or 4 times the length of the</u> largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived on scene		

6	Additional 12,000 feet of boom with at least 6,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC
12	Additional 240,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-4050 Grays Harbor ~~National Wildlife Refuge~~ Planning Standard. Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. 46°54'52.25"N Long. 124°10'26.45"W (WGS 1984) outside the entrance to Grays Harbor must meet these standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom or 4 times the <u>or 4 times the length of the</u> largest vessel of boom to be used for containment, protection or recovery could have arrived on scene		

6	Additional 6,000 feet of boom with at least 2 4,000 feet of open water boom and 3,000 feet of calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 25% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 2 10,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 2 40,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-41005 Willapa National Wildlife Refuge Planning Standard.

Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. 46°44'00"N Long. 124°11'00"W (WGS 1984) outside the entrance to Willapa Bay must meet these standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 10,000 feet of boom with at least 6,000 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 210,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 240,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-4150 ~~Lewis and Clark Cathlamet Staging Area National Wildlife Refuge~~. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 36 and statute mile 42 within a five river mile radius of a point at Lat. 46 12'25.17"N Long. 123 25'19.29"W (WGS 1984) must meet the following standards. The resources to meet the two and three must be resident.

The planning area was narrowed and a residency requirement was added. Additional explanation can be found in response #35.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 7,000 feet of boom with at least 4,200 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 2 40,000 feet of boom with at least 5,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less and 25% must be open water capable	1.5 times the EDRC
24	Additional 2 40,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived. At least 25% must be open water capable	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-420 ~~Ridgefield National Wildlife Refuge~~ [Vancouver Planning Standard](#). Those [covered](#) vessel and facility plan holders that transit or operate on the Columbia River [between statute mile 99 and statute mile 107](#) ~~within a five nautical mile radius of a point at Lat. 45 38'29.67"N Long. 122 43'10.44"W (WGS 1984)~~ must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		

3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 6,000 feet of boom with at least 3,000 feet of boom being calm water - current capable containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 2 40,000 feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 2 40,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-430 ~~McNary National Wildlife Refuge~~ Tri-cities Planning Standard high risk site. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 316 and statute mile 322 ~~within a five nautical mile radius of a point at Lat. 46° 09' 46.78" N Long. 118° 58' 14.87" W (WGS 1984)~~ must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the <u>or 4 times the length of the</u> largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 8,000 feet of boom with at least 4,800 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 2 <u>10,000</u> feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 2 <u>40,000</u> feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom <u>More boom as necessary for containment, recovery or protection</u>	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

~~WAC 173-182-440 Planning standards for other vessel transit locations.~~

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
3	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
6	Additional 10,000 feet of boom appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24 hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet— combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24 hour period could have arrived	1.5 times the EDRC
24	Additional 40,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24 hour period could have arrived	2 times the EDRC
48	Sensitive areas protected by sufficient types and amounts of boom	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24 hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-450 Planning standards for the Washington coast. These standards apply to covered vessels that enter Washington waters at the Columbia River, Grays Harbor or the Strait of Juan de Fuca, and offshore facilities.

Plan holders shall be capable of sustaining a worst case spill response and shall develop an addendum specific to Washington's coast, including:

- (1) The capability, if applicable, for in situ burning, dispersant, and mechanical recovery;
- (2) Surveillance equipment (including fixed wing, helicopters and low visibility equipment) to provide for aerial assessment of spill within six hours of spill awareness;
- (3) Time frames and mechanisms to cascade in equipment and other resources for up to seventy-two hours;
- (4) Ten thousand feet of boom appropriate for shoreline protection, containment and/or ten thousand feet of open water boom for enhanced skimming, containment or other use to arrive within twelve hours; and
- (5) Twenty thousand feet of boom appropriate for containment, protection or recovery to arrive within twenty-four hours.

SECTION D--RESPONSE AND PROTECTION STRATEGIES FOR SENSITIVE AREAS

NEW SECTION

WAC 173-182-510 Requirements for response and protection strategies. (1) Plan holders shall have methods to track and contain spilled oil and enhance the recovery and removal operations that are described in the plan.

(2) Each plan shall include [a description of](#) how environmental protection will be achieved, including:

- (a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;
- (b) The plan shall include a description of the sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics. ~~The GRPs have been developed to meet this requirement and plans may refer to the NWACP to meet this requirement. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect;~~
- (c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;
- (d) Identification of shellfish resources and methods to protect those resources;
- (e) Identification of significant economic resources to be protected in the geographic area covered by the plan; and
- (f) Each facility with the potential to impact a "sole source" aquifer or public drinking water source must identify the types of substrate and geographical extent of sensitive sites.

~~(3) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect.~~

- ~~(3)~~ (4) Each plan shall identify potential initial command post locations.

NEW SECTION

WAC 173-182-520 Planning standards for shoreline cleanup. (1) Each plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations. This standard will be evaluated using the criteria found in 33 CFR Part 155 Appendix B and 33 CFR 154 Appendix C. ~~Each plan shall identify, personnel and equipment, including absorbent material, to protect and clean three miles of shoreline and support for three days a total of one hundred people.~~
~~————(2) The plan shall include a description for how the resources necessary to support fourteen days of shoreline cleanup will be obtained and brought to the spill site.~~
~~————(3) Resources shall be appropriate to the shoreline areas that could be impacted and have the capability to arrive on scene within twenty-four hours.~~

This section was changed to be consistent with federal requirements. Additional explanation can be found in response #39.

NEW SECTION

WAC 173-182-530 Planning standards for ground water spills. (1) Each facility plan shall include a description of the methods to be used to immediately assess ~~and mitigate~~ ground water spills, ~~and prevent further migration.~~
(2) Facility plan holders shall include contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to ground water. ~~These resources shall have the capability to arrive on scene beginning at twelve hours of spill awareness.~~

These changes were made to distinguish between assessing and mitigating ground water spills. Guidance on meeting this requirement will be found in the plan review manual that Ecology will publish.

NEW SECTION

WAC 173-182-540 Planning standards for wildlife rescue and rehabilitation. The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty-four hours of spill awareness.

SECTION E--PLAN EVALUATION

NEW SECTION

WAC 173-182-610 Plan evaluation criteria. Plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans based on these conditions:

(1) Only ecology approved PRC resources, plan holder owned resources and resources guaranteed through written mutual aid agreements or letters of intent or agreement shall be counted when calculating the planning standards. In the case of non-dedicated storage devices, these will be derated by fifty percent of maximum storage volume (counted at a one to two ratio) and acquisition of these resources will be tested in unannounced drills.

(2) If a plan holder operates in an area where more than one planning standard designation applies, ecology will determine the more stringent of planning standards.

(3) Ecology will count equipment if it is appropriate for the operating environment within the geographic area defined in the plan. Ecology will use criteria from sources such as the ASTM International documents, World Catalogue, manufacturer's recommendations, the Regional ~~Equipment~~ Response list, the federal Oil Spill Removal Organization guidelines, the *Field Operations Guide* (FOG) resource typing guidelines and drills and spills to make approval and verification determinations on operating environments.

(4) Ecology will count boom if it is appropriate to the operating environment and support equipment is identified. Support equipment for boom means transportation devices, cranes, anchors, boom tackle, connectors, work boats and operators.

(5) Ecology will only count dedicated response resources towards the ~~one and~~ two hour standards.

NEW SECTION

WAC 173-182-620 Alternative method of evaluating planning standards.

(1) A plan holder may request that ecology review and approve a plan based on alternative planning standards. Such requests should be submitted with the plan and shall be subject to ~~Ecology will provide the proposal for~~ a thirty day public review period.

(2) The proposal must include, at a minimum:

(a) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(b) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(c) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(3) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal ~~would~~ provides an equivalent level of ~~environmental~~ protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(4) Ecology may reconsider an approval at any time, in response to significant plan changes.

There has been a process in place for a thirty day public review period since the rules were initially developed. This is not a new requirement.

NEW SECTION

WAC 173-182-630 Process for plan approval. (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of deficiencies within five days. The public review period does not begin until a complete plan is received.

(2) Once a plan is complete, ecology shall notify interested parties and make plans available for public review. Comments will be accepted during the first thirty calendar days of the review period.

(3) If the plan is approved, the plan holder receives a certificate describing the terms of approval, including plan expiration dates.

(a) Ecology may approve a plan conditionally and require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised,

Plan holders will be told the specific components of the plan needed for approval.

resubmitted and approved. [Such notice will include specific reference to the regulatory standard in question.](#)

(i) Precautionary measures may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Precautionary measures may also include additional requirements to ensure availability of response equipment.

(ii) Plan holders who fail to meet conditional requirements or provide required changes in the time allowed will forfeit conditional approval status.

(b) If plan approval is denied, the plan holder shall receive an explanation of the factors for denial and a list of actions necessary to gain approval. The plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved plan.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

PART III: DRILL [AND EQUIPMENT VERIFICATION](#) PROGRAM

NEW SECTION

WAC 173-182-700 Drill participation, scheduling and evaluation. (1) Plan holders and PRCs shall participate in [a drill and equipment verification](#) ~~inspection and drill~~ program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Drill Program (PREP), is relied on to test each component of the ~~response~~ plan.

(2) Ecology shall be provided an opportunity to help design and evaluate all tabletop and deployment drills. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table below.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Plan deficiencies identified in the written evaluation may require plan holders to make specific amendments to the plan.

(6) A plan holder may request an informal review of the ecology ~~drill~~ evaluation ~~or spill evaluation~~ within thirty days of receipt of the [evaluation report](#).

~~(7) Ecology may require the plan holder to participate in additional drills beyond those required in this section.~~

This is a reference to additional drills that may be required because of plan compliance issues, and is accounted for in the next section.

NEW SECTION

WAC 173-182-710 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - one in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - done two per year	These drills shall include, GRP deployments, testing of all <u>each</u> types of equipment and to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.

(1) Tabletop drills:

(a) Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the ICS. Role playing shall be required in this drill.

(b) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the ~~contingency~~ plan shall be mobilized in state for a drill, except that: At ecology's discretion, away team members may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state ~~no longer than~~ at least once every five years.

(2) Equipment deployment drills:

(a) During the triennial cycle, deployment drills shall include a combination of owned and contracted assets.

(b) Plan holders should ensure that each type of equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a GRP strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the pre-booming of an oil transfer.

This is one type of deployment drill available to plan holders if applicable. Typically it is combined with objectives to test other parts of the plan such as safety, notifications, assessment, etc.

(3) Plan holders may receive credit for GRP deployment drills conducted by PRCs if:

- (a) The PRC is listed in the plan; and
- (b) The plan holder operates in the area, schedules and participates in the drill.
- (4) Ecology initiated scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill ~~and inspection~~ program to survey, assess, verify, inspect or deploy response ~~resources~~ equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced ~~vessel~~ notification drills are designed to test ~~a~~ the vessel's ability to follow the notification and call-out process in the plan.

(d) Immediately pPrior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

This change was made to clarify that notice of unannounced drills is given at the start of the drill, or immediately prior.

NEW SECTION

WAC 173-182-720 Evaluation criteria. The PREP guidance document lists fifteen core components that shall be demonstrated during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate drills. The core components are as follows:

- (1) Notifications: Test the notifications procedures identified in the plan.
- (2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.
- (3) Ability to operate within the response management system described in the plan. This includes demonstration of the ICS staffing and process identified in the plan.
- (4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.
- (5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge and provide continuing assessments of the effectiveness of the tactical operations.
- (6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.
- (7) Recovery: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. Includes mitigation and removal activities, e.g., dispersant use, in situ burn use, and bioremediation use.
- (8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimode.

~~(12)~~ Transportation both for execution of the discharge and support functions.

~~(13)~~¹² Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

~~(14)~~¹³ Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

~~(15)~~¹⁴ Procurement: Demonstrate the ability to establish an effective procurement system.

~~(16)~~¹⁵ Documentation: Demonstrate the ability of the plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

NEW SECTION

WAC 173-182-730 Other ways to get drill credit. (1) Plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate and evaluate the spill response. Credit from spills shall not entirely alleviate the plan holder's responsibility to drill.

To obtain credit, a written request to ecology shall be made within sixty days of completion of the cleanup operations.

(a) The request shall include documentation supporting the components of WAC 173-182-720.

(b) Plan holders shall have up to ninety days~~also to~~ submit a lessons learned summary with supporting the request for drill credit.

(2) Plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill.

There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self certification documentation shall be provided to ecology within thirty days of the drill;

(d) The plan holder has one response plan for a number of facilities or a fleet of vessels; and

(e) Plan holders seeking credit for a scheduled out-of-state drill shall notify ecology in writing ninety days in advance, to provide ecology an opportunity to participate.

Plan holders will have 60 days to notify of their intent to request credit, and an additional 30 days to submit paperwork to support the request.

NEW SECTION

WAC 173-182-740 Drill requirement waivers. (1) Plan holders may request a waiver for a deployment or tabletop drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Plan holder's requests for a drill waiver will be made available for public review for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the letter.

PART IV: PRIMARY RESPONSE CONTRACTOR (PRC) STANDARDS

NEW SECTION

WAC 173-182-800 PRC application. (1) To become a state-approved PRC, a response contractor must:

- (a) Submit an application as set forth in subsection (2) of this section;
- (b) Have a process to provide twenty-four hour/day contact for spill response;
- (c) Commit to begin mobilization efforts immediately upon notification but no later than one hour from notification of a spill;
- (d) Maintain equipment in accordance with manufacturer specifications; and
- (e) Assist plan holders in meeting the requirements for drills in Washington.

(2) To apply, a contractor should complete, sign and submit the application form number ECY 070-216.

NEW SECTION

WAC 173-182-810 Submittal and review of contractor applications. (1) Once an application is received, ecology will determine whether it is complete. If not, the response contractor shall be notified of deficiencies in writing and given a time period for submitting the required information.

(2) ~~An on-site inspection to verify equipment~~ Equipment and personnel readiness will be ~~conducted~~ verified once the application is approved. ~~During the inspection,~~ Ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of ~~the~~ each type of equipment listed in the application. ~~Inspections~~ These inspections may be conducted at any/all equipment locations. Any resources not on-site at the time of an inspection shall be accounted for by company records.

(3) If the application is approved and the ~~inspection~~ verification is satisfactory, the contractor shall receive a letter of approval describing the terms of approval, including expiration dates and EDRC of the recovery equipment. PRC approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

(4) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

(5) Approval of a response contractor by ecology does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

NEW SECTION

WAC 173-182-820 ~~Significant~~ Significant changes require notification. (1) The PRC is responsible to provide written notification to ecology and plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application. The notice shall include the identification of back up resources sufficient to maintain the PRC readiness level, and the estimated date that the original equipment shall be back in full service. Changes which are considered significant include loss of equipment that affect the planning standard spreadsheet of any plan holder covered by the PRC, personnel identified in ICS positions by plan holders, changes in equipment ownership, or a greater than ten percent decrease in available spill response equipment. Failure to report changes could result in the loss of PRC approval. Notification by facsimile or e-mail will be considered written notice.

(2) If ecology determines that PRC approval conditions are no longer met, approval may be revoked or conditionally modified. The PRC will receive a written notice of the loss of approval or conditional modifications and a time period to either appeal or correct the deficiency.

(3) Ecology will immediately notify plan holders of changes in the approval status of PRCs.

If the approval of a PRC is changed, Ecology will notify plan holders

PART V: ~~INSPECTION~~ RECORD KEEPING AND COMPLIANCE INFORMATION

NEW SECTION

WAC 173-182-900 ~~Inspections~~ Record Keeping. Ecology may verify compliance with this chapter by examining ~~unannounced inspections in accordance with RCW 90.56.410 and chapter 88.46 RCW. These inspections will be used to verify~~ training and equipment maintenance records, ~~verification of~~ drill records, accuracy of call-out and notification lists, spill management team lists, ICS forms, waste disposal records, post-spill reviews and records on lessons learned.

This section has been changed to clarify that it pertains to examination of the records required by this chapter and not to inspections.

NEW SECTION

WAC 173-182-910 Noncompliance. (1) If an owner or operator of a covered vessel, onshore or offshore facility, a person or plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

- (a) Place conditions on approval; and
- (b) Require additional drills to demonstrate effectiveness of the plan; or
- (c) Revoke ~~its~~ the approval status.

(2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(3) Any violation of this chapter may be subject to the enforcement and penalty sanctions.

(4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a covered vessel, facility or person is in violation of this section shall be considered a separate violation.

NEW SECTION

WAC 173-182-920 Operation without plan. (1) A covered vessel may not enter or operate on the waters of the state without an approved, or conditionally approved, contingency plan, ~~except that a~~ ~~A covered~~ vessel not in compliance with this chapter may enter waters of the state if the Coast Guard has determined that the vessel is in distress.

(2) The owner or operator of a ~~regulated onshore or offshore~~ facility may not operate without an approved, or conditionally approved, plan nor transfer cargo or passengers to or from a ~~tank covered~~ vessel that does not have an approved, or conditionally approved, contingency plan. The owner or operator of a covered vessel may not transfer oil to or from an onshore or offshore facility that does not have an approved or conditionally approved contingency plan.

(3) Ecology may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. ~~In the case of a continuing violation, e~~Each day's ~~continuance that a facility or person is in violation of this section~~ shall be considered a separate violation.

(4) Any person found guilty of willfully violating any of the provisions of this ~~chapter~~section, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

NEW SECTION

WAC 173-182-930 Severability. If any provision of this chapter is held invalid, the remainder of the rule is not affected.

Response to public comments

Oil Spill Contingency Rules

Chapter 173-182 WAC

RESPONSE TO COMMENTS

Part 1: Purpose, Authority, Applicability and Definitions

1. WAC 173-182-010 Purpose

Summary of comments: There were comments suggesting that a safety clause should be added to the purpose section; for example, the section should state that nothing in this chapter requires an unsafe response, or an action to be undertaken if it is unsafe.

Response: The purpose section of these rules sets the goals and objectives for the regulations, and they are consistent with the goals and objectives of the authorizing statute. During the rule advisory committee process, there was an overarching agreement that protection of human safety should be considered the primary objective in all oil spill responses. Safety is addressed in several places in these rules, including WAC 173-182-030 definitions (19) and (45), WAC 173-182-220 binding agreement, WAC 173-182-250 initial response actions, WAC 173-182-280 training, WAC 173-182-310 planning standards, safety during an actual spill event, WAC 173-182-440 safety assessment, WAC 173-182-710 drills. It is not necessary to also address it in this section and this change was not made.

Commenter(s): Richard Wright, Frank E. Holmes, Michael R. Moore

2. WAC 173-182-015 Applicability

Summary of comments: There were comments that the section was poorly written and difficult to understand. There was also a related question about use of the term “substantial harm” relating to onshore facilities and the criteria that Ecology would use to determine substantial harm applicability.

Response: This section, which defines the applicability of these rules, was edited in a manner to provide clearer language with no changes of substance.

In part, these rules apply to facilities that transfer oil to/from tank vessels and pipelines. Facilities are further defined within the statute as either onshore or offshore. The definition of onshore facility includes facilities that could *reasonably* be expected to cause *substantial harm* to the environment by discharging oil into navigable waters or the adjoining shorelines. This is the same standard that has been in place since the early 1990’s when these rules were initially developed. The substantial harm determinations are made on a case-by-case basis, and based partially on the potential pathways for spilled products to reach state waters or adjoining shorelines (for example, distance to water, topography, permeability of ground water, storm water conveyance and collection systems) as well as the history of spills at the location. If a facility operator has a question

about whether these rules apply to a particular facility, the operator should contact the department of Ecology to assist in making the determination.

Commenter(s): John R. Felton, Richard Wright, Tammy Brown

3. WAC 173-182-030 Definitions

(1) “Boom.” One commenter requested that Ecology state the boom classifications by sizes or Coast Guard classifications required to meet the planning standards. The commenter also noted that the referenced ASTM [American Society for Testing Materials] standard is not readily available to the public without purchasing it.

Response: Boom is typically the first mechanical response equipment brought to the site of an oil spill. It is used to contain oil for removal, deflect it away from or toward specific locations for removal or protection and is used with absorbent material to maximize response efforts. Boom is manufactured in a variety of sizes and materials that are configured for certain operating environments (calm, current, protected and open water areas). These rules set standards to ensure that the appropriate type of boom is available for the recommended operating environment. The definition lists the references that Ecology will use to determine the effectiveness of boom, and these references are available to the public. In addition, Ecology will revise its existing guidance manual to provide regulatory assistance on this issue once these rules are effective.

Commenter(s): John R. Felton

(5) “Contract.” There was a comment that this definition introduces the acronym “OSRO” without further defining it.

Response: This acronym has been replaced with the term primary response contractor, which is a defined term under this chapter of rules. OSRO [Oil Spill Removal Organization] is the acronym that the federal government uses to define response contractors, while primary response contractor is the term that the state uses.

Commenter(s): Greg Hueckel

(11) “Dispersants.” There were suggestions to add a definition for the term dispersants.

Response: A definition has been added and the new definition is consistent with federal regulations.

Commenter(s): Greg Hueckel, Ken S. Berg

(8) “Demise charter.” There were suggestions to add a definition for the term demise charter.

Response: A new definition has been added. The term demise charter is used in these rules when defining a public vessel and determining applicability under this chapter.

Commenter(s): Greg Hueckel, Ken S. Berg

(14) “Facility” “Onshore facility,” and substantial harm criteria. There were comments that vacuum trucks be specifically excluded in the definition of facility, and from the applicability of these rules. There were requests to clarify throughout these rules the various types of facilities covered under this chapter.

Response: Vacuum trucks (a type of mobile facility) are excluded from these rules under WAC 173-182-015. This section has been clarified in terms of the multiple references to various types of facilities. Please see response #2 “Applicability” for additional information about the substantial harm comments.

Commenter(s): Frank E. Holmes, Jason Lewis, Michael R. Moore, Ken S. Berg, John Crawford, Tammy Brown

(15) “Geographic Response Plan” There was a suggestion to simplify this definition by deleting extraneous information.

Response: Geographic response plans are contained within the Northwest Area Contingency Plan, and are strategies that prioritize resources to be protected during the initial responses to oil spills and allows for immediate and proper action. By using this plan, the first responders can avoid the initial confusion that generally accompanies any spill. The definition has been modified, simplified.

Commenter(s): Greg Hueckel

(16) “Gross tons.” Commenters suggested that this term be specifically defined as domestic gross tonnage. Other comments suggest that using vessel tonnage is an inappropriate way to measure risk because vessels routinely manipulate tonnage to avoid regulations, that potential worst case spill volume is more appropriate.

Response: The Legislature uses the term “gross tons” several times in Chapters 88.46 and 90.56, but they do not define the term. Under federal regulations (46 CFR Part 69) gross tonnage means a vessel's approximate volume. Under federal regulations, tonnages are required before a vessel may be documented and are used to apply commercial vessel safety regulations, to meet the requirements of the International Convention on Tonnage Measurement of Ships, 1969. There are domestic measurements and international measurement. At this time, the definition included in 173-182-030 for “Gross Tons” is the same definition that the Coast Guard uses. Ecology has not changed its definition nor use of the term “gross ton”.

Commenter(s): Dan Smiley, Michael R. Moore

(19) “Interim storage.” One commenter noted that the term interim storage site was defined but not used elsewhere in the chapter.

Response: The term consistently used in the rules, including definitions, is now interim storage.

Commenter(s): Greg Hueckel

(17) “Incident Command System.” There were suggestions to add a definition for incident command system.

Response: The incident command system is a standardized emergency management system used when responding to oil spills in the United States. A definition has been added.

Commenter(s): Greg Hueckel, John R. Felton, Ken S. Berg

(20) “Maximum extent practicable” There were comments that this definition is open-ended and leaves too much discretion to Ecology by allowing an unchallengeable director’s determination.

Response: This definition contains sufficient criteria to be clear. Under Washington statute RCW 90.56.010, it is the director that determines best achievable protection and technology. In addition, decisions made by Ecology may be appealed.

Commenter(s): Michael R. Moore, Richard Wright

(22) Navigable waters of the state and (53) waters of the state: There were comments to suggest further defining of waters of state as limited by 3 miles seaward.

Response: No change is needed. Both navigable waters and waters of the state are defined in the statute by the legislature and the rules, and are inherently limited to waters that the state has jurisdiction over.

Commenter(s): Jason Lewis, Frank E. Holmes, John Crawford, Michael R. Moore

(27) “Oil.” There were comments that the term oil should be expanded to include those derived from non –petroleum sources, given that those oils have potential to harm the environment if spilled, and recent interest in the development of bio-diesel facilities in Washington.

Response: Ecology agrees that oil derived from non –petroleum sources when spilled can harm the environment; however, the definition of oil (which must contain petroleum derived product) is set by the legislature in statute, thus Ecology cannot change the definition in these rules. Legislative action is needed to expand this definition.

Commenter(s): Ken S. Berg, Greg Hueckel, Arthur (R.D.) Grunbaum

(32) “Passenger vessels.” There was a comment that the definition contains an exemption for passenger vessel with a fuel capacity less than 6,000 gallons, which is arbitrary.

Response: This definition is used to determine applicability under these rules. The legislature established the definition for passenger vessels by statute, thus Ecology cannot alter the definition in these rules.

Commenter(s): Dan Smiley

(33) “Persistent oil.” There was a suggestion to simplify the definition, and a comment relating to use of this word in the oil transfer regulations also being developed at this time by Ecology.

Response: The federal regulations classify oil into five types, primarily based on their specific gravity. The characteristics of these oil types are based on the relative persistence of the oil. These rules contain the same classification system as the federal regulations. The term persistent oil is used in the context of dispersant requirements in WAC 173-182-325. The comment relating to the oil transfer rules will be answered in that Concise Explanatory Statement.

Commenter(s): David A. Sawicki, Greg Hueckel

(38) “Planning standards.” There was a suggestion to add the word “criteria” to the definition.

Response: This change has been made.

Commenter(s): Greg Hueckel, Ken S. Berg

(41) “Regional Response List.” There was a comment that this definition is not used in the chapter of rules.

Response: The term is used in 173-182- 610, as well as in the primary response contractor application ECY form number ECY 070-216. This is available at (internet site).

Commenter(s): Greg Hueckel

(43) “Responsible party.” There were requests in several areas of this draft for clarification between the roles and legal obligations of the spill/responsible party and a plan holder that may act on behalf of the spill.

Response: A definition for responsible party (spiller) was added in response to several requests to clarify statutory responsibilities when the plan holder is not the spill.

Commenter(s): Eric D. Johnson

(44) “Ship.” There was a comment that the definition of ship differs from the federal definition, and that Ecology’s use of the words ship, barge and vessel in these rules is unnecessarily confusing. There were similar and related comments concerning the term

(6) “Covered vessel.” There was a comment that the draft rule is confusing about the types of applicable vessels and uses the term vessel in too many ways. There was a suggestion to consolidate the number of terms down to the fewest required; review the rule to ensure that the way the terms are used in the chapter results in the appropriate application of the rule; and reconcile the differences in the definition for "covered vessel" between WAC 173-182-015 and WAC 173-182-030(6).

Response: The word ship is used in the definitions of the various types of covered vessels to which these rules apply. The legislature established the definition for ship by statute, thus Ecology cannot alter the definition in these rules. In numerous places throughout these rules Ecology has clarified these terms as they are used.

Commenter(s): John R. Felton, Greg Hueckel

(49) “Transfer site.” Definition is unclear, whether it is a location or a vessel route.

Response: Ecology has modified the definition to make it clearer.

Commenter(s): Greg Hueckel, Ken S. Berg

(54) “Worst case spill.” There was a comment that this definition (for tank vessels) does not account for the risk mitigated by double hull, double redundant tank vessels, and thus creates a struggle to design meaningful drills. There was a comment that historically, operators have been allowed to understate their worst case spill volumes and that the volume stated in the plan be reviewed and approved before the plan is submitted (to save time). There was a statement that it was unclear whether this section was meant to apply to both self propelled and non-self propelled vessels.

Response: The Legislature has set a high standard in Washington in defining a plan holder’s worst case spill volumes (see 88.46.010 (22) and 90.56.010 (27)). The standard is the largest foreseeable spill, or entire cargo and fuel of the vessel, each complicated by adverse weather.

Commenter(s): David A. Sawicki, John R. Felton, Mike Doherty

“High risk.” There were comments that the definition was unclear and missing either an “and” or “or,” and a suggestion that the term be changed to special planning areas.

Response: This definition has been deleted, and the term high risk area changes to special planning standards.

Commenter(s): Frank E. Holmes, Greg Hueckel, Michael R. Moore, Richard Wright

“Systems Approach.” This definition is deleted, though in these rules there are various requirements that require plan holders and primary response contractors to describe their recovery systems and to maximize their efficiency (see WAC 173-182-34 and 173-182-348).

Commenter(s): Greg Hueckel

Summary of comments: There was a question asking how widely the definitions are meant to apply within the Washington Administrative Code, with a suggestion if the intent is to make them applicable only to Chapter 173-182 WAC, then consider inserting the phrase " As used in this chapter:" at the beginning of the section.

Response: Ecology only intends the definitions in WAC 173-182-030 to apply within this chapter. Ecology believes that the general rule of statutory (and rule) construction is that definitions at the beginning of a chapter only apply to that chapter, unless a contrary intent is stated. Thus, Ecology believes the addition of the phrase "as used in this chapter" is unnecessary.

Commenter(s): Greg Hueckel

Part II Covered Vessel and Facility Oil Spill Contingency Plans

SECTION A - GENERAL PLANNING, INFORMATION AND TIMING

4. WAC 173-182-110 Authority to submit contingency plan

Summary of comments: There were suggestions to clarify the section, which was confusing as written. There was a comment to resolve the legislative language that allows agents to submit umbrella plans for vessels of similar class.

Response: Several clarifying (editing) revisions were made within this section in response to the comments that, as written, the section was confusing. Under RCW 88.46.060 (3) (a) and (b), the statute allows an agent, or facility owners or operators to submit a single contingency plan for cargo or passenger vessels of a particular class, subject to conditions imposed by the Ecology. Ecology interprets "of a particular class" to mean a group of vessels that are similarly situated, for example, share the same spill management team, response contractor, training policies or pose a similar risk in terms of types and quantities of oil carried. Otherwise it would not be feasible to submit an umbrella plan.

Commenter(s): Jason Lewis, John Crawford, John R. Felton, Michael R. Moore.

5. WAC 173-182-120 Submitting a contingency plan

Summary of comments: There were suggestions that this section be amended to require one rather than three copies of contingency plan be submitted to Ecology for review, a request for an explanation why extras are needed, and audits to ensure that the copies are truly being used.

Response: This section has been changed to require two copies of plans to be submitted to Ecology. Ecology is organized into regional offices, much like the Coast Guard which is organized into two Captain of the Port zones in Washington’s waterways. When spills occur, Ecology responders utilize the plans to make spill response decisions. When industry plan submitters operate in more than one of Ecology’s regional jurisdictions (Puget Sound, Columbia River, eastern Washington), it is necessary that industry submit a sufficient number of plans for Ecology to refer to and use.

Commenter(s): Jason Lewis, John Crawford

6. WAC 173-182-130 Phase in language

Summary of comments: There were comments that the phase in language is punishing those who have actively participated in the rulemaking, and that resubmitting plans will cost industry because they must also be submitted to EPA and DOT. There was a comment that 18 months is too short a time for compliance if there are substantial infrastructure investments to be made.

Response: If more time is needed, a compliance schedule shall be set in writing with individual plan holders. In order to mitigate the costs of these rules on small businesses, a longer compliance schedule is set.

Commenter(s): David A. Sawicki, Eric Haugsted

7. WAC 173-182-140 Plan maintenance and reporting obligations

Summary of comments: There was a comment that this section leaves too much discretion to Ecology whether to change the approval status of plan holders when “significant changes” have occurred. There were comments requesting to add the word permanent in paragraph 2 to indicate that it is necessary to report permanent and not temporary loss of key spill management team, for example, if key members are on vacation.

Response: Ecology respectfully disagrees with this suggestion. Taking enforcement action is always discretionary.

Commenter(s): Bruce Wishart, Michael R. Moore, John R. Felton

8. WAC 173-182-145 Plan implementation procedures

Summary of comments: There were comments that the requirements in this section to use the state-approved contingency plan appear to conflict with similar federal requirements to use the federal plan (federal vessel response plan). The commenter also observed that this may be an area of pre-emption because of pending federal regulations plans for non-tank vessels. There was a comment that drills should be deleted from this section’s requirement to implement the plan during drills. There was a request that the requirement to implement the plan be revised to apply to the vessel and not to the vessel umbrella plan holder.

Response: Under this nation's national response system, several sets of contingency plans integrate and cover all areas of jurisdiction to ensure consistency, from the national contingency plan to area or regional plans to the individual industry plans. Title 33, section 2718 of the United States Code, preserves the rights of states to impose additional liability and requirements relating to the discharge or substantial threat of a discharge of oil. Therefore, the State is not federally preempted in this area. Ecology is required to be consistent with the Coast Guard to greatest extent practicable under RCW 88.46.020 and 90.56.070. Ecology has tried to harmonize these rules with Federal contingency planning requirements wherever possible and appropriate, given the legislature's direction that contingency plans focus on worst case spills.

Section 701 of the 2004 Coast Guard Reauthorization Act, HR 2443, authorized the Coast Guard to require non-tank vessels to submit contingency plans, while the state has had this requirement since the early 1990's. The advent of federal planning is an enormous advance in the area of preparedness. A contingency plan prepared for the federal government and that satisfies the requirements of these rules may be accepted Ecology for approval. In other words, it is possible to submit a single plan to meet both requirements. Tank vessel companies have been doing this for years. Section 701 contains language that requires the Coasts Guard to consider any applicable state-mandated response plan and ensure consistency to the extent practicable.

Ecology believes it is a reasonable expectation that plans will be implemented during drills, for it is the purpose of a drill to test the effectiveness of the plan, and the word drill will not be deleted from this section.

Commenter(s): Elizabeth Wainwright, Frank E. Holmes, John R. Felton, Michael R. Moore, Michael Anderson

9. WAC 173-182-150 Post-spill review and documentation procedures

Summary of comments: There were also several comments on the tracking of oily waste. These are addressed in Response #11. The requirements for tracking waste have been moved from this section of the rules into WAC 173-182-230.

There was a comment that a requirement in this section for post-spill debriefs when unified command has been established is too broad, because this happens in nearly every spill response, regardless of size.

Response: This section has been clarified in terms of responsible party requirements and when debriefs are required.

Commenter(s): Elizabeth Wainwright, Greg Hueckel, Jason Lewis, John Crawford, John R. Felton, Michael R. Moore, Richard Wright

SECTION B CONTINGENCY PLAN FORMAT AND CONTENT

10. WAC 173-182-220 Binding agreement

Summary of comments: There were suggestions in this section to add the word “safe” in addition to “aggressive” as a commitment for plan holders when implementing the plan. There were comments that are similar and related to other comments summarized in response number 8, regarding potential conflicts with federal vessel response plans, and a request to delete the language binding a plan holder to implementing the state plan. There were comments on the requirement to commit to notifications of significant threats of spills. Commenters felt the term significant should be defined or that it should be a requirement for the responsible party and not the vessel umbrella plan holder.

Response: RCW 90.56.340 requires a spiller to respond immediately. This section has been changed to be consistent with the statute. In addition, the word safety has been added to the binding agreement as well. Safety is addressed several times in the rule, including 173-182-030 definitions (19) and (45), 173-182-220 binding agreement, 173-182-250 initial response actions, 173-182-280 training, 173-182-310 planning standards, safety during an actual spill event, 173-182-440 safety assessment, 173-182-710 drills. Regarding conflicts with Federal vessel response plans, please see Ecology’s response to Comment #8.

Commenter(s): Elizabeth Wainwright, Frank E. Holmes, Jason Lewis, John Crawford, John R. Felton, Michael R. Moore, Richard Wright

11. WAC 173-182-230 Contingency plan, general content

Summary of comments: There was a suggestion that the requirement to list other plans relied on for spill response and to describe how coordination will occur be deleted from this section, since the binding agreement already requires a commitment to respond. There was also a question about whether the section could be further clarified by adding “vessel” or “facility.”

Response: This deletion has been made.

Commenter(s): Jason Lewis, John Crawford, David A. Sawicki

Summary of comments: There was a suggestion add additional language to this section clarifying what types of trajectory model will be acceptable to Ecology when used to define the geographic extent to which facilities must plan (worst case spill), and that contingency plans should also list any special planning areas in which a vessel operates or transits in order to define worst case spill. There were comments that the language concerning vessels submitting more than one worst case volume was confusing, and perhaps were in conflict with a requirement elsewhere in the rules to apply the more stringent planning standard.

Response: Umbrella plans cover a variety of vessel types with worst case volumes that differ accordingly. These plans may cover ports with limited ship operation, for example, cargo vessels only. In that case, the umbrella plan may submit more than one worst case spill volume. The language in this section was slightly amended to clarify the intent.

Commenter(s): Greg Hueckel, Ken S. Berg

Summary of comments: There was a comment that the section could be further clarified if Ecology would identify the types of diagrams that may be requested for the vessel umbrella plans.

Summary of comments: The requirements for tracking waste have been moved from WAC 173-182-150 to this section of the rules. There was a request to clarify that it is the responsible party (specifically the vessels that enroll in umbrella plans) and not the umbrella plan holders that are responsible for tracking recovered wastes. This new requirement unnecessarily takes additional manpower, labor and management, away from other spill response activities assuming a limited amount of trained personnel. This is a new requirement not in previous regulations, not required by WAC or the statutes, and not discussed or justified by Ecology per the Administrative Procedures Act. Please reconsider the necessity of taking personnel away from a response to segregate, classify, quantify, verify, and track the quantity of oil recovered from a spill. This will slow down the cleanup and add considerable costs with an unforeseen or negligible benefit.

Response: This section was changed to include the list of diagrams necessary.

Oil spill responses can quickly generate large volumes of waste. Storage, handling and disposal of waste generated during oil spills must be planned for in advance. It is important that waste generation is minimized, and immediately segregated by type, mixing of hazardous and non-hazardous waste is avoided, and waste is labeled and identified by source. Planning ensures this. Umbrella organizations must start this, and transition to responsible party.

In general, volume recovery estimates are important because of their role in assessing the effectiveness of response operations, as well as punitive and natural resource damages. In particular, the State of Washington's Natural Resource Damage Assessment Compensation Schedule (Chapter 173-181 WAC) basis natural resource damage assessment values on quantity spilled and quantities recovered. The quantity spilled is multiplied by scaling factors related to general environmental effect (i.e., toxicity, persistence, and mechanical injury effects), and area-specific environmental vulnerability factors (i.e., habitat sensitivity, endangered species presence among others). Using the formula, a range of \$1 to \$50 dollars per gallon is possible. Credit (i.e., compensation reduction) may also be given for oil recovered in the first 24 hours since a reduction in environmental impact is presumed.

As is prescribed in the Northwest Area Contingency Plan and the statute (RCW 90.56.210 (k) and 88.46.060 (l)) tracking waste is already an existing response requirement. Tracking waste and recovered product helps gauge the magnitude of the response, effectiveness of the response, helps steer response activities, understand risk to the environment, and assures proper disposal. It is appropriate that vessel umbrella plans provide the tools and process for their members, as waste tracking must begin immediately after a spill.

Commenter(s): Greg Hueckel, John Crawford, Michael R. Moore, Jason Lewis, John R. Felton

12. WAC 173-182-240 Field document

Summary of comments: There were comments that the requirements to keep field documents in the locations listed in the plan be deleted, and that it should be sufficient that vessel operators are required to locate it in key locations. There was a comment that vessel umbrella plan holders be exempt from the requirement to list the locations where field documents are kept, because this type of plan holder cannot know in advance where the enrolled owners/operators of vessels keep the documents. There was a comment on liability of vessel umbrella plan holders should enrolled owners or operators fail to have the field document on board when inspected by Ecology. There was a question whether it was acceptable to make field documents available to vessels electronically; otherwise spot charter vessel trade to Washington could be restricted

Response: A field document contains time critical information for the initial emergency phase of a spill, including proper notifications. Spillers (responsible parties) are required by statute to make notifications of a spill. Vessel umbrella plans may be submitted by an organization that develops and implements the plan, but is not the spiller. RCW 88.46.070 states that contingency plans are legally binding on those persons submitting them. The language in this section has been changed to clarify responsibilities of plan holders and responsible parties. Vessel umbrella plans must describe where the enrolled members must keep their field document, but the plan holder will not be held liable if a vessel owner or operator fails to do so. These changes made it necessary to define a new word, “responsible party” (definition number 43). Language was also added to indicate that electronic means is acceptable to ensure each vessel covered by a plan is provided the field document prior to entering Washington waters.

Commenter(s): David A. Sawicki, Elizabeth Wainwright, Eric Haugsted, Jason Lewis, John Crawford, Michael R. Moore

Summary of comments: There were comments that it is unrealistic to require the crew on the vessel to make a reasonable assessment of spills, that it was better for those who detect a spill to just describe what they see – “... detect, report and document ...” Commenters felt the field document should not contain procedures to detect, assess and document spills and that this requirement should be simplified, with a goal that initial report be prompt so that the response can be immediate.

Response: Clearly a vessel crew must perform some of the initial assessment steps: discover the spill, determine the extent and make notifications as required. A complete assessment may take more than just the vessel crew, for example, the spiller’s primary response contractor may need to arrive and conduct a safety assessment including air monitoring. No change is necessary.

Commenter(s): Richard Wright, Jason Lewis, John Crawford, Michael R. Moore

13. WAC 173-182-250 Initial response actions

Summary of comments: Commenters felt that the existing technology for oil spill assessment in all conditions was inadequate (such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery), or that this section should be deleted for its subjectivity. There was a comment that stockpiling of oil tracking devices (including radio buoy droves) would enable the trajectory of a spill to be traced through the night and in fog, and that having hoistable tracking equipment in King county doesn't help the outer coast. One commenter noted that monitoring surface currents along the coast of Washington (using CODAR?) would enhance the tracking of oil spills, and other events and emergencies that threaten the Olympic coast shoreline. There was a comment that the requirements for spill assessment could be written as a standard to be met rather than guidance. One commenter suggested that the rules should require specific equipment rather than rely on Ecology to determine adequacy because this would give a firmer basis for defending a decision. There was also a suggestion the rules set specific timing for conducting assessments, similar to the required safety assessment in the planning standards.

Response: Ecology will be evaluating plans to determine if plan holders have a mechanism to conduct spill assessment in all environmental conditions. Writing a specific standard for all plan holders would not be appropriate as each location and spill could benefit from different assessment capabilities. A small spill in the Seattle area and a small spill in the San Juan Islands would require different assessment capabilities. Plans will be evaluated based on the plan holder's area of operation and potential worst case spill volumes.

Commenter(s): Tammy Brown, Ben Johnson, Jr., Fred Felleman, Greg Hueckel, Jennifer Lukens, Jim Davis, Paul Jewell

Summary of comments: There was a suggestion to delete the requirements to list procedures to confirm the existence of spills, estimate the quantity and nature, and later update the report if it changes significantly, because the standards are subjective and should be simplified.

Response: The spiller is required to make additional notifications if there are significant changes. Should an initial spill notification later be found to differ significantly from the first report, the plans should contain procedures stating additional reports are necessary, until unified command is established. It is not unreasonable to require that significant changes be reported, so that the responding agencies can make unified decisions and scale their responses.

Commenter(s): Jason Lewis, John Crawford

Summary of comments: There was a question about how to include safety assessment standards for air monitoring for all types of spills, including spills to groundwater?

Response: There are basic steps that should be taken to assess ground water spills, both for safety and to determine the extent of the spill. In recent years there have been spills

from pipelines where these basic steps have been overlooked by the plan holders, including spill events where non-persistent oil type surfaced to the ground. Planning for such events and training staff how to respond will be required under this section, as well as the requirements under WAC 173-182-260 and 173-182-530.

Commenter(s): Tammy Brown

Summary of comments: There was a request to revise the requirement that plan holders document initial spill actions to indicate that the vessel owners and operators are responsible to implement plans including the requirements of this section, and not the vessel umbrella plan holder.

Response: This section has been changed to add the responsibility that responsible parties (spillers) may share with plan holders to document their initial spill actions. In some cases, for example, the case of a Washington non-profit cooperative that submits an umbrella plan on behalf of various vessels, the spiller and plan holder may not be the same entity. Both entities will take actions to respond to a spill, and under this section, are required to document initial spills actions, for example, through vessel logs, notification call-out forms or using the ICS 201 Incident Briefing form.

Commenter(s): Elizabeth Wainwright

14. WAC 173-182-260 Notification and call-out procedures

Summary of comments: There was a comment that a plan holder (who is not the spiller) may assist the responsible party in meeting the notification requirement; however, the legal requirement to make notification rests on the spiller, and a request to clarify this section to reflect the legal requirements. There was also a request to clarify which list of names need not be included in the plan.

Response: Under RCW 90.56.280 the spiller is responsible to make notifications. This section has been changed to reflect this. This section requires that plan holders maintain a list of the names and phone numbers of response contractors and spill management team members, which may contain home telephone numbers. The section has been clarified that this list may be maintained at the office and reviewed at that location by Ecology, rather than included in the plan. Further clarification will be found in the revised plan review manual that Ecology will publish.

Commenter(s): Elizabeth Wainwright, Michael R. Moore, Richard Wright, Tammy Brown

15. WAC 173-182-270 Maintenance records for response equipment

Summary of comments: There was a request to clarify whether this section that requires equipment maintenance is applicable to response contractors or the plan holders. There were comments that requiring maintenance details (schedules, methods and procedures) to be contained in plans is unnecessary, adds needless bulk to the plans, and that instead

Ecology should require that the records be kept elsewhere and made available for inspection upon request. There was a comment that manufacturer's specifications or maintenance recommendations are often very detailed and nearly impossible to follow, while others suggested that with such a large investment in equipment, it is in the owner's best interest to maintain it properly.

Response: This section was clarified to reflect that both the plan holder and the primary response contractor have responsibility to maintain equipment that they own. Some plan holders do not own equipment and rely solely on their primary response contractor, and this section would not apply in that case. However, it is advisable for a plan holder that relies on primary response contractors to ensure that the equipment is maintained and ready. A change was made in this section to require that maintenance records are kept at an office and made available if requested. This change was made in order to keep the plans as tools needed for response, and not filled with unnecessary documents.

Commenter(s): Elizabeth Wainwright, David A. Sawicki, Frank E. Holmes, Jason Lewis, John Crawford, John R. Felton, Michael R. Moore, Richard Wright

16. WAC 173-182-280 Spill management teams

Summary of comments: There were comments that assigning primary and alternate names down to the unit level was excessive, totaling 66 individuals. There were comments that the Coast Guard *Field Operations Guide* states that only positions required for an adequate response need to be filled, and organizations should be kept as small as possible to accomplish the incident objectives. It was requested that this section be amended to require one primary and one alternate name down to the command and staff (section chief) level instead. Concern was expressed over the ability of small companies to meet the requirement and the commenter questioned whether the costs of these requirements were considered in this rule development process. There was a comment that this section should distinguish that professional consultants brought in to help fill various ICS spill management positions are not considered to be response contractors for purposes of having to be on the state's approved primary response contractor list.

Response: The commenters are correct to suggest that an ICS organization should be flexible in terms of size, and grow according to the needs to the spill incident. However, these planning regulations are intended to demonstrate industry's readiness for worst case spills, and the requirement in this section is intended to show that the plan holder is prepared with enough trained staff for a spill which could easily involve 66 or more people at the command post. Since this section does not require a full ICS response to all spills, there is no conflict with the flexibility of the system or the *Field Operations Guide*. Some plan holders have agreements with professional spill management teams, and the section has been clarified to reflect that, while an agreement is required that says that the spill management team is committed to respond, the team is not required to be approved under Section 173-182-800 of this chapter. Rather than writing this section in too prescriptive a manner, Ecology has amended it to require staff names and one alternate down to the section and command level of the ICS organization with an important

requirement that Ecology will verify the adequacy of a management team during drills, and require changes if needed. It should be noted that this is not a new requirement, and is currently implemented in drills, spills and plan reviews. The costs of compliance with this section were considered in the rulemaking.

Summary of comments: There were comments on the training requirements, suggesting that the section appears to be a "one size fits all approach" and that minimum training requirements should be tailored to the needs of the individual ICS positions. Some commenters felt that the requirement to provide a description of a shift change for spill management teams is unnecessary, too prescriptive and this information is in Section 14 of the Coast Guard *Field Operations Guide*. And there were comment that new employees may already have experience and training to qualify them for key positions. There was a request for Ecology to clarify when new employees can be used for responses in non critical (lower) incident command system positions.

Response: In a spill response that lasts longer than the first day, there is a need to manage transitions between day and night shifts or between spill management teams. During drills, certain transition difficulties are a demonstrated issue, for example, managing an orderly transition from the spill emergency phase to the project phase. It is important that plans provide tools for a smooth transition and practice that transition in drills. No changes were made and a description of shift change for spill management teams is still required. Additional assistance in meeting the requirements of this section will be provided in the revised guidance manual that Ecology will publish.

A key to successful implementation of ICS is a proactive training and qualification program, which provides consistency at all levels, familiarizes staff with the area policies for unified response and gives workers tools for managing worst case oil spills. Training is also a key element to ensure worker health and safety. The training should be tailored to the company needs and Ecology is not proposing a "one size fits all" requirement. This section requires that the plan holder determine which training is appropriate for their spill management teams, and not all of the listed training topics apply to each team member. New staff should have training and experience before they are assigned to critical positions, such as Section Chief or Incident Command. This section has been modified slightly to clarify that plan holders require training only necessary for the particular role in the incident command system.

Commenter(s): Frank E. Holmes, Gary A. Solari, Jason Lewis, John Crawford, John R. Felton, Michael R. Moore, Richard Wright, Ty J. Gaub, David A. Sawicki, Paul Jewell

SECTION C PLANNING STANDARDS

17. WAC 173-182-310 Planning standards

Summary of comments: There were comments that writing the planning standards using the term "could have", which makes the standard seem somewhat discretionary and tentative, and that the term "arrived" sets a low bar that doesn't define a standard that the equipment be effective (deployed and operating) once it arrives. The commenters felt that unambiguous planning standards should be the goal in this chapter.

Response: Planning standards are goals and criteria intended to be used to ensure plan adequacy through plan reviews and drills. They are not intended to simulate actual performance so these words are purposefully used to make this distinction. The drill program will systematically test equipment and personnel deployment times, readiness through maintenance and appropriateness of the operating environment to ensure that equipment listed in the plan can be effectively deployed in the timeframes described in the planning standards. Ecology agrees with the goal to develop unambiguous standards, and these rules include many requirements that make the planning standards measurable and demonstrable.

Commenter(s): Greg Hueckel, Tom Copeland

18. WAC 173-182-315 Planning standards for non-dedicated work boats and operator

Summary of comments: There were comments that the entire paragraph should be stricken because it is not a defined “objective” standard, or that the words “if it is necessary to meet the planning standards” be added to the section. There was a comment that subjective standards leaves approval entirely to the discretion of the plan reviewer [Ecology], and the cost of planning for this requirement cannot be known in advance.

There was a comment that the need for this requirement has not been demonstrated through shortages during actual spills. Contrarily, there was also a comment that the need for this support was a “lesson learned” during the Exxon Valdez spill.

Response: Adequate planning is not a new requirement under Washington’s contingency planning regulations, and is the standard set by statute (“plans shall contain full details” and to the “maximum extent practicable” result in prompt and proper responses to worst case spills). While smaller spills of shorter duration may not result in the need to bring these types of resources to bear, certainly a worst case spill will test the bounds of our response system and logistical abilities to support continued, daily operations for weeks or months. Twelve hours after a worst case spill, the oil will have had the potential to spread over many square miles, and there will be a variety of logistical considerations that can only be addressed by the use of additional workboats. Washington’s response community should collectively seek non-regulatory solutions, which can lead to a response system that can support the myriad of worst case spill activities.

Commenter(s): Elizabeth Wainwright, Frank E. Holmes, Jason Lewis, John Crawford, Richard Wright, John R. Felton, Tim Archer, Tom Copeland

Summary of comments: Also within this section, others commented that 12 hours availability to respond to a worst case spill is inappropriate because these resources will not be needed until at least Day 2 of a spill. The commenter felt that imposing such a strict time requirement on this program vastly reduces its ability to acquire the best vessels and crew, while vastly increasing its cost. There was a comment that bringing the

vessels on at hour 12 is not possible, given the logistics of insurance, contracts, training, and suitability of vessels (surveys).

Response: This section has been amended to reflect a more realistic timeframe to bring these non-dedicated resources on site, changing the planned for timeframe from 12 hours to 48 hours. Other states (such as Alaska) with similar programs allow 48 hours to deploy these resources, as the operators and their boats will likely be engaged in their day to day tasks at the time of a spill. It is the intention of this section to manage much of the logistics that one commenter pointed out (insurance, contracts, training and suitability) ahead of the spill and not on the day of the spill.

Commenter(s): Tom Copeland, David A. Sawicki, Eric A. Haugsted

19. WAC 173-182-320 Planning standards for aerial surveillance

Summary of comments: There were comments that this section was unclearly worded and should be simplified. There was confusion with the logic and justification for a response within three hours on the Columbia River and six hours elsewhere. And there was a question of why to require this if the resources may not be able to work in the operating environments we are in (e.g. fog), and a request to explain why these standards exceed the federal requirements.

Response: Aerial surveillance by trained observers is critical to planning spill responses. Using surveillance from the air will maximize the recovery operations, for example, guiding responders to locate and work in the thickest patches of oil (which rapidly spreads and thins after a spill). This section has been clarified using some of the language suggested in the comments. It has also been changed to clarify that the aerial support is needed to maximize the effectiveness of recovery operations, rather than for use in the initial assessment of an oil spill. Oil spill contingency plans are tools that help to reduce the chaos during the early hours and days of a spill. This section requires the plan holder to pre-identify the resources that would be obtained on the day of a spill, so that time is not wasted looking for phone numbers or determining whether these industries meet company safety standards. There is no expectation that aerial resources must work on any given day if the conditions are unsafe. The Coast Guard has announced its intentions to adopt a similar regulatory requirement, and those rules are pending completion.

Commenter(s): David A. Sawicki, Jason Lewis, John Crawford, Richard Wright, Tim Archer, John R. Felton, Paul Jewll

20. WAC 173-182-325 Planning standards for dispersants

Summary of comments: Commenters pointed out that the Coast Guard classifies this as an alternative technology, and requires this equipment capability only if you apply it towards meeting a planning standard (making it optional not mandatory). There was the suggestion that the wording in this section be changed to match the federal requirements in 33 CFR 155.1050(j), making it optional and not mandatory. One commenter felt that there should be additional language to call out the point that there are related federal

regulations under both Coast Guard and EPA rules, and that the state rules will be implemented in a way to support them. One commenter felt that the lack of trained pilots to apply dispersants is a major shortfall in this country.

Response: Dispersants are a technology used to break oil into droplets that then disperse into the water column. In certain circumstances, use of dispersants can result in lower environmental impacts by preventing the oil from being driven onto shorelines or into toxic concentrations for critical natural resources. The federal government regulates the use of dispersants, for example, dispersant products must be listed (approved) on the Environmental Protection Agency product schedule. Ecology did not feel that a change was needed to this section to reflect this federal requirement.

For effectiveness, dispersants should be applied as soon as possible after a spill. Dispersants should be planned for and not considered as a last resort. Nor should dispersants be planned as a substitute for mechanical recovery or burning. The same environmental conditions favorable for effective mechanical recovery (low winds, waves, thick slick, etc.) are not favorable for dispersant applications; therefore Ecology finds that it is not appropriate to allow a capability credit, as the commenters suggest that the U.S. Coast Guard has done.

With these rules, Ecology is not authorizing or mandating the use of dispersants. In this section Ecology is requiring that plan holders prepare for the possibility of using dispersants, if the conditions on the day of the spill are favorable and appropriate. These rules require planning for the logistics (aircraft, vessels, application gear, stockpiles of dispersant products, trained personnel) of dispersant use. Oil spill contingency plans should contain tools and information to reduce the chaos and delays on the day of a spill. Capability to effectively use this tool will be tested in drills, and training for pilots must be addressed at the national level.

Commenter(s): Greg Hueckel, Jason Lewis, John Crawford, Tom Copeland

Summary of comments: Commenters felt that it is encouraging that the state has recognized, and authorized, the use of dispersants. There were comments that the decrease from 10% in an earlier draft of the rule to 5% was disappointing, and urged that the stockpiling of dispersant equipment and materials should be resident, given the short timeframes for effective use of dispersants. One commenter felt that this standard greatly exceeded the federal standards and should be changed to be consistent, especially for day 1 of a discharge. Other commenters cautioned against relaxation of this standard during finalization of the rule.

Response: The U.S. Coast Guard has announced an intention to adopt rules relating to planned use of dispersants, and these rules are consistent with the stated intention of the federal government. The application dosage used by the proposed federal standard is 1-10, and they allow an offset of the required equipment cap of up to 2500 barrels per day, for a maximum stockpile of 250 barrels of dispersant capability. Our application dosage is 1-20 which results in a slightly higher planning standard, requiring at most a 600 barrel stockpile of dispersants. We feel this is appropriate given the unique and peculiar waters of the state of Washington.

There is no residency requirement for this capability, though we may see a shift in resources because of the pending federal regulations.

Commenter(s): Ben Johnson, Jr., Jennifer Lukens, Richard Wright, Ken S. Berg

21. WAC 173-182-330 Planning standards for in situ burning

Summary of comments: The comments for this section were similar to the dispersant comments on WAC 173-182-325. Several commenters felt that this section must also be changed to reflect the federal standards for an alternative technology, optional and not mandatory. Some commenters felt that the equipment should be local to best apply the technology. One commenter felt that the standards were too prescriptive. Other commenters cautioned against relaxation of this standard during finalization of the rule.

Response: In-situ burning (burning oil in place) can remove large quantities of oil and can be effectively used under the right conditions in a variety of environments. In situ burn should not be considered as a substitute or trade-off for mechanical recovery because conditions exist when mechanical recovery can occur while burning can not. Ecology is not authorizing or requiring the use of in-situ burn with this rule. Please see Ecology's comments in response #20 for additional clarification to the very similar comments. In this section, Ecology is requiring plan holders to prepare for the possibility of using in-situ burn, if the conditions on the day of the spill are favorable and appropriate. In-situ burning must occur within a short window of opportunity, and before the oil has had time to weather. Fire-resistant boom is made of rugged material that can survive burning in water environments for long periods of time. Ensuring that plan holders have planned to obtain enough fire booms to effectively burn oil within 12 hours is appropriate and not overly prescriptive.

Commenter(s): Ken S. Berg, Jason Lewis, Jennifer Lukens, John Crawford

22. WAC 173-182-335 Planning standards for storage

Summary of comments: Commenters expressed concerns over the amount of temporary storage required in the planning standards. Of specific concern was the amount of storage required on the Columbia River below Vancouver and towards Astoria [near the entrance to the Columbia River]. The commenter pointed out that there is a prevailing shortage of temporary storage due in part to a decline in availability of tank barges for storage. There was a comment that shoreside storage may be available that exceeds the standards as written, but is discounted by the 50% on- water requirement in the rules. There were comments about the process for requesting and gaining approval from WDOE for faster immobilization and/or travel times, expressing concern that such approval is not assured in the rules and is discretionary with Ecology.

A commenter raised the issue of whether the [Ecology] Industrial section may limit the ability of a facility to receive / handle oily water during a response, and wondered whether it is possible for Ecology to approve additional shoreside storage for emergency operations?

Response: Managing arrangements for temporary and permanent storage of potentially enormous amounts of waste generated during oils spills must be carefully planned in order to avoid delays in recovery operations. There are many types of temporary storage devices, including those designed and dedicated solely for oil spills response, more general purpose devices and those containers-of opportunity that are located on the spot and used. It is necessary to prepare for temporary storage that is available on the water and on shore, in a manner that does not slow down a response. And while dedicated resources are optimal, it is an unreasonable expense to expect that all storage would be dedicated to spill response. Therefore when considering plans for approval, Ecology allows plan holders to “plan” for each type of storage and at times rely on storage devices of opportunity.

The planning standards for storage have not changed from the standards that have existed (in guidance) since the early 1990’s. What has changed is a requirement that requires plan holders to locate and secure both on water and shoreside storage devices. And in response to comments, for those plan holders operating in freshwater environments such as the river, the rule has been amended to allow for up to 65% of the total storage requirement to consist of shoreside storage.

The ability for a facility to receive and store oily waste is an issue that has been observed in drills, and there may be permit restrictions that could cause delays in the response if the permit issues could not be addressed in an expedited manner. During an oil spill there are various expedited processes and procedures for emergency operations. Ecology and the Unified Command would assist to expedite these processes.

Commenter(s): David A. Sawicki, Tim Archer

23. WAC 173-182-345 Determining effectiveness of recovery systems

WAC 173-182-348 Determining effective daily recovery capacity

Summary of comments: There were comments that this entire section should be deleted, and re-written to match, or reference, the Coast Guard requirements. Ecology was encouraged to accept the federal derated 20% efficiency, while others commented that there is no need for an alternative EDRC. There was a comment that if the equipment is owned by a primary response contractor, the plan holder should only have to refer to the appropriate primary response contractor application, and a request to list where the American Standards for Testing Materials (ASTM) specification is available for examination by the public. One commenter felt that this was too much information for a contingency plan (added clutter), that the response contractor application is the appropriate place for this information, since the contractor is likely to be the equipment owner and not the plan holder.

Other expressed concern that ineffective storage devices would be allowed for the outer coast (bladders) that would not allow decanting in open water environments so as not to slow down the response effort. Reliance on bladders is a recipe for secondary spills and possible delays to the response; barges should be the primary acceptable method of

storage for the outer coast. And so I think we should have some real containment capability especially in remote locations. The current draft is not clear what the end result or rating would be. Furthermore, your department said it would accept testing data that allowed a higher recovery rate. This does not appear in the current draft regulation and needs to be added.

Commenter(s): Fred Felleman, Ben Johnson, Jr., John R. Felton, Eric Haugstad, Jason Lewis, Jennifer Lukens, John Crawford, Ken S. Berg, Richard Wright, Ty J. Gaub, Bruce Wishart, David A. Sawicki, Frank E. Holmes, Greg Hueckel

Response: This section has been separated into two sections for further clarity. One section details how Ecology will determine of the efficiency of recovery systems (WAC 172-182-34) and the other section details how plan holders, response contractors and Ecology will determine the effective daily recovery capacity of equipment (WAC 173-182-348).

These sections discuss the methods that Ecology will use to maximize the efficiencies of response systems. Skimmers are used to recover oil from the surface of water. A skimming system is composed of several parts, which could include the skimming device, pumps to move the oily water, boom to enhance the rate of which the skimmer encounters the oil (encounter rate), hoses, support vessels and some type of temporary storage device. If any part of this system is missing or ineffective, recovery would be less than ideal or would cease all together. This rule is intended to look at the most appropriate skimmer system for the operating environment and the product type. When determining the efficiency of the recovery systems the entire recovery system must be considered along with likely storage and encounter rate limitations. Prior to claiming a capability it is essential to establish that there are no missing links. A skimming system is only as strong as its weakest link. Plan holders may reference primary response contractor task force groupings/listings, if they exist.

Actual recovery rates during spills can be lower than expected for a variety of reasons, including practical matters such as having to stop operations during night hours, logistical complications of getting equipment and personnel on site, time needed to offload oil, conduct maintenance, or change crews. In addition, the *encounter rate* with oil on the water surface decreases over time as oil spreads, thins on the water surface, and emulsifies. In actual historical responses, mechanical recovery effectiveness is typically between 15% to perhaps 25%, except in sheltered areas or in areas directly around a pre-boomed vessel. Any inefficiencies or errors by response crews and officials in determining the oil trajectory, failure to direct recovery operations from overflights, deployment of defective or poorly maintained equipment delays in getting equipment on-site (due to greater distances, weather conditions, logistical problems), or weather events can all greatly reduce the effectiveness of on water recovery operations. The section titled determining effective daily recovery capacity is now consistent with the federal criteria.

EDRC is calculated using a 20% derating of the pumping capacity unless a plan holder requests an alternative EDRC and can demonstrate the justification. The alternative EDRC formula is the same as the Federal regulations, with the exception of the number of hours of operation used in the formula. Ecology will use 10 hours of operation because

of the meteorological conditions unique to Washington: short winter days and wet weather create working conditions with limited visibility.

24. WAC 173-182-350 Documenting compliance with planning standards

Summary of comments: One commenter appreciated changes throughout the rule that will make it possible for Ecology to better evaluate and quantify contingency plans [measurable standards]. Other commenters asked whether information submitted by the primary response contractors in their application could be used to meet the requirements in this section, since this would avoid duplication of effort, and save paper.

Response: Presenting a spreadsheet that details a systematic approach to meeting planning standards is a practice that several companies currently (voluntarily) use when submitting plans to Ecology for approval, and is an effective way for both the plan holder and Ecology to evaluate the adequacy of the plan and ability of the plan holder to meet the planning standards. The response contractor is involved in creating the spreadsheet; however, this exercise is very specific to the individual plan holder since it is the particular risks of that individual industry and the areas that the plan holder operates in that is being evaluated. The primary response contractor application can contribute the descriptions of the systems, but the plan must be able to show which assets are brought to bear to meet the planning standards.

Commenter(s): Bruce Wishart, David A. Sawicki, John Crawford

Summary of comments: One commenter requested that the section be further clarified to indicate that these standards for mobilization will be used for calculating or computing, rather than conditions of operation or performance. Some commenters questioned whether applying a three hour mobilization time for non-dedicated resources not held by a response contractor adequately accounts for the time it takes to mobilize such a resource (given the need to locate it, move gear, take on fuel, etc). An edit was suggested to clarify that requests for alternative calculations would be made for shorter times, rather than higher times, and the section be further clarified to indicate demonstration must be a part of approving alternative times. There were comments suggesting edits to this section, to improve clarity.

Response: Mobilization is the time it takes to get resources assembled and prepared for response. The requirements in this section are intended to be applied to planning and not performance, and they are consistent with the federal requirements. Both the federal and state rules require the plan holder to include the time for notification, mobilization, and travel when computing planning standards. The time to notify and mobilize resources at a site is largely based on how much control the plan holder has over those resources. For this reason, different mobilization times are assigned dependent on the level of control. These times and are then used for calculating the ability to meet the planning standards. Dedicated resources are more likely to have a quicker notification/mobilization time than those that are non-dedicated since the dedicated resources are not committed to other activities and therefore are more readily available. Resource sites that are owned and dedicated are presumed to be more capable of mobilizing faster than those that are

contracted and non-dedicated. The rule has been changed to say plan holders may request alternative notification, mobilization and travel times.

Commenter(s): Frank E. Holmes, Jennifer Lukens, Richard Wright, John R. Felton, Tim Archer

25. WAC 173-182-355 Transfer sites

Summary of comments: There were comments made in support of the transfer site standards, and a comment that this section relies on its title to describe to whom the planning standards apply and would benefit from an opening paragraph of text similar to that found in WAC 173-182-375 and other planning standards. There were comments that the reference in the table for the 1 and 2 hour requirements to meet the oil transfer rules should be deleted since those are oil transfer requirement and not a contingency plan requirement. There was a comment that the storage requirement exceeding the federal requirements needs to be justified.

Response: The one and two hour planning standards for transfer locations are found in the oil transfer rules , and Ecology has deleted the reference previously found in the planning standards table. The remainder of the standards found in this section apply to all locations where transfers occur and for facilities with a vessel terminal. The storage planning standards are not changed from the existing guidance that has been in place since the early 1990's in guidance. The federal standard for High Volume Ports- all of Puget Sound, is two times the recovery rate at all hours. These rules propose two times the recovery rate for 6 and 12 hours, and then three times the rate at 24 hours.

Storage and recovery are critically linked. Soon after the oil spills, it starts spreading, evaporating, and dispersing, depending on the oil type and the amount spilled (the surface area and contact with air and water influence the oil behavior). After the first several hours the slick begins to increase in size as it thins out considerably. As the oil thins and spreads, it becomes patchier and considerably more difficult to recover. The effectiveness of oil recovery becomes more difficult as the oil needs to be "chased" as it breaks into smaller slicks or patches. The thinness of the slick (down to 0.001 mm or less) means that considerably more water is being recovered than oil. This dramatically increases the amount of storage capacity that is required to temporarily store oil. This is especially a factor for diesel fuel, which tends to spread quickly and also begins to evaporate and disperse into the water column. The dramatically increased water uptake during diesel recovery as the oil spreads requires even more storage capacity than for less volatile fuels and oils, because the recovered oil/water mixture will not likely be able to be decanted (separated water returned to state waters).

The planning standards for storage are based on an assumption of a certain degree of emulsification of oil (mixing of oil with water) after the first 12 hours. This means that the storage capacity must be greater than the removal capacity to accommodate the water that is recovered along with the oil as the oil becomes more emulsified with time. This is accounted for as the planning standards increase over time (one times the recovery, 1.5

times, 2 times and 3 times). At sites with the higher risk of a spill- where oil is transferred- storage must keep pace with recovery.

Ecology finds that there is justification for recovery and storage standards that may exceed the federal baseline at transfer locations. Additionally, this section requires that both sides of the transfer are held responsible to meet the requirements. This is critical for a level playing field of enforcement between vessel and facility plan holders, and for ensuring a shared investment in this state's response capability.

Commenter(s): Frank E. Holmes, Jennifer Lukens, Richard Wright, John R. Felton, Richard Wright, Tim Archer, Greg Hueckel, John R. Felton, Ken S. Berg, Kit Rawson

26. WAC 173-182-360 Vessel transit planning standards

Summary of comments: There was a comment that it may be more appropriate to move this section so it is located before Section-365. This would put the planning standards before the sections that describe special planning standards for other areas.

There was another comment that the boom requirements for all locations should be no higher than the "high risk" areas and should not exceed the volume of boom in the planning standard for the high risk sites. Boom is already strategically positioned to respond to the "high risk" sites, the transit areas and the major transfer areas. One commenter asks that WDOE lower the boom requirement for other vessel transit locations to the same level as the "high risk" sites, which should be 60,000 feet.

Response: This section has been moved to a different location in these rules. The planning standards for boom have been adjusted. The amounts are cumulative, meaning that a reader must add the 2 hours to the 6 hours to determine the total amount of boom required to satisfy the planning standards. The draft rule had 40,000 at 24 hours and that was an editorial error, it should have read 20,000 feet of boom to reflect the cumulative criteria (use of the word "additional").

Commenter(s): Ken S. Berg, Tim Archer

27. WAC 173-182-365 Transmission pipelines and pipeline tank farms

Summary of Comments: There was a comment that it would be helpful to have additional language to clarify which facilities are required to meet the transmission pipeline planning standards, for example, to include portions of the definitions for "transmission pipelines" and "pipeline tank farms" within the text at the beginning of this section. There were comments that the language in this section could be more specific concerning boom requirements. Subsection (3) should be reworded as follows: "Boom required for the two hour standard shall be dedicated, appropriate for the operating environment, and may be staged."

There was a suggestion to change "state surface waters" to "surface waters of the state," and to use the term "river" while other statements use the term "stream". Throughout section 360, replace the term "stream" with the term "river."

There was a question of whether the reference river speed is referring to the year-around average flow, high water average flow, or low water average flow? It was suggested that determining "average" river speed should be based on the year-round average flow, and a suggestion to clarify where the boom needs to arrive in this planning standard (in the 6 and 12 hour planning standards). This is important because due to the dynamic nature of river and stream environments, the spill source and leading edge may be miles apart in very little time.

Response: The rule has been modified to use the term river throughout. WAC 173-182-610 has a section indicating how boom will be counted and that only boom appropriate to the operating environment will be considered. More detail on how to determine average river flow and where the boom needs to arrive will be provided in the revised guidance manual that Ecology will publish.

Commenter(s): Frank E. Holmes, Greg Hueckel, Ken S. Berg, Richard Wright, Ty Gaub,

28. WAC 173-182-370 San Juan County Planning Standard

Summary of comments: The entirety of San Juan County has been designated a Marine Stewardship Area, containing a number of sensitive and protected areas. Consequently, we encourage you to consider extending the sensitive area standards to other parts of San Juan County.

Response: The entirety of San Juan County is included in this planning standard. The higher level of protection for this area is justified. The San Juan Islands consist of 700 islands, islets, rocks, and reefs. Eighty-three of these islands are within the San Juan Island National Wildlife Refuge and eighty one are designated as wilderness areas. The San Juan Islands support the largest concentration of nesting bald eagles in Washington. Numerous kelp and eelgrass beds fringing the islands providing critical nursery areas for juvenile rockfish, lingcod and other fish and shellfish. The San Juan area is used by all 3 of the southern resident orca pods and the area contains some of the largest concentrations of marbled murrelets in the state.

Commenter(s): Kit Rawson

29. WAC 173-182-375, Padilla Bay Planning Standard,

WAC 173-182-380 Commencement Bay-Quartermaster Harbor

Summary of Comments: We question why shallow water skimming capability for Padilla Bay is at least 20% for the expansive and sensitive eelgrass beds adjacent to fuel dock and oil refinery facilities whereas a more appropriate value of 50% is applied at Nisqually.

Response: Padilla Bay contains one of the largest contiguous eelgrass beds on the west coast of North America and was selected in 1980 as Washington's only National Estuarine Research Reserve. It supports the largest wintering population of black brant in the lower 48 states as well as numerous other waterfowl. Padilla Bay is important habitat for Dungeness crab, baitfish, and shellfish. It is also located near 4 refineries and major shipping lanes and vessel anchorages. Padilla Bay has extensive eelgrass, but open water environments as well. 20% is appropriate as the very shallow water prohibits even shallow water skimmers from working in many of the areas of the Bay as they would damage the environment more than the oil. In addition, the majority of the past spills and trajectory analysis show the oil moving towards Guemes Island. Quartermaster Harbor is one of the most biologically diverse areas of southern Puget Sound. It contains significant spawning habitat for herring, sandlance, and smelt and supports large concentrations of shorebirds and waterfowl. Ecology feels that 20% for Padilla Bay is adequate when considering the area as a whole. During certain tidal fluctuations, there are extensive areas within the bay when responders will likely not be allowed to access the area, as more damage could be caused by the response than some other passive type of cleanup.

Commenter(s): Jennifer Lukens

30. WAC 173-182-385 Nisqually Planning Standard

WAC 173-182-390 Dungeness Planning Standard

Summary of comments: There was a comment that the Dungeness National Wildlife Refuge is located in inland waters as defined in the Coast Guard rules, and that Ecology is requiring equipment capable of operation in open waters, which is in direct conflict with Coast Guard requirements. The comment continued that without justification or rationale, the requirement for open water boom and recovery equipment should be deleted. There was another comment that using the referenced standard, the requirement that only 60% of the boom used for skimming be capable of operating in the open water environment found in the Strait of Juan de Fuca and Cape Flattery Region caused concern. The commenter recognized that there is a need for different boom to implement geographic response plans but felt that reliance on the few that are identified for this region will significantly underestimate the needs and type of equipment stockpiled.

There was a comment that the requirements of Sections 380 and 400 (Nisqually and Grays Harbor) have the potential for disastrous economic consequences for Olympia and the Grays Harbor communities.

Response: The Nisqually River delta is the last undeveloped major river estuary in Puget Sound. Its 3000 acres of wetlands and other habitats support a wide array of wildlife, fish, and shellfish resources throughout the year. Dungeness Spit provides a unique habitat in the Strait of Juan de Fuca. This habitat supports regionally significant waterfowl, shorebird, and marine bird concentrations, and provides haul outs for marine mammals. Bald eagles and marbled murrelets concentrate here seasonally and there are extensive eelgrass beds. Approximately 1,500 black brant spend the winter in the area.

Protection Island (National Wildlife Refuge) contains the largest seabird nesting colony east of Tatoosh Island and is used as a haul out for marine mammals. By definition the Dungeness Planning Standard area is in inland waters by the Coast Guard standard. However, that standard is not used by Ecology to determine the type of equipment that is appropriate for the operating environment. The Coast Guard indicates that Inland areas have a wave height of less than or equal to 3 feet. The Strait of Juan de Fuca frequently has waves well in excess of that height and therefore equipment must be able to operate in that environment, regardless of the Coast Guard classification in regulation. The Coast Guard in their equipment typing document, indicate that they use the same American Society for Testing Material standard to which Ecology refers. Therefore we are consistent with the Coast Guard in part and are justified by the operating environment found in the Dungeness Planning Standard area.

The concerns for the economic impact of these regulations on remote areas such as Olympia and Grays Harbor are discussed in the cost benefit analysis. Ecology looked at existing caches of response equipment and compared this to the proposed rule standards, using simplified assumptions for logistical support, mobilization times, and transit times and GIS analysis. The costs of being unprepared in these remote areas could far outweigh the costs of maintaining an adequate level of preparedness. This rule may result in the shifting of some equipment, but Ecology respectfully does not agree that the results will be economically disastrous.

Commenter(s): John R. Felton, Ben Johnson, Jr.

31. WAC 173-182-395 Neah Bay Staging Area

Summary of comments: Some commenters endorsed establishing the Port of Neah Bay as a strategic location to stockpile oil spill response gear, while other felt that the requirements for this site are costly and time-consuming, with the outcome anything but certain. Some commenters agree with a three-hour on-scene planning requirement (which was a change from earlier drafts that the rule advisory members had seen), but concerns remain because it will still be difficult to achieve, especially between Neah Bay and Port Angeles. A 4-hour planning standard was suggested instead. One commenter stated that the requirement that boom be resident at Neah Bay for the 2, 3, and 6 hour planning standards be “resident” (stationed at Neah Bay) is excellent, since it is essential that this boom be quickly accessible with no chance of weather related delays. One commenter stated that open water capable boom is essential for responding to incidents off the coast, the biggest need out of Neah Bay.

Response: There are unique and peculiar considerations for Washington’s waterways and economy to justify the standards found within this section. Tatoosh Island supports the state’s largest nesting colony of common murre and is one of the top three seabird nesting colonies in Washington. Makah Bay is used as a feeding area by gray whales and as a resting and feeding area for sea otters. Makah tribal lands contain numerous sensitive cultural & subsistence resources. The Straits of Juan de Fuca is a major confluence of ship traffic from around the world destined for ports in Canada and Puget Sound. The Straits mark the entrance to a United States high volume port complex,

Canada's largest port, and the world's third largest Naval complex. Ship movement is regulated by a vessel traffic system jointly managed by the Canadian and United States federal governments. The high level of vessel traffic in the Straits has resulted in a history of oil spills and other serious vessel incidents which have potentially threatened or damaged environmental resources in the area.

It is critical that response capability be built up near the major entrances to Washington's water, including the Straits, Grays Harbor, Willapa Bay and the Columbia River. Cooperation between plan holders is critical to successfully establishing response capability at Neah Bay.

Commenter(s): Ben Johnson, Jr., Jim Davis, Richard Wright, Terrie Klinger

32. WAC 173-182-400 Copalis, Flattery Rocks and Quillayute Needles Planning Standard.

Summary of comments: There was a comment that the boundary description for this area should be rewritten for clarity. Consider moving the northern latitudinal boundary further to the north, and expanded, perhaps as far north as Cape Flattery. Some commenters supported inclusion of these standards which will support an area of pristine and nationally significant value. Some commenters questioned the requirement for 60% open water capability for the coast, suggesting that it should be changed 100%.

Response: The outer coast islands provide breeding habitat for all of Washington's common Murres, which is a candidate for listing as a state threatened or endangered species. The boundary description for this planning standard area has been rewritten for clarity. Boom capable of operating in open water conditions is large and cumbersome. Ecology's standard of 60% is appropriate as there are other uses for the boom other than working in the open ocean. Nearshore geographic response plan deployment and nearshore skimming may be essential to protection of this area.

Commenter(s): Greg Hueckel, Jim Davis, Ken S. Berg, Terrie Klinger, Fred Felleman, Jennifer Lukens, Ben Johnson, Jr.

33. WAC 173-182-405 Grays Harbor Planning Standard.

Summary of comments: The requirements of Sections 380 and 400 (Nisqually and Grays Harbor) have the potential for disastrous economic consequences for Olympia and the Grays Harbor communities. There was a comment that due to the remoteness of many areas of the coast in the area of Grays Harbor, and because Grays Harbor is such a highly sensitive area, appropriate boom for 2-, 3-, and 6-hour response should be pre-positioned and immediately available for deployment [resident], as is planned for Neah Bay. There was a comment that the requirements for open water boom at hours 6 and 12 be changed to hours 3 and 6, similar to the Neah Bay standard, since a quick response out of Grays Harbor is as important as Neah Bay. There were comments that the definition of the geographic area encompassed by the Grays Harbor planning area needs to be clarified to include only waters under state jurisdiction, and should include any covered

vessel entering or departing Grays Harbor instead of "outside the entrance of Grays Harbor" to ensure that the area inside the entrance to Grays Harbor is not excluded.

Response: Grays Harbor is remote; however resources can arrive from other equipment staging areas in a timely manner, so the residency requirement was not imposed as it was for Neah Bay. Grays Harbor is a shorebird site of worldwide significance, supporting up to 100,000 birds per day during the spring migration. The harbor contains extensive areas of eelgrass and is home to one of only three nesting areas in Washington for snowy plover. Numerous salmon, waterfowl, seabirds, and marine mammals utilize the harbor. This area is one of the most pristine estuaries in the United States, where Chum, Chinook, and Coho salmon move to refuge streams to spawn. Therefore boom is required to protect the sensitive areas at the early hours and some boom for open water is now brought in at 6 hours. The area covered by the Grays Harbor Planning Standard has been modified to include only Washington waters.

Commenter(s): Gerald Joyce, Greg Hueckel, Jim Davis, Ken S. Berg, John R. Felton

34. WAC 173-182-410 Willapa Bay Planning Standard Area

Summary of comments: The definition of the geographic area encompassed by the Willapa Bay planning area needs to be clarified.

Response: Willapa Bay is designated as shorebird site of international significance, supporting up to 1 million birds per year during the spring migration. The harbor contains extensive areas of eelgrass and is home to one of only three nesting areas in Washington for snowy plover. Numerous salmon, waterfowl, seabirds, and marine mammals utilize the harbor. Willapa Bay is a shorebird site of world significance. Much of this area is managed by the USFWS as a National Wildlife Refuge and contains large waterfowl concentrations, marbled murrelets, herring spawning areas, and nursery areas for Dungeness crab. The boundary description of the Willapa Bay Planning Standard Area has been modified to include only Washington waters.

Commenter(s): Greg Hueckel, Ken S. Berg,

35. WAC 173-182-415 Cathlamet Staging Area

WAC 173-182-420 Vancouver Planning Standard

WAC 173-182-430 Tri-cities

Summary of comments: Commenters asked that Ecology change the descriptions for the Ridgefield and McNary areas from nautical miles to river miles as has been done for the Lewis and Clark area, and to clarify the description of the planning area (using circles on a linear river is inappropriate). There were comments that these rules will result in repositioning of equipment away from areas of higher risk in Portland to the lower Columbia River. Commenters were concerned about trade off between higher incidence vs. higher sensitivity

There was a comment to clarify how the terminology of “on the Columbia River” applies. i.e., is it a terminal on the Willamette River, in Oregon, but does not transit or operate on the Columbia? And to clarify the definition of “OPERATING” - i.e. does a submerged pipeline under the river meet this definition?

Response: These standards are intended to protect the entire river. Transfer sites in the Portland area will still have response equipment in the area for rapid response, and the rest of the river will also benefit from the protection of equipment at early hours. The Columbia River estuary (the lower river near the mouth) supports the largest nesting colony of Caspian terns in North America. The estuary also has several areas designated as shorebird sites of regional significance. Numerous sloughs and backwater channels provide feeding and resting areas for waterfowl and rearing areas for juvenile fish. Columbian white-tailed deer are present on all islands and nearby mainland. The Ridgefield Wildlife Refuge near Vancouver supports Washington’s only wintering population of sandhill cranes. Three to four thousand sandhill cranes utilize the refuge each year during their migration. It is an important wintering and migration staging area for large numbers of wintering waterfowl, including the federally threatened Aleutian Canada goose. Near the tri-cities, Up to half of the Pacific Flyway mallards winter in this portion of the Columbia Basin and the area serves as an anchor for biodiversity in Eastern Washington. The area around the refuge contains numerous unique habitats that support rearing habitat for juvenile salmonids and resident fish and large numbers of migratory and wintering waterfowl. This area also supports one of the few American white pelican nesting areas in the state.

The description of the planning areas and staging areas has changed to improve clarity. Statute Miles- have been used consistently for the Columbia River. As the rule reads if a plan holder operates in the planning standard area as defined by the boundaries of the river miles then they would have to comply with this requirement. Therefore a terminal on another river outside of the area described would not have to comply, however a pipeline submerged within the area as described would. Additional clarification of this requirement will be provided in the revised guidance manual that Ecology will publish.

Commenter(s): David A. Sawicki, Elizabeth Wainwright, Greg Hueckel, Tim Archer,

36. WAC 173-182-450 STANDARDS for the Washington coast

Summary of comments: There was a comment to re-title this section as "General planning standards for Washington outer coast and clarify whether the applicability includes state waters off the outer coast, not covered by the special planning standards defined elsewhere. There was a comment that there are no points of compliance for these planning standards unless the entrances of the Strait of Juan de Fuca and the Columbia River are meant to be the de facto points of compliance. There was a comment that there appears to be a typographic error in 450(4) and recommended replacing "and/or" with "and". There was a recommendation to increase boom available for 12 and 24 hour to levels comparable to the Neah Bay staging area. There was a comment that these standards are substantially lower than those provided for all other state waters, and we

strongly recommend against further erosion of standards for this area. There was a comment to clarify to whom this section applies. There was a comment that moving traffic further offshore was a rational and cost effective protection effort.

Response: The purpose of this section is to require plan holders that could impact the outer coast from spills that occur offshore are prepared for obtaining resources necessary to respond to a worst case spill. As such, no points of compliance are necessary and Ecology does not feel it is necessary to increase the boom standard.

Commenter(s): David A. Sawicki, Greg Hueckel, Jennifer Lukens, Jim Davis, Ken S. Berg, Michael R. Moore, Richard Wright

37. General comments on WAC 173-182-355 through WAC 173-182-440 Planning standards

Summary of comments: There were general comments to supports the inclusion of the 6-hour planning standard in the proposed rules, stating that this his new benchmark is a positive step towards obtaining faster on-the-ground response to oil spills. There were comments that the term "sensitive area" appears in various sections of these draft rules, but the term is undefined in WAC 173-182-030.

Too few or too many/too high or too low, significant improvement: There were several comments suggesting additional areas be added including significant areas where substantial navigation challenges exist or abut five internationally recognized Important Bird Areas in and near Puget Sound (too few) or that complying with the individual elements in each section will be virtually impossible (too high). There were general comments that these standards exceed those of the Federal regulations, some involving increases over the current state guidance, and justification has not been provided. There were comments that these standards represented a significant improvement from previous drafts of the rule, and comments that this draft remains too complex and should be simplified with fewer planning areas.

There was a comment to justify why 5nm is the distance selected, otherwise, this is arbitrary, and a question on how this rule will mesh with geographic response plans which are currently under development and whether other, equally important resource areas will be adequately protected in the event of a spill.

There was a comment that the appropriate planning standards in each of the tables in these sections would benefit by being more specific as to the types of boom required. Add text in each of these sections that references the reader back to the definition for "boom" (WAC 173-182-030 (I)), or use the phrase "appropriate to the operating environment" when defining boom requirements

There was a comment that the reference to boom requirements of "4 times the largest vessel" (appearing in the tables under either in the 2 hour or 3 hour standard) is confusing. And a suggested edit that all occurrences of the above term to read, "4 times the length of the largest vessel."

Requiring a safety assessment at 1.5 hours after report of spill would require 24 hour crewing of the dedicated resource. The cost of this crewing would far exceed the benefit gained by having a safety assessment done 30 minutes earlier. Justify the need to have the safety assessment at hour 1.5.

Response: The term sensitive area has been deleted. The five mile radius for the planning standard areas was taken from the Environmental Protection Agency planning standard area for facilities. The planning standard areas were chosen to facilitate better protection of the states resources and to encourage caching of equipment in order to facilitate a more rapid response. Boom appropriateness will be determined through the plan evaluation process using published standards and guidelines. The wording has been changed in the tables to reflect “4 times the length of the largest vessel”. See response number 54 for information regarding the justification of the 1.5 hour safety assessment.

Commenter(s): Greg Hueckel, Ben Johnson, Jr., Bruce Wishart, Eric D. Johnson, Fred Felleman, Gerald Joyce, Jason Lewis, Jennifer Lukens, John Crawford, John R. Felton, Ken S. Berg, Michael R. Moore, Richard Wright, Tim Archer

SECTION D RESPONSE AND PROTECTION STRATEGIES FOR SENSITIVE AREAS

38. 173-182-510 Requirements for response and protection strategies

Summary of comments: There was a comment that the state should assist plan holders in identifying section public-private resources, including sole source aquifers, and for example, the state should offer a website to share this information on incident command posts that are not controlled by the plan holder. The commenter felt that all of these requirements should be addressed in the Northwest Area Contingency Plan, how else could a plan holder know these things?

Response: The Northwest Area Contingency Plan is currently being revised to broaden the types of economic and natural resources that are identified in the geographic response plans to collectively assist all plan holders; however, there will always be a need for individual plan holders to locate additional resources that may be impacted by worst case spill. Some areas that plan holders operate in do not have geographic response plans and in those areas plan holders will need to work with Ecology to help identify the natural resource priorities. In addition, plan holders will need to work with their local governments to determine the economic resources that are in the area.

Commenter(s): David A. Sawicki, Greg Hueckel, Michael R. Moore.

39. 173-182-520 Planning standards for shoreline cleanup

Summary of comments: There were comments that this section was too non-specific and subjective, and that in most of the modern world, shoreline cleanup does not begin until

the threat of re-oiling is over. There was a comment that the word “protect” adds confusion to this regulation since a shoreline oiled needs to be cleaned not protected. One commenter questioned the applicability of these standards to facilities that only deal with non-persistent oil, another wondered whether the requirements would include caches of “pom-poms.”

Response: Every effort in a response should be made to prevent oil from reaching the shoreline to reduce environmental impacts, as well as reduce the duration of the cleanup and generating the waste that must be permanently disposed of in some manner. This section has been renamed to reflect its applicability to shoreline cleanup and not shoreline protection. In addition, this section has been changed to be consistent with an existing federal standard.

Commenter(s): David A. Sawicki, Eric A. Haugsted, Frank E. Holmes, Jason Lewis, Jennifer Lukens, John Crawford, Richard Wright, Tammy Brown

40. 173-182-530 Planning standards for ground water spills

Summary of comments: There were comments that while it is prudent to require a facility to immediately commence a response/investigation effort upon becoming aware of a spill to groundwater, it is not realistic to require a facility to immediately assess and mitigate ground water spills and prevent further migration nor is it realistic to identify who exactly will be used to respond to a groundwater spill. There was a comment that this section should be either deleted or rewritten to require that a facility immediately initiate a response upon learning of a spill to groundwater, and recognize that other standards in the Model Toxics Control Act cleanup standards (WAC 173-34-10).

Response: This section was changed to require steps to assess (and not mitigate) spills to ground in recognition that mitigation standards exist in a separate regulation. Additional clarification of this requirement will be provided in the revised guidance manual that Ecology will publish.

Commenter(s): David A. Sawicki, Frank E. Holmes, Gary A. Solari, Richard Wright, Tammy Brown, Ty J. Gaub

41. 173-182-540 Planning standards for wildlife rescue and rehabilitation

Summary of comments: There were comments that this section is non-specific (subjective), and should indicate that plan holders can refer to established federal, state, or approved private programs for resources (people and equipment) that would be used in the event of an oil spill. There was a comment that until there are wildlife regulations that can be referred to, the plan holders have nothing to reference. There were concerns that facilities are simply not set up to staff wildlife rescue and rehabilitation nor are responsible parties experts in this area and must rely on state and federal resources to help with this important task.

Response: The capture and care of oiled wildlife depends on a level of cooperation and coordination between industry and government, and specialized policies and procedures are required. It is the policy of the Northwest Area Committee that representatives of the U.S. Fish and Wildlife Service (USFWS) will assume the position of Director and Deputy Director of the Wildlife Branch. State Fish and Wildlife representatives will assume these positions if a USFWS representative is not available, or if designated by a USFWS representative. The plan holder is expected as with all other positions on the response team to provide support for all positions within the Unified Command and therefore must plan to provide staff as well as plan for and provide resources necessary to rehabilitate oiled wildlife. Additional clarification of this requirement will be provided in the revised guidance manual that Ecology will publish.

Commenter(s): David A. Sawicki, Frank E. Holmes, Jason Lewis, John Crawford, Richard Wright, Ty J. Gaub

SECTION E PLAN EVALUATION

42. 173-182-610 Planning evaluation criteria

Summary of comments: One commenter requested that written consent be the standard to secure an agreement with tank barge companies to list their barges and rely on those barges in the plan, rather than mutual aid. There was also a request to clarify the meaning of this sentence “Dedicated resources (owned, mutual aid, or response contractor-held) should count for all the Planning Standards.” Add there was a request to add to the end that Ecology will use factors set forth in WAC 173-182-350. This plan evaluation criteria is far too prescriptive.

Response: The equipment that will be used to ensure compliance with the planning standards is owned, mutual aid, or response contractor-held. The rule has been modified to include non-dedicated storage resources, and the methodology to count them. These comments concern the types of agreements that plan holders reach with owners of non-dedicated equipment that can be relied on during spills if it is available (equipment of opportunity). In order to be relied on in the plan, there must be some tangible, written agreement that the equipment will be provided if it is available. Non-dedicated tank barges used for temporary storage may operate at significant distances from potential spills sites in Washington waters, plan holders must further ensure the availability of non dedicated barges by contract or other approved means in quantities equal to twice what the plan holder requires of the dedicated resources. Language was added to this section to allow mutual aid agreements or letters of intent. Ecology feels that the evaluation criteria is appropriate and allows for clear evaluation of plan adequacy.

Commenter(s): John Felton, Jennifer Lukens, David A. Sawicki, Richard Wright

43. 173-182-620 Alternative method of evaluating planning standards

Summary of comments: There was a comment that sending an alternative method of evaluating planning standards out for a 30-day public review period will be problematic when time is of the essence, and that the rule should contain exemption language similar to the federal regulation 33 CFR 155.130. There were comments that there is no need for the alternative, and that allowing the public the 30 days review does little to ease concerns.

Response: The Legislature set the process for public review by statute. The thirty day public review period is already part of the existing plan submission and review process. No changes to the section made.

Commenter(s): Ben Johnson, Jr., Bruce Wishart, Jason Lewis, John Crawford, Michael R. Moore

44. 173-182-630 Process for plan approval

Summary of comments: There were requests to add a caveat that when Ecology approves a plan conditionally, the notice will also include specific reference to the regulatory standard (rule) in question. There was a comment that formal notice should be provided when plans are up for review.

Response: A change was made to this section to indicate that notice of the specific rule in question will be given when a plan is approved conditionally. Ecology will continue to provide notice to interested stakeholders when plans are available for review during the thirty day review period, including a published index of contingency plans with their approval dates listed, use of electronic mail notices and the agency web page.

Commenter(s): Fred Felleman, Jason Lewis, John Crawford

Part III Drill and Inspection Program

45. 173-182-700 Drill participation, scheduling and evaluation

Summary of comments: There were comments that paragraph (7) be deleted [Ecology may require additional drills] because it appears to be open-ended. A commenter noted that there does not appear to be a requirement that plan holders or primary response contractors self report drill results to Ecology. There was a comment that criteria for the determination of a "significant failure" should be provided to ensure early re-testing when appropriate, and a comment that requiring retesting of objectives over a three year period (if not initially met) is too long and doesn't encourage rapid correction of problems.

Response: The criteria for determining “significant failure” are provided in the list of 15 core objectives in WAC 173-182-720. The reference in paragraph 7 has been clarified (deleted from this section and fully contained within the language of the next section). The “additional drills” refers to the possible need to repeat drills where failures have occurred. It was not intended to be an open-ended standard.

The federal government relies on self reporting of drills. In Washington, for plan holders to receive credit for drills, Ecology must be given the opportunity to participate and evaluate. Self-reporting is unnecessary with the agency evaluation. Under both the federal drill program and the State of Washington, there is a three year drill cycle to demonstrate the effectiveness of plans. The three year to test all drill objectives results in a robust drill program. This allows the plan holder to design a variety of drill types to test different phases of a response.

Commenter(s): Jennifer Lukens, Jason Lewis, Frank E. Holmes, Ken S. Berg, Michael R. Moore, John Crawford, Richard Wright, Ben Johnson, Jr.

46. WAC 173-182-710 Type and frequency of drills

Summary of comments: Some commenters supported the requirements for unannounced drills, but did not support prior notice for the drill. Others wrote that unannounced drills are not an effective way to verify plan resources. Another commenter felt that excusing participants from unannounced drills due to economic hardship should not be allowed. Others commented that the requirement to test through inspection all equipment over 6 years is far less disruptive than unannounced drills and would provide Ecology with better information about readiness and maintenance, or that 6 years is too long for this requirement. There was a comment that worst case tabletop exercises should not be allowed to fulfill worst case exercise requirements [a deployment should also be required], and that credit should not be given for drills conducted out of state. There is a comment that two deployment drills per year for vessels exceeds the federal standards. The commenter felt that unless the plan holder relies on the contractor, this places a significant new administrative burden on the plan holder, as well as considerable added costs.

There were comments that Ecology should require that drills be conducted in every region of the state rather than testing every piece of equipment over 6 years. There was a request to modify the language requiring geographic response plan deployments twice per triennial cycle to include strategies that have not been tested recently. There were comments that the requirement to test all “types” of equipment is unclear, or that the section should reference each type of equipment rather than resources.

One commenter noted that it appears that Ecology has expanded current drill guidance into an aggressive and extremely costly drill program focused on the plan holder, and since the rule gives Ecology unlimited authority to require the plan holder to participate in any type of drill at any time, the commenter was not sure how costs to plan holders will be estimated..

Response: Unannounced drills are an important component of a regulatory program. The scope and scale of these drills varies. For example, each year Ecology conducts several hundred unannounced drills on vessels each year to ensure the operators know how to make proper spill notifications. These drills typically last no more than 1/2 hour. The word “immediately” was added to this section to indicate that notice of unannounced drills is given “immediately prior” to the start of the drill. This means notice is only given when Ecology is on site and immediately prior to the start of the drill. There are circumstances when plan holders should be allowed to be excused on that day from an unannounced drill, including for **significant** economic hardship, which is a higher standard than an inconvenience or slight business interruption. This is consistent with the federal standards.

The entire drill program is intended to test the adequacy of the plan, and in that sense, the drill program appropriately focuses on the plan holder. Both tabletop and deployment drills add value, and worst case tabletop drills provide the department with the opportunity to evaluate the major portions of contingency plans. Ecology will have an opportunity to provide input to plan holders on the geographic response plans that will be tested and it is intended that all plans will be tested, not just those located nearby facilities. In addition, through the drill planning process Ecology will ensure that plan holders systematically drill in all areas of the state where planholders operate.

The standard [in guidance] for two deployments and one tabletop a year is not new to Washington plan holders, including the vessel companies that may conduct drills in other states. There are a variety of ways to meet the deployment requirement, including routine training done by primary response contractors, the annual Oil Spill Course, the rodeo event on the Columbia River, actual spill responses, pre-booming of oil transfers, and more.

Ecology respectfully disagrees that it is unreasonable to set a goal to systematically survey, assess, verify, inspect, or deploy all response equipment over 6 years. This will be accomplished with industry led drills, the primary response contractor application process (which requires field verification of equipment), Ecology or federal unannounced drills, routine training events, geographic response plan deployments, pre-booming of oil transfers and actual spill responses.

Recent events such as the response to Hurricane Katrina have highlighted the need for a robust preparedness program. Drills provide an opportunity for all members of the spill management team to come to the state and understand the unique environment we have in Washington. It is in the best interest of the plan holder to stay aware of the readiness and capability of the primary response contractor that they rely on for response. Drills encourage a proactive, anticipatory approach to the management of spills, and work against complacency and towards prevention. Drills are one important part of the continuous cycle of preparedness (e.g., plans, procedures, policies, training, and equipment) necessary to maximize the capability to prevent, protect against, respond to, and recover from spills, especially major events that require coordination among an appropriate combination of Federal, State, local, tribal, private sector, and non-governmental entities. These standards are largely consistent with the federal drill program, and in the areas where the federal standards are exceeded, Ecology has

determined that the difference is justified and that the rule contains sufficient alternatives to minimize the economic impact. Additional clarification on these requirements will be provided in the revised guidance manual that Ecology will publish.

Commenter(s): Ben Johnson, Jr., Richard Wright, John R. Felton, Ben Johnson, Jr., Jenifer Lukens, Frank E. Holmes, Jason Lewis, Ken S. Berg, Michael R. Moore, Brad Ack, Bruce Wishart, David A. Sawicki, Eric Haugstad, Jim Davis, Fred Felleman, John Crawford

47. 173-182-720 Evaluation criteria

Summary of comments: There were comments that the draft rule lists 16 drill objectives, though it was intended to list 15.

Response: This section has been edited to correct a typo. There are 15 drill objectives that will be used to evaluate drills.

Commenter(s): Frank E. Holmes, Greg Hueckel, Jason Lewis, Jennifer Lukens, John Crawford, Michael Moore, Richard Wright

48. 173-182-730 Other ways to get drill credit

Summary of comments: There were comments that tabletops should not be used for worst case spill credit, especially if out of state credit is permitted. Another commenter felt that 60 days is too short a time after a spill to ask for credit. Commenters felt that 90 days advanced notice of out of state drills is too much and that the process for out of state credit should be simplified. And, trying to include an Ecology representative in a planning meeting with out-of-state parties can complicate and prolong the process.

Response: In-state worst case tabletop drills add significant benefit to the plan holder and the response community in general. Drills that are performed out of state will only receive credit for the plan holder where there are similarities in the makeup of the response team and the plan being exercised.

Most companies that plan worst case drills do so well in advance of the exercise. Ecology feels that 90 days notice will not be difficult to achieve. Ecology would like to be part of the planning process to ensure that planholders get the credit they expect. To request out of state credit, Ecology expects that a meeting must occur between the company and Ecology, and this does not necessarily mean bringing Ecology into the larger planning meetings.

Commenter(s): Ty Gaub, John Crawford, Jennifer Lukens, Jason Lewis, Frank E. Holmes, Ben Johnson Jr.

Part IV Primary Response Contractor standards

49. WAC 173-182-800 Primary response contractor

Summary of comments: Is this ECY form available? Remove this reference to maintaining equipment per manufacturer's specifications. The maintenance of equipment should be left to the response contractor's discretion. Require the contractor to submit a maintenance schedule or check list for containment, recovery, and storage equipment or systems for Ecology's review. Should include drills for orphan drills by adding a requirement for contractors to assist state with orphan drills.

Response: The form to apply for approval as a primary response contractor is available on the Ecology website. Please see response # 15 for further clarification of maintenance issues within these rules. Ecology can not bind response contractors to participate in orphan drills without compensation. The response community will participate in all types of drills through plan holders and the department through our existing contracts.

Commenter(s): Tom Copeland, Richard Wright, John R. Felton, Bruce Wishart

50. 173-182-810 Submittal and review of Primary response contractor applications

Summary of comments: The second sentence should read each type of equipment to be consistent with WAC 182-710.

Response: The request to add the words "each type" to this section has been made.

Commenter(s): Richard Wright

51. 173-182-820 Significant changes require notification

Summary of comments: Commenters stated that it is important that the plan holder(s) also be immediately notified by Ecology if the primary response contractor's approval status is revoked or conditionally modified. There was also a comment on the word "may" regarding whether Ecology will change the approval status of a response contractor if significant changes occur, and that here does not appear to be any public notice associated with these changes in capability. The 10% rule seems more objective... Identification of back up resources seems ambiguous, what if a vessel goes into dry dock.

Response: Ecology modified the rule to indicate that Ecology will notify the plan holder if a response contractor's approval status has changed. If a contractor's status changes

public notice would be provided. Ecology will provide further information on this requirement in the revised contingency plan manual.

Commenter(s): Ty Gaub, Richard Wright, Frank E. Holmes, Bruce Wishart

Part V Inspection and compliance information

52. WAC 173-182-900 Inspections

Summary of comments: There was a comment that this appeared to be a new inspection program, without explanation of costs and benefits, and that the RCW reference was incorrect.

Response: The existing rule contained language about inspections, located in the drill section. This section has been changed to describe the records that may be reviewed under this chapter.

Commenter(s): John R. Felton

53. 173-182-920 Operation without a plan

Summary of comments: There was a comment that “Chapter” should be “section.”

Response: This change has been made.

Commenter(s): Richard Wright

54. Other general comments on the rules

There were numerous general comments on the rules. The following comments have been summarized into topic headings and a response follows each summarized section.

Commenter(s): Mike Doherty, Sue Joerger, Terrie Klinger, Tim Archer, Jim Townley, Lauren Goldberg, Brad Ack, Ben Johnson, Jr., Bruce Wishart, Fred Felleman, Chuck Donaldson, Dave Goedel, Donna Osseward, Eric Haugsted, Eric D. Johnson, George Clark, Gerald Joyce, Greg Hueckel, Jason Lewis, Jennifer Lukens, John Miller, John Crawford, John R. Felton, Ken S. Berg, Kit Rawson, Larry Crockett, Marian LaBounty, Michael Anderson, Michael R. Moore, Jim Davis, Paul Jewell

Summary of Comments: The Emergency Response System for the Strait of Juan de Fuca was not included in the rules.

Response: The Emergency Response System for the Strait of Juan de Fuca was not included in the rules. Thank you for your interest and your comments on this topic.

Rule process – Public Involvement, Justification for the standards

Summary of Comments: Some commenters felt that such major changes in the spill response regime on the Columbia River needs a full discussion with all stakeholders and must be justified, both environmentally and economically. Others commented that recent spills in Washington and the challenges to mounting a timely response have demonstrated the need to strengthen preparedness. Another commented in a more general way that while Ecology has made substantial improvements in this rule there was a miserable failure to engage the public and to provide sufficient defense for the rule in the cost benefit analysis. There were comments of notice and appreciation over improvements in this draft of the rule over previous versions, and there were comments expressing disappointment about the complexity that continues to exist in these rules.

Response: Ecology developed and employed an extensive plan to include the regulated community, other resource managers, the general public, other governmental organizations (including the Coast Guard, the Environmental Protection Agency, the Office of Pipeline Safety and the state of Oregon) and other interested stakeholders in our decision making process as required by State statute. Additional description of the public involvement process is found in a later section of this document. These rules are complex, as are the federal rules, and this is reflective the complexity and technical nature of preparing for worst case spills. For vessel plan holder, the format of these rules appears more complex than the existing guidance, which presented planning standard by zones. But it should be noted that even under the zone concept; each area of the state had standards that were largely met.

Ecology will revise its existing plan review guidance manual, and use other mechanisms to assist the response community in compliance. There is additional information on technical assistance in the rule implementation plan in a later section in this document.

Summary of Comments: Some general comments were in general support of the rule and the process, others were not. Many wrote to support the comments made by others.

Response: Thank you for the time you took to review these rules, your interest in spill preparedness and your comments.

Summary of comments: There were comments urging greater consistency with the federal requirements, and concern that in those areas where the state regulations exceed the federal standards, sufficient justification has not been presented.

Response: This comment has been addressed in several of the responses above. Ecology's rules are consistent with the United States Coast Guard, as required under state law. In some cases, the unique and peculiar aspects of Washington's waters warrant a higher level of protection against the effects of oil spills than that provided by uniform national federal standards. To the extent that the rules differ from federal standards, Ecology has determined that the differences were necessary to meet the legislature's

mandates and achieve the goal of providing for “worst case spill” response. These are factors that have heavily influenced the development of these rules.

- **Biological Sensitivity of Washington’s waters:** Federally protected threatened and endangered species that can be impacted by oil spills include marbled murrelets, certain salmon runs, and Orca whales. During certain seasons, Washington is host to shorebird sites of worldwide significance. Washington also has the second largest estuarine environment in the United States.
- **Meteorological Conditions:** Short winter days and wet weather create working conditions with limited visibility, potentially limiting the effectiveness of spill response activities.
- **Sea States, Tides and Currents:** It’s not uncommon for strong storms to occur in Washington during the winter months. In recent years, a rescue tug has been stationed at Neah Bay from early fall to late spring to provide assistance to ships if they encounter problems during this period of time. Puget Sound also has large tidal fluctuations and high currents due to the local geography, bathymetry, and oceanographic conditions of the region. All of these environmental conditions can significantly influence the safety of marine transportation and oil transfer operations as well as the effectiveness of oil spill response activities.
- **Waterway Configuration:** Washington’s coastal bars (Columbia River, Willapa Bay, and Grays Harbor) constitute high risk areas where the peculiarities of local waters call for the state to establish special precautionary measures. The Columbia River’s strong current runs headlong into the strength of the Pacific Ocean tides and coupled with frequent storms create some of the roughest waters in the world. Professional mariners and the Coast Guard have called the area “the graveyard of the Pacific.” The Straits of Juan de Fuca is a major confluence of ship traffic from around the world destined for ports in Canada and Puget Sound. The Straits mark the entrance to a United States high volume port complex, Canada’s largest port, and the world’s third largest Naval complex. Ship movement is regulated by a vessel traffic system jointly managed by the Canadian and United States federal governments. The high level of vessel traffic in the Straits has resulted in a history of oil spills and other serious vessel incidents which have potentially threatened or damaged environmental resources in the area.
- **Significant Economic:** Washington has the largest commercial shellfish production in the nation. Intertidal oysters, clams, and mussels are easily contaminated by oil spills. If significantly contaminated, the shellfish beds will be decertified from commercial harvest, even if contamination/shellfish mortality is low.
- **Twenty-nine federally recognized tribes in Washington State:** Tribes and tribal members possess property and self government rights that predate the formation of the United States and the creation of the State of Washington, and are guaranteed under treaties and federal law. Due to federal laws and inherent tribal sovereignty, each reservation in the state constitutes a bordering jurisdiction for environmental purposes. Environmental actions outside the reservation affect the tribe and the residents of the reservation just as the actions within the reservation affect the state and its citizens.

- Preventing the extra-jurisdictional impacts of oil spills in the Pacific Northwest, “The southward flowing California Current extends from the shelf break to the coast (> 500 nm wide) in spring and summer. In fall and winter, the California Current moves offshore, and the northward flowing Davidson Current surfaces and extends from the coast to the mid-shelf. Typical velocities for the California Current are 0.2 - 0.4 knots, generally increasing offshore. Typical velocities for the Davidson Current are 0.1 - 0.3 knots, stronger in the more southern portions of this zone.” These predominant coastal currents move oil from major spills onto the shorelines of an adjoining nation (Canada).

There is additional discussion in other sections of this document.

Uncertainty over the implementation of the rule

Summary of comments: There were comments that this rulemaking leaves considerable uncertainty about the true expectations, with several sections of the proposed rules, such as added drill requirements, work boat expectations and shoreline cleanup, being very subjective in nature. This is troubling as it leaves the operator and/or plan holder not knowing what is expected under the rule and precludes any form of cost projection for compliance.

Response: Ecology expects that the requirements will be similar to existing compliance with guidance except in some explicitly analyzed situations. Thus cost projection has been extrapolated from existing reported compliance costs. Ecology will revise its existing guidance manual to provide regulatory assistance on this issue once these rules are effective.

55. Cost Benefit Analysis

The following comments have been summarized into topic headings in regards to the cost benefit analysis (publication number 06-08-020). The response follows each summarized section.

Commenter(s): Ben Johnson, Jr., Brad Ack, Chuck Donaldson, David A. Sawicki, Elizabeth Wainwright, Fred Felleman, Jim Townley, Lauren Goldberg, Marian LaBounty, Michael Anderson, Michael R. Moore, Tim Archer, John R. Felton, Paul Jewell

Qualitative vs. Quantitative

Summary of comments: Some that commented supported the conclusions in the CBA concerning the probable quantitative and qualitative costs and benefits of these rules; others commented that the quantitative benefit values are overstated, the costs are understated, or that the analysis minimized its effort to determine both quantitative and qualitative costs.

There were suggestions of additional qualitative costs or benefits to be considered, such as:

- The loss of competition in the bunkering industry already experienced in Puget Sound;
- The potential loss of business in Grays Harbor due to increased costs to that locality;
- The potential increase in costs to vessels calling in the Port of Olympia;
- The quantitative and qualitative costs to vessel plan holders for equipment deployment drills and table top exercises;
- Lost employee productive time for training and drills;
- The potential loss of maritime business to other U.S. and Canadian ports resulting from the imbalance in competitive marketplaces.
- Industry investments in Ship Escort Response Vessel System (SERVS) should be enumerated in the Cost Benefit Analysis for comparative purposes.

There was a question whether the costs of the primary response contractor approval process was included in the analysis, but since these requirements are not new we assume that there are no additional costs or benefits from the minor changes to the program.

Response: The CBA as required by statute examined the probable quantitative and qualitative cost and benefits, as well as the directives of the statute. The qualitative costs of plans, drills and the primary response contractor program were collected using the self-reported survey instruments described in the CBA. These costs or benefits, with the exception of the SERVS investments, were considered in some manner in this analysis.

Summary of comments: There was a comment that the table listing costs actually shows a reduction in costs due to non enforcement by Ecology of current regulations, and the commenter didn't think all costs were considered.

Response: The primary sections of the survey that incorporated these costs were the planning, training, and equipment sections. Where there was a change from the old rule to the new rule, Ecology tried to extrapolate based on the cost of compliance with the existing rule and the guidance. Occasionally the extrapolation was not clear (for example, one company claimed the cost of doing five of a specific type of drill when two were required).

Summary of comments: It also appears that to come to a conclusion of the benefits outweighing the costs one should annualize both the probable benefits and the probable costs. Both annual and 20 year present values were displayed.

Response: The annualized costs were used because to do otherwise would have undercounted the value of the existing capital that is being used to comply with the guidance that is being adopted into rule. Existing capital cannot generally be sold for its replacement cost. This creates a wedge between the two values that could be used for the capital. Therefore, treating the price of the existing capital as an annual charge reduces the likelihood of undercounting its value. This is similar to straight line depreciation over the life of the object.

Summary of comments: There was a comment that dispersant and in situ burn capability is not required in current guidelines or regulations. Therefore, requiring these new capabilities need to be justified and cost estimates included in the analysis.

Response: The rule amendment adopts existing guidance into rule. Ecology used plan holder data on equipment to define the current state of response equipment. Please see the new appendix on equipment in the CBA. Dispersants and in situ burning reduce the cost of spill response.

Cultural and Tribal Resources:

Summary of comments: There were comments that the CBA did not recognize tribal cultural resources that require special protection, including mention of the National Historic Preservation Act (NHPA) sites on the National Historic Register. There was a comment that Cost Benefit Analysis must formally represent tribal cultural and resources values into the rule making and that a thorough inclusion of tribal cultural and resource interests would provide more than ample qualitative justification for the proposed improvements.

Response: We have further addressed the importance of tribal resources in the final version of the cost benefit analysis in section 3.2.3 of the report. State statute (RCW 34.05.325) requires that both probable quantitative and qualitative cost and benefits be considered, as well as the specific directives of the Washington State statutes. The Legislature itself recognizes that not all costs and benefits relating to oil spill prevention, preparedness and response can be quantified. This analysis finds that the probable quantitative costs of the adopted rule appear to outweigh the probable quantitative benefits, but not all costs and benefits can be quantified. Ecology has determined that the total probable benefits of the adopted rules that accrue to society as a whole outweigh the probable costs of implementation.

Using Exxon Valdez data

Summary of comments: Some comments indicated the *Exxon Valdez* should have been used as the basis for values, for example, the *Exxon Valdez* expenses should be listed as an indication of how much it costs not to be prepared to respond to a major spill. Other commenters felt that considering the stockholder loss for the *Exxon Valdez* spill is ludicrous, though costs were probably greater than the \$30 billion identified, the commenter felt that the proposed rules will do nothing to mitigate similar costs for a worse case discharge in Puget Sound.

Summary of comments: An *Exxon Valdez* study of willingness to pay for prevention and immediate response was used as another bookend, as was a similar California study. The reader will note on page 56 of the appendix that the table does not display an expected value. It shows a high and low, depending on likelihood assumptions, and depending on the reader's willingness to assume a linear relationship to a willingness to pay study using the *Exxon Valdez* with national willingness to pay as a basis or California in-state payments as a basis. The number you believe will depend on your expectations with

respect to the likelihood of a spill and whether you believe that people outside of Washington have a willingness to pay for prevention and an extremely rapid response in a Washington spill.

Response: It is appropriate to use the Exxon stockholder losses in this analysis. If a spill like the 1968 12 million gallon spill off the Oregon/Washington coast were to occur again, it is possible that similar stockholder losses like this could once again accrue. While stock holders expect to experience losses from the high risk enterprise, the losses to them are none-the-less a cost to them. In this case part of the stock loss cost of the *Exxon Valdez* spill was due to the mismanagement of the response. The magnitude of effects here may or may not be larger. Further this value was actually used more as a bookend, which capped the maximum loss for major spills. It was not counted into the values since it is not clear that there is a linear relationship between better spill response, greater on-water removal, and these losses.

Modeling

Summary of comments: There was a comment that the model developed for the CBA is the most vulnerable part. Specifically, the Olympic coast response capability is undervalued not just by the inappropriate selection of oceanographic parameters which caused the oil spill to go offshore, but because the modeling assumptions eliminated spills with high Canadian impact and assumed only 5% shoreline and 95% open water values for the calculations.

The comment continued that use of an oil spill model that reflects the actual damages tribes suffered from the Nestucca and Tenyo Maru oil spills would show that quantitative benefits of enhancing spill response more than amply exceed the quantitative costs. Canadian impacts were ignored in the modeling; the model fails to depict the fate of real world spills. The parameters of the model low ball the cost of spilling (by assuming shoreline versus open water percentages).

Response: Throughout this analysis, we have consistently used conservative assumptions and methodologies for the modeling. The SIMAP (Spill Impact Model Application Package), used for this study, is a model comprised of three-dimensional oil fate and biological effects models that assess impacts and provide data to estimate natural resource damages, response, and socioeconomic costs of spills in marine and freshwater environments. The model was run in stochastic mode to produce results and statistics for multiple model runs under **various possible** environmental conditions. The trajectory, oil removal, and shoreline impact results from SIMAP modeling were then used to estimate socioeconomic costs.

The model uses wind data, current data, and transport and weathering algorithms to calculate mass balance in various environmental compartments (water surface, shoreline, water column, atmosphere, sediments, etc.), surface oil distribution over time (trajectory), and concentrations of the oil components in water and sediments. Geographical data (habitat mapping and shoreline location) were obtained from existing Geographical Information System databases based on Environmental Sensitivity Indices. Water depth was obtained from National Oceanic and Atmospheric Administration National Ocean

Service soundings databases. Hourly wind speed and direction data over a long historical period were obtained from nearby meteorological stations. Tidal and other currents were modeled based on known water heights, using a hydrodynamic model based on physical laws (i.e., conserving mass and momentum). SIMAP was used to evaluate exposure of aquatic habitats and organisms to whole oil and potentially toxic components from the fuels, resulting mortality and ecological losses.

Summary of Comments: Can Ecology explain why using California as a source of base-line measures in the Cost Benefit study is relevant to the Columbia River?

Response: Ecology is not using California as a baseline. The California Study you refer to is Valuing Oil Spill Prevention: A Case Study of California's Central Coast, by Richard T. Carson, Michael B. Conway, W. Michael Hanemann, Jon A. Krosnick, Robert C. Michell, and Stanley Presser, Kluwer Academic Press. This study was not used to generate a net benefit estimate. It was used to assess the probability that a similar study for Washington would yield sufficient willingness to pay that there would be net benefits. The study looked at citizen willingness to pay for oil spill prevention and/or rapid response that contains and cleans up most of the oil on the California Coastline. The values were assessed for California citizens only and these values were high. This study, in conjunction with a similar study in Alaska, does indicate a high willingness to pay. It is difficult to extrapolate from the prevention and response in this study to an increase in cleanup that removes an additional 2% to 15% of the oil in a major spill. We can only use this work to estimate the likelihood that a similar study done for Washington would yield similar results and display what that value would be if it were similar. Ecology believes, given the question, that you may have misinterpreted our baseline. When guidance is incorporated into a rule, the law requires that the cost of that guidance and its benefits be evaluated. The CBA evaluates the change from the existing rule, to incorporate the guidelines into the proposed rule. Companies in Washington are currently following the guidelines, not the existing rule. Ecology believes that companies currently pass on the costs of following this guidance, which is being incorporated into the rule amendment, to their customers. Thus, people in Washington are already paying for the existing level of effort, which is called for in the rule amendment. Given these two studies, it is likely that a study for Washington, which asked citizens about their willingness to pay, would show that citizens are willing to continue to pay for the existing level of effort that is called for in the rule amendment. We believe this is true for the Columbia, the Outer Coast, and Puget Sound.

Columbia River, Olympia, Grays Harbor – small ports:

Summary of comments: A commenter asked for the basis for the proposed changes, given the Columbia River zero spill record of performance as reflected and reported in the DOE Cost Benefit Analysis. Another commented that smaller ports and operations may be more significantly impacted than were considered in the CBA, that the ports themselves do not have direct impacts from the costs, but rather through the companies (vessels, facilities, and primary response contractors) that work within them.

Response: Spills occur throughout the state and have occurred on the Columbia, including during bunkering. Data from the Coast Guard National Response Center and

Ecology between the years 2000-2004, indicates 4 reported spills that occurred on the Columbia totaling approximately 12,000 gallons. Some of these occurred during bunkering. Response standards for Washington include the Columbia and therefore the analysis done reflects data for cost and benefits to respond on the Columbia as well as to the rest of the state. Given that some resources cited in the plans may also be used in Oregon or Canada, Ecology has already over stated the costs.

The advancing shifts in the bunkering industry in Grays Harbor, and Olympia, are in progress and are due to a number of factors. Ecology changed the draft of the rule before filing it as a proposed rule to reduce the impact for businesses in some ports.

The new Washington requirements are not as stringent as Oregon's laws and rules in some areas. Despite that Ecology has assumed that a share of the cost reported for compliance with existing guidance, accrues to the new rule. The existing rules and laws for Oregon are part of the baseline. Benefits would be implicitly extrapolated to Oregon if the Exxon Valdez study values were used. This value was presented.

Summary of comments: One commenter felt that if these standards are implemented as proposed, they will impact the economic viability of this state, and Washington will lose its competitive edge in the world market.

Response: Ecology does not expect this rule to have that effect. The rule is structured to deploy existing resources better, rather than to drive up the costs, and port closures due to slow response impose significant costs.

Summary of comments: We don't believe the implementation consequences and costs have been fully considered as required. For example, the relatively few vessels transiting to and from the Port of Olympia may require on-the-spot hiring of a response vessel escort and standby; this potentially significant cost in addition to a recent large tariff increase in pilotage costs as decided by the state, may substantially impact operations there. Some of the early response requirements, using the planning standards provided, will mean more equipment in certain areas, and some 24/7 manned response operations instead of the on-call status currently used.

Response: Ecology used plan holder data on equipment to define the current state of response equipment. The distances and time for deployment were explicitly considered as the times were adjusted for the South Sound. Given the stated placement of existing equipment and staff for that equipment, Ecology does not see how these outcomes could result from these rules.

The baseline for most of the costs counted in the cost benefit analysis is the same as those in existing guidance. State statute requires Ecology to consider existing rule requirement to proposed rule requirement in the analysis. The cost counted therefore from what is in guidance would be considered "new cost." Ecology believes most companies are in compliance with the existing guidance and expects the change from current levels of effort to be small, especially given the number of mechanisms offered in the rule to share or reduce costs.

Canadian waters

Summary of comments: One commenter noted that there are other potentially significant issues that need to be considered such as the impact to response capabilities in our boundary waters with Canada. Given the complexity of jurisdictional issues, the commenter wondered how these rules will impact vessels calling on Canadian ports and the current cooperative coverage agreements.

Response: Washington does not intend to impose contingency planning requirements on vessels transiting to Canadian ports at this time though may revisit the issue at a later date. Therefore, Ecology did not consider benefits or costs of vessel calling to Canadian ports.

Probability of worst case spills

Summary of comments: The probability of a worse case discharge occurring in Puget Sound or off the coast would need to be determined.

Response: The cost benefit tried to take into account the risk related information available. Much of the question of whether a net benefit will occur depends on the question of whether the reader regards the probability of a very large spill. Such a spill did occur off of the Columbia River, near Warrenton, Oregon in 1968. The spill from the tank vessel *Mandoil* was estimated at 12.6 million barrels. Much has changed in the area of prevention over the last 10 years, however. The risk inherent in dropping the guidance and asking companies to work from the existing rule is unknown given that large spills are not predictable. That being said, people are already paying the higher prices implied. We believe the current cost of the guidance being adopted into rule is about \$6 per year per household.

Drills

Summary of comments: A commenter noted that by using the existing rule as a baseline, one worse case equipment deployment drill held on a tank ship plan holder would cost hundreds of thousands of dollars, and suggested that the CBA should use Ecology's existing guidance as a baseline instead. A commenter felt that the existing drill standards found in DOE guidance [rather than the rule] were typically followed voluntarily by vessel plan holders as they understood the value of conducting training on their plans to enhance readiness in the event of an incident, and should also use the Ecology annual drill reports to tabulate the annualized drill costs over the past 15 years as compared to the annual estimated costs to comply with this new rule.

Response: The statute requires Ecology to evaluate the probable costs and benefits in moving from the existing rule to proposed rule. A survey instrument was used to gather costs of drills from response contractors and plan holders (this is described in the final CBA). A crosswalk of existing and new drill requirements has been added in the final version of the cost benefit analysis as an appendix 3. There was an increase in some drill requirements but the dominant effect was from the drop in the number of unannounced full deployment drills. This type of drill is very expensive and there is a cost reduction

when evaluating the move from the old rule to the new rule. The unit cost of each type of drill was used to extrapolate the net impact.

Summary of comments: A commenter noted that the CBA misstates the federal drill requirements, while for facilities two deployment drills are required annually, that there are no federal requirements for vessel plan holders to conduct deployment drills if the OSRO conducts one deployment drill annually. Therefore, the commenter concluded the entire drill program for vessel plan holders is a new requirement and all costs associated with these drills, both qualitative and quantitative, should be included in the cost section of this analysis.

Response: In determining the cost for drills, Ecology conducted a survey requesting respondents to list their costs of each type of drill required. Given how they expressed the costs, Ecology summed or divided them to get a per drill cost. For example one company might have had one of a specific type of drill in the prior year. If 2 of that drill were required we would have multiplied by 2. If another company did 5 of a type of drill then we would divide by 5 to get the average per unit cost. These unit costs were averaged across firms for the CBA but have been separated by business size for the Small Business Economic Impact Analysis.

Summary of comments: Since the table listing costs actually shows a reduction in costs due to non enforcement by Ecology of current regulations, we don't think all costs were considered. Since this is only the preliminary cost/benefit analysis perhaps the final will correct this oversight.

Response: A crosswalk of existing and new drill requirements has been added to the final version of the CBA as appendix 3. The baseline is the existing rule, not the guidance, and not the existing practice. If the existing rule had actually been enforced, the costs would have been higher. Since the rule gives Ecology unlimited authority to require the plan holder to participate in any type of drill at any time, we are not sure how costs to plan holders will be estimated. A worse case equipment deployment exercise for a tank ship will run well into the hundreds of thousands of dollars. By comparison with the existing rule Ecology believes there is a cost reduction for most companies. The costs were considered for each type of effort.

Equipment and cooperation

Summary of comments: There were several comments on the CBA suggestion that by cooperating, costs will be reduced and more equipment will be available. These are summarized together:

- Should one of these companies cease to exist because it can't compete, then there will be considerably less equipment, a scenario that is not accounted for.
- In a big spill all the available equipment will be used, but in planning for and responding to the typical smaller spills of their respective clients, these organizations are not likely to freely share equipment as they compete to provide this service.
- It is the primary response contractors that must cooperate, not the plan holders. If not, there will be big costs.

- There are many reasons that organizations are not allowed to mutually list all response assets to cover the requirements for all plan holders. Cooperatives that exist have fee structures that members pay to acquire equipment and training and to improve the response capabilities of all members. Private response contractors have significant resources that add to the total cache of equipment and make for a stronger response system but of course the motive for the contractor is profit and a return on investment to their owners. The proposed regulations may make it difficult for a large, for profit OSRO to remain in the market with the same level of staffing and equipment that currently exists or to continue capital acquisition. The result of the proposed rules may be that and resources and capabilities for response will reside with fewer organizations and that the collective capability in the region will be lessened and not improved as is intended in the proposed rules.

Response: In a setting where there is excess capacity under a scenario of cooperation, it is difficult to assign cost to the rule amendment. However, Ecology has assumed that this adoption would drive a share of the capacity based on the requirements in rule amendment as a share of existing capacity. This amendment adopts guidance into rule. Most companies are in compliance with this guidance. Ecology has provided additional description of the existing information available on the placement/timed distance and quantities of equipment for the areas.

Equipment and its deployment and use provide the primary driver for allocating costs for the CBA. The reason for this is that the nature and quality of the equipment drives on water effectiveness. All planning, all manpower, all training, must be congruent with the equipment deployed or deployable. Ecology therefore spent a great deal of effort defining the difference between the baseline and the new rule, and the difference between the existing equipment and the requirements. There is excess equipment over and above every mandate reviewed. This setting is similar to an insurance setting. Response is being structured for a high cost/low probability event. In this setting it is normal for companies that typically compete to cooperate. Risk spreading takes place here through both insurance and response. In paying for this risk reduction/risk spreading there is no reason that plan holders should want to pay the primary response contractor's for excess capacity, unless they are risk averse and wish to have the added buffer of additional response capacity. Thus, some equipment may eventually leave the market if the plan holders come to doubt that it provides value. Further, if response contractor's competitors leave the market they may take equipment with them. The CBA addresses the increased cost of storage capacity for instance. However, if a plan falls below the minimum requirements, then the plan holder would need to replace some or all of the capacity removed. Income would shift from the response contractor who leaves, to the response contractors that stay. A problem might occur if the economies of scale are sufficient that a monopoly or oligopoly arises. This is less likely given that the plan holders themselves cooperate. Both plan holders and response contractors who cooperate with each other are likely to experience lower costs. Spill response is so expensive that society, via the plan holders, will need to assure it is cost effective. The market will tend over time to move in this direction. Given all the above, Ecology intends to support cooperative efforts.

Existing compliance and the effect of enforcement stance on relative costs

Summary of comments: One commenter questioned the statement in the CBA that “most industries in Washington are already in compliance with the standards reflected in the proposed rules,” since the proposed planning standards are excessive and unnecessarily complex, and are not justified by risk-analysis or CBA.

Response: Ecology used self-reported plan holder and response contractor data on equipment to analyze the current state of response equipment.

Summary of comments: One commenter felt that honest and responsible businesses will, as usual, adhere to the new requirements and that the costs and difficulties of doing business in Washington may force some to re-evaluate the wisdom of attempting to operate in Washington at all. At the same time, those bad actors that habitually ignore requirements will ignore the new rules just as readily as the old ones. The commenter also noted a firmly held conviction that Ecology has become so entrenched in political and bureaucratic self protection that it is incapable of achieving its mandate, and urged that Ecology take a long hard look at itself to identify and correct the practices and policies that do not work. The commenter requested that Ecology not repeat the same ineffectual process it took in response to the Clean Care and Reflex Recycling fiascos, and felt that spills will continue to be caused by bad actors that flee the scene and Ecology will continue to be ineffectual in preventing or responding to such incidents.

Response: Ecology must evaluate the costs and the benefits of the rule based on the assumption of compliance. If we assume non-compliance then we will underestimate the maximum potential costs. Losses associated with non-compliance are a function of enforcement and the limits on penalties, which are set in statute not by rule.

56. COMMENTS RELATING TO OIL TRANSFER RULE:

Summary of comments: There were several comments received that related to oil transfer rules currently under development.

Response: These comments will be answered in that Concise Explanatory Statement for the oil transfer rules.

Public Comments

Oil Spill Contingency Rules

Chapter 173-182 WAC

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173-182-030 (32)

The rule applies to passenger vessels that are three hundred or more gross tons and have a fuel capacity of at least six thousand gallons. To base an exemption on 6000 gallons is too arbitrary. All vessels with an AMPD of less than 10,000 should be exempt.

173-182-030 (16)

The rule applies to cargo vessels that are three hundred or more gross tons. Gross Registered Tons is an inappropriate unit of measurement for the purpose of determining the risk that an individual vessel poses to the environment and should not be used in this regulation. Vessel Tonnage is routinely manipulated by to make vessels small enough to avoid regulation. Towing and fishing vessels, many with high fuel capacities, are routinely designed to be under 200 GRT in order to avoid inspection by the USCG. The U.S. Coast Guard and International Maritime Organization have been moving away from Gross Registered Tons for years. A case in point is NVIC 01-05, the U.S Coast Guard's Non-Tank Vessel Response Plan Guidance, which uses ITC Tons as the regulatory benchmark.

Size does not matter. When assessing the risk that a vessel poses to the environment only the volume of the "Worst Case Discharge" matters. In the proposed regulation you have exempted passenger vessels that have a fuel capacity of less than six thousand gallons. This kind of exemption should apply to all vessels regardless of the trade in which they are engaged. If an 80,000 GRT ship carries less than 6000 gallon of fuel they pose no more threat to the environment than your hypothetical passenger vessel.

Conversely a 100 GRT vessel carrying 500,000 gallons of fuel should not be exempt. It is time to stop regulating vessels based on how many wine casks can be

173-182-220

Requires pan holders to commit to an "aggressive response". "Aggressive" is not defined and is it different from implementation of an approved contingency plan?

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MFSA

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173-182-315

Since this section does not detail what will be required to gain plan approval, leaving approval to WDOE's discretion, the cost of planning, administering or implementing a program to meet this requirement cannot be known in advance, nor is such potential cost considered in the cost benefit analysis for this rulemaking.

173-182-150

Vessels that enroll and not umbrella plan holders should be responsible for tracking recovered wastes.

173-182-250

The first sentence of proposed WAC 173- 182-250 reads: (1) Plan holders are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation." MFSA asks that this section to be changed as follows: (1) Plan holders, or in the case of an umbrella plan each vessel or facility that enrolls in coverage under an umbrella plan, are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation. . . . This edit is needed to distinguish the plan implementation obligations of a vessel enrolled under an umbrella plan.

173-182-240

Paragraph (1) requires: that locations where field documents are kept be listed in the plan. Umbrella plan holder's are unable to meet this requirement. MFSA has no way of knowing in advance where covered vessel keep field documents on board. This section should be deleted.

173-182-260

The first sentence of proposed WAC 173-182-260 reads:

(1) Plan holders must make immediate notifications and callouts after spills. MFSA asks that this sentence be changed to read: (1) Plan holders, or in the case of an umbrella plan each vessel or facility that enrolls in coverage under an umbrella plan, must make immediate notifications and call-outs after spills. If oil spills from a vessel, the vessel owner / operator, i.e., the "responsible party" is required under both federal and existing Oregon and Washington law to make notifications. This sentence as written by WDOE confuses this clear statutory authority by also making the umbrella plan holder, MFSA, responsible for making statutory notifications. MFSA does not have that statutory obligation. This edit is essential to distinguish the statutory responsibilities of vessels

from those of MFSA. As written, MFSA could be subject to liability under the regulations for failure of a covered vessel to have made proper notifications, even where MFSA has received no notice of a spill from a vessel. The responder immunity provisions of both Oregon and Washington law specifically extend to MFSA's activities in coordinating the umbrella contingency plan for vessels. However, as written, this section would expose MFSA to liability outside of the protections of the responder immunity laws which do not extend to activities that amount to a violation of law or regulation.

173-182-145

Revise 173-182-145 to read: Every pan holder, or in the case of an umbrella plan each vessel or facility that enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan throughout the response to a spill. This edit requested so that MFSA an umbrella plan holder not be held accountable for independent actions of vessels enrolled under the plan.

173-182-415,173-182-420,173-182-430

Rule will result in repositioning of equipment away from areas of risk in Portland to lower Columbia. Concerned about trade off between higher incidence vs. higher sensitivity. Unless there are identifiable problems on the existing system. WDOE rule will be a detriment to Oregon.

173-182-240

The concerns over liability expressed in the several sections above are not merely theoretical. On March 30, 2004, a vessel that had confirmed to MFSA in its advance notice of arrival that a field document was on board was unable to produce the document for a WDOE inspector. Rather than sanction the vessel for this regulatory violation, WDOE issued a "notice of violation" against MFSA and threatened MFSA with fines up to \$100,000 per day. While this notice was later withdrawn, the event demonstrates that if WDOE's regulations are not clear as to who is responsible for certain actions, or if the regulations are subject to alternative interpretations, then umbrella plan holders like MFSA are subject to uninsured and potentially unlimited liability, notwithstanding the provisions of responder immunity laws. By having the umbrella plan holder "share" responsibility for properly reporting a spill and taking other actions that under federal and Oregon law are the vessel's responsibility alone, the liability and indemnity allocations made by contract in the MFSA enrollment agreement will also be rendered unenforceable as to claims by third parties and by the vessel itself. Is this the result that WDOE intends? If not then the changes requested by MFSA should be made. Because the new proposed rules do not distinguish an umbrella plan holder from a responsible party in these key areas, and because WDOE has not changed this language from earlier rule drafts despite MFSA's requests, the new rule will expand MFSA's liability exposure and create inconsistencies with both Oregon and federal law. Neither the legal ramifications nor the costs or benefits of this aspect of the rule is discussed in WDOE's rulemaking process or in WDOE's cost benefit analysis report.

173-182-270

The first paragraph of proposed WAC 173-182-270 reads: "Plan holders are required to maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. Each plan shall include the schedules, methods, and procedures for equipment maintenance." These maintenance duties are performed by OSRO contractors to MFSA, not MFSA. This section would be more effective if it required description of the maintenance programs that OSRO contractors listed in the plan have available by contract, and this should be verified through inspections and drills. Requiring a plan holder to list a contractor's procedures for equipment maintenance will fill plans with unnecessary details, and the cost of this added burden has not been reflected in the cost benefit analysis.

Cost Benefit Analysis

Clean Rivers estimates the costs imposed by the rule range from \$500,000 to \$3 million for on water storage as well as \$100,000 for upkeep. MFSA will have to pay for 50%. Cost benefit analysis fails to identify costs or benefits for Columbia River.

173-182-145

Revise 173-182-145 to read: Every pan holder, or in the case of an umbrella pan each vessel or facility that enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan throughout the response to a spill. Drills should be deleted from this section.

173-182-240

MFSA can not be in a position of guaranteeing that a field document is going to be on each vessel. Vessels that enroll should be held responsible not the umbrella plan provider.

Cost Benefit Analysis

The analysis states that the existing caches of equipment in the state owned or controlled by response organizations exceed state and federal requirements but that competitors do not like to share. There are many reasons that organizations are not allowed to mutually list all response assets to cover the requirements for all plan holders. Cooperatives that exist have fee structures that members pay to acquire equipment and training and to improve the response capabilities of all members. Private response contractors have significant resources that add to the total cache of equipment and make for a stronger response system but of course the motive for the contractor is profit and a return on investment to their owners. The WDOE analysis states that the market as well as regulation has driven substantial effort and capital acquisition. The proposed regulations may make it difficult for a large, for profit OSRO to remain in the market with the same level of staffing and equipment that currently exists or to continue capital acquisition. The result of the proposed rules may be that and resources and capabilities for response will reside with fewer organizations and that the collective capability in the region will be lessened and not improved as is intended in the proposed rules.

173-182-355 through 173-182-450

Clean Rivers asks that WDOE change the proposed rules by eliminating the six hour storage requirement for on-water storage, or that WDOE use zones for planning on the Columbia River and storage requirements that mirror the Oregon DEQ standards. The Columbia River should be considered separately from Puget Sound because of the joint jurisdiction with Oregon and because of the economic base that ports and cities share along the Columbia River.

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173-182-335

The movement of on-water storage devices to a spill site below Vancouver is also a significant issue for our MFSA partner. MFSA covers vessels from Vancouver to Astoria which is well below the Longview example given above. The Columbia River has seen a steady decline in tank barge availability. Tank barges used for fertilizer and fuel oil that in the past were listed in plans have been taken out of service and converted to other uses because of lowered demand and because of increased response regulation. We now have only one operator remaining that provides bunker service. Clean Rivers can maintain its agreement with the remaining bunker service provider for non-dedicated use of its tank barges for storage. Clean Rivers can also establish agreements for non-dedicated storage capacity with the tank barge operators that come in the river and deliver to facilities. These barges will not always be in the river and would only be available for storage once they have unloaded new product at a facility. All of the non-dedicated barges will have greater mobilization times and the same travel issues as the dedicated barges. Clean Rivers is establishing mutual aid access to significant shore side storage in the Longview area that far exceeds overall storage requirements, but WDOE's 50% on water requirement for storage devices at a spill site discounts this ample excess storage from the compliance calculation. To meet the proposed standard for storage, Clean Rivers and its partner MFSA would need to place a barge in the Longview area and in the Astoria area or gain access to the Marine Spill Response Corporation (MSRC) tank barge moored in Astoria. It is not presently known if direct access to the MSRC barge can be negotiated. The costs for adding a dedicated tank barge in Longview are significant. A new barge would not be available for several years and would cost approximately \$3,000,000. A used barge may be available at a cost in the \$500,000 range. The costs once a barge is owned continue. Insurance costs for a barge are about \$30,000 per year and maintenance and moorage total about \$60,000 per year. If a reasonable person compares the cost of purchasing and operating a barge to the cost of other response equipment and also compares the likelihood of using a barge to likely use of response boats, skimmers and boom, than a storage barge is a very poor investment.

173-182-360

The boom required by WDOE in this section totals 71,000 feet. The boom in the three high risk sites identified by WDOE on the Columbia River call for varied amounts of 59,000 feet; 60,000 feet and 61,000 feet, which is inconsistent. The justification for 10,000 feet additional boom in "non-high risk" sites does not make sense. The boom requirements for all locations should be no higher than the "high risk" areas and should not exceed the volume of boom in the planning standard for the high risk sites. Boom is already strategically positioned to respond to the "high risk" sites, the transit areas and the major transfer areas. Clean Rivers asks that WDOE lower the boom requirement for other vessel transit locations to the same level as the "high risk" sites, which should be 60,000 feet. Clean Rivers also suggests that WDOE change the standard so that the three sites all total 60,000 feet at the 24 hour mark. The variation in planning standards is inconsistent.

General

The current version of the draft rules are an improvement over the previous version and it is apparent that some of the concerns presented by stakeholders were addressed.

173-182-315

This section needs specifics that tell the plan holder what WDOE is asking for. On the surface it appears simple but a response planner would look at this as a significant task to comply and there may be significant costs which are going to be dependant upon the interpretation of the WDOE plan manager. A system to accomplish what is seemingly required would include recruiting boat owners operators, providing 24 Hour HAZWOPER training, annual 8 Hour HAZWOPER training and providing equipment deployment training. There would also be administrative costs for scheduling, contracts and insurance. Clean Rivers asks that WDOE provide clarification and a cost benefit analysis for this new section or that this section be removed.

173-182-415,173-182-420,173-182-430

WDOE and Clean Rivers had discussed the descriptions of the high risk areas at a meeting and Clean Rivers suggested that river or statute miles be used in the descriptions on the Columbia River. This is consistent with the charts and Geographic Response Plans for the Columbia River. The description for the Lewis and Clark area is given in river miles and is a change from the previous drafts. Clean Rivers asks that WDOE change the descriptions for the Ridgefield and McNary areas from nautical miles to river miles as has been done for the Lewis and Clark area.

173-182-320

The standard calls for resources to arrive on scene beginning at six hours except that the three high risk areas on the Columbia River have a three hour requirement. This is a significant difference compared to the other nine high risk areas that WDOE has identified. Clean Rivers asks that the standard be changed so all high risk areas have the six hour requirement.

173-182-710

In this section WDOE proposes unannounced inspections of equipment that could require a plan holder to deploy 50% of the equipment listed in the plan in the first triennial cycle and the remaining 50% during the subsequent triennial cycle. This is potentially a very large expense for plan holders if they have to deploy all the boom, boats and skimmers in two cycles. WAC 173-182-900 calls for unannounced inspections to review training and maintenance and several other items. Why does WDOE want to address equipment inspection under drills and again under inspections? Clean Rivers understands and supports the need for unannounced drills that test personnel and equipment.

Unannounced inspections for equipment verification are an unnecessary burden for plan holders. Clean Rivers would fully support scheduled inspections for the items listed in WAC 173-182-900. Clean Rivers asks that WDOE change the rule to require scheduled inspections of equipment, We suggest that WDOE work in concert with the USCG OSRO verification program. The USCG does a very good job of inspecting and verification by making site visits to equipment locations and by having response organizations start and run a random sampling of equipment.

173-182-350

This standard cannot be met with the current shallow water barge, bladder and tank barge capacity on the river that is dedicated to oil spill response if this standard is coupled with the standards for notification, mobilization and travel times found in WAC 173-182-350. Clean Rivers has an agreement for two Tidewater Barge Lines dedicated response tank barges moored in Vancouver. It would take nine hours to move one or both of these barges to our member facilities in Longview based on the notification, mobilization and travel times found in WAC 173-182-350. The six hour standard for storage in the tables starting at WAC 173-182-355 cannot be met without requesting and gaining approval from WDOE for faster immobilization and/or travel times. Such approval is not assured in the rules and is wholly discretionary with WDOE.

173-182-540

This is another non-specific (subjective) standard, i.e. "...describe the equipment, personnel, resources and strategies for compliance with the requirements." How much is necessary for plan approval? If you have specific numbers or standards in mind, they need to be in the regulation. Otherwise, you will end up enforcing internal policy as regulation – in violation of the Washington State Supreme Court decision: HILLIS v. DEPARTMENT OF ECOLOGY, Mar. 1997, 131 Wn. 2d 373, 932 P. 2d. 139. Another problem with these "subjective" regulations is unequal application or

173-182-730

It is recommended that this process be simplified and streamlined. It is sometimes difficult to give WDOE a full "90-day" notice when scheduling an out-of-state drill. And, trying to include an Ecology representative in a planning meeting with out-of-state parties can complicate and prolong the process. Other states accept out of state drills (for credit), if they are properly documented, submitted in a timely fashion, and attended by a representative from an appropriate federal and/or state agency. Washington is encouraged to do likewise. This would greatly simplify the process.

Jason Lewis

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173-182-315

The entire paragraph should be stricken. This is not a defined “objective” standard, e.g. how many workboats and operators would be required. This leaves approval entirely to the discretion of the plan reviewer. This is another subjective standard that will become an internal policy enforced as regulation.

173-182-710

As a whole, this section exceeds the federal standards widely accepted and followed by industry. See: National Preparedness for Response Exercise Program (PREP) Guidelines, August 2002. There has been no explanation or justification for exceeding these standards, as required by Washington’s Administrative Procedures Act (APA), RCW 34.05.328.

173-182-325

The Coast Guard classifies this as an alternative technology. There is only a requirement to have the equipment capability if you apply it towards meeting a planning standard. This means it is optional, not mandatory. However, it is encouraging that the state has recognized, and authorized, the use of dispersants.

173-182-330

Comments: Same as for dispersants, above.

173-182-345

This entire section should be deleted, and re-written to match, or reference, the same requirements in Title 33 CFR 155, Appendix B, Section 6, “Determining Effective Daily Recovery Capacity for Oil Recovery Devices.” Incorporation by reference is the preferred and easiest method. The new / revised section should read as follows: Oil recovery devices identified by the plan holder or operator, including a Primary Response Contractor (PRC), must be identified by manufacturer, model, and effective daily recovery capacity.

For the purposes of determining the effective daily recovery capacity of oil recovery devices, the following federal standards apply, as currently detailed in Title 33 CFR 155, Appendix B, Section 6, “Determining Effective Daily Recovery Capacity for Oil Recovery Devices.” To avoid duplication, plan holders relying upon a primary response contractor (PRC) to meet the necessary planning standards may reference or use the information submitted in the PRC’s application, as approved by the department.

173-182-355 through 173-182-450

There are serious concerns with Sections 355-450. Complying with the individual elements in each section will be virtually impossible. Substantial changes are necessary to make these planning standards simple, practical and reasonable – and in compliance with the state’s Administrative Procedures Act (APA).

SIMPLICITY:

To begin, these planning standards are not “simple” – as originally agreed upon in the Rules Advisory Committee. Sections 355-450 contain 16 separate and differing planning standards (matrices) for the State of Washington, whereas the federals have used only one basic standard, since 1993* – for the entire country. This same standard must be met in each applicable Captain of the Port Zone (COTP). The only variance is the response time sequence for facilities or vessels in a Tier 1-2-3 response for a High Volume Port (Puget Sound) vs. a Non High Volume Port (Portland, Oregon). This makes it relatively simple and straightforward – for the entire country. More importantly, these “federal” standards have worked to provide an adequate and reasonable response capability in each of 31 COTP Zones. Please provide justification as to why there needs to be 16 separate planning standards in the state.

For the record, the Coast Guard conducted a formal review of the original OPA-90 planning standards in 1998 and 2003, as mandated in the regulations. The projected step-increase in 1998 was implemented, but the study in 2003 determined that a further increase in the planning standards was not justified, or necessary. Please provide justification by the department to refute the Coast Guard’s opinion.

Since Washington’s response standards for oil transfer procedures are defined separately (hours 1 and 2), the first priority is to condense these various standards into a SINGLE TABLE, i.e. identical standards across the board (entire state). However, this single table (standards) could be applied to multiple geographic areas or zones (including transfer areas) – with some footnotes or minor exceptions.

JUSTIFICATION:

In reviewing these 16 tables, it is impossible to determine the reason or justification for the variances, e.g. why does one area require more boom and recovery amounts than other areas. Or, why does one area require storage 3 x the recovery amount when other areas require the federal standard of 2 x the recovery amount? More importantly, why do the state standards exceed the federal standards by such a substantial margin, especially for boom and storage – without the justification required by Washington’s Administrative Procedures Act (APA).

In summary: Without a separate and distinct justification for each increase over the federal standards, it seems appropriate that the state is compelled to use the federal standards – as a baseline.

RISK-BASED ANALYSIS / GEOGRAPHIC REALIGNMENT:

To protect our environment for future generations requires cooperation and common sense. More is not always better. There is a line between what is practical, reasonable

and effective and what is overkill. There are areas where the risk is higher and those areas should be the focus for strategic deployment of resources. It's difficult to comprehend how WDOE moved from 5 zones under their 1995 "internal policy planning standards" – to 16 zones or matrices in 2006. Again, Washington's Administrative Procedures Act (APA), RCW 34.05.328, requires: (2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

173-182-230 and 173-182-220

Paragraph (3)(f) states: "If applicable, a list of all other plans that are relied on for spill response and describe how coordination will occur." In the interest of plan simplicity, this paragraph should be deleted. The binding agreement in WAC 173-182-220(2)(a) commits to a safe and aggressive response to spills in Washington. That should be sufficient.

173-182-240

Paragraph (2)(a) reads: "A list of the procedures to detect, assess and document the presence and size of a spill;" This should be simplified, and changed to read: "A list of procedures to report and document a spill." If a spill is spotted, then there would be an immediate report with a record of significant details, i.e. time, date, location, estimated amount. The initial report shouldn't take too long or require too much information, since the goal is to have a prompt report of the incident so mobilization can begin.

173-182-280

It is recommended that paragraph (4) be deleted, i.e.: "The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes." In the interest of plan simplicity, this information is incorporated in Section 14 of the USCG FOG manual. It should not be necessary to "describe and explain" it again. Nor should it have to be referenced.

173-182-280

Paragraph (1)(b) requires an organization list of one primary and one alternate person down to the ICS unit / branch level. That totals 66 individuals. This requirement should be amended to one primary and one alternate down to the command and staff (section chief) level. This would total 16 individuals, without listing a separate (optional) Deputy Incident Commander position – something the alternate IC could fill if necessary or appropriate.

Comment: This creates a manageable list, and includes key individuals. Positions for unit / branch level can be stood up as needed. And, many of these individuals could or would come from OSRO's, P&I Clubs, and other contractor sources. The USCG FOG manual (2000 edition) states, on page 2-2: "Only positions that are required for an adequate response need to be filled, and organizations should be kept as small as possible to accomplish incident objectives and monitor progress."

173-182-270

Paragraph (1) states: “Plan holders are required to maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. Each plan shall include the schedules, methods, and procedures for equipment maintenance.” The paragraph should read: “Equipment owners shall maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. – And, delete the second sentence. Each plan shall include the schedules, methods, and procedures for equipment maintenance.

Comment: Needless details in the plan, i.e. including the schedules, methods and procedures for equipment maintenance. This equipment is available for inspection or audit by the department. Furthermore, companies have invested a significant amount of capital in this equipment. It is not in their best interest to ignore its maintenance and upkeep.

173-182-620

Sending an alternative method of evaluating planning standards out for a 30-day public review period will be problematic – especially when time is of the essence.

Consequently, that requirement sentence should be deleted. WDOE should remain unrestricted to make their own decisions, based on sound judgment.

AWO is also concerned that the proposed rules contain no provisions for an exemption, as outlined in Title 33 CFR 155.130. Therefore, it is recommend that this section include the following language:

(5) The department may grant an exemption or partial exemption from compliance with any requirement in this part if:

- (a) A plan holder submits a written request for an exemption within 30 days before operations under the exemption are proposed.
- (b) It is determined from the request that:
 - (i) Compliance with a specific requirement is economically or physically impractical;
 - (ii) No alternative procedures, methods, or equipment standards exist that would provide an equivalent level of protection from pollution; and
 - (iii) The likelihood of discharges occurring as a result of the exemption is minimal.

173-182-520

Unfortunately, this is another non-specific standard (rule / regulation), e.g. “(1) Each plan shall identify, personnel and equipment, including absorbent material, to protect and clean three miles of shoreline and support for three days a total of one hundred people.” How much is enough to get the plan approved?

There is no easy fix to this dilemma, unless you set some specific standards – for either the plan holders or the PRC’s / OSRO’s. The latter would be easier, because most plan holders rely upon them for all of their coverage.

Recommend that this be re-written, similar to the federal standards in Title 33 CFR 155.1050(m)....

(1) Each plan holder shall identify and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations.

173-182-030 (54)

“Navigable waters of the state” should state that they are limited to a 3 mile limit off the coast of the state.

173-182-110

(3)(b) should be amended to read: “...to the covered facility” instead of “...to the vessel company.”

173-182-030 (14)

(12)(b) should be changed to read <add new subparagraph (vi)>:

(b) A facility does not include any...(vi) Vacuum type trucks or trailers used to pump (remove) bilge slops, waste oil, contaminated ballast water and contaminated or excess fuel. Comment: Vacuum trucks / trailers are used to facilitate the proper removal and disposal of waste or excess fluids. If they lose hose suction, the product simply returns to the bilge or tank it was pumped from. If encumbered by these regulations, services will be delayed and costs will sky-rocket. Vacuum trucks provide a valuable and useful service, and they are relatively small, 30-120 barrel capacity. They are also not a significant source of spills. For these reasons, they should be exempted from these regulations.

General

The protection of the waterways is of paramount importance to our organization and its membership, personally and professionally. Unfortunately, AWO has been put in a position of opposing the Washington State Department of Ecology’s contingency plan draft rule. The department has proposed a contingency plan regulation that is overly complicated, impossible to comply with in its current form and does not take into account the current measures and practices which have resulted in a nearly 90% reduction in spills over the last decade. At its core, it seems the department has intended to craft well meaning regulation with the intent of providing additional coverage for Washington waters. Unfortunately, they grossly miscalculated the impact of the proposed regulation and do not appear to understand the implications of their draft. The draft rule goes beyond what would be deemed necessary and reasonable to protect the waters of Washington State. The affects on the industry and the economy of the state will be dramatically impacted by these rules, if passed in their current form. Summary: The department has not produced a draft regulation that is ready to be implemented by the state or industry. There are still a number of problems that exist in the current draft. AWO strongly encourages the department to reconvene the Contingency Plan Committee to draft new language that takes into account the necessary changes the industry has submitted. It is only through an active and engaged partnership with industry that the department can remedy the egregious problems that exist in the current rule draft.

173-182-630

Paragraph (3)(a) should include (add) the following sentence....(a) Ecology may approve a plan conditionally and require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. Such notice will also include specific reference to the regulatory standard (rule) in question.

173-182-150

Paragraph (1)(b) requires that, “Plan holders must accurately track and account for the entire volume of oil recovered and oily wastes generated and disposed during spills. Recommended change to read: “A responsible party must accurately track and....”

173-182-120

Paragraph (2) requires the submission of three copies. Recommend it be changed to just “one” copy. If extras are needed, they should be justified – and included as a checklist item in the state / agency audit system to ensure that they are truly being used, and necessary.

173-182-220

Paragraph (2)(a) should be changed to read (add words)... Verify acceptance of the plan and commit to a[n] safe and aggressive response....” Comment: Safety is the number one consideration in a spill response.

173-182-700

It is recommended that paragraph (7) be deleted. It states: “(7) Ecology may require the plan holder to participate in additional drills beyond those required in this section.” Quoting from the PURPOSE statement on page 1-1, PREP Guidelines (2002): “The PREP was developed to provide a mechanism for compliance with the exercise requirements, while being economically feasible for the government and oil industry to adopt and sustain.” Paragraph (7) clearly exceeds the prescribed standards for drills. It would give Ecology unlimited authority to operate outside the drill guidelines.

173-182-250

Recommend delete paragraph (4) which requires: “The plan must list procedures that will be used to confirm the occurrence of a spill, estimate the quantity and nature, and to later correct or update the initially reported estimated quantity or the area extent of the contamination if it changes significantly. This is recommended for plan simplicity, and deletion of subjectively evaluated procedures (not standards). The department could require an updated report if there are any significant changes from the initial report.

173-182-320

This entire paragraph needs to be shortened and simplified. Also, there is confusion with the logic and justification for a response within three hours on the Columbia River and six hours elsewhere. Suggested wording:

Each plan shall provide for aerial oil tracking resources to be on-scene within six hours of spill awareness. These resources must be available for three, 10-hour operational periods during the initial 72 hours of the discharge.

173-182-720

This section incorrectly lists 16 core components. PREP (Appendix B) includes only 15. The mix-up involves a repeat with #11 and #12 (TRANSPORTATION...) in the proposed rules.

In PREP, transportation is included in #11 (only), with three-subparagraphs for: 11.1 Land...; 11.2 Waterborne...; 11.3 Airborne....Standardization with the federal requirements should be of paramount importance

173-182-710

The proposed requirement for equipment deployment drills incorrectly lumps everyone into one category – requiring two drills every year, whereas.... PREP (pages 3-16 through 3-21) differentiates and requires...

USCG MTR FACILITIES – with facility owned / operated response equipment must conduct drills SEMIANNUALLY (twice per year).

USCG MTR FACILITIES – with OSRO response equipment cited in their plan must conduct drills ANNUALLY (once per year).

VESELS must conduct drills ANNUALLY (once per year). If drill standards are repeated in this section of the rules, they should duplicate the federal standards – unless any increase is fully justified, per the APA.

173-182-240

The last sentence in the first paragraph (1) requires: “The locations where field documents are kept must be listed in the plan.” In the interest of simplicity, this sentence / requirement should be deleted. Comment: Earlier in the paragraph, the rule requires that the field document be kept in key locations at facilities, docks, on vessels, and in the plan. Let the plan holder decided where it is best maintained – and save the explanation. Besides, some vessels have dissimilar construction or operation that would require multiple explanations for each. The most important thing is to have the document available. This is something the department could verify or confirm during an

General

CRK strongly supports both the proposed Oil Transfer and the proposed Oil Spill Contingency plan: both proposed rules are vital for the protection of Washington by preventing and minimizing the impacts of spills.

Lauren Goldberg

Columbia Riverkeeper
724 OAK STREET
Hood River, OR 97031

Cost Benefit Analysis

First, the proposed Oil Contingency Plan Rule is crucial for the prevention and containment of oil spills. By requiring plans for oil spills—from small to large spills—the rule is a pragmatic measure to minimize the impacts of spills. Furthermore, by requiring a program for drill exercises to test the plans, the rule takes strong steps toward ensuring that plans will be as effective as possible in the event of a spill. In addition, CRK supports the rule’s requirement that plan holders use state approved clean-up contractors. Requiring state approved contractors is a crucial step in ensuring the most effective response to spills. In considering the Oil Spill Contingency Plan Rule’s Preliminary Cost-Benefit Analysis (CBA), CRK supports DOE’s conclusion: “the sum of the probable quantitative and qualitative benefits and the benefits of implementing the specific directive of the state justify the rules as currently drafted” (p. 5).

General comment

As an organization committed to restoring and protecting the Columbia River, CRK strongly supports the proposed Oil Transfer and Oil Contingency Plan rules, which incorporate the necessary standards and planning measures to prevent and minimize the negative repercussions of oil spills. The proposed rules take necessary steps to address the threats of oil spills to surface and subsurface resources, recreation, and commercial interests. If you have any questions please feel free to contact me. Please keep Columbia Riverkeeper informed through mailings or e-mail regarding DOE’s decision on the proposed rules.

General

Thank you for the opportunity to comment on the proposed Oil Spill Contingency Plan. This plan is a substantial improvement on existing regulations and should help provide more effective response to a spill.

173-182-405

Grays Harbor National Wildlife Refuge. Due to the remoteness of many areas of the coast in the area of Grays Harbor and because Grays Harbor is such a highly sensitive area, appropriate boom for 2-, 3-, and 6-hour response should be pre-positioned and immediately available for deployment, as is planned for Neah Bay.

Gerald Joyce

Seattle Audubon Society and Washington Oil Spill
8050 35th Avenue NE
Seattle, WA 98115

173-182-355 through 173-182-450

The main concern I have is the failure to designate certain areas that contain critical habitats as "High risk sites for planning standards." According to the definition section "High risk sites for planning standards" means an area determined by ecology to contain one or more navigational hazards, abuts or includes areas of critical environmental concern. However, the plan neglects to identify significant areas where substantial navigation challenges include or abut five internationally recognized Important Bird Areas in and near Puget Sound. The goal of the Washington IBA program is:... to identify and describe specific places on the landscape that are essential for sustaining wild bird populations in our state. The IBAs are part of a program conducted in more than 100 countries. This program requires a rigorous review process to designate a location as an IBA. Navigation into Puget Sound from the Strait is made difficult by the high volume of vessels in the area; traffic lanes that diverge; and extensive required course changes, including a nearly blind turn at the juncture of the Strait and Puget Sound. There are narrow passages and visibility is often impeded. In this area, the following IBAs are not designated "High risk sites for planning standards":

Crescent Harbor Marshes 48° 17' N, 122° 37' W
Deer Lagoon 47° 59' N, 122° 29' W
Indian-Marrowstone Island/Oak Bay 48° 03' N, 122° 43' W
Point No Point 47° 54' N, 122° 31' W
Protection Island 48° 08' N, 122° 55' W

As a representative for the 25 chapters of Audubon in Washington State and Audubon Washington (the state office of National Audubon), I strongly urge that you recognize these IBAs as critical areas in or abutting zones of extremely high-volume vessel traffic, and that special planning standards, similar to those developed for Padilla Bay National Estuary Research Reserve, be developed for these sites.

Mike Doherty

Clallam County
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015

173-182-030 (55)

This section requires the vessel and facility managers identify the "worst case spill." Historically operators have been conservative in their estimates of "worst case" spills.

This is to be expected because most have justifiable confidence in their skill and professionalism. In some instances, this confidence has been unjustified. Spill quantities have been underestimated, perfect weather conditions are often assumed, and immediate detection and response is usually assumed. The Exxon Valdez for example spilled many times the "worst case" spill previously contemplated in spill exercises. So I am in doubt about the "worst case spill" estimates of vessel and facility operators.

This is not a small matter. Much of the response capability that must be included in contingency plans is determined by the "worst case spill." This is so important that I would suggest the "worst case spill" be reviewed and approved by Ecology before plan preparation and submittal. This might save vessel and facility operators from a considerable amount of wasted time and effort if they develop a plan around an inadequate "worst case" and have to completely revise it. Ecology should require that the "worst case" be identified, justified, and approved prior to plan preparation.

The requirements for vessel and facility plan holders that transit or operate near Neah Bay seem appropriate and it is also important that the State also fund the rescue tug stationed at Neah Bay on a permanent basis. The type of tug should be similar to that discussed at the attached article "What Kind of Tug?" Support for this request is demonstrated on the DOE website. See "Neah Bay Rescue Tug, Summaries of Response Since 1999."

General

The Oil Spill Contingency Plan Regulations look to be an improvement to current regulations. They contain geographic planning requirements, specific drill and exercise requirements, specific standards on equipment and supplies, provisions for staging cleanup supplies and equipment, some attention to the outer coast, appropriate penalties for noncompliance, and an appropriate recognition of a response structure consistent with NIMS.

General

I incorporate by reference the comments submitted into this rule-making process by:

1. People for Puget Sound (July 25, 2006)
2. The Makah Tribe
3. Comments by Mr. Jerry Joyce on behalf of the Seattle Audubon Society

In addition, I incorporate:

1. A press release issued by U.S. Senator Maria Cantwell dated July 17, 2006 demonstrating the need for additional and regular spill drills in the Strait of Juan de Fuca and along the Pacific Coast of Washington State.
2. Jim Cole, What King of Tug Do We Need? September/October 1999 Edition, International Tug and Salvage pgs. 33 and 34.
3. Neah Bay Rescue Tug, Summaries of Responses Since 1999

173-182-530

Oil releases to groundwater are very complex issues that vary significantly with each situation and cannot simply be addressed by the wording contained in this section. While it is prudent to require a facility to immediately commence a response/investigation effort upon becoming aware of a spill to groundwater, it is not realistic to require a facility to immediately assess and mitigate ground water spills and prevent further migration nor is it realistic to identify who exactly will be used to respond to a groundwater spill. This section should be either be deleted or rewritten to require that a facility immediately initiate a response upon learning of a spill to groundwater in accordance with Model Toxics Control Act (MTCA) cleanup standards (WAC 173-34-10).

Gary A. Solari

Conoco Phillips Ferndale Refinery
3901 Unick Road - P.O. Box 8
Ferndale, WA 98248

173-182-280

ConocoPhillips requests that the phrase 'down to the unit/branch level' be replaced with the phrase "down to the section chief level and command staff level. The Incident Command System (ICS) was developed to provide a response management organization that could b universally adopted by responders for oil spills. Further, the ICS was designed to provide for maximum flexibility in varied situations. The requirement to provide a detailed organizational list of one primary and one alternative person to lead each ICS spill management position down to the unit/branch level on a standard ICS organizational chart is very prescriptive and in conflict with the maximum flexibility features built into the ICS structure. This section should distinguish that professional consultants brought in to help fill various ICS spill management positions am not considered to be response contractors for purposes of having to be on the state's approved Primary Response Contractor (PRC) list.

173-182-310

I am concerned that the phrase “could have arrived” sets an extremely low bar for accepting plans which the reviewer feels have only a slight chance of actually achieving the objective. How slim a chance of success satisfies “could”? I suggest a better word is “should”. Should implies a probability of success, not merely a slight possibility.

A more serious problem lies in the use of “arrived” to measure successfully meeting the planning standard. This could result in plans which deliver equipment to the spill site without the ability to use it effectively to contain and recover the spill. For instance, according to the current rule wording, a plan holder could meet the 2-hour boom standard with a plan that merely calls for the boom to be dropped from a helicopter at the spill site, with no vessels or personnel there to deploy it. I recommend that “arrived” be replaced

with “deployed and operating”. The entire phrase then becomes “should be deployed and operating”.

Tom Copeland

3817 Mt Baker Hwy
Everson, WA 98247

173-182-315

For once I believe that the rule goes too far. Please do not set a time limit of 12 hours availability to respond to a worst case spill. It is extremely doubtful that the USCG would allow non-dedicated workboats into a worst case spill area in the first 24-48 hours due to numerous hazards. Imposing such a strict time requirement on this program vastly reduces its ability to acquire the best vessels and crew, while vastly increasing its cost.

Prince William Sound has experienced a near worst case spill and has learned from that experience. The PWS Plan contains a highly developed workboat plan for response to worst case spills. Over 700 nondedicated vessels are called for in the plan. There are three levels of readiness for these vessels. A small group is paid to respond within 24 hours (crew have been fitted with hazardous vapor masks – no beards). Over 300 other vessels and crew are trained annually and are ready to respond beginning at 24 hours through 72 hours. An additional 350 vessels and crew receive their training after the oil is on the water. These vessels can enter the response as early as the 5th day.

Washington can easily plan to mobilize significant numbers of highly effective workboats cheaply and effectively. Cascaded equipment is available to equip these workboats. Please to not set artificial constraints on Washington’s ability to mobilize a tremendous and vital response force for worst case spill response.

Worst case spills are big events. The emergency response period continues much longer than 12 hours. With a good plan, nondedicated vessels using cascaded equipment can dominate the response to worst case spills somewhere in the middle of the emergency response period. This time is measured in days not hours.

I urge you to drop “that could have arrived on scene beginning at twelve hours.” And to replace it with “capable of fully utilizing available cascaded equipment.”

173-182-325

A major shortfall of dispersant response is the lack of trained pilots to spray the dispersants. The history of dispersant use in this country is rife with misapplications due to the use of pilots untrained in spraying. During the Exxon Valdez spill, a very critical lightering operation was interrupted for several hours due to the dispersant pilot missing the target area by over a mile and a half, and instead spraying the decks and lightering personnel onboard the Exxon Valdez. I strongly suggest adding a requirement for pilots trained in dispersant application to this rule. History indicates that you will not get them otherwise.

173-182-800

I urge the department to carefully consider the suggestion put forward by People For Puget Sound. Drilling for orphan spill response should be a part of these rules.

Cost Benefit Analysis

Imprecise language, highlighted by ODEQ and many stakeholders, remains in the rule posing the potential for unintended consequences which could significantly alter the relationship between umbrella plan providers and responsible parties. Major changes in the spill response regime on the Columbia River needs a full discussion with all stakeholders and must be justified, both environmentally and economically. Oregon Department of Environmental Quality recommends the following course of action:

- Conduct a cost benefit analysis specific to the Columbia River including impacts to Oregon ports.
- Hold Columbia River specific workshops with shippers, agents, environmental groups, response contractors, ports, and interested state and local governments.
- Discuss and clearly state the intent of the rules.
- Where the rule has environmental or economic impact on interested parties, provide a serious analysis of the benefits and costs to the citizens and states that share the Columbia.

General

The Oregon Department of Environmental Quality (ODEQ) fully supports the efforts of the Washington Department of Ecology to update Washington's Oil Spill Contingency Plan Rule. The Columbia River is a major economic and environmental resource to both states and the regulation of spill prevention and response activities on this shared water is critical to both states. ODEQ has participated in this process since its inception in the year 2000 and has provided input and assistance.

While the rules, as currently proposed, provide much needed clarification in terms of making unenforceable guidance into enforceable rule and clarifying plan holder requirements to conduct no-notice drills, it is the Oregon Department of Environmental Quality's position that the proposed rule is not yet ready for adoption.

Kit Rawson

San Juan County
PO BOX 947
Friday Harbor, WA 98250

173-182-370

We strongly support the proposed response standards for sensitive areas within San Juan County. Currently, these are limited to the San Juan Islands National Wildlife Refuge. We bring to your attention the fact that the entirety of San Juan County has been

designated a Marine Stewardship Area, containing a number of sensitive and protected areas. Consequently, we encourage you to consider extending the sensitive area standards to other parts of San Juan County.

General

The San Juan County Marine Resources Committee (MRC) thanks you for the opportunity to comment on the draft rule. Through a strategic planning exercise, the MRC has identified oil spills as a substantial threat to living marine resources in the county. Consequently, we favor actions to mitigate this threat. We note that the draft contingency plan rule and transfer rule contain improvements in equipment staging and response times, and we strongly support these improvements.

173-182-355

We support the proposed standards for transfer sites, and for sensitive areas in the vicinity of transfer sites. Although no transfer sites occur within San Juan County, county waters could be affected by spills in adjacent areas where oil transfer occurs.

173-182-345

In the second sentence, beginning "Include in the plan the mobilization time the phrase "timely manner" is used. If plans are to indicate a mobilization time (presumably some number of hours), it seems inconsistent to use the subjective phrase "timely manner" as a standard. A specific maximum acceptable timeline should be stated as a planning standard. Suggestion: Edit the second sentence in this section to read: "Describe in the plan the mobilization time needed to ensure the assets are available and delivered on scene, as well as the "time "

Greg Hueckel

Washington Department of Fish and Wildlife
600 Capitol Way N
Olympia, WA 98501-1091

173-182-310

Throughout "Section C -- Planning Standards", there are various verbs used to describe the obligations of the plan holder towards meeting a particular planning standard. The terms "should", "must", "capable of" and "could have" are used at various times without a clear sense of why a distinction is being made. An alternative to using the above terms would be to say: "the planning standard is" and then rely upon WAC 173-182-350 for documenting compliance with the planning standards. For example, in WAC 173-182-320, the proposed rule states: "Resources could have arrived on scene beginning at six hours, except for the high risk areas on the Columbia River where the resources could have arrived on scene within 3 hours." This could be rewritten to say: "The planning standard is that resources arrive on scene within six hours, except for the high risk areas

on the Columbia River where the planning standard is that resources arrive on scene within three hours "

173-182-030 (14)

Throughout the chapter there are references to four different terms to describe "facilities" (i.e. facility, covered facility, onshore facility, and offshore facility) This seems like too many terms and it seems likely that there will be confusion when applying the rule.

Suggestions:

- a) Consolidate the number of terms describing "facilities" down to the fewest required
- b) Review the rule to ensure that the way the terms are used in the chapter results in the appropriate application of the rule

173-182-030 (6)

The term "vessel" is not specifically defined, and seven different terms are used in the chapter to describe "vessels". This seems like too many terms and it seems likely that there will be confusion when applying the rule Examples include: Vessels are considered "covered" according to the applicability section and include tank, cargo, and passenger vessels "Covered vessels" are defined in the definition section to include tank, cargo, or passenger vessels, but not public vessels. "Cargo vessels" are defined in the definition section to include self-propelled ship in commerce, other than a tank vessel or a passenger vessel, including but not limited to commercial fish processing vessels and freighters By definition, fish processing vessels aren't covered vessels 01 vessels thus every time the rule references "vessels" it doesn't include fish processors unless it refers to "cargo vessels." "Tank vessels" are defined in the definition section as a ship that is constructed or adapted to carry, or that carries, oil in bulk. "Non-tank vessel" is not defined, "Ship" is defined in the definition section as any boat, ship, vessel, barge or other floating craft of any kind, but is it is only used in the definitions of numerous other "vessels" and not elsewhere in the chapter. "Passenger vessel" is by definition a "covered vessel" but according to the "covered" vessel" definition it can't be public, although that isn't stated in the "passenger vessel" definition.

- a) Consolidate the number of terms down to the fewest required.
- b) Review the rule to ensure that the way the terms are used in the chapter results in the appropriate application of the rule.
- c) Reconcile the differences in the definition for "covered vessel" between WAC 173-182-015 and WAC 173-182-030(6)

173-182-355 through 173-182-45

The term "sensitive area" appears in various sections of these draft rules, but the term is undefined in WAC 173-182-030. It would appear that this term is meant to define discrete locations that can be protected by specific booming strategies but it is possible that this term could be confused with the newly defined (and considerably larger) planning standards areas. Add a definition for the concept of "sensitive area", but replace the term "sensitive area" with the term "sensitive site" (Ex "Sensitive site" means a location determined by ecology to contain habitats or species of special environmental concern that could be at risk due to an oil spill).

173-182-030 (17)

WAC 173-182-140 introduces the term "Incident Command System (ICS)", but this term is not included in the definitions section. Suggestion: Add a definition for "Incident Command System", such as "ICS is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents."

173-182-310

WDFW is concerned about the way in which some of the planning standards have been written.

Many of the planning standards are written using the term "could have", which makes the standard seem somewhat discretionary and tentative. While we understand that this is due to the need to distinguish between "planning" and "performance" standards, WDFW would recommend that a better solution be found. We have suggested a possible solution in our general comments on Section C--Planning Standards. An unambiguous benchmark should be the goal of these rules.

173-182-150

The second sentence in paragraph (b), beginning with "Plan holders must accurately track" appears to be out of context within this subpart. Move the sentence to subsection (2). The new sentence would read: "Plan holders must accurately track and account for the entire volume of oil recovered and oily wastes generated and disposed (of) during spills. Plan holders must provide these records to ecology upon request."

173-182-230

Contingency plans should also list any special planning areas in which a vessel operates or transits. Suggestion: Edit statement to read, "All ports of call, areas of expected operation, and any special planning areas entered or operated in (as described in WAC 173-182, Sections 365 through 430) while in Washington waters."

173-182-355 through 173-182-45

WAC 173-182-355 and WAC 173-182-360 describe planning standards for some vessels, facilities and pipelines, while WAC 173-182-365 through 173-182-450 establish planning standards based on the geographical location of the activity. As written, it is not clear that all vessels, pipelines and facilities in all locations within the state would have applicable planning standards. For example, what standards apply to facilities that don't receive petroleum products from vessels?

Suggestion: WAC 173-182-355 and 173-182-360 could be written as general requirements that cover all appropriate vessels, pipelines and facilities statewide. Standards for special areas would then be exceptions to the general standards (i.e., notwithstanding WAC 173-182-355,). The definition "high risk area" (WAC 173-182-030(15)) could be eliminated and replaced with a definition of "special planning standard area" (e.g., "special planning standard area" means a geographical area determined by ecology to require exceptional planning standards). The applicability of the planning standards would also be more apparent if the rules were rewritten to clarify the

relationship between WAC 173-182-355 and 360 (appear to be statewide standards), WAC 173-182-365 through 430 (special area standards) and WAC 173-182- 440 and 450 (appear to be general area standards)

173-182-325

The point should be made that there are federal standards in effect as well and that state regulation will support them. Suggestion: Add the following statement to the end of this subsection, "Plan holders are reminded that subpart J (40 CFR Part 300.910) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) governs the use of dispersants. The USEPA prepares and maintains a list of products, known as the NCP Product Schedule, which may be authorized for use on oil discharges. Only those products listed as dispersants in the NCP Product Schedule will be considered appropriate for dispersant use or planning."

173-182-030 (27)

One point of concern, however, is that the rules do not cover oils derived from non-petroleum sources. We are aware that your statutory authority does not include these types of oils. However, the recent interest in the development of biodiesel refining facilities leads us to recommend that we jointly begin a dialogue with the Legislature and the Governor regarding the appropriate level of state regulation. Spills of non-petroleum oils such as biodiesel have considerable potential to harm the environment.

173-182-250

This section implies guidance but does not appear to set a standard that needs to be met. Suggestion: Edit this subsection to read, "The plan shall describe the equipment or methods that will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions. Examples of such equipment or methods include visual tracking, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery."

173-182-030

How widely are these definitions meant to apply within the Washington Administrative Code?

Suggestion: If the intent is to make them applicable only to Chapter 173-182 WAC, then we suggest inserting the phrase "As used in this chapter:" at the beginning of the section.

173-182-230

This sentence appears to have three potential problems.

1) The word "differ" is confusing. Presumably this refers to the fact that a vessel may transit or operate within different planning areas. Suggestion: Edit first part of sentence to read "If vessel operations occur in different "

2) The use of the word "areas" is ambiguous. This could refer to either large, geographic areas (i.e. Outer coast or Puget Sound) or to the newly defined "special planning standards areas" (i.e. Grays Harbor or Nisqually). Suggestion: Clarify how the term "areas" is being used (e.g. "special planning standard area")

3) The sentence continues, " a worst case volume for each area may be submitted to ecology for consideration " This seems to conflict with the statement in WAC 173-182-610(2) that indicates that ecology will require the more stringent of planning standards when a plan holder operates in areas with different planning requirements. Suggestion: Edit statement to read, "If vessel operations occur in areas with different planning standards, the largest worst-case volume shall be applied to the planning area with the most stringent planning requirements.

173-182-030 (50)

The definition of the term "transfer site" could be interpreted to mean both:

(1) a location where oil is transferred between two vessels or between a vessel and a shore facility; and

(2) the route a vessel follows as it transports the oil through state waters

The term "transfer site" and the reference to "a location" both suggest that the definition is intended to describe only (1), but the wording " moved over waters of the state by a vessel" seems to include (2)

Suggestion: If only (1) is intended, replacing the word "by" after "waters of the state" with "to or".

173-182-030 (33)

The definition for "persistent oil" could be simplified. Suggestion: The definition for "persistent oils" could be reworded to read: "Persistent oil" means petroleum-based oil that has been classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60' F, as follows:"

173-182-030 (8)

A definition of "chartering by demise" might be useful as this is a phrase not in common use, being specific to maritime law, and could therefore be misunderstood. Suggestion: Consider adding a definition for the term "chartering by demise"

173-182-230

A definition of what constitutes an acceptable forty-eight hour worst-case spill trajectory analysis should be included to ensure that adequate scope is used for planning purposes. Suggestion: Add additional language to this sub-section stating that, "Trajectory analysis will be based upon a model acceptable to ecology".

173-182-030

The term "High risk sites for planning standards" is used to describe the planning standards areas in Sections 365 through 430 of this chapter. We agree that these areas require special consideration, but believe that a different term might be more descriptive of the relationship between these special areas and those that have different planning standards.

- a) We recommend replacing the term "High risk sites for planning standards", with the term "Special planning standards areas"
- b) Change the definition for these areas to read: "Special planning standards areas" means those areas determined by Ecology to warrant specific planning requirements due to the presence of factors such as navigational hazards, logistical constraints, or areas of critical environmental concern

173-182-030 (15)

The definition for GRP makes reference to the Northwest Area Committee. We're not sure if this additional information is useful, since there are no other references describing the NW Area Committee. Suggestion: The definition could be simplified by rewording it to read: " response strategies published in the Northwest Area Contingency Plan Note: By definition, the NWACP is a product of the NWAC/ RRT 10.

173-182-355

The title for this section uses the term "transfer location" Elsewhere in the rule, including the definitions section, the term ""transfer site" is used instead. For the sake of consistency, we recommend that the title for this section be revised to use the term "transfer site" instead of "transfer location." 1 The title for this section could be modified for overall clarity. The title could be modified to read: "Transfer sites for vessels and for facilities with a vessel terminal".

173-182-365

- 1) It would be helpful to have additional language to clarify which facilities are required to meet these planning standards. Include appropriate portions of the definitions for "transmission pipelines" and "pipeline tank farms" within the text at the beginning of this section.
- 2) The language in this section needs to be more specific as to boom requirements. Subsection (3) should be reworded as follows: "Boom required for the two hour standard shall be dedicated, appropriate for the operating environment, and may be staged".
- 3) Use of the term "state surface waters", in subsection (I), is inconsistent with other terminology used in this rule. Change "state surface waters" to "surface waters of the state"
- 4) In subsection (1) some statements use the term "river" while other statements use the term "stream" We feel this distinction is important, because the booming requirements for the "widest stream" in a given WRIA could be much less than the requirements for the widest "river" in that WRIA. Throughout section 360, replace the term "stream" with the term "river."
- 5) Subsection (1) (b) refers to the average river speed Is the average referring to the year-around average flow, high water average flow, or low water average flow?

Suggestion: Determine "average" river speed based on the year-round average flow. In the Boom/Assessment column of the table for this section, the direction provided in the 6 and 12 hour planning standards states that resources "could have arrived" but doesn't say where it (i.e. the boom) needs to arrive at. Due to the dynamic nature of river and stream environments, the spill source and leading edge may be miles apart in very little time. Clarify where the boom is required to arrive within the specified time intervals (source of the spill, leading edge of the spill, or other appropriate locations).

173-182-355 through 173-182-450

WAC 173-182 Sections 365 through 430 - General comment

1) The areas described in these sections fall into the category of "High risk sites for planning standards" (WAC 173-182-030(15)). Redefine "high risk sites for planning standards" as "Special planning standards areas" Note: If this change is adopted, the definition for "High risk sites" will need to be deleted from WAC 173-182-030, and the new term, "Special planning standards areas", will need to be added to WAC 173-182-030. This term could be defined as follows: "Special planning standards areas" means those areas determined by Ecology to warrant specific planning requirements due to the presence of factors such as navigational hazards, logistical constraints, or areas of critical environmental concern."

2) Naming the "High Risk Sites" after specific National Wildlife Refuges is not appropriate for all of the areas described in sections 365-430, since in many cases the described areas do not include (or only partially include) the referenced refuges. In addition, some of the areas included in the list of "high risk sites" were selected primarily because of the need for specialized response equipment to deal with the challenges posed by shallow-water environments. Whatever terminology is used to define these special areas, we would recommend that these areas be renamed, so as not to be tied to a specific wildlife refuge. Suggested new names for individual areas are as follows:

- WAC 172-182-365, change "San Juan Island National Wildlife Refuge" to the "San Juan County
- Planning Standards area" WAC 173-182-370, change "Padilla Bay National Estuary Research
- Reserve" to "Padilla Bay Planning Standards Area" WAC 173-182-375, change "Commencement
- Bay-Quartermaster Harbor" to "Dalco Pass Planning Standards Area" WAC 173-182-380, change
- "Nisqually National Wildlife Refuge" to "Nisqually Reach Planning Standards Area"
- WAC 173-182-385, change "Dungeness National Wildlife Refuge" to "Dungeness Planning
- Standards Area" WAC 173-182-390, change "Neah Bay Staging Area" to "Neah Bay Planning
- Standards Area" WAC 173-182-395, change "Copalis, Flattery Rocks, and Quillayute Needles

- National Wildlife Refuge" to " Cape Alava to Copalis Planning Standards Area" WAC 173-182-400, change 'Grays Harbor National Wildlife Refuge" to " Grays Harbor Planning Standards Area".
- WAC 173-182-405, change "Willapa National Wildlife Refuge" to " Willapa Bay Planning
- Standards Area" WAC 1 73-182-410, change "Lewis and Clark National Wildlife Refuge" to
- "Cathlamet Planning Standards Area" Note: for this and other planning areas on the Columbia River, our renaming recommendations use the convention of naming sites after one of the towns/cities encompassed by the 5 miles circle that defines the area WAC 173-182-420, change "Ridgefield
- National Wildlife Refuge" to "Vancouver, WA Planning Standards Area"
- WAC 173-182-430, change ""McNary National Wildlife Refuge" to "Pasco Planning Standards Area"

3) The reference to boom requirements of "4 times the largest vessel" (appearing in the tables under either in the 2 hour or 3 hour standard) is confusing

Suggestion: Edit all occurrences of the above term to read, "4 times the length of the largest vessel "

4) References to Latitude and Longitude locations should use consistent formats and a degree of precision that is reasonable (i.e. can be easily located on a navigational chart)
Suggestion: All latitudes and longitudes presented in these sections should be given in the format dd/ddd, mm', ss" Furthermore, the "seconds" should be rounded to the nearest 30 seconds of latitude

173-182-400

1) The boundary description for this area ("Copalis, Flattery Rocks and Quillayute should be rewritten for clarity. "Those vessel and facility plan holders that transit or operate along Washington's outer coast within the area bounded on the north by Lat Xxxxxx, on the south by Lat Yyyyyy, and on the west by the outer limit of the jurisdictional waters of Washington State, must meet the following standards".

2) Some of the coordinates used in this section (ex Lat 47" 10' 10 5 7 85") don't seem to make sense. Suggestion: Check the Lat/Long coordinates, correct as appropriate, and format as suggested

173-182-030 (11)

Although the term "dispersants" is used in this chapter, there is no definition provided for the term in WAC 173-182-030

Suggestion: Add the following definition for the term "dispersants":

- "Dispersants" means chemical agents that emulsify, disperse, or soluble oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column (from: subpart J (40 CFR Part 300 5))

173-182-355 through 173-182-450

In each of the tables in these sections the following language appears in either the 24-hour or 48-hour standard (or both): "Sensitive areas protected by sufficient types and amounts of boom". This statement needs to be defined in more specific terms.

Suggestion: "Sensitive sites located within the 48-hour worst-case spill trajectory for a given contingency plan protected by sufficient amounts and types of boom ". See comment regarding the addition of the term "sensitive site" to WAC 173-182-030 (Definitions)

173-182-355 through 173-182-450

WDFW also supports the inclusion of the 6-hour planning standard in the proposed rules. This new benchmark is a positive step towards obtaining faster on-the-ground response to oil spills.

173-182-355 through 173-182-450

The appropriate planning standards in each of the tables in these sections would benefit by being more specific as to the types of boom required. Add text in each of these sections that references the reader back to the definition for "boom" (WAC 173-182-030 (I)), or use the phrase "appropriate to the operating environment" when defining boom requirements.

173-182-400

Given the ecological sensitivity and rugged topography of the entire northern outer coast, and the logistical challenges associated with this area, we feel that this planning area should be expanded to include other highly important locations (ex Bodelteh Islands, Point of Arches, Portage Head, Cape Flattery) that are currently excluded. Consider moving the northern latitudinal boundary further to the north, perhaps as far as Cape Flattery.

173-182-405

The definition of the geographic area encompassed by the Grays Harbor planning area needs to be clarified for the following reasons:

- 1) The western portion of this circle, as currently defined, would include waters outside of the jurisdictional waters of Washington State, and
- 2) The description of this circle could be misconstrued as excluding the area inside the entrance to Grays Harbor.

Suggestions:

- a) Move the center point of the circle to the east, such that the westernmost arc of the circle is at the outermost limit of state waters,
- b) Define the area using a box rather than a circle (ex the area bounded on the north by Lat -, on the south by Lat -, on the east by Buoy G"13", and on the west by the outer limit of the jurisdictional waters of Washington State) or,

c) Instead of defining the area based on Lat/Long, employ other language to indicate that the planning standards for this area apply to any covered vessel entering or departing Grays Harbor (see introductory language for WAC 173-182-450 for an example)

173-182-720

This section mentions "fifteen core components" used to evaluate drills. The actual list that follows contains sixteen items.

Suggestion: Combine existing subsections (11) and (12)

173-182-030

It appears that some of the terms defined in WAC 173-182-030 are not used elsewhere in the chapter. The following terms do not appear to be used in the chapter, we recommend removing them from this section: (17) Interim storage site (40) Regional Response list (45) Systems approach.

173-182-355

1) This section currently relies solely on its title to describe to whom the planning standards apply. This section would benefit from an opening paragraph of text, immediately following the title that provides more specific information to clarify the intent of this section (Ex "Planning standards for those vessel and facility plan holders that transit or operate within Washington State waters east of Cape Flattery and outside of those areas described in other, more specific planning areas (i.e. "special planning standards areas.")

2) The title of this section could be improved by clarifying the relationship of these more generalized planning standards to those more specialized standards specified for other planning areas.

Suggestion: Re-title this section as "General planning standards for Puget Sound and the Straits of Juan de Fuca"

3) In addition, since this section describes overall or "baseline" planning standards and the preceding planning standard sections 365-430 describe "special planning standards" that pose additional requirements in addition to the "baseline", it may be preferred to move this section in front of the other sections.

Suggestion: It may be more appropriate to relocate this section, inserting it prior to WAC 173-182-360. This would put the general or "baseline" planning standards first in the rule, followed by the sections that describe special planning standards for other areas.

173-182-415, 173-182-420, 173-182-430

1) The use of circles to define these planning standards areas seems inappropriate, given the linear nature of the river. Define these planning areas based on upstream and downstream boundaries referenced to Lat/Long coordinates or prominent landmarks along the river.

2) The distance measurements used in these sections are not consistent. In some cases, the term "river miles" is used, while in other instances the term "nautical miles" is used. For these sections, any distance measurements should be defined in terms of "statute miles" While the term "river mile" is a commonly used convention among some groups, we should stick with the formal distance measurement as presented on the NOAA charts, which clearly state "Mileage distances along the Columbia River are in Statute Miles, " (Chart 18521).

173-182-355 through 173-182-450

The special planning standards for areas such as Grays Harbor, Willapa Bay, Padilla Bay and the San Juan Islands acknowledge the significance of these ecological treasures.

General

Oil spill planning is a very contentious issue and we realize the effort that it has taken to get the rule proposals to this point. However, your hard work is well worth the effort because the ultimate benefit is better protection for Washington's very special natural resources. The proposed contingency plan rules are an appropriate step in the evolution of the state's strategy for minimizing the damage from oil spills. Citizens expect state government to safeguard our environment and these rules demonstrate our commitment to that goal. The rules reaffirm Washington's intent to deal with oil spill prevention and response in a fair but effective manner. WDFW appreciates the Department of Ecology's efforts to develop rules that safeguard Washington's fish and wildlife.

173-182-410

The definition of the geographic area encompassed by the Willapa Bay planning area needs to be clarified for the following reasons:

- 1) The western portion of this circle, as currently defined, would include waters outside of the jurisdictional waters of Washington State, and
- 2) The description of this circle could be misconstrued as excluding the area inside the entrance to Willapa Bay

Suggestions:

- a) Move the center point of the circle to the east, such that the westernmost arc of the circle is at the outermost limit of state waters, a,
- b) Define the area using a box rather than a circle (ex the area bounded on the north by Lat -, on the south by Lat -, on the east by Buoy RIY, and on the west by the outer limit of the jurisdictional waters of Washington State) a,
- c) Instead of defining the area based on Latlong, employ other language to indicate that the planning standards for this area apply to any covered vessel entering or departing Willapa Bay (see introductory language for WAC 173-182-450 for an example)

173-182-030 (39)

The definition for "Planning Standards" could be strengthened to indicate that these standards contain specific targets to be achieved, not just generalized goals. Suggestion:

Reword the first sentence to read: "Planning standards means goals and criteria that Ecology will use "

173-182-355

This section relies on its title to describe to whom the planning standards apply. This section would benefit from an opening paragraph of text similar to that found in WAC 173-182-375 and other planning standards

173-182-030 (5)

This section introduces the acronym "OSRO". This appears to be the only use of this term in the chapter. Replace acronym "OSRO" with "Oil Spill Response Organization"

173-182-510

This section should be consistent with the planning requirements described in the special planning standards sections. It should also be made consistent with the description of the term "sensitive sites" (the term we suggest be used to replace the existing "sensitive area" terminology). Edit this part to read: "(b) The plan shall include a description of the sensitive sites located within the 48-hour worst-case spill trajectory for a given contingency plan and the booming strategies that have been developed to protect these sites The booming strategies described in the Geographic Response Plans (GRPs) contained within the Northwest Area Contingency Plan (NWACP) have been developed to meet this need and plans may refer to the NWACP to meet this requirement if approved GRPs do not exist in the NWACP, plan holders will work with Ecology to determine.

173-182-450

As described in the introductory paragraph, this section appears to apply only to specific points of entry into WA (Columbia River, Grays Harbor, Strait of Juan de Fuca) These points of entry already have higher planning standards ("High Risk Sites" [we've suggested using the term "Special Planning Standards Areas " instead]). It is our understanding that this section is intended to apply to state waters off the outer coast, not covered by the special planning standards areas defined elsewhere.

a) Re-title this section as "General planning standards for Washington outer coast "

b) Reword the introductory paragraph to read: "These standards apply to vessels transiting or operating within Washington State outer coast waters that are not included in a special planning standards area.

173-182-355 through 173-182-450

The reference related to boom requirements appearing in the tables under the 2 or 3 hour stands should be specified as "4 times the length of the largest vessel."

173-182-030 (8)

A definition of "chartering by demise" added to the Definitions Section would ensure clarification of the phrase.

Ken S. Berg

USFWS

Western Washington Fish and Wildlife

Lacey, WA 98503

173-182-030 (27)

We are aware that the current Washington State regulatory authority for oil transport, oil spill planning and response, and natural resource damages does not cover oils derived from non-petroleum sources. The recent interest in the development of bio-diesel refining facilities raises concern for the current regulations. We recommend that the State of Washington re-visit the appropriate sources and level of regulation of all sources of oil products (including non-petroleum) as they have very similar effects on the environment when spilled.

173-182-030 (17)

The term "Incident Command System" is discussed in WAC 173-182-140 and its definition should be included in this section.

173-182-030 (39)

WWFWO would encourage the strengthening of the definition of "Planning Standards" by changing the phrase "goals that ecology will use to assess" to "criteria that ecology will use to assess ...".

General

The U.S. Fish and Wildlife Service's (FWS) Western Washington Field Office (WWFWO) appreciates the opportunity to provide comments on Washington Department of Ecology's (WDOE) proposed Oil Spill Contingency Plan Rule (Rule) that improves protection for natural resources and the efficacy of oil spill response. We commend the WDOE for its proposal of this Rule as we understand it to be a risk-based approach that is intended to provide protection and response where it is most needed, based on sensitivity of the environment and proximity to oil trafficking. This is especially significant for the FWS's National Wildlife Refuges residing along the outer coast and the Strait of Juan de Fuca. They provide nationally important ecological value and are also exposed to a high risk of oil spills from oil transport and other vessel traffic.

173-182-030 (50)

The definition of "transfer site" seems unclear. The definition should clarify if a "transfer site" is a location where oil is transferred and/or a route a vessel follows while transporting oil.

173-182-230

This sentence should be clarified as it could be confusing. Does it refer to a vessel that may transit or operate within different planning areas or a vessel that operates differently

in specific areas? Does the term "areas" refer to a large geographic area or a specific planning standard area? Is the vessel operator required to consider a "worst case volume" as stated in this sentence or the "most stringent planning standard" as stated in WAC 173-182-610(2) or both?

173-182-230

Perhaps more explanation should be included for the "forty-eight hour worst case spill trajectory analyses". Does WDOE have certain criteria for an acceptable trajectory analyses? Are there specifications that should be used in a trajectory model? Perhaps just adding that the trajectory analyses must be determined to be acceptable by WDOE is appropriate. If not, more information should be provided, or a source for information (guidelines) for an acceptable trajectory analyses.

173-182-230

Special planning areas should be specifically mentioned as a part of the "areas of expected

173-182-325 and 173-182-330

In addition, the WWFWO fully supports the planning standards for dispersant and in-situ burning in addition to the other response capabilities. We believe it is essential to have standards that require local staging of equipment and materials so that any available response technology can be best applied to that specific spill scenario.

173-182-355 through 173-182-450

The WWFWO supports the inclusion of a 6-hour planning standard in the proposed rule. This new benchmark is a positive step towards obtaining more efficient response to oil spills and has a great potential to reduce ecological impacts to sensitive environments

173-182-345

Delete "in a timely manner" from the second sentence. It adds uncertainty to the requirements.

173-182-700

Criteria for the determination of a "significant failure" should be provided to ensure early re-testing when appropriate.

173-182-355 through 173-182-450

These sections would benefit from all introductory paragraph. To clarify, a statement that these standards apply statewide, unless the plan holder transits or operates within a high risk site for planning standards where additional planning standards would apply.

173-182-355 through 173-182-450

The planning standards in each of the tables in these sections could benefit by further defining the types of boom required. For example, adding a phrase such as "appropriate to the operating environment" when defining boom requirements might be helpful.

173-182-355 through 173-182-450

The WWFOW especially appreciates and encourages the specific emphasis and planning requirement standards on the San Juan Islands, Nisqually, Dungeness, Copalis, Quillayute Needles, Grays Harbor, Willapa, Lewis and Clark, Ridgefield, and McNary National Wildlife Refuges. The Julia Butler Hansen National Wildlife Refuge should also be included. The Julia Butler Hansen National Wildlife Refuge consists of Columbia River floodplains and islands (next to Lewis and Clark Refuge islands). It is possible that the Julia Butler Hansen National Wildlife Refuge could be included in the WAC 173-182-410 with the Lewis and Clark National Wildlife Refuge,

173-182-400

WWFOW supports the need of a regional staging area for response equipment at Neah Bay. Neah Bay is the only protected deep-water port north of Grays Harbor with sufficient equipment-staging capacity to provide appropriate response capacity in and adjacent to the San Juan Islands, Dungeness, Copalis, Flattery Rocks, and Quillayute National Wildlife Refuges. In addition, the requirements for staging oil spill response equipment at Neah Bay that is appropriate for efficient deployment, in particular oil containment equipment, is vital for the continued health of these sensitive areas. Oil spill clean-up would be very difficult in most locations of these Refuges. These areas are nationally significant breeding and resting areas for marine birds and mammals that are particularly vulnerable to the effects of oiling.

173-182-360

It may be more appropriate to move this section so it is located before Section-365. This would put the planning standards before the sections that describe special planning standards for other areas.

173-182-410

The description of the area should include any covered vessel entering or departing Willapa Bay instead of "outside the entrance to Willapa Bay" to ensure that the area inside the entrance to Willapa Bay is not excluded.

173-182-450

It is our understanding that this section is intended to apply to state waters off the outer coast, not covered by the special planning standards defined elsewhere. If that is so, it is confusing to specifically discuss the Columbia River, Grays Harbor, and the Strait of Juan de Fuca as they are "high risk sites" that include higher planning standards. In addition, it may be appropriate to move this section so it is located before Section -365 with clarification similar to "unless the area is identified as a high risk area with increased planning standards" and add reference to the Sections that describe the high risk areas.

173-182-030 (14)

The term "vessel" should be specifically defined in the Definitions Section. The terms "vessel" and "facility", including their subtypes (covered vessel and facility, tank vessel, non-tank vessel, passenger vessel, public vessel, onshore facility, offshore facility) are used throughout the Rule. Perhaps the number of terms used to describe vessels and facilities should be consolidated to avoid confusion. The Rule should be closely reviewed in its entirety to ensure that the "vessel" and "facility" terms used to describe the vessel or facility type is inclusive, consistent, and an appropriate application of the intent of the Rule.

173-182-355

It may be clearer to use the same terminology throughout the rule - replace "transfer location" with "transfer site."

173-182-405

The description of the area should include any covered vessel entering or departing Grays Harbor instead of "outside the entrance of Grays Harbor" to ensure that the area inside the entrance to Grays Harbor is not excluded.

173-182-030 (11)

The WWFOW recommends that the term "dispersants" be added to the Definitions Section. This definition could be taken from 40 CFR Part 3005- "Dispersants" means those chemical agents that emulsify, disperse, or soluble oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

173-182-365

To be more consistent within the Rule and with WRIA, replace the term "stream" with the term

General

HMWS fully supports the detailed comments presented by Mr. Jason Lewis of the American Waterways Operators (AWO) and does not feel the need to reiterate them in this letter. The Draft Rule is confusing, burdensome, and overly onerous without providing benefits to justify its complexity. Navigation and safety decisions will be made based upon compliance with this rule rather than for prudent seamanship.

Merchant Mariners, like airline pilots, travel between states and countries on a regular basis. Commonality of regulations and expectations are a boon to safety. Having to tread unfamiliar waters of varying regulation and compliance requirements because of a state boundary only add to confusion and misunderstanding.

The entire marine transport system has worked very hard to reduce spills, reduce incidents, and reduce the effects of mistakes when they do happen. The State of

Washington has not presented evidence (required by its own laws) to justify exceeding federal standards or for requiring sections of planning that are subject to interpretation and whim of a plan reviewer. We request that the entire Draft Rule be withdrawn for additional re-writing before being implemented.

Ben Johnson, Jr.

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Cost Benefit Analysis

In closing, the public review draft of the contingency plan rule includes significant improvements over previous drafts. However we are concerned that the Cost Benefit Analysis finds that the quantitative costs outweigh the quantitative benefits. A major reason for this conclusion was the use of inappropriate oil spill trajectory model. We believe that a thorough inclusion of tribal cultural and resource interests would provide more than ample qualitative justification for the proposed improvements. We need to identify the means to formally integrate our treaty interests into this rule making procedures.

173-182-345

We are concerned that no improvements to storage are being recommended. The Olympic coast in particular needs dedicated storage that allows decanting in open water environments so as not to slow down the response effort. Reliance on bladders is a recipe for secondary spills and possible delays to the response; barges should be the primary acceptable method of storage for the outer coast Barges can also provide an additional platform upon which response gear can be stored while at the dock, which would greatly improve response, times by eliminating the delay associated with getting gear from the shore to the water.

173-182-700

Additionally, there is no requirement that plan holders provide a self-assessment to Ecology of problems encountered during drills. Significant failures encountered during drills need to be retested within 6 months not within three years as proposed.

173-182-395

The MTC has strongly endorsed establishing the Port of Neah Bay as a strategic location to stockpile oil spill response gear that will assist in providing the natural and cultural resources within our treaty area the protection they require. Therefore the MTC is encouraged by the identification of the Neah Bay Staging Area in the current draft. We view this designation as a basic improvement to the state's oil spill safety regime.

173-182-400

The identification of the Copalis, Flattery Rocks and Quileute Needles National Wildlife Refuge Planning Zone will provide protection for a large portion of the Makah Tribe's treaty area and is viewed by the MTC as another basic improvement in the oil spill safety regime.

General

The MTC urges Ecology to take action towards defining and establishing an Emergency Response System (ERS) for the Entrance to the Strait of Juan de Fuca before July 2007 as proposed in the 2005-2007 Biennium for the Spill Prevention, Preparedness and Response Program. Establishing an ERS will provide all the residents of the Olympic Peninsula, including the Makah Tribe, an enhanced safety net in the prevention and response to catastrophic oil spill in the Cape Flattery region. The creation of the ERS by DOE would complement the newly established staging area and planning zone put forth in the current draft of the rule

173-182-710

In place of a requirement that every piece of equipment be drilled every three years, Ecology should require that drills be conducted in every region of the State each year. In a July 17 press release, Senator Cantwell requested an emergency drill to ensure we have "the equipment and resource coordination necessary to protect the diverse marine life, productive fisheries and scenic shorelines off Washington's northwest coast"

Cost Benefit Analysis

We have analyzed the Preliminary Cost Benefit Analysis provided by Ecology in support of the creation of the Oil Spill Contingency Plan Rule and concluded that the model developed for the Cost Benefit Analysis is the most vulnerable part. The MTC previously submitted detailed comments in January 2006 on the inadequacies of the model. On page 42, Table 4.3: NRDA Compensation Schedule Cost Summary, the Olympic coast response capability is undervalued not just by the inappropriate selection of oceanographic parameters which caused the oil spill to go offshore, but it eliminated spills with high Canadian impact and assumed only 5% shoreline and 95% open water values for the calculations. Furthermore, there is no recognition of our cultural resources that require special protection in the Northwest Area Contingency Plan (NW ACP) that Ecology frequently references, including any mention of our National Historic Preservation Act (NHPA) sites on the National Historic Register. The MTC feels strongly that that the DOE must continue to work closely with the MTC to develop the means to formally represent our tribal cultural and resources values into the rule making. The use of an oil spill model that reflects the actual damages we suffered from the Nestucca and Tenyo Maru oil spills would show that quantitative benefits of enhancing spill response more than amply exceed the quantitative costs. The Exxon Valdez expenses should be listed as an indication of how much it costs not to be prepared to respond to a major spill. The MTC also believes industry investments in Ship Escort Response Vessel System (SERVS) should be enumerated in the Cost Benefit Analysis for comparative purposes

173-182-390

We are concerned that the use of the ASTM Standard F 1523 • 94 for identifying boom appropriate for the operating environment limits the size of boom that will be required. According to this standard, the entire Strait of Juan de Fuca as well as the outer coast should be classified as open water. Therefore, we are concerned about the requirement that only 60% of the boom used for skimming be capable of operating in the open water environment found in the Strait of Juan de Fuca and Cape Flattery Region. We recognize there is a need for different boom to implement Geographic Response Plan's (GRP) but are concerned that the NWACP is so outdated, especially the GRP's for the Olympic coast, that reliance on the few GRP's identified for this region will significantly underestimate the needs and type of equipment stockpiled.

173-182-620

Finally, formal public notification and comment opportunities should be provided every time a plan holder submits a contingency plan for review. Formal public notice and comment opportunities should also be provided when a plan holder petitions to make changes to their contingency plan for alternative response capabilities or travel times.

173-182-325

The current draft rule calls for plan holders to be capable of dispersing only 5% of the worst case spill volume, to be consistent with pending federal regulations. The MTC strongly believes this decrease from the 10% requirement in previous drafts of the contingency plan rule translates to added justification for increased mechanical recovery capability, especially along the outer coast where the largest spills in the state have occurred. Additionally, Ecology should require that oil spill dispersant stockpiles be resident to the region given the short window of opportunity for their use.

173-182-730

While we recognize improvements have been made to the drill participation, scheduling and evaluation program, we encourage Ecology to revise this section further before the rule is completed. Tabletop exercises should not be able to be used to fulfill worst-case scenario drills especially if out of state exercises can be used to meet this requirement. The only out of state exercises that should be counted are those conducted in Oregon along the Columbia River

173-182-250

An important additional requirement is the stockpiling of oil spill tracking devices such as radar reflective drogues or radio buoys that would enable the trajectory of the spill to be traced through the evening and in the fog. These devices can be stored on board vessels and with over flight operations gear and once activated can be picked up by any vessel arriving on scene. Ecology includes in its definition of spill assessment determination of oil properties and weather conditions including currents that cannot be determined without using the above tracking devices or installing CODAR along the entire WA coast that would enable calculation of the speed and direction of surface currents. Monitoring surface currents using CODAR would enhance the tracking of not

just oil spill, but toxic algae blooms, cruise ship discharges, search and rescue events and other emergencies that threaten the Olympic Coast shoreline.

Bruce Wishart

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173-182-710

Unannounced drills are the most effective way to measure plan holder preparedness. The language in 173-182-710(4)(a) is an improvement over earlier drafts in that the rule now assures that all plan holders will be subject to unannounced drill requirement in the first three years.

General

While the rule development process has been a long difficult one, we are very pleased to see the draft rule near completion. We do feel that this rule will result in significant improvements in our ability to respond to spills.

173-182-350

We also appreciate changes throughout the rule that will make it possible for Ecology to better evaluate and quantify contingency plans (see, e.g., Section 173-182-350).

173-182-710

We also question the advisability of excusing participants from drills if the drill might cause “economic hardship” 710(4)(e). All such drills might cause such hardship. It requires a suspension of activities in the same way a fire drill in an office building requires disruption of activities. The importance of these drills are such that we believe it is justified. The cost to the public of bungled spill response is far greater than the cost of any one drill.

General

The 1 and 2 hour storage requirements for Rate A facilities should be enhanced. Rate A facilities that pre-boom need only have access to storage for “seven barrel oil spill” in the first six hours (173-180-220(5)(vi)(B)). While those that choose not boom are required to have 100 barrels more storage associated with skimmers, this is still far short of what is likely to be needed (173-180-220(6)(b)(v) and 220(6)(d)). Spills in these areas are likely to require much more storage capacity in the early hours to be effective. These are locations at which it is feasible and practical to require more storage capability early on.

General

We also support the use of buoys or floats with GPS units placed in spill to help track its movement.

173-182-355 through 173-182-450

In terms of the ecologically sensitive areas identified (Nisqually, Padilla Bay, Commencement Bay, and the San Juan Islands), we very much appreciate the inclusion of planning standards for these areas. We do question how this rule will mesh with GRP plans which are currently under development and whether other, equally important resource areas will be adequately protected in the event of a spill. GRP's can and should be allowed to supplement the Contingency Planning rule and fill the gaps in our safety net. This rule should include language to clarify that this is, in fact, the case.

173-182-800

The rule does not deal with the issue of orphan spill drills. The Dalco Passage spill clearly illustrated that this is an area where improvement is needed. At a minimum, we urge the Department to amend the language in 173-182-800(1) to add the following requirement: "(f) assist the department in conducting "orphan" spill drills in Washington."

General

While we appreciate the requirement for Rate A facilities to have the ability to track spills in times of low visibility or at night and have equipment on site in 30 minutes (173-180-220(6)(b)(iii)), there are no requirements for Rate B facilities to track or monitor spills in the first 6 hours. At a minimum plans for these locations should require "appropriate air monitoring" of spills as well as a "safety assessment by a trained crew" within the first 2 hours.

173-182-820

The language in 173-182-820 allows PRC's to make "significant changes" in their response capability without clear consequences. There does not appear to be any public notice associated with these changes in capability. Moreover, Ecology is not compelled to revoke PRC approval even if the approval conditions are no longer met by the PRC.

173-182-710

Language in 710(4)(d) still calls for "written notice" prior to the drill. How can the drill be considered "unannounced" if written notice is provided in advance of the drill explaining the scenario? This section should be deleted.

173-182-620

In a number of places in the rule, "alternative approaches" or significant modifications are allowed. We do not feel this type of flexibility is necessary or appropriate. Section 173-182-620 allows for "alternative methods" of evaluating plan standards. This, in a sense, makes all the standards in this rule, developed over many years, essentially

“optional.” If the rule was extremely prescriptive and the case had been made for this approach, it might be more acceptable. The rule is very flexible with narrative performance standards throughout. This approach is both bad public policy and unnecessary. The 30 day public review process does little to reduce our concerns.

General

While our organization has over the past number of years emphasized the importance of spill prevention strategies, recent spills in Puget Sound and the challenges we have faced in mounting a timely response to those events has underscored the importance of strengthening spill preparedness and response requirements for Washington waters.

173-182-140

In section 173-182-140, which addresses situations in which the plan holder has made “significant changes” regarding commitments under the plan, Ecology is allowed to essentially approve modified plans which no longer meet “approval criteria.” Subsection (5) should be amended state that ecology must under these circumstances revoke the plan. This process does not appear to contain any public involvement requirements. The public should be notified as soon as the report regarding the significant change is made to the agency. A thirty day comment period should also be allowed.

173-182-345

We see no need for an alternative EDRC as outlined in 173-182-345(3) for the reasons stated

173-182-355 through 173-182-450

By identifying multiple sites, both transfer locations and environmentally significant areas, around the Sound from which to measure contingency plan effectiveness, we believe that the rule will result in the stockpiling of more gear and insure that we have more personnel available to address future spills in the region. This is a big step forward.

General

The unique negotiated rule-making process that produced the Oil Pollution Act of 1990 (OPA-90) regulations [codified in 33 CFR and 46 CFR] has had a profound impact on spill response prevention and readiness in the United States. More importantly, it has also resulted in an almost 90% reduction in oil spills since OPA-90 was implemented over a decade ago. That is a significant improvement that cannot be ignored or discounted in drafting these regulations.

173-182-030 (14)

Should be changed to read <add new subparagraph (vi)>:

(b) A facility does not include any...

(vi) Vacuum type trucks or trailers used to pump (remove) bilge slops, waste oil, contaminated ballast water and contaminated or excess fuel.

Comment: Vacuum trucks / trailers are used to facilitate the proper removal and disposal of these fluids. If they lose hose suction, the product simply returns to the bilge or tank it was pumped from. If encumbered by these regulations, services will be delayed, costs will sky-rocket, and vessels might seek less desirable ways to (improperly) dispose of these products. Vacuum trucks provide a valuable and useful service, and they are relatively small, e.g. 30-70-120 barrel capacity. I don't recall them being a significant source of spills. For these reasons, they should be exempted from these regulations.

173-182-230

Paragraph (3)(f) states: "If applicable, a list of all other plans that are relied on for spill response and describe how coordination will occur. In the interest of plan simplicity, this meaningless paragraph should be deleted. Comment: The binding agreement in WAC 173-182-220(2)(a) commits to a safe and aggressive response to spills in Washington. That should be sufficient. And, plan holders will also incorporate by reference the NW ACP. Finally, this statement requires a subjective evaluation by the plan reviewer. This is not an objective requirement.

John Crawford

Foss Maritime Company

173-182-280

Paragraph (1)(b) requires an organization list of one primary and one alternate person down to the ICS unit / branch level. That totals 66 individuals. This requirement should be amended to one primary and one alternate down to the command and staff (section chief) level. This would total 16 individuals, without listing a separate (optional) Deputy Incident Commander position – something the alternate IC could fill if necessary or appropriate.

Comment: This creates a manageable list, and includes key individuals. Except for including an alternate for each position, it is identical to the federal requirements in 33 CFR 155.1035(d)(4). Positions for unit / branch level can be stood up as needed. And, many of these individuals could or would come from OSRO's, P&I Clubs, and other contractor sources – including temps. The USCG FOG manual (2000 edition) states, on page 2-2: "Only positions that are required for an adequate response need to be filled, and organizations should be kept as small as possible to accomplish incident objectives and monitor progress."

General

As I've stated before: Grossly excessive standards destroy the legitimacy of the necessary standards and undermine Ecology's creditability as an agency to set and enforce those standards.

General

If these standards are implemented as proposed, I believe they WILL impact the economic viability of this state, and Washington will lose its competitive edge in the world market. Other ports, with less expensive fuel and infrastructure costs, stand to benefit from these unrealistic regulations – including nearby Vancouver, British Columbia. It's interesting to note that Governor Gregoire has been flying around the world trying to encourage foreign trade with Washington (Seattle Post-Intelligencer, 28 June 2006, "Gregoire takes state global"). This cannot be accomplished with regulations that will create unnecessary obstacles and roadblocks, making it more difficult and prohibitively costly to operate.

General

To be truly effective, regulations must be specific, objective and / or quantifiable. This leads to a check-list type review that can be accomplished in a relatively short time frame, e.g. yes or no, or how much, i.e. a measurement against a threshold value or planning standard.

Objective regulations enable everyone to know exactly what is expected. The advantages are obvious, for both the regulated and the regulators. An objective regulation negates personal interpretation, or subsequent enforcement of internal policy as a regulation – in violation of the Washington State Supreme Court decision: *HILLIS v. DEPARTMENT OF ECOLOGY*, Mar. 1997, 131 Wn. 2d 373, 932 P. 2d. 139. Another problem with "subjective" regulations is unequal application or enforcement. With that said, I do appreciate the improvements that the department has made to eliminate many, but not all, of the subjective type requirements in the new (proposed) rules, vs. the current rules.

Cost Benefit Analysis

The proposed planning standards are excessive and unnecessarily complex, and are not justified by risk-analysis or cost benefit analysis (CBA). The CBA conducted for these proposed rules is too broad, and too flawed, to be a helpful decision making tool.

173-182-110

(3)(b) should be amended to read: "...to the covered facility" instead of "...to the vessel company."

173-182-120

Paragraph (2) requires the submission of three copies. I recommend it be changed to just "one" copy. The extra two copies are not necessary, and in the past, have only been kept in a storage room – just in case.... If extras are needed, they should be justified – and included as a checklist item in the state / agency audit system to ensure that they are truly being used, and necessary.

173-182-220

Paragraph (2)(a) should be changed to read (add words) "...Verify acceptance of the plan and commit to a[n] safe and aggressive response...." Safety is the number one consideration in a spill

173-182-240

The last sentence in the first paragraph (1) requires: "The locations where field documents are kept must be listed in the plan." In the interest in plan simplicity, this sentence / requirement should be deleted. Earlier in the paragraph, the rule requires that the field document be kept in key locations at facilities, docks, on vessels, and in the plan. Let the plan holder decide where it is best maintained – and save the explanation. Besides, some vessels have dissimilar construction or operation that would require multiple explanations for each. The most important thing is, it's

173-182-240

Paragraph (2)(a) reads: "A list of the procedures to detect, assess and document the presence and size of a spill;" This should be simplified, and changed to read: "A list of procedures to report and document a spill." If you see it – you immediately report what you see, and keep a record of the significant details, i.e. time, date, location, estimated amount, etc. The initial report doesn't have to be perfect, and probably never will. Our goal is a prompt report of the incident so we can begin mobilization ASAP. We do not want to delay a report to deal with formatting issues and inclusion of useless details.

173-182-270

Paragraph (1) states: "Plan holders are required to maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. Each plan shall include the schedules, methods, and procedures for equipment maintenance."

In the interest of plan simplicity, it is recommended that this paragraph be changed to read: "Equipment owners shall maintain response equipment in a state of constant readiness and in accordance with manufacturer specifications. – And, delete the second sentence, i.e. Each plan shall include the schedules, etc...."

Comment: Needless details in the plan, i.e. including the schedules, methods and procedures for equipment maintenance. This equipment is available for inspection or audit by WDOE – with or without the details included in the plan. Furthermore, companies have invested a significant amount of capital in this equipment. It is NOT in their best interest to ignore its maintenance and upkeep. Finally, this is another subjective (vs. objective) evaluation by the plan reviewer. Does it matter if the equipment is described but not properly maintained vs. not described and properly maintained? The only way to know is by audit or inspection.

173-182-280

It is recommended that paragraph (4) be deleted, i.e.: “The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.”

Comment: In the interest of plan simplicity, this information is incorporated in Section 14 of the USCG FOG manual. It should not be necessary to “describe and explain” it again. Nor should it have to be referenced. Conducting a shift or watch change is not that difficult that it requires a detailed explanation.

173-182-730

This consideration is much appreciated. However, portions of this section exceed what is practical and necessary. Except for a SONS drill (Spill of National Significance) on the West Coast, Ecology employees do not travel out-of-state to attend drills because of out-of-state travel restrictions. There is one exception: drills in nearby Oregon.

It is recommended that this process be simplified and streamlined. It is sometimes difficult to give WDOE a full “90-day” notice when scheduling an out-of-state drill. And, trying to include an Ecology representative in a planning meeting with out-of-state parties can complicate and prolong the process.

Other states accept out of state drills (for credit), if they are properly documented, submitted in a timely fashion, and attended by a representative from an appropriate federal and/or state agency. Washington is encouraged to do likewise. This would greatly simplify the process.

General

Furthermore, they do not take into account the coverage and effectiveness of the federal standards which have been in effect since February 1993. In submitting these comments, I hope to help craft some realistic and practical regulations that will stand the test of time. Unless these proposed regulations are scaled back, I’m afraid they will create a rash of unintended consequences – administrative, operational and economic. And, they are anything but simple – one of the few things that the Rules Advisory Committee agreed upon, starting with its first meeting back in September 2002.

173-182-150

Paragraph (1)(b) requires that, “Plan holders must accurately track and account for the entire volume of oil recovered and oily wastes generated and disposed during spills.” I recommend that this be changed to read: “A responsible party must....”

173-182-345

This entire section should be deleted, and re-written to match, or reference, the same requirements in Title 33 CFR 155, Appendix B, Section 6, “Determining Effective Daily Recovery Capacity for Oil Recovery Devices.” Personally, incorporation by reference is the preferred and easiest method.

This would also be consistent with Washington's Administrative Procedures Act (APA)
The new / revised section should then read something like this....

Oil recovery devices identified by the plan holder or operator, including a Primary Response Contractor (PRC), must be identified by manufacturer, model, and effective daily recovery capacity.

For the purposes of determining the effective daily recovery capacity of oil recovery devices, the following federal standards apply, as currently detailed in Title 33 CFR 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices."

To avoid duplication, plan holders relying upon a primary response contractor (PRC) to meet the necessary planning standards may reference or use the information submitted in the PRC's

173-182-315

The entire paragraph should be stricken. This is NOT a defined "objective" standard, e.g. how many workboats and operators would be required, etc. This leaves approval entirely to the discretion of the plan reviewer, i.e. another subjective standard that will become an internal policy enforced as regulation – which is illegal. To make matters worse, because of their subjective nature, this type of standard is not equally applied to all plan holders.

Comment: This is a problem when you get too far down into the weeds. Alternatively, most plan holders rely upon a Primary Response Contractor (PRC) to provide this service, and PRC's are inspected and drilled independently.

173-182-320

This entire paragraph needs to be shortened and simplified. Also, I'm having trouble trying to understand the logic and justification for a response within three hours on the Columbia River and six hours elsewhere. My suggested wording: Each plan shall provide for aerial oil tracking resources to be on-scene within six hours of spill awareness. These resources must be available for three, 10-hour operational periods during the initial 72 hours of the discharge.

173-182-520

Unfortunately, this is another non-specific standard (rule / regulation), e.g. "(1) Each plan shall identify, personnel and equipment, including absorbent material, to protect and clean three miles of shoreline and support for three days a total of one hundred people." How much is enough to get the plan approved? Consistency, for ALL plan holders?

There is no easy fix to this dilemma, unless you set some specific standards – for either the plan holders or the PRC's / OSRO's. The later would be easier, because most plan holders rely upon them for all of their coverage.

I recommend that this be re-written, similar to the federal standards in Title 33 CFR 155.1050(m)....(1) Each plan holder shall identify and ensure the availability of, through

contract or other approved means, response resources necessary to perform shoreline protection operations.

173-182-355 through 173-182-450

There are many concerns and issues with Sections 355-450. Trying to dissect each element will be difficult. However, trying to comply with each element or planning standard would be virtually impossible. Consequently, substantial changes are indicated to make these planning standards simple, practical and reasonable – and in compliance with the state’s Administrative Procedures Act (APA).

SIMPLICITY:

To begin, these planning standards are not “simple” – as originally agreed upon in the Rules Advisory Committee. Sections 355-450 contain 16 separate and differing planning standards (matrices) for the State of Washington, whereas the federals have used only one basic standard, since 1993* – for the entire country. This same standard must be met in each applicable Captain of the Port Zone (COTP). The only variance is the response time sequence for facilities or vessels in a Tier 1-2-3 response for a High Volume Port (Puget Sound) vs. a Non High Volume Port (Portland, Oregon).

This makes it relatively simple and straightforward – for the entire country. More importantly, these “federal” standards have worked to provide an adequate and reasonable response capability in each of 31 COTP Zones.

For the record, and your information, the Coast Guard conducted a formal review of the original OPA-90 planning standards in 1998 and 2003, as mandated in the regulations. The projected step-increase in 1998 was implemented, but the study in 2003 determined that a further increase in the planning standards was not justified, or necessary. Consequently, for the record: what research or justification does the state have to refute this finding?

Since Washington’s response standards for oil transfer procedures are defined separately (hours 1 and 2), the first priority is to condense these various standards into a SINGLE TABLE, i.e. identical standards across the board (entire state).

However, this single table (standards) could be applied to multiple geographic areas or zones (including transfer areas) – with some footnotes or minor exceptions.

JUSTIFICATION:

In reviewing these 16 tables, it is impossible to determine the reason or justification for the variances, e.g. why does one area require more boom and recovery amounts than other areas. Or, why does one area require storage 3 x the recovery amount when other areas require the federal standard of 2 x the recovery amount?

More importantly, why do the state standards exceed the federal standards by such a substantial margin, especially for boom and storage – without the justification required

by Washington's Administrative Procedures Act (APA), RCW 34.05.328. Specifically see paragraphs (1)(h) and (1)(i) – again.

STANDARDIZATION:

Another problem with these proposed rules is the lack of a definitive standard for calculating the WORST CASE DISCHARGE PLANNING VOLUMES. The federal standards in 33 CFR 155 Appendix B, Section 7, include not only the amount of oil, but they make allowances for type (persistence), emulsification factors, and operating environments. This makes it fairer and easier for smaller vessels with less persistent oils to comply. WDOE's proposed standards treat everyone like they carry 60,000 + barrels of black (Group IV) oil.

Note: For USCG computer generated planning volume calculations (for WCD), see: <http://www.uscg.mil/vrp/pvc/pvc.shtml>

Instead of re-inventing the wheel, wouldn't it be easier to use the federal (USCG) computer generated planning volume calculator to determine the WCD planning volume(s)?

In summary: Without a separate and distinct justification for each increase over the federal standards, it seems appropriate that the state is compelled to use the federal standards – as a baseline, including the conveniently available computer generated planning volume calculator. They could however, apply this baseline standard to multiple zones within the state (discussed later, in detail).

RISK-BASED ANALYSIS / GEOGRAPHIC REALIGNMENT:

To protect our environment for future generations requires cooperation and common sense. More is not always better. With that logic, we'd all carry four spare tires vs. one. This is where the risk-based analysis and cost-benefit analysis come in – as required by the Administrative Procedures Act (APA). Remember also, the goal was to keep these rules SIMPLE.....

Somewhere there is a line between what is practicable, reasonable and effective. Somewhere the risks are higher than others. Somewhere we can overlap coverage. The big problem is determining where we draw that line. Where do we build the new fire station: where it will do the most good, of course. And that's exactly the problem we are faced with here. We can't arbitrarily decide to build multiple fire stations all over town. How could we fund and operate them? Nor could we build ¼ of a fire station in four different locations and expect adequate coverage.

It's difficult to comprehend how WDOE moved from 5 zones under their 1995 “internal policy planning standards” – to 16 zones or matrices in 2006. Again, Washington's Administrative Procedures Act (APA), RCW 34.05.328, requires:

(2) In making its determinations...the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified <emphasis added>.

Consequently, I propose the following revision or change: Return to the original five (1995) zones:

(1) Puget Sound, (2) Strait of Juan de Fuca, (3) Coast & 3 miles, (4) Coastal Harbor, and (5) Columbia River System.

In the interest of better coverage, I could even concede breaking Puget Sound into two zones, where the same (identical) planning standard would have to be met: North Puget Sound and South Puget Sound. This would total six (6) zones where the one planning standard would have to be met, individually, in each zone.

It's not difficult to review historical spill records in this state to determine where the highest risk areas are located, or where the most spills have occurred: Port Angeles, Ferndale, Bellingham, Anacortes, Seattle, Tacoma and Portland / Vancouver, WA. This is not to say that spills won't happen at other locations, but what is the probability or risk factor?

Do you build the fire station out in the country (near the mayor's house), or in town – closer to the largest number of dwellings? I know where I'd propose....

Coincidentally, this matches where the greatest number of oil transfers are conducted in this state, and where the PRC's / OSRO's have pre-positioned equipment for a prompt response. It also explains why the Coast Guard considered oil transfer operations a higher risk, and required a greater amount of protection and coverage, i.e. Average Most Probable Discharge (AMPD) response within 1 and 2 hours.

This is doable fix, and it makes sense. If the department used the OPA-90 planning standards in each individual zone, it will have magnified the spill response coverage (capability) in this state by a six fold increase. And, while 6 zones are not exactly simple – it is much easier to tract and calculate than 16 zones or matrices with differing standards.

One last comment on the proposed 16 zones / matrices. Eleven of the proposed “zones” are wildlife refuges, or the like. Absolutely sensitive areas. However, the majority are transit areas only – and several will likely never see a vessel greater than 300 GRT in their area. This is why it makes more sense to use the transfer locations as your highest risk areas, necessitating a higher (or quicker) level of protection. From there, equipment can be mobilized elsewhere, as needed.

173-182-350

Our Primary Response Contractor (PRC) will be submitting comments on this section, which Foss endorses. However, to make it easier for plan holders, and the department, it should be possible to utilize the spreadsheets submitted by the PRC's in their application process. This would avoid duplication of effort, and save reams of paper.

173-182-330

I recommend that this section be changed to read: The pertinent federal standards for in-situ burning found in Title 33 CFR 155 are applicable for the State of Washington. This section too must be changed to reflect the federal standard, for an alternative technology, i.e. you only have to have the equipment capability if you apply it towards meeting a planning standard. In-situ burning is even less defined in 33 CFR 155, Appendix B, Section 8.6 (at this time).

General

Because of the importance and complexity of these proposed rules, the need for a better risk assessment and cost-benefit analysis, and the large number of recommended (and significant) changes, I believe these rules should be completely redrafted and resubmitted for public comment. And, I would be willing to serve in an advisory capacity to help the department with such a project.

173-182-540

This is another non-specific (subjective) standard, i.e. "...describe the equipment, personnel, resources and strategies for compliance with the requirements." How much is necessary for plan approval? If you have specific numbers or standards in mind, they need to be in the regulation. Otherwise, you will end up enforcing internal policy as regulation – in violation of the Washington State Supreme Court decision: *HILLIS v. DEPARTMENT OF ECOLOGY*, Mar. 1997, 131 Wn. 2d 373, 932 P. 2d. 139. Another problem with these "subjective" regulations is unequal application or enforcement.

While responsible parties are keenly interested in rescuing and rehabilitating injured wildlife, and will ultimately pay the bill, this is not their area of expertise. That is why the Washington State Legislature created the Washington Wildlife Rescue Coalition (WWRC), per Section 12 of SHB 2494 (State of Washington, 51st Legislature, 1990 Regular Session), and codified in RCW 90.56.100 [quote]:

(1) The Washington wildlife rescue coalition shall be established for the purpose of coordinating the rescue and rehabilitation of wildlife injured or endangered by oil spills or the release of other hazardous substances into the environment....

(3) The duties of the Washington wildlife rescue coalition shall be to:

(a) Develop an emergency mobilization plan to rescue and rehabilitate waterfowl and other wildlife that are injured or endangered by an oil spill or the release of other hazardous substances into the environment. ...

(c) Provide advance training and instruction to volunteers in rescuing and rehabilitating waterfowl and wildlife injured or endangered by oil spills....

It appears that this responsibility, along with the resident expertise, rests with this organization as wildlife trustees, not the individual plan holders

173-182-630

Paragraph (3)(a) should include (add) the following sentence.....

(a) Ecology may approve a plan conditionally and require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. Such notice will also include specific reference to the regulatory standard (rule) in question.

173-182-710

As a whole, this section exceeds the federal standards widely accepted and followed by industry. See: National Preparedness for Response Exercise Program (PREP) Guidelines, August 2002. There has been no explanation or justification for exceeding these standards, as required by Washington’s Administrative Procedures Act (APA), RCW 34.05.328. Again, see paragraphs (1)(h) and (1)(i) – which requires “substantial” evidence that the difference is necessary to achieve the general goals and specific objectives stated....

173-182-700

It is recommended that paragraph (7) be deleted. It states: “(7) Ecology may require the plan holder to participate in additional drills beyond those required in this section.” Quoting from the PURPOSE statement on page 1-1, PREP Guidelines (2002): “The PREP was developed to provide a mechanism for compliance with the exercise requirements, while being economically feasible for the government and oil industry to adopt and sustain.”

Paragraph (7) clearly exceeds the prescribed standards for drills. I was surprised and shocked to see this sentence included. It would give Ecology unlimited authority to operate outside the drill guidelines – and to do whatever and whenever they wanted, to whomever they wanted.

For these reasons, this paragraph should be deleted.

173-182-710

The proposed requirement for equipment deployment drills incorrectly lumps everyone into one category – requiring two drills every year, whereas....

PREP (pages 3-16 through 3-21) differentiates and requires...

USCG MTR FACILITIES – with facility owned / operated response equipment must conduct drills SEMIANNUALLY (twice per year).

USCG MTR FACILITIES – with OSRO response equipment cited in their plan must conduct drills ANNUALLY (once per year).

VESSELS must conduct drills ANNUALLY (once per year).

If drill standards are repeated in this section of the rules, they should duplicate the federal standards – unless any increase is fully justified, per the APA.

173-182-720

This section incorrectly lists 16 core components. PREP (Appendix B) includes only 15. I believe the mix-up involves a repeat with #11 and #12 (TRANSPORTATION...) in the proposed rules.

In PREP, transportation is included in #11 (only), with three-subparagraphs for: 11.1 Land...; 11.2 Waterborne...; 11.3 Airborne....

Standardization with the federal requirements should be of paramount importance.

173-182-250

Recommend delete paragraph (4) which requires: “The plan must list procedures that will be used to confirm the occurrence of a spill, estimate the quantity and nature, and to later correct or update the initially reported estimated quantity or the area extent of the contamination if it changes significantly.:

Comment: This is recommended for plan simplicity, and deletion of subjectively evaluated procedures (not standards). You might simply require an updated report if there are any significant changes from the initial report. However, my experience has been that the Unified Command is up and running and will stay on top of any updated reporting back to respective agencies, or for the

173-182-620

The thought behind this is appreciated. However, sending this out for a 30-day public review period will be problematic – especially when time could be of the essence. Consequently, that requirement /sentence should be deleted. WDOE should remain free to make their own decisions, based on sound judgment.

Furthermore, given the political climate surrounding oil spill issues, it is unlikely that any alternative would survive the public review process regardless of merit due to the perception that any alternative will somehow be considered as a give-away....

I’m also concerned that the proposed rules contain no provisions for an exemption, as outlined in Title 33 CFR 155.130. Therefore, I recommend that this section include the following language:

(5) The department may grant an exemption or partial exemption from compliance with any requirement in this part if:

- (a) A plan holder submits a written request for an exemption within 30 days before operations under the exemption are proposed.
- (b) It is determined from the request that:
 - (i) Compliance with a specific requirement is economically or physically impractical;
 - (ii) No alternative procedures, methods, or equipment standards exist that would provide an equivalent level of protection from pollution; and
 - (iii) The likelihood of discharges occurring as a result of the exemption is minimal.

173-182-030 (54)

“Navigable waters of the state” should include words to this effect, to avoid any confusion: “...state waters to their seaward limit of 3 miles.”

173-182-325

The wording in this section should be changed to match the federal requirements in 33 CFR 155.1050(j): “The response plan for a vessel carrying group II or III persistent petroleum oils as a primary cargo that operates in areas with year-round pre-approval for dispersant use may request a credit against up to 25% of the on-water oil recovery capability for each worst case discharge tier necessary to meet the requirements of this section. To receive this credit, the vessel owner or operator shall identify in the response plan and ensure, through contract or other approved means, the availability of the dispersants and the necessary resources to apply those agents appropriate for the type of oil carried and to monitor the effectiveness of the dispersants. The extent of the credit will be based on the volumes of dispersant available to sustain operations at manufacturers’ recommended dosage rates. Dispersant resources identified for plan credit must be capable of being on scene within 12 hours of discovery of a discharge.”

Comment: The Coast Guard classifies this as an alternative technology. You only have to have the equipment capability if you apply it towards meeting a planning standard. This means it is optional, not mandatory. However, I am encouraged that the state has finally seen fit to recognize, and authorize, the use of dispersants.

173-182-030 (15) and 173-182-015

Clarify “substantial harm facility” or criteria used to determine this.

173-182-250

The requirement to use equipment to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery is not feasible for all facilities. There is not enough available technology to support.

Should list any equipment currently available.

173-182-250

How can we include safety assessment standards for air monitoring for all types of spills, including spills to groundwater?

Tammy Brown

Navy Region NW
1101 Tautog Circle Suite 115
Silverdale, WA 98315

173-182-520

What about facilities that only deal with non-persistent oil?

173-182-260

States that this list need not be included in the plan, but shall be available for review by ecology upon request and verified during drills. Does this refer to the list for names of spill management team members in (1), or the names of individuals responsible for implementing the notification and call-out process in (2)?

173-182-520

Can you specify to what depth you want resources identified for personnel and equipment, including absorbent material, to protect and clean three miles of shoreline and support for three days for a total of 100 people? Do you mean lodging, food, etc.? Same for the 14 days of shoreline cleanup; what about facilities that only deal with non-persistent oil?

173-182-530

What information are you looking for to describe the methods to immediately assess and mitigate ground water spills?

173-182-220

...commit to a safe and aggressive response

173-182-345

Equipment owners should document recovery systems. If that is the plan holder, they would need to provide information as equipment owners. If the equipment is owned by a PRC, the plan holder should only have to refer to the appropriate PRC application.

Richard Wright

MSRC Pacific/Northwest Region

173-182-325

These dispersant requirements greatly exceed the dispersant requirements proposed by the Coast Guard, especially for day 1 of a discharge. We strongly suggest that these

requirements be consistent with those being implemented by the Coast Guard, especially for day 1. Also, at the end of (4), add: “and federal and state approval of the use of dispersants.”

173-182-320

Wording and syntax unclear. Suggest the following: “Each plan shall provide for aerial oil tracking resources capable of being on-scene within six hours of spill awareness. These resources must be capable of supporting oil spill removal operations for three, 10-hour operational periods during the initial 72 hours of the discharge.”

173-182-315

Open paragraph with: “If necessary to meet the planning standards of this Chapter, each plan holder ...”

173-182-280

Requiring a primary and alternate, by name, all the way down to the Unit/Branch level is extremely excessive (66 people!). The requirement should go to the Section Chief and Command/General Staff only.

173-182-270

A Plan Holder should be able to reference the maintenance records of its PRC where appropriate. Therefore, at the end of (1), add: “or, in the case of equipment owned by its PRC, shall reference the schedules, methods and procedures of its PRC.” Also, at the end of (2), add: “In the case of equipment owned by a PRC, the Plan Holder may reference the records maintained by the PRC.”

173-182-240

Change to: “... detect, report, and describe the physical area covered by the spill.”

173-182-150

Responsible parties should be responsible for tracking and accounting for spilled oil.

173-182-810

To be consistent with 173-182-710, the second sentence should refer to “each type” of equipment.

173-182-030 (20)

Allowing an unchallengeable “director’s determination” for all future considerations is extremely open ended. I suggest a definitive statement.

173-182-540

Should indicate that plan holders can refer to established federal, state, or approved private programs for resources (people and equipment) that would be used in the event of an oil spill.

173-182-350

For consistency, plan Holders should use the planning factors set forth in 350 for mobilization time/planning factors.

173-182-260

“Plan holders” should be “Responsible parties”.

173-182-520

The 100 people for three days standard anywhere in the State of Washington is still excessive. To have it all set up within 24 hours of a spill is also excessive. The SCAT process would not even be started by then. I suggest that you require the plan holder to demonstrate how they would first protect, then clean-up shorelines.

173-182-350

Please change the last three sentences to read: “For dedicated resources owned by the plan holder, the mobilization planning factor to be used by the plan holder, PRC and Ecology is thirty minutes. For all other dedicated response equipment, the mobilization planning factor is one hour. Non-dedicated resources shall have a mobilization planning factor of three hours.”

173-182-010

Add: (5) "Nothing in these rules shall be construed as requiring an unsafe response."

173-182-700

Under what circumstances will DOE require additional drills?

173-182-610

Add to end of (1): “In evaluating such resources, Ecology will use the planning factors set forth in 173-182-350.”

173-182-530

I continue to suggest that MTCA is the appropriate regulatory regime for response to releases to groundwater. Having two different entities control the same thing will inevitably lead to confusion.

173-182-710

The initial table provides for “Deployment Drills” of “all types of equipment...” To be consistent, subsection 4(a), second sentence, should also reference “each type of equipment” rather than “the resources.”

173-182-450

There are no points of compliance for these planning standards. As the only points of entry for the vast majority (if not all) covered vessels are the entrances of the Strait of Juan de Fuca and the Columbia River, do you mean these to be the de facto points of compliance?

173-182-395

A three-hour on-scene planning requirement, while an improvement over two hours, will still be very difficult to achieve, especially between Neah Bay and Port Angeles. Seiku is the only safe harbor, and it is marginal in terms of support. I suggest a 4-hour planning standard for this stretch

173-182-395

The requirements for this site are huge! Placing the required resident equipment at Neah Bay will mean that a large amount of planning, EIS development, permitting, engineering surveys, dredging, and construction must be done beforehand. This will be extremely costly and time-consuming, with the outcome anything but certain.

173-182-355 through 173-182-450

The requirements of Sections 380 and 400 (Nisqually and Grays Harbor) have the potential for disastrous economic consequences for Olympia and the Grays Harbor communities.

173-182-365

The 2 hour standard for transmission pipelines requires these facilities to use boom “dedicated to the facility” and “staged in various locations along the pipeline.” Pipelines should be allowed to use boom owned by a PRC and dedicated to spill response efforts (even if not dedicated solely to the facility) if it is “resident” to the immediate area and is otherwise suitable and affords an equivalent level of protection to meet the intent of this standard.

173-182-030

High-risk site definition is unclear. Does it have to have navigational hazards and abut or include areas of critical environmental concern? Should it be or?

173-182-355 through 173-182-450

High Risk Sites. The requirement to have a vessel with a two-person crew, air monitoring equipment, and 1,000 feet of boom underway and on scene within a planning standard of 1.5 to 2 hours could necessitate virtually a 24/7 watch on the vessel at some of the high

risk sites. This could be hugely expensive with less than equivalent benefit. This is especially true at Nisqually and Dungeness where geography will require a vessel to travel quite some distance to get into the area. Suggest a “two hours to get underway” planning standard with extra transit time as appropriate.

173-182-720

Fifteen core components or sixteen?

173-182-820

Current regulations require notification to Ecology of any “significant change” in capability. Ecology can then determine if any plan holders plans are impacted. This would seem to be a more effective and efficient system than notifying potentially hundreds of plan holders. Also, the PRC may not be in a position to determine, e.g., if a change could “affect the planning standard spreadsheet” of a particular plan holder, when the PRC does not prepare such spreadsheets. The “ten percent” rule would seem more objective and workable for the plan holder, the PRC and Ecology. Finally, the phrase “identification of backup resources sufficient to maintain the PRC readiness level” is ambiguous. For example, if a PRC vessel goes into a periodic dry dock (as the law requires), what is “sufficient” in terms of back-up resources?

173-182-920

“Chapter” should be “section.”

173-182-800

Is this ECY form available?

173-182-015

Isn't the intent to also require vessels to use approved PRCs (only specifies facilities)?

173-182-345

In all the area-specific planning standards, we are concerned that the minimum storage volumes required are not strong enough. It is widely recognized that storage capacity is most frequently the limiting factor in skimming operations. We encourage Ecology to include larger storage volumes, particularly for the outer Washington coast where transfer of skimmed materials would require significant transit times and port access is extremely limited.

173-182-400 and 173-182-395

The 12-hour requirement for only 60% of the skimming capability designed for open water is questionable for these open coastal areas. Essentially this allows for up to 40% of the skimming capability to have effectiveness limited to calm conditions. Perhaps this is appropriate for a 12 hour standard, but it is not appropriate for a 24 or 48 hour standard. Therefore, the sanctuary recommends that the 24 and 48 hour standards specify that the capacity to recover given volumes is only verifiable if the recovery equipment is

appropriate for open water environments, i.e., 100% of the recovery capacity provided by 24 and 48 hours is able to work open water environments.

173-182-375

We question why shallow water skimming capability for Padilla Bay is at least 20% for the expansive and sensitive eelgrass beds adjacent to fuel dock and oil refinery facilities whereas a more appropriate value of 50% is applied at Nisqually.

173-182-350

An edit is suggested because plan holders presumably would request a "shorter" travel (etc.) time rather than a "higher" time, as written. On this point, support of an alternate mobilization time request requires documentation for which current language suggests ("such as") actual performance. The required documentation definitively should include actual performance in an unannounced drill, and shorter times should not be granted without documentation of actual performance. Therefore, we recommend changing "such as" to "including" or other language that requires actual performance to demonstrate shorter times.

Jennifer Lukens

Olympic Coast National Marine Sanctuary
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Port Angeles, WA 98362-2925

173-182-350

We question the mobilization time of 3 hours for nondedicated resources. If these resources are dedicated assets held by another primary response contractor (PRC) with an established notification system, this mobilization time is reasonable. If such nondedicated resources include vessels of opportunity that have a different primary function (e.g., fishing vessels), this mobilization time is optimistic, given the potential need to remove fishing gear, take on fuel, and have the skipper and crew diverted from other work. We recommend a longer mobilization time, perhaps 6 hours, be applied to nondedicated resources not held by another PRC.

173-182-330

The planning standard for in situ burning is ambiguous and perhaps unintentionally prescriptive. Item (2) specifies that 2 fire booms be available. Item (3) could be improved with these edits (new language in italics) - "Each of the fire booms must be at least five hundred feet in length.. ."

173-182-325

In the interest of minimizing impacts to natural resources and having response capacity effective for a variety of conditions and scenarios, the sanctuary fully supports having a

variety of response capabilities, including mechanical recovery, salvage, in situ burning, and dispersant application. For this reason, we support the planning standards for dispersant and in situ burning provided in this rule, and we encourage Ecology to avoid relaxation of these standards during rule finalization. We believe it is essential to have standards that require local staging of equipment and materials so that any response technology can be best applied when conditions are appropriate.

General

The sanctuary is a federally designated marine protected area that lies off the outer Washington coast between the entrance to the Strait of Juan de Fuca and the Copalis River. Our boundaries extend from the intertidal shoreline to 25-40 miles offshore, to approximately the 100 fathom contour. A primary mandate of the sanctuary is conservation of natural resources in a manner that allows activities compatible with conservation. The Olympic Coast sanctuary is one of only 13 in our nation recognized for their special significance under the National Marine Sanctuary Act. A catastrophic discharge of oil or other hazardous materials is one of the greatest threats facing the sanctuary, especially because the volume of vessel traffic approaching and within the Strait is among the highest of any waterway in the nation. The ecological significance of the outer Washington coast is recognized also by designations of the Washington Islands National Wildlife Refuges centered on the nearshore islands with their extensive and remote sea bird colonies and marine mammal haul out areas, and the coastal strip of the Olympic National Park, which includes the intertidal areas of the shore as well as upland areas. Moreover, the lands owned by Native American Tribes and waters within their usual and accustomed fishing grounds have a special cultural significance. In recognition of all these factors, we believe the Olympic Coast sanctuary should be afforded enhanced levels of protection against man-made disasters.

General

This area was designated as a group of wildlife refuges, a national park, and most recently a marine sanctuary because of its special national significance. In order to protect and maintain its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, and esthetic qualities, the sanctuary fully support preparedness and oil spill contingency planning. Many of these qualities are difficult to quantify for a cost-benefit analysis, yet we have learned from past oil spills that the cost of response, assessment, and clean up can be enormous even without consideration of the more qualitative factors that contribute to the special national significance for which the area is recognized. For these reasons, the sanctuary encourages Ecology to maintain the strong and practical planning standards as they work toward rule finalization.

173-182-355 through 173-182-450

The sanctuary strongly supports planning standards provided for the Neah Bay staging area and the Washington Islands National Wildlife Refuges. These planning standards are essential to provide a modest level of equipment staged where it can reliably be available for the early stages of response. We support specifications for open water boom in these areas and skimming capacity for operating in open water environments.

173-182-710

We are encouraged that current language requires drills to be conducted in all operating environments, but do not feel this language is strong enough to encourage or require routine drilling in conditions that challenge the crew and equipment. The drill program should require deployment drills to occur within each geographic area identified at some frequency, no less than once each

173-182-250

The plan requires documentation and description of equipment that will be used for initial spill assessment and spill tracking. As written, there are no requirements or minimum planning standards for these capabilities, and it is at Ecology's discretion to determine if such capabilities are adequate. We note that this might not provide Ecology a firm legal basis for rejecting a plan considered deficient in this area. We recommend that the rule provide a minimum level of equipment required for spill assessment and tracking, which should include visual and radio transmitters drogues.

173-182-610

We support use of objective evaluation criteria for response equipment. Moreover, we strongly support requirements that equipment must be appropriate for the operating environment within a geographic area define in the plan. This is a serious consideration for the outer Washington coast, which is clearly open water but where sea conditions commonly are suitable for mechanical recovery, dispersant application, and in situ burning.

173-182-710

In addition, we recommend addition of "within the triennial cycle" to the end of 4(e) so that the "future time" for drilling is not undefined.

General

We at the Olympic Coast National Marine Sanctuary (sanctuary) appreciate this opportunity to provide the Department of Ecology (Ecology) with comments on the June 2006 draft rule Oil Spill Contingency Plan, Chapter 173-182 WAC. We welcome Ecology's efforts to develop provisions in this rule that enhance preparedness and response capabilities for the Pacific Coast, as well as the remainder of Washington state waters.

173-182-520

We support inclusion of planning standards for shoreline cleanup.

173-182-710

Nondedicated work boats and operators can be a valuable asset for spill response, particularly for large spills that require an extended response. These resources are, however, typically involved with other activities that might limit their availability during a spill event and dedicated assets should be real, not paper assets. Therefore, we encourage Ecology to include nondedicated work boats and operators in the unannounced

drills to evaluate the extent to which they are available, particularly if such resources are integral to the first 48 hours of response.

173-182-700

A strong drill program is an essential component of preparedness for spill response, and we support Ecology's efforts to develop a program that is feasible and practical to achieve and monitor. There does not appear to be, however, a requirement that PRCs self report drill results to Ecology. Self reporting, as well as planned and unannounced oversight of PRC drilling, should be a required element of the drill program.

173-182-700

It is important that significant failures be retested and demonstrated properly soon after a failure, yet there is no definition or example provided for "significant failure". Lack of definition might limit Ecology's legal standing for requiring such retesting.

173-182-710

While the requirement for a geographic response plan (GRP) strategy deployment twice per triennial cycle is good component of the drill program, we recommend that language be modified to require a different GRP strategy each time so that all GRP strategies are evaluated periodically and improved as appropriate.

173-182-730

Granting of drill credit for out-of-state drills must be limited, and we strongly support exclusion of deployment drills from this section. We do question how table top drills, which are primarily a test of Incident Command establishment and procedures, conducted in another state can demonstrate capabilities in Washington State. This credit should be limited to where joint jurisdiction exists, such as along the Columbia River and near its ocean terminus.

173-182-710

We note that Ecology's unannounced drills will confirm no less than 50% of there sources in each of the first two triennial cycles. We support a drill program that includes Ecology's periodic and unannounced evaluation of all response resources. Six years, however, is a long period to extend the confirmation of assets, and it might be more appropriate to confirm all assets once per triennial cycle.

173-182-700

Current language requires successful demonstration of objectives that are not initially met within the triennial cycle. This is too long a period and does not encourage rapid correction of problems identified in drills. We recommend this period be no more than one year, but two months might be more appropriate. It is important that significant failures be retested and demonstrated properly soon after a failure, yet there is no definition or example provided for "significant failure". Lack of definition might limit Ecology's legal standing for requiring such retesting.

173-182-720

We note what appears to be a typographic error where (1 1) is split and included in an incomplete

173-182-450

We commend Ecology for including planning standards for the Washington coast much of which is held in public trust as state and federal park lands on the shore and a marine sanctuary in the ocean. We recommend correction of what may be a typographic error in 450(4) by replacing "and/or" with "and". Even with this edit, these planning standards provide significantly less boom available for 12 and 24 hour response than other areas, and we recommend that these standards be increased to levels comparable to the Neah Bay staging area. Also, 450(5) should be made clearer by insertion of "Additional" at the beginning, which is parallel to other area standards. These standards are substantially lower than those provided for all other state waters, and we strongly recommend against further erosion of standards for this area.

173-182-400

The AC supports the proposed planning standards for all sensitive areas within the Sanctuary that lie within Washington state waters.

General

The Sanctuary's location at the entrance to the Skagit of Juan de Fuca exposes it to risks associated with ships transiting through very rough waters. Consequently, we favor levels of protection within the Sanctuary that are commensurate with these risks. In this regard, we note that the draft contingency plan rule contains improvements in equipment staging and response times, and we support these improvements.

173-182-400

The AC supports the proposed requirements for the staging of spill response equipment that is appropriate for deployment within the Sanctuary. This could include equipment appropriate for deployment in rough open ocean conditions and in sensitive shoreline areas within the Sanctuary.

173-182-395, 173-182-450

The AC supports the use of Neah Bay and Gray's Harbor as regional staging areas for spill response equipment that could be used to protect Sanctuary resources in the event of a spill.

Fred Felleman

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173-182-710

My concern is it's been 13 years since the state response plan has been created we get to have a state sponsored drill in the sanctuary and these- the logistically challenging places are going to be drilled less often into the future. We need an obligation that each zone or however you want to redefine it will be drilled annually.

General

The state still fails to include emergency response within this rule to which would be most appropriate place for this to be embraced.

Cost Benefit Analysis

While Ecology has made substantial improvements in this rule you have failed miserably to engage the public and to provide sufficient defense for the rule in the cost benefit analysis. I didn't see any reference to the numbers generated from Exxon Valdez. The exorbitant costs associated with that, a great worst-case scenario. That should be embraced in the rule. It is expensive to spill and not to be prepared, and I think the state should have those

173-182-630

Formal public notification should be provided every time a c-plan is up for review. I understand that we've been working on a process for that. And anytime a plan holder makes a petition to make changes, especially for the travel time exemptions. We need to know about it.

General

It is truly unfortunate that after spending close to five years to finalize this rule that Ecology has chosen to seek public comment over the summer and then to hold meetings during the business day and over the weekend. I will be most disappointed if you retreat from the current proposal based on industry push back given how difficult you have made it for garnering public support.

Cost Benefit Analysis

So, in fact, justifying the improvements that you called for in the staging area is not defended by the failure to enumerate the Canadian costs to have an oceanographic model that more accurately depicts the real world that we've experienced in Tenyo Maru which is a long shore trajectory which smears both the north and the south. Finally if that wasn't bad enough the model specifically assumes only a five percent shoreline impact and a 95 percent open water calculation. So again, all the dollars are just generated on the beach.

And so basically the parameters used in the model lowball the cost of spilling. The state does not embrace the known cost of the Exxon Valdez, and you are raising the bar and you are going to be standing there naked when you're going to try to defend against industry. Having said that I believe if you embrace the improvements the numbers are more

173-182-345

I see a few things that could be enhanced, would be improvements to storage, which has been for many years and especially important in the more remote locations where a high recovery rate skimmer will quickly fill itself. And you're allowing these portable bladders, which are spills in the making themselves, to be decanting oil in the open sea into a bladder that's sitting at the sea level is just imprudent at best and should not be seen as the first line of defense for an open water decanting exercise. It may be used for backup, but right now it's our only means. And so I think we should have some real containment capability especially in remote locations.

173-182-355 through 173-182-450

I'm very concerned with the northwest area contingency plan especially when it's recognized that the GRPs that are identified in it are few and far between, especially in the outer coast, which used GRPs in the region, and if we have equipment necessary to fulfill the GRPs when they're in the process of reviewing. We're basically setting up a system for a need that's a growing need and an ill-defined need. So I think in making reference to the NWACP we should point to that as being a starting point and not the goal.

173-182-250

I think some reference was made to the need for having hoistable tracking equipment, and I do see that there is a press conference coming up about the Coast Guard being asked for the King County infrared helicopters, especially on the outer coast which is far away from King county and these radio buoy droves seem to be simple way. You can throw a buoy into the slick and it will track the trajectory of the slick for you overnight in the fog, whatever. It seems to me a relatively low cost requirement that should be called for. And I don't recall seeing anything about specific requirement calling for pompoms or any sort of specific beach cleanup equipment. I thought in early iterations the rule was going to actually specify some level of pompon requirement.

173-182-710

The tabletop exercises should not be able to fulfill the worst case scenario requirement for drills. You can have a tabletop requirement that's the worst case scenario, but meeting the worst case scenario drill requirement should require a deployment and not and especially important in light of the fact that table top exercises are able to be conducted out of state. The only out of state exercises that should be counted should be those done on the Columbia River.

General

In addition to the oral comments I presented at the public hearing on July 19th. I would like to be on record supporting the comments submitted by the Makah Tribal Council.

Cost Benefit Analysis

In table 4.3, if you look at response it is undervalued, not just by the poor oceanographic model used for the oil spill trajectory, but that the model illuminated spills with high Canadian impact. So, in fact, the trajectory used for the Olympic Coast scenario was dominated by the Straits of Juan de Fuca currents, and sent all the oil offshore and into Vancouver Island. So we have coastal costs in WA state and we're not counting the costs to Canada.

173-182-400 and 173-182-395

Why is it that only that 60 percent of the boom used in skimming can operate in an open water environment for the Cape Flattery and outer coast areas. I understand that additional boom would be appropriate more for GRP application, but this says 60 percent of boom for skimming. It seems to be that we need ocean capable boom whether it's in the straits or in the outer coast.

Jim Davis

Olympic Coast Alliance
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173-182-450

Inclusion of planning standards for the Washington Coast for all vessels entering state waters at the Columbia River, Grays Harbor, or the Strait of Juan de Fuca is also excellent. However, these planning standards are not as rigorous as those for other Washington state waters and need to be moderately enhanced. This could be accomplished by two small changes to the existing draft wording. First, the “/or” in section four on page 45 should be removed (thus requiring 10,000 feet of open water capable boom, plus 10,000 feet of boom that is not specifically open water capable boom). This would make the total amount of boom at 12 hours roughly comparable, but not as high, as for other areas. Second, the word “additional” should be inserted at the very beginning of the sentence in section 5 on page 45. This planning standard would then total 40,000 feet of required boom by 24 hours (still less, but at least comparable to other areas).

173-182-395

The requirement that 2,000 feet of boom at Neah Bay at 3 hours and 4,000 feet of the boom at Neah Bay at 6 hours be “open water capable” is excellent. Open water capable

boom is essential for responding to incidents off the coast, the biggest need out of Neah Bay.

173-182-400

The inclusion of planning standards for the Copalis, Flattery Rocks, and Quillayute Needles Wildlife Refuges is excellent. Substantial resources must be devoted to protecting these pristine areas.

173-182-405

A similar requirement (to 390) needs to be in place for Grays Harbor with at least 1,000 feet of “open water capable” boom at 3 hours and at least an additional 2,000 feet of “open water capable” boom at 6 hours. This is needed to assure that a spill outside Grays Harbor can be handled quickly with boom that is available on site. It will also provide the resources for responding to a spill in

173-182-710

Specific language in the table on page 52 that says unannounced drills will have “no notice” is excellent. DOE should be commended for stating this very clearly. However, to be consistent, the nature of unannounced drills needs to be further clarified in section 4 d. on page 53 by inserting the word “immediately” before the words “prior to the start...” If this clarification is not made, industry and future DOE staff might interpret the existing draft language to mean that the objectives, etc. could or should be provided days in advance (a contradiction for an “unannounced

173-182-405

The same requirement for 2, 3, and 6 hour boom to be resident also needs to be in place for the Grays Harbor planning standards. A quick response out of Grays Harbor is just as essential as a quick response out of Neah Bay.

173-182-250

No where does the document specifically address the timing of oil spill assessments by responders (i.e., how much oil, what type of oil, where the oil is currently located, and environmental conditions that will determine where the oil will move). The detailed planning standards require a safety assessment (e.g., page 34 for Neah Bay), but not a spill assessment. A spill assessment should be initiated within at least two hours of a spill in all locations.

General

Thank you for providing an opportunity to comment on the proposed Oil Spill Contingency Plan Rule. Overall, DOE is to be highly commended for developing a much improved set of contingency plan standards. However, there are a few weaknesses that remain and should be addressed, mostly for the outer coast.

173-182-395

The requirement that boom stationed at Neah Bay for use during the 2, 3, and 6 hour planning standards be “resident” (stationed at Neah Bay) is excellent. It is essential that this boom be quickly accessible with no chance of weather related delays.

Arthur (R.D.) Grunbaum

FOGH (Friends of Grays Harbor)

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173-182-030 (27)

As far as we can determine, none of the rules under review, Chapter 317-40 WAC, Chapter 173-180 WAC nor Chapter 173-182 WAC have any reference to biodiesel or similar alternative fuel products. This has considerable concern for Grays Harbor Bay since the proposed location of a 25 million gallon tank farm to be located at the edge of the estuary in Grays Harbor. The Department of Ecology just issued a DNS for the location of a such a plant to the proponent Imperium Grays Harbor, L.L.C. The site is located adjacent to the Chehalis River in the City of Hoquiam in Section 7, Range 9 West, Township 17 north of the Willamette Meridian. The project is located at the Port of Grays Harbor Terminal 1. The project will process at build out approximately 100 million gallons of fluids consisting of biodiesel, sodium methylate, glycerin, methanol and petroleum products. Water quality is crucial to the survival of many aquatic dependent industries in Grays Harbor. Please assure that the Spill Prevention, Preparedness and Response Program covers and includes this new industry. In the future we would expect to see more innovative alternatives to traditional fuels and these need to be included in the new rule making.

General

Olympic Park Associates recommends to the Department of Ecology the observations, comments, and recommendations submitted by Olympic Coast Alliance.

General

We commend your Draft Oil Spill Contingency Plan to require more rapid responses to alleviate any oil spills which occur. Spills from afar can cause extensive damage, such as the Nestucca from some years back – quite far south of the northern Olympic Peninsula, yet the oil from it also affected this area.

173-182-150

Paragraph (1)(a) requires “Debriefs ... may be appropriate if ... unified command has been established” We believe this is too broad. Even in the small spill responses at which the state and/or CG unify with the RP, we have unified command. We recommend

that this section be more specific regarding what would trigger a debrief. What's the intent?

Michael R. Moore

Pacific Merchant Shipping Association (PMSA)

173-182-010

We suggest that a safety clause be added – "Nothing in this Chapter requires a responder to undertake an action if under the circumstances it would be unsafe to do so."

173-182-450

We recognize changes in coastal response requirements; changes that clearly acknowledged the physical and logistical challenges of responding on the coast and the associated costs and benefits. In addition, we continue to encourage the state of Washington to recognize that moving traffic farther offshore and moving the entrance to the traffic lanes farther out was a rational and cost effective coastal protection effort that was both voluntary and regulatory (federal and international). We know that on water recovery off the coast has very limited chances of success and continue to recommend that we avoid putting large amounts of resources in areas where they have very limited windows for effectiveness and are logistically difficult to support (Neah Bay must be more carefully analyzed for appropriate staging).

Cost Benefit Analysis

We don't believe the implementation consequences and costs have been fully considered as required. For example, the relatively few vessels transiting to and from the Port of Olympia may require the spot hiring of a response vessel escort and standby; this potentially significant cost in addition to a recent large tariff increase in pilotage costs as decided by the state, may substantially impact operations there. Smaller ports and operations may be more significantly impacted than were considered in the CBA. Such operations may not be able to leverage economy of scale benefits. There are other potentially significant issues that need to be considered such as the impact to response capabilities in our boundary waters with Canada. Given the complexity of jurisdictional issues, how will these rules impact vessels calling on Canadian ports and the current cooperative coverage agreements? What are the associated costs and benefits? For further detail on implementation costs and challenges, we will defer to the comments from the plan holders and primary response contractors.

173-182-240

Paragraph (2)(a) -- It is unrealistic and unreasonable to require the crew on the vessel to make a reasonable "assessment." When a response gets off to a bad start, this is often one of the reasons. It is better for those who detect a spill to just describe what they see – "... detect, report and

Cost Benefit Analysis

The CBA “finds that the probable quantitative costs of the proposed rules appear to outweigh the probable quantitative benefits, not including all of the potentially probable quantitative benefits of improving response to a ‘worst case oil spill’ in the state of Washington. However, Ecology believes that the sum of the probable quantitative and qualitative benefits; and the benefits of implementing the specific directives of the statutes, justify the rules as currently drafted.” Further the CBA suggests that “most industries in Washington are already in compliance with the standards reflected in the proposed rules,” something we have some difficulty understanding and believing. Some of the early response requirements, using the planning standards provided, will mean more equipment in certain areas, and some 24/7 manned response operations instead of the on-call status

173-182-110

For clarification, recommend better identification of the referred to owner or operator as that of the covered vessel.

(1)(c) “... of which the covered vessel owner or operator ...”

(2)(c) “... of which the covered vessel owner or operator ...”

Paragraph (3) is for facilities, thus (3)(b) should read – “... cleanup services to the facility company.”

173-182-145

Paragraph (1) requires that every plan holder “implement the Washington approved plan throughout the response to a spill and drill. A decision to use a different plan must first be approved” This has generally been accepted in the past and not an issue since vessels other than tankers had plans only because of a Washington state requirement. However, this is soon to be a major conflict as the Federal VRP requirement for non-tank vessels is implemented. This will likely be a significant preemption issue. To deviate from a Federal plan can lead to serious consequences. See 33 USC § 1321(c)(3) for details.

173-182-280

Paragraph (1)(b) requires a listing of the ICS response organization with one primary and one secondary down to the unit level. Maintaining such a list, accounting for all those on the list and reporting when the list changes, will be a significant workload; changes will occur frequently. Recommend that the organization chart be established by name only to the Section Chief level with general information to be provided regarding the source of personnel to fill other ICS positions.

173-182-150

There appears to be an unnumbered paragraph between (1)(b) and (2) that belongs to neither one. What we believe should be paragraph (2) requires the plan holder to accurately track and account for the entire volume of oil recovered.

173-182-220

Paragraph (1) requires that “Each plan shall contain a written statement binding the plan holder to its use.” Again, as commented above, this is a serious conflict with the Federal VRP requirements. At a minimum, this needs coordination language.

173-182-220

Paragraph (2)(a) should read “... commit to a safe and aggressive response”

173-182-230

Paragraph (6)(b) requires that for umbrella plans “... vessel diagrams shall be available for inspection by ecology” Ecology should identify the plans that may be requested.

Cost Benefit Analysis

We appreciate many of the modifications DOE has made since the early drafts of these rules, but believe the rules still go too far in certain areas, e.g., the build up in Neah Bay (as discussed more below), without the justification required by the APA. Further we believe the preliminary cost benefit analysis (CBA) assumes too much regarding the current state of response equipment, suggesting that those who are truly in competition with each other should cooperate and share equipment to reduce costs. In a big spill all the available equipment will be used, but in planning for and responding to the typical smaller spills of their respective clients, these organizations are not likely to freely share equipment as they compete to provide this service. The CBA suggests that by cooperating they make more equipment available, however, should one of these companies cease to exist because it can't compete, then there will be considerably less equipment, a scenario that is not accounted for.

Cost Benefit Analysis

Given these improvements, OPA 90 and other federal legislation (and the successful outcomes), we believe that the Department of Ecology (DOE) has failed to provide the required rationale and justification for these rules where they exceed the Federal standards. We note that the Washington Administrative Procedures Act (APA) requires that “... before adopting [significant] rule ... an agency shall:

- (h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:
 - (i) A state statute that explicitly allows the agency to differ from federal standards; or
 - (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and
 - (i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.”

173-182-030 (20)

“Maximum extent practicable ... In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measure.” While these are very pertinent considerations, the definition constitutes open-ended regulation. What the director determines to be maximum extent practicable this year may not be what he/she would determine to be maximum extent practicable next year.

173-182-140

Paragraph (2) identifies “changes which are considered significant include ... loss of initial response personnel listed in command and general staff incident command positions” In that these positions are currently being identified to the unit level, temporary loss/changes could occur daily. We recommend that section 280 be amended to require that ICS position only be pre-identified by name to the Section Chief level.

173-182-700

Paragraph (7) allows that “Ecology may require the plan holder to participate in additional drills beyond those required in this section.” This is open-ended regulation. For what reason ... rationale ... justification?

173-182-030

The definition of high risk sites needs clarification. It appears to be missing an “and” or an “or” in the sentence. Is a high risk site one that has “one or more hazards and abuts or includes areas of critical environmental concern” or is it one that has “one or more hazards or abuts or includes areas

173-182-355 through 173-182-450

We will defer to the comments from the plan holders, oil spill removal organizations (OSROs) and primary response contractors (PRCs) who can better address their equipment capacities and locations in comparison to the proposed rules. Generally, these standards exceed those of the Federal regulations, some involving increases over the current state guidance, and justification has not been provided.

General

PART III: Drill Program. To the extent that these requirements exceed the Federal standards of the PREP Guidelines, they need to be justified per the state’s APA.

173-182-620

As we previously commented, why will submission for alternatives require a 30 day public review period when DOE can make an assessment? Given the political climate surrounding oil spill issues, it is unlikely that any alternatives submitted will be approved regardless of merit due to the perception that an alternative will somehow be a give away. We believe alternative compliance options should exist so that equivalent or better

approaches to requirements can be implemented. We believe DOE should make that decision along with documented supporting rationale.

173-182-270

Paragraph (1) requires plan holders to maintain response equipment. However, in most cases, it is not the plan holder who owns the equipment. Most plan holders rely on oil spill removal organizations or primary response contractors who are the equipment owners. This paragraph should read “Equipment owners are required to maintain” Equipment owners, not plan holders, should also maintain maintenance records. Since the maintenance records are available to DOE, and a check of the equipment is also possible, what purpose is served by providing the maintenance schedule details in the plan?

173-182-720

The introductory discussion indicates that the guidance document “lists fifteen core components,” but then the section goes on to list 16 components. Looks like the proposed component (12) should be part of (11).

173-182-240

The location where field documents are to be kept is doable. Identifying where they are actually kept is another thing, particularly in the case of an umbrella plan.

173-182-260

Paragraph (1) should read “The Responsible Party must make immediate notifications....” A plan holder may assist the RP in meeting the notification requirement, however, responsibility is on the

173-182-710

Paragraph (1)(b) “no longer than once every five years” should read either “at least once every five years” or “no less than once every five years.” More importantly, what is the justification for requiring something more than the Federal requirements?

General

We continue to support a real dispersant use capability for “appropriate” use in the offshore area, appropriate GRP and shoreline response capabilities in addition to effective traffic management and port state control.

173-182-030 (16)

Gross Tons needs to be clearly defined as domestic tonnage. Washington State has historically used domestic tonnage. A change that might also include gross tonnage under the international tonnage convention will capture significantly more vessels and raise costs substantially beyond the CBA.

173-182-030 (14)

should include an exception for vacuum trucks.

“(b) A facility does not include any: ... Vacuum trucks used to pump (remove) bilge slops, waste oil, contaminated ballast water, and contaminated or excess fuel.”

173-182-030 (54)

For clarity in the definition of state waters, we believe (20) and (52) should specifically indicate to “their seaward limit of 3 miles.”

173-182-510

We appreciate that the NWACP can be referenced to meet the requirement of (2)(b), however, it would also be more consistent if (a) through (f) were all addressed in the NWACP. All plan holders must meet the NWACP. To the extent that individual plan holders know of these sensitive areas that might not already be covered by a GRP, then their Plan will have to address. Not sure why or how a plan holder will know all this information except through the NWACP; one of the reasons for the NWACP is to provide geographic specificity.

173-182-150

(2) requires the plan holder to accurately track and account for the entire volume of oil recovered.

This should be the RP, if anybody.

General

We recently read the Washington Public Ports Association (WPPA) letter of comment. Regarding the above draft rules proposed by DOE. We endorse WPPA’s comments.

Brad Ack

STATE OF WASHINGTON

P.O. Box 40900

Olympia, WA 98504-0900

Cost Benefit Analysis

Finally, with respect to the potential costs of the rule versus the environmental benefit, we support the conclusions of Ecology's Cost Benefit Analysis for the Oil Spill Contingency Plan Rule. Such analysis for environmental protection can be difficult to evaluate, however we support the conclusion that the sum of the probable quantitative and qualitative benefits far exceed the quantitative costs of the rule.

General

We are generally supportive of these proposed rules, and encourage Ecology's adoption of them, however we do have some specific comments and concerns:

173-182-710

We support incorporating unannounced drills into the planning standards for individual plans. We feel this requirement is necessary to test the effectiveness of the plans and to make adjustments prior to a crisis situation.

General

The Puget Soundkeeper Alliance supports the comments made by People for Puget Sound on the Oil Contingency Planning Rule.

General

To date there have been numerous changes to the proposed rules that have provided greater clarity and definition. That being said, there are still many areas of the proposed rules that we do not agree with or feel need to be revised. For the sake of simplicity and, to reduce the paper flow please let the record show that Sea Coast Transportation LLC is in full support of the comments provided by Jason Lewis, American Waterways Operators for both Oil Spill Contingency Plan and Oil Transfer Rules. We are also in support of the comments provided by our industry partner, Foss Maritime, penned by John Crawford.

Marian LaBounty

SQG Specialists Inc.
1225 14th Street SE
Salem, OR 97302

General

Once again, I will attempt to caution Ecology that no amount of rule making or new requirements of business will make one bit of difference until or unless the Dept. of Ecology faces up to and corrects its own shortcomings regarding prevention and response in Washington State.

General

Honest and responsible businesses will, as usual, adhere to the new requirements. The costs and difficulties of doing business in Washington may force some to re-evaluate the wisdom of attempting to operate in Washington at all. At the same time, those bad actors who habitually ignore requirements will ignore the new rules just as readily as the old ones. Spills will continue to be caused by bad actors who flee the scene and Ecology will continue to be ineffectual in preventing or responding to such incidents.

General

Ecology's legislative mandate is to safeguard Washington State's natural resources. It is my firmly held conviction that Ecology has become so entrenched in political and bureaucratic self protection that it is incapable of achieving it's mandate. To achieve it's goal, Ecology must take a long hard look at itself to identify and correct the practices and

policies that do not work. To do so may appear to be political suicide. To continue under the status quo is to endanger the wonderful natural resources the agency was formed to protect.

I see Ecology repeating the same ineffectual process it took in response to the Clean Care and Reflex Recycling fiascos. Bad actors were a threat in Washington. Ecology could not or would not take decisive action to prevent those (known) bad actors from doing exactly what Ecology fears and hates the most. The bad actors had 2 or 3 years to flourish while Ecology huffed and puffed. Sites were polluted and abandoned. Ecology reacted by imposing more rules and expense on honest businesses. The bad actors got away. Taxpayers footed the bills. Decent businesses were forced to increase overhead and decrease productivity. Ecology came out looking like it had taken a stand for Washington while, in fact, it spent 2 years and untold sums to accomplish little or nothing to address the underlying problem.....Ecology's own inability to enforce the rules that could have and should have prevented the abandonment of those sites.

General

I am a native Washingtonian forced to move my business out of state by the ever increasing demands of Ecology. Though I may no longer live and work in Washington, it remains home in my heart. I implore the Dept. of Ecology, the Washington State legislature, and every environmental watchdog group to take heed and to protect the home we all love by placing more importance on getting the job done than looking good politically.

You cannot fix something if you can not admit it is broken.

173-182-710

There is no value in calling unannounced drills that require a plan holder and OSRO to deploy 50% of the equipment to test the compliance of the plan or to see if the equipment exists and is operational. That can be done by inspections that are far less disruptive and would actually better educate the department staff on what each piece of equipment operates. Obviously if the equipment is in an operators area of operation and it starts and is fully functional, your staff can do the time distance calculations that are outlined in your regulations.

173-182-520

This is proactive but somewhat pre-mature to expect this in 12 hours. In most of the modern world shoreline cleanup does not begin until the threat of re-oiling is over. The word "protect" adds confusion to this regulation since a shoreline oiled needs to be cleaned not protected.

173-182-345

On April 20, 2006 Industry representatives and WADOE met in Olympia. Industry strongly suggested accepting the federal derated 20% efficiency since those have long been accepted by your department. The current draft is not clear what the end result or rating would be. Furthermore, your department said it would accept testing data that

allowed a higher recovery rate. This does not appear in the current draft regulation and needs to be added.

Eric A. Haugsted

Tesoro Maritime Company

173-182-315

This makes no sense. There is no way of bringing on vessel of opportunities in a 12 hours. Before industry could do this there are insurance issue's to addressed contracts reviewed and signed, health and safety issue's for the vessel crews to be addressed, least but not last the vessel would have to be surveyed. Tesoro strongly recommends that this requirement be removed until your department has better understanding of best business practices and corporate policies.

173-182-240

Although these are important documents, requiring them to be onboard vessels before entering state waters could eliminate spot charter vessels from the marketplace. A ship that may call on Puget Sound one time may not even have orders to go there until at sea. The first point it would be able to receive a hard copy would be the Pilot Station unless an electronic file would suffice. Is an electronic file acceptable? If not this will be viewed as trade restrictive.

173-182-130

The justification that has always been put forward by your agency is to get those who are not in compliance into compliance but with this you are punishing those who have actively participated in development of these regulations and those who have struggled get a longer time frame to come into compliance. I strongly suggest reversing the phase in times or making them the same for everyone. It will make it easier for your staff to evaluate if everyone is on the same timing for

General

Tesoro is very disappointed in the final draft that has been distributed. I realize that the legislature mandated changes but feel that the changes forthcoming will not prepare your agency to respond to mystery spills any better than it did in the Dalco Passage spill. Industries has contracts with OSRO's with great capability and soon even more capability but the state and Coast Guard will have the same response capability as in the past since they have no rapid deployment agreements in place nor live by the same requirement that Industry.

Ty J. Gaub

U.S. Oil and Refining Co.
3001 Marshall Ave.,
Tacoma, WA 98421

173-182-530

Oil releases to groundwater are very complex issues that vary significantly with each situation and cannot simply be addressed by the wording contained in this section. This is one of the key reasons why it took Ecology many years to amend the Model Toxics Control Act (MTCA) regulations contained in WAC 173-340. These amendments were completed in February 2001. In fact, this issue was so complex that Ecology had to develop additional documents to support this regulation (i.e. MTCA Guidance Document and a Cleanup Level and Risk Calculation Document). While it is prudent to require a facility to immediately commence a response/investigation effort upon becoming aware of a spill to groundwater, it is not realistic to require a facility to immediately assess and mitigate ground water spills and prevent further migration nor is it realistic to identify who exactly will be used to respond to a groundwater spill. While the overall goal of the oil spill contingency plan rules is to effectively respond to oil spills, spill characterization efforts and subsequent remediation efforts can take many years to complete and are unique to each situation. In some cases it is impossible to mitigate a ground water spill 100% without tearing down fully functional buildings, structures, roads etc. or causing other unintended damage. This section should either be deleted or rewritten to require that a facility immediately initiate a response upon learning of a spill to groundwater in accordance with MTCA cleanup standards outlined in WAC 173-340.

173-182-365

McCord Pipeline, which is a wholly owned subsidiary of U.S. Oil & Refining Co. meets the definition of a transmission pipeline. The 2 hour standard for transmission pipelines requires these facilities to use boom dedicated to the facility. Pipelines should be allowed to use boom dedicated to spill response efforts (and not dedicated to the facility) if it is suitable and affords an equivalent level of protection to meet the intent of this standard. For example, the widest Water Resources Inventory Area (WRIA) river crossing for the McCord Pipeline is the Puyallup River, which is located within a few of miles of U.S. Oil's Marine Terminal where Marine Spill Response Corporation's (MSRC's) Tacoma Base is located. Containment boom and response equipment are already staged at this manned base. It doesn't make sense for U.S. Oil to purchase additional boom dedicated specifically to McCord Pipeline when we already have MSRC dedicated containment boom staged nearby that is suitable for responding to a spill in the Puyallup River.

173-182-820

This requirement states that if Ecology determines that the PRC approval conditions are no longer met that approval may be revoked or conditionally modified. Further, this requirement states that the PRC will receive a written notice of the loss of approval or conditional modifications and a time period to either appeal or correct the deficiency.

USOR believes that it is extremely important that the plan holder(s) also be immediately notified if the PRC's approval status is revoked or conditionally modified because this "domino effect" could also result in a significant impact to the plan holder(s) ability to meet facility oil spill response planning standards. Ecology needs to ensure that impacted facilities are not "blind sided" by the change in status of their PRCs. This paragraph needs to be amended to note that the plan holders will also receive a written notice from Ecology if the PRC's approval conditions are no longer being met thereby resulting in their approval becoming revoked or conditionally modified.

173-182-540

Facilities are simply not set up to staff wildlife rescue and rehabilitation nor are we experts in this area. Rather, facilities rely on state and federal resources to help with this important task. It doesn't make much sense for each facility to assemble their own wildlife rescue and rehabilitation operation. This section should indicate that facilities can refer to an established state/federal program for resources (personnel and equipment) that would be utilized in the event of an oil spill.

173-182-710

The special instructions column for deployment drills contains the following requirement "These drills shall include, GRP deployments, testing of all types of equipment and demonstrating compliance with the planning standard". It is not clear whether this term applies to all types of equipment listed in the oil spill response plan regardless of the location or to equipment located at the marine terminal that would typically be used in an oil spill response. Please provide some clarification as to what "testing of all types of equipment" means.

173-182-345

It's important to distinguish that while plan holders can list the Effective Daily Recovery Capacity (EDRC) of spill response equipment in order to demonstrate how this equipment meets planning standards, it's up to the PRC who actually owns the response equipment regulated by this section to demonstrate the response equipment EDRC or alternative EDRC to Ecology. USOR recommends that the term "plan holder" be replaced with the term "equipment operator" in this section.

173-182-280

This paragraph appears to be a "one size fits all approach" to training which is not an effective use of time or resources. Minimum training requirements should be tailored to the needs of the individual ICS positions. For example, while it is important that all ICS job functions understand ICS, it doesn't make sense that personnel in the Finance Section have training on the use and location of Geographic Response Plans (GRPs). USOR requests that the first sentence of this section be revised to read: "(2) The plan should address the type and frequency of training that each individual down to the section chief level and command staff level receives."

Further this paragraph assumes that new employees do not have any ICS training listed in this requirement, which is not necessarily true. This requirement should apply to those

new employees who do not already have the training/experience required by this paragraph. Further, it's important to emphasize that the real world knowledge required by this paragraph is typically obtained through a combination of classroom training, drills and responses to actual spill events.

173-182-280

This section should distinguish that professional consultants brought in to help fill various ICS spill management positions are not considered to be response contractors for purposes of having to be on the state's approved Primary Response Contractor (PRC) list. Our class 1 facility relies on out-side assistance from contracted staff and agency personnel to help fully staff the ICS structure down to the unit branch level. As a smaller organization, our strength is that our employees are capable of staffing more than one position and depending on the individual circumstances perform more than one function. While an ICS organizational chart can be completed using a combination of facility, contract and agency personnel it is unlikely that our facility would be able to strictly follow this chart since personnel assignments will vary as necessary in order to effectively respond to the uniqueness of each spill event.

173-182-730

It's important to note that while a spill response can be completed in a short amount of time, a spill cleanup operation can last for many weeks, months or even years. Further the scope of each spill cleanup operation is driven by MTCA requirements. The proposed 60 day window is rather tight if Ecology's intent is to require plan holders to submit a request for spill drill credits within 60 days after a spill response is completed. During this 60 day window, the facility is also working with various Ecology Departments to (1) conduct an incident investigation and prepare an investigation report, (2) implement short term (and possibly long term) cleanup operations and (3) preparing a cleanup report. Each of these steps can be rather manpower intensive. This section should be amended to allow the facility to submit an extension request to Ecology for their approval to extend this 60 day window as necessary on a case by case basis.

173-182-280

The requirement to provide a detailed organizational list of one primary and one alternative person to lead each ICS spill management position down to the unit/branch level on a standard ICS organizational chart is very prescriptive and defeats the maximum flexibility features built into the ICS structure. USOR requests that the phrase "down to the unit/branch level" be replaced with the phrase "down to the section chief level and command staff level".

For example, within the Logistics Section and Finance Section for a facility our size, one primary person can effectively support more than one unit function. This has been repeatedly demonstrated during worst case tabletop spill drills in which our facility has performed extremely well using our existing (non-prescriptive) approach to filling the ICS organizational structure. Further it is important to note that our facility was able to effectively respond to an actual worst case spill event following a crude oil spill during 1991 using an organizational structure that was specifically created following this incident. Identifying additional primary and alternative staff to arbitrarily fill all of the

units within these sections will also result in additional required ICS training for facility personnel who we would never use to fill a unit level role.

General

It is difficult to make concise comments on these rule proposals, both because our operations are so far-ranging, and because these rules deal with issues that are very complex and detailed. It appears that these rules have been improved in several significant ways from earlier drafts that were discussed, and we commend the Department for these steps.

Eric D. Johnson

WASHINGTON PUBLIC PORTS ASSOCIATION

1501 Capitol Way, Suite 304. PO Box 1518

Olympia, WA 98507-1518

General

We also urge the Department to consider making these rules as precisely consistent with US Coast Guard regulations as our law will allow. Every form, report, requirement, inspection or interpretation that differs from the USCG requires an additional step by someone that can easily cause more inattention or confusion than is gained by the state requirement. The cumulative burden of a separate regulatory system must be weighed next to the possible benefits of anyone particular separate state requirement

General

The maritime shipping and bunkering community has commented extensively on these types of issues, however, and we urge the Department to review these carefully and to incorporate these comments into the final rules. Our region's spill record is very good, and most importantly, it is improving. The working waterfront has been a key partner in these improvements, and we have every reason to believe that they will continue to be. Maritime interests have raised a number of specific comments on a variety of operational issues, however. These concerns -- which are being articulated loudly -- are from the very interests that must become supportive of these rules if they are to succeed over the long term.

173-182-030 (43)

Finally, these rules need to be as clear as possible about which particular party within a complex transfer or contingency framework has responsibility for what. In other words, there are several areas - pointed out by the industry letters-where there is some confusion about owner v. operator, or vessel v facility. These should be clarified as much as possible so that everyone involved in implementing these rules understands precisely what they are required to do.

173-182-355 through 173-182-450

Several of our state's port districts are either geographically distinct, or serve a smaller niche market such as break bulk (non-containerized) cargo. These types of ports have a smaller overall number of annual vessels calls per year, which results in a smaller "rate base" for apportioning contingency-planning costs. The busier shipping lanes of northern Puget Sound lend themselves to a larger fleet of vessels sharing costs of response equipment, etc. Some areas (Grays Harbor and Olympia are good examples) contain marine terminals that are very important to their region, but which already pay higher costs because of their geographic position. The Department needs to implement this rule so that contingency-planning efforts do not make these ports uncompetitive with other West Coast.

Michael Anderson

Washington State Ferries
2911 2nd Avenue.
Seattle, WA 98121

Cost Benefit Analysis

Although surely not alone in this concern, WSF as a domestic and international operator is quite concerned about the implication of these rules on the response capabilities in our boundary waters with Canada. Given the complex jurisdictional issues involved, WSF is concerned over how these rules will impact vessels calling on Canadian ports and the current cooperative/reciprocal coverage agreements with our Canadian partners. It isn't clear whether Ecology has fully considered the associated impacts, including costs and benefits.

General

WSF, as is the case with most operators, currently has to meet a number of existing federal standards regarding spill prevention and response, and is expecting to soon have to comply with federal contingency plan rules. Accordingly, WSF is very concerned about the potential confusion and/or conflicts set up by two rules covering the same topic. The Washington Administrative Procedures Act (APA) requires that "... before adopting [significant] rule..., an agency shall..., determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified ... " and shall " coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter." There are number of proposed State standards that differ from or exceed the federal standards, and in cases such as boom length and storage capacity by a significant margin. Without understanding the rationale or justification for these rules that exceed the federal standards, it is impossible to determine whether Ecology has met its obligation under the APA.

Cost Benefit Analysis

As is typically the case with any marine operator, WSF desires to see the promulgation of clear, objective, consistent, measurable, and preferably simple regulations that enable everyone in the regulated community, as well as the regulator, to know what is expected. WSF is concerned that this rulemaking leaves considerable uncertainty about the true expectations, with several sections of the proposed rules, such as added drill requirements, work boat expectations and shoreline cleanup, being very subjective in nature. This is troubling as it leaves the operator and/or plan holder not knowing what is expected under the rule and precludes any form of cost projection for compliance.

General

WSF applauds and endorses Ecology's efforts to approach this rulemaking in a risk-based manner, and fully understands that the quantification of risk is not an exact science and will not be viewed the same by varying stakeholder groups. However, the level of specificity, with 16 separate and differing planning standards matrices for the State of Washington seems to be excessive and overly confusing. WSF alone operates in 5 of these areas, and WSMC as a blanket plan holder covering the coast, entrance waters, and greater Puget Sound, will have to coordinate compliance with nearly all these standards. Ways to simplify these planning standards should be explored. The federal standards may be used as a good example or place to start.

Cost Benefit Analysis

Further the CBA suggests that "most industries in Washington are already in compliance with the standards reflected in the proposed rules" WSF can say with some certainty this is not the case for us, and we have considerable difficulty believing this statement is truly representative of "most industries in Washington". As just one example, the early response requirements established in the planning standards will undoubtedly mean more equipment in areas not previously supplied, and will likely require fully manned response operations instead of the on-call status currently used.

173-182-145

Further, WSF is concerned about the preemptory nature of these rules as there are several sections, such as State plan implementation, that would suggest that the State plan takes precedence over the federal plan. Our long and firsthand experience with federal regulators would be directly contrary to this stance and potentially set up a direct conflict with the federal agency responsible for spill

General

WSF will not make section by section comments to this rulemaking. Rather, WSF fully supports and endorses the detailed comments offered by WSMC, as our umbrella oil spill contingency plan holder. Further, we defer detailed comment on the specifics of rule implementation costs and challenges to NRC Environmental Services, as our primary response contractor.

Frank E. Holmes

Western States Petroleum Association (WSPA)
111 Market Street NE, Suite 325,
Olympia, WA 98501

173-182-220

A Binding Agreement requirement is defined in this section as follows: "Each plan shall contain a written statement binding the plan holder to its use." As with WAC 173-182-145(1), this requirement appears to conflict with the requirement to use the Federal VRP. WSPA requests that this section be deleted from the regulation.

173-182-145

Section 1 requires that every plan holder "implement the Washington approved plan throughout the response to a spill and drill. A decision to use a different plan must first be approved ... " This requirement appears to conflict with the requirement to use the Federal VRP To deviate from a Federal plan can lead to serious consequences The federal citation is presented below: 33 USC § 1321. Oil and hazardous substance liability

(c) Federal removal authority

(3) Actions in accordance with National Contingency Plan

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(8) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j) of this section, or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects

173-182-030 (54)

For clarity, Definitions (20) and (52) would benefit from defining "navigable waters of the state" as state waters to their seaward limit of 3 miles.

173-182-530

Oil releases to groundwater are very complex issues that vary significantly with each situation and cannot simply be addressed by the wording contained in this section. While it is prudent to require a facility to immediately commence a response/investigation effort upon becoming aware of a spill to groundwater, it is not realistic to require a facility to immediately assess and mitigate ground water spills and prevent further migration nor is it realistic to identify who exactly will be used to respond to a groundwater spill This section should either be deleted or rewritten to require that a facility immediately initiate a response upon learning of a spill to groundwater in accordance with Model Toxics Control Act (MTCA) cleanup standards (WAC 173-340)

173-182-345

It is suggested that it is important to distinguish in this section that, while plan holders can list the Effective Daily Recovery Capacity (EDRC), it is up to the PRC who actually owns the response equipment to demonstrate the response equipment EDRC or alternative EDRC to WOE WSPA recommends that the term "plan holder" be replaced with the term "equipment owner" in this

173-182-365

The regulation should allow for flexibility in boom requirements for pipeline facilities Pipelines should be allowed to use boom dedicated to spill response efforts (and not dedicated to the facility) if it is suitable and affords an equivalent level of protection to meet the intent of this standard. For example, McCord Pipeline (a wholly owned subsidiary of U.S. Oil & Refining Co.) meets the definition of a transmission pipeline The 2-hour standard for transmission pipelines requires these facilities to use boom dedicated to the facility. The widest Water Resources Inventory Area (WRIA) river crossing for the McCord Pipeline is the Puyallup River, which is located within a few of miles of U S Oil's Marine Terminal where Marine Spill Response Corporation's (MSRC's) Tacoma Base is located. Containment boom and response equipment are already staged at this manned base

173-182-520

In Section 1, it is suggested that the phrase "to protect and clean" be changed to "to clean" as this section applies to shoreline cleanup. Section 2 is unclear with regard to intend an incident that is ongoing will have a shoreline cleanup through an established Unified Command System that will be addressing the supply and support chain for this type of operation.

173-182-030

Definition (15) for high risk sites needs clarification. It appears to be missing an "and" or an "or" in the sentence. A high risk site one that has either "one or more hazards and abuts or includes areas of critical environmental concern" or is it one that has "one or more hazards or abuts or includes areas"

173-182-030 (20)

In Definition (18) for "Maximum Extent Practicable", it is stated that "In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measure." While these factors of consideration are pertinent, the definition remains an "open-ended regulation". For example, what the director determines to be maximum extent practicable this year may not be what he/she would determine to be maximum extent practicable next year.

173-182-540

WSPA believes that oil facilities are simply not the appropriate resource to staff wildlife rescue and rehabilitation Facilities rely on state and federal resources to help with this

important task. This section should indicate that facilities can refer to established state/federal programs for resources (personnel and equipment) that would be utilized in the event of an oil spill.

173-182-010

WSPA suggests that a safety clause be added to the Purpose Section that states "Nothing in this Chapter requires a responder to undertake an action if under the circumstances it was deemed to be unsafe to do so."

173-182-280

This section should distinguish that professional consultants brought in to help fill various ICS spill management positions are not considered to be response contractors for purposes of having to be on the state's approved Primary Response Contractor (PRC) list.

173-182-720

The introduction for this section indicates that the guidance document "lists fifteen core components ..." However, the section lists 16 components due to the inadvertent separation of a single component (Transportation) into two items (listed as 11 and 12).

173-182-350

In this section, times for notification and mobilization of equipment and personnel are noted for use in computing planning standard calculations. WSPA would like to express concern that these times (30 minutes, 1 hour, and 3 hours) as stated, can potentially be misinterpreted as a "standards' versus their intended purpose as "planning computation factors". WSPA requests that DOE add language to this section to clearly state that these time period are not standards, conditions of operation or any other regulatory limitation.

173-182-280

The Incident Command System (ICS) was developed to provide a response management organization that could be universally adopted by responders for oil spills. Further, the ICS was designed to provide for maximum flexibility in varied situations. The requirement to provide a detailed organizational list of one primary and one alternative person to lead each ICS spill management position down to the unit/branch level on a standard ICS organizational chart is very prescriptive and in conflict with the maximum flexibility features built into the ICS structure. WSPA requests that the phrase "down to the unit/branch level" be replaced with the phrase "down to the section chief level and command staff level"

It is important to note that WSPA member facilities have demonstrated during worst-case tabletop spill drills the ability to perform extremely well using the existing (non-prescriptive) approach to filling the ICS organizational structure. Further, facilities have been able to effectively respond to an actual worst-case spill event (i.e. . . , crude oil spill during 1991) using an organizational structure that was specifically created following an actual incident. Identifying additional primary and alternative staff to arbitrarily fill all of the units within these sections will also result in additional required ICS training for facility personnel who we would never use to fill a unit level role.

Class 1 facilities tend to rely on out-side assistance from contracted staff and agency personnel to help fully staff the ICS structure down to the unit/branch level. As a smaller organization, the strength of the program is that company employees (not contractors) are capable of staffing more than one position and depending on the individual circumstances perform more than one function. While an ICS organizational chart can be completed using a combination of facility, contract and agency personnel, it is unlikely that a class 1 facility would be able to strictly follow this chart since personnel assignments will vary as necessary in order to effectively respond to the uniqueness of each spill event.

173-182-710

Section (4)(b) identifies unannounced drills WSPA does not support this concept WSPA believes that the WDOE should consider more effective ways of verifying plan holder's resources rather than calling an unannounced drill. It must be clearly recognized that the purpose of drills is for personnel training. Conversely, inspections serve to demonstrate regulatory compliance. "Verifying plan holder's resources" is a compliance activity and not a training activity. Therefore, unannounced drills are not the proper vehicle for verification of plan holder resources. Rather, equipment inspections with the plan holder and PRC would be better use of both agency and plan holder

173-182-730

It's important to note that while a spill response can be completed in a short amount of time, a spill cleanup operation can last for many weeks, months or years. Further, the scope of each spill cleanup operation is driven by MTCA requirements. The proposed 60-day window is rather tight if WDOE's intent is to require plan holders to submit a request for spill drill credits within 60 days after a spill response is completed. During this 60-day window, the facility is also working with various WDOE departments to (1) conduct an incident investigation and prepare an investigation report, (2) implement short term (and possibly long term) cleanup operations and (3) preparing a cleanup report. Each of these steps can be rather manpower intensive. This section should be amended to allow the facility to submit an extension request to WDOE for their approval to extend this 60-day window as necessary on a case-by-case basis.

173-182-820

This section states that if WDOE determines that the PRC approval conditions are no longer met, approval may be revoked or conditionally modified. Further, PRC will receive a written notice of the loss of approval or conditional modifications and a time period to either appeal or correct the deficiency. WSPA believes that it is important that the plan holder(s) also be immediately notified if the PRC's approval status is revoked or conditionally modified, WDOE must ensure that impacted facilities are not "blind sided" by the change in status of their PRCs. This paragraph needs to be amended to note that the plan holders will also receive a written notice from WDOE if the PRC's approval conditions are no longer being met thereby resulting in their approval becoming revoked or conditionally modified

173-182-030 (14)

Under Definition (12)(b), the definition should be modified to read: "(b) A facility does not include any: ... vac-truck engaged in operations to recover oil or other contaminants."

173-182-315

WSPA suggests that this section be amended to read: "If necessary to meet the planning standards of this chapter, each plan holder shall have."

173-182-710

The special instructions column for deployment drills contains the following requirement "These drills shall include, GRP deployments, testing of all types of equipment and demonstrating compliance with the planning standard", It is not clear whether this term applies to all types of equipment listed in the oil spill response plan regardless of the location or to equipment located at the marine terminal that would typically be used in an oil spill response. For Clarification, WSPA requests that DOE change the wording of the section as follows: "These drills shall include, GRP deployments, testing of all types of equipment as prescribed within the designated GRPs, and demonstrating compliance with the planning standard"

173-182-270

Maintenance records for response equipment are the responsibility of and maintained by the equipment owners and not the "plan holders". It is, therefore, requested that "plan holder" be replaced with "equipment owner" in Section 1.

173-182-700

With regard to Drill participation, Section 7 indicates that 'Ecology may require the plan holder to participate in additional drills beyond those required in this section,' As this requirement is redundant to drills described elsewhere in this chapter, WSPA requests that this section either be deleted from the regulation or a rationale (justification) be provided for this requirement.

173-182-710

WSPA also requests clarification on intent of 3 drills - one in each year of the cycle. Specifically, some companies have U,S facilities on the East Coast, Gulf Coast, and West Coast Spill Management Team exercises are rotated from area-to-area to facilitate response preparedness to manage incidents that may occur in the various locations on each coast Having to commit a Spill Management Team exercise of Significant size in the Puget Sound area every year would be logistically very difficult and undermine the intent of the Spill Management Team rotation concept.

For example if a company runs a drill in Louisiana and invites WDOE to come but then WDOE decides not to attend, does that void the drill credit? For a worst case discharge exercise, if the Spill Management Team demonstrates a worst-case discharge exercise offshore Long Beach, and again invite WDOE but do not attend, does this mean worst-case exercise must be also done in Puget

173-182-280

This section appears to be a "one size fits all" approach to training which is not an effective use of time or resources. Minimum training requirements should be tailored to the needs of the individual ICS positions. For example, while it is important that all ICS job functions understand ICS, it does not make sense that personnel in the Finance Section have training on the use and location of Geographic Response Plans (GRPs). WSPA requests that this section be revised to read: "(2) The plan should address the type and frequency of training that each individual in subsection (1) (9) of this section down to the section chief level and command staff level receives. This section assumes that new employees do not have any ICS training listed in this requirement which is not necessarily true. This requirement should apply to those new employees who do not already have the training/experience required by this section. It is important to emphasize that the real world knowledge required by this section is typically obtained through a combination of classroom training, drills, and responses to actual spill events.

173-182-710

Section (1)(b) should read "at least once every five years" rather than "no longer than once every five years".

173-182-220

Neither the plan holder nor responsible party can commit to reporting a significant threat" of a spill until that term is defined.

173-182-270

This paragraph should be applicable to equipment owners not to plan holders. Manufacturer's specifications or maintenance recommendations are often very detailed and nearly impossible to follow. We seriously doubt if anyone follows to the letter the manufacturer's recommended maintenance schedule. Having a requirement to maintain equipment in constant state of readiness is enough. Change to read: "Equipment owners are required to maintain response equipment in a state of constant readiness. Equipment owners are required to keep maintenance records for each piece of equipment listed in a vessel (ship) or facility contingency plan."

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173-182-150

150 should be (2) Plan holders must accurately track and account for entire volume of oil recovered and oily wastes generated and disposed (of) during spills.

173-182-710

The existing drill standards found in DOE guidance were typically followed voluntarily by vessel plan holders as they understood the value of conducting training on their plans to enhance readiness in the event of an incident. The standards for deployment drills in the existing guidance document for vessels call for Ecology to initiate the drill and require the plan holder to call out the primary response contractor to test the validity of the two-hour response standard. Notwithstanding the successful experience with the existing drill regime for many years, the proposed rule now requires the plan holder to conduct two deployment drills per year and ensure that during the three year drill cycle all types of equipment and all equipment operators listed in the plan are exercised. Unless the plan holder relies on the contractor, this places a significant new administrative burden on the plan holder, as well as considerable added costs. In addition to the specifically required drills, the proposed rule allows Ecology to require the plan holder to participate in any number of unspecified drills, apparently at its discretion. It appears that Ecology has expanded current drill guidance into an aggressive and extremely costly drill program focused on the plan holder. Since these standards constitute new rules for vessel plan holders, the need for exceeding the federal drill requirements must be justified and the additional costs for this new drill program need to be included in cost benefit analysis. Since the rule gives Ecology unlimited authority to require the plan holder to participate in any type of drill at any time, we are not sure how costs to plan holders will be estimated. A worse case equipment deployment exercise for a tank ship will run well into the hundreds of thousands of dollars.

General

The stated Ecology goal in the CR101 filed February 16, 2000 regarding these rule changes is to “revise the current rules to make them more consistent with changes that have occurred since they were first written, use simpler language that takes advantage of the planning that has been done, and develop rules that are more efficient by consolidating regulatory requirements.” Our review indicates that the proposed rulemaking represents much more than making standards consistent, simplifying language, and/or consolidating regulatory requirements. Indeed, the planning standards have been changed significantly, as have the drill requirements. The existing non-regulatory standards have not just been consolidated into the new rules – they have been totally rewritten using entirely new concepts. Ecology is not following the requirements of the Washington Administrative Procedures Act by proposing new regulations without providing any justification or rational basis for them. In areas where federal regulations on the same subject exist no rationale has been given for exceeding the federal requirements.

Cost Benefit Analysis

A general comment regarding this cost/benefit analysis is that the quantitative benefit values are overstated and the costs are understated. Considering the stockholder loss for the EXXON VALDEZ spill is ludicrous! While we agree that the costs to industry and stockholders as a result of the spill were huge, probably greater than the \$30 billion identified, the proposed rules will do nothing to mitigate similar costs for a worse case discharge in Puget Sound.

173-182-900

We could find nothing in this analysis covering the costs or benefits of the new inspection program described in WAC 172-182-900. Since this is a new program the need for it should be justified and the costs/benefits quantified.

Cost Benefit Analysis

We could find no mention of the costs of the PRC approval process, but since these requirements are not new we assume that there are no additional costs or benefits from the minor changes to the program.

173-182-110

This paragraph makes sense, but conflicts with the WAC, which allows a single plan to be submitted for vessels of the same class. Ecology should resolve the conflict, not ignore it.

General

Section 1.4 appears to be the justification for creating new rules that are in excess of federal requirements without having to justify them as required in Washington's Administrative Procedures Act.

Cost Benefit Analysis

In conclusion, this study appeared to identify all possible quantitative and qualitative benefits from the proposed rules, but minimized its effort to determine both quantitative and qualitative costs. We would like the opportunity to add additional qualitative costs, such as the loss of competition in the bunkering industry already experienced in Puget Sound; the potential loss of business in Grays Harbor due to increased costs to that locality; the potential increase in costs to vessels calling in the Port of Olympia; the quantitative and qualitative costs to vessel plan holders for equipment deployment drills and table top exercises; and the potential loss of maritime business to other U.S. and Canadian ports resulting from the imbalance in competitive marketplaces. It also appears that to come to a conclusion of the benefits outweighing the costs one should annualize both the probable benefits and the probable costs. The probability of a worse case discharge occurring in Puget Sound or off the coast would need to be determined.

173-182-150

This new requirement unnecessarily takes additional manpower, labor and management, away from other spill response activities assuming a limited amount of trained personnel. This is a new requirement not in previous regulations, not required by WAC or the statutes, and not discussed or justified by Ecology per the Administrative Procedures Act. Please reconsider the necessity of taking personnel away from a response to segregate, classify, quantify, verify, and track the quantity of oil recovered from a spill. This will slow down the cleanup and add considerable costs with an unforeseen or negligible benefit.

General

We will not make comments concerning formatting or grammar since it is assumed that Ecology has someone tasked with that responsibility prior to the final rule being published. We realize that these rules were hastily put together to meet an imposed deadline. It is unfortunate that the reviewer is put in such a position after nearly four years of reviewing and commenting on previous drafts. Still some of the sections in the published rule are not decipherable.

173-182-145

This section requires plan holders to use the Washington plan in lieu of its federally approved plan (when in Washington waters?). The National and Federal response plans are also required to be followed. This may give rise to a federal preemption issue and it should be resolved prior to promulgation of the final rule. Further, this requirement interjects considerable potential for confusion over what plan components apply and when, which is clearly undesirable.

173-182-140

A literal reading of this section would require notification whenever a key person listed for command and general staff position went on vacation or goes out of town? Please insert the word “permanent” prior to loss of personnel. Alternatively, since two or more people are listed for each position wouldn’t you really want to know if the plan holder didn’t have enough people to fill the command and general staff positions with qualified personnel? Please rethink this section to avoid numerous and unnecessary notifications.

173-182-030 (55)

This section is probably meant to apply to both self propelled and non self propelled watercraft, although it is not clear. If that is correct, it emphasizes the point expressed in the previous comment for 030 (42).

173-182-030 (1)

Is it unduly cumbersome, expensive, or inexpedient to state the classification criteria? ASTM specifications are not readily available to the public without buying them. Is the 2000 FOG still readily available? Does this paragraph comply with RCW 34.05.365? Please state the boom classifications by sizes or USCG classifications required to meet the planning standards.

173-182-015

The entire paragraph is poorly written and difficult to understand. Please rewrite this paragraph. Do you intend to include mobile facilities as a vessel?

173-182-220

The plan holder cannot commit to notification of spills and significant threats of spills unless the plan holder is also the responsible party. WSMC needs to be exempt from this requirement; it should be a requirement for the “responsible party” or spiller to make the

notifications. The spiller is required by federal and state statutes to report spills. This section is seemingly redundant and conflicts with other laws if the plan holder is not the responsible party.

173-182-015

We assume that you intended to include both facility and vessel plans in this paragraph?

Cost Benefit Analysis

Section 2.1 makes a statement that there are no qualitative costs shown in the analysis because all such costs were able to be quantified. Since there was no discussion of qualitative costs it is impossible to determine exactly what costs were or were not considered. For example, the drill costs for plan holders. Does it include lost employee productive time for training and drills? Since the table listing costs actually shows a reduction in costs due to non enforcement by Ecology of current regulations, we don't think all costs were considered. Since this is only the preliminary cost/benefit analysis perhaps the final will correct this oversight.

Cost Benefit Analysis

Section 5.0, Existing Rules as a Baseline. There is a note explaining that the current equipment requirement guidelines included boom, recovery, storage, over flights, dispersants and in situ burning equipment. Dispersant and in situ burn capability is not required in current guidelines or regulations. Therefore, requiring these new capabilities need to be justified and cost estimates included in the analysis.

173-182-030 (45)

The definition of ship comes from the enabling legislation but it is contrary to the federal definitions. Please have the RCW changed to the definitions commonly used by maritime personnel as found in the federal definitions. Ecology's use of the terms "vessel", "ship", and "barge" in these regulations is needlessly confusing.

173-182-320

The last sentence in this paragraph is not understood. If it is intended to require that aerial surveillance resources are to be at a spill site in 6 hours for Puget Sound and the coast, 3 hours for the Columbia River, it will require contracting with resources at a cost. Since this exceeds federal requirements and is a new requirement, it must be justified by some form of data.

General

We disagree with this conclusion (Section 1.4), as the RCW sections 88.46.060 and 90.56.210 quoted paraphrase the federal law found in the Oil Pollution Act of 1990 amendments to the FWPCA. Since the federal regulations cover the same subjects as do the Ecology rules, exceeding those regulations regarding contingency planning, response equipment, drills, and equipment inspections, must be justified per the Administrative Procedures Act, RCW 34.05.328. The state statute does not explicitly permit the agency to differ from federal standards.

Cost Benefit Analysis

Section 5.0, Page 20, Current ongoing costs for equipment and expected change. This paragraph offers a new perspective on equipment costs, more in line with the above previous comment. The analysis states capital costs of equipment will be large if plan holders do not cooperate. However, it is not the plan holders that must cooperate; it is the PRCs that must cooperate. This will not happen, as the PRCs are essentially competitors, and the large costs for additional equipment must be estimated and included in the analysis. This additional capital cost does not just apply to Neah Bay and Columbia River; it will be throughout state waters.

173-182-355

The reference in the table for the 1 and 2 hour requirements to meet the oil transfer rules should be deleted. It is an oil transfer requirement and not a contingency plan requirement. The storage requirement exceeding the federal requirements needs to be justified.

173-182-350

Dedicated resources whether owned by a plan holder or owned by a PRC should be treated the same as far as mobilization time. By definition, it is the time it takes the equipment to get ready for operation and be ready to travel to the site or staging area. Why would plan holder owned equipment take less time for mobilization than other owned and dedicated equipment?

173-182-345

We have gone through this entire section several times and find it very difficult to determine how the equipment will meet the planning standards. A new factor of efficiency of recovery systems has been added in paragraph (1), will this affect the efficiency factor of 20% in paragraph (2)? If it doesn't, why have paragraph (1), when the alternative to paragraph (2) is described in paragraph (3)? We recommend deleting paragraph (1).

Cost Benefit Analysis

Planning for the use of in situ burning is another new requirement. Estimated costs to comply with this requirement needs to be included in the cost/benefit analysis.

173-182-355 through 173-182-450

Make the safety assessment and 2000' of additional boom consistent throughout the rules as 2 hour assessment and 3 hours for additional boom to be on scene. Requiring a safety assessment at 1.5 hours after report of spill would require 24 hour crewing of the dedicated resource. The cost of this crewing would far exceed the benefit gained by having a safety assessment done 30 minutes earlier. Justify the need to have the safety assessment at hour 1.5.

Cost Benefit Analysis

Planning for the use of dispersants and identifying resources capable of being on scene within 12 hours is another new requirement. We do not argue the merits of this requirement, but estimated costs should be included in the cost/benefit analysis.

173-182-390

Dungeness National Wildlife Refuge is in inland waters as defined in the USCG rules. Ecology is requiring equipment capable of operation in open waters, which is in direct conflict with USCG requirements. Since no justification or rationale has been provided for requiring this open water equipment in an inland environment, the requirement for open water boom and recovery equipment should be deleted.

173-182-405, 173-183-400, 173-182-410

Ecology authority goes out to 3 miles beyond shore, yet the trigger for application of these sections is 5 miles offshore. Change the applicability to those vessels that operate within 3 miles off the entrance to Grays Harbor and Willapa Bay.

173-182-610

610 (1) This section excludes listing equipment of opportunity to be counted on a 2 for 1 basis as is allowed for under the federal rules and current state guidance. We do not anticipate having a "mutual aid agreement" with tank barge companies allowing us by written consent to list their barges in our plan. Please add to this paragraph equipment allowed by written letters of intent. Are mutual aid agreements defined? Do mutual aid agreements guarantee equipment and personnel in a certain amount of time? We were under the impression that they were agreements to help on an "as available" basis, similar to our consent letters.

173-182-610

We do not anticipate having a "mutual aid agreement" with tank barge companies allowing us by written consent to list their barges in our plan. Please add to this paragraph equipment allowed by written letters of intent. Are mutual aid agreements defined? Do mutual aid agreements guarantee equipment and personnel in a certain amount of time? We were under the impression that they were agreements to help on an "as available" basis, similar to our consent letters.

173-182-800

800 (1)(d) Remove this reference to maintaining equipment per manufacturer's specifications. The maintenance of equipment should be left to the PRC's discretion. Require the PRC to submit a maintenance schedule or check list for containment, recovery, and storage equipment or systems for Ecology's review.

173-182-345

Please list where the ASTM specification is available for examination by the public. Is it necessary to reference this specification?

173-182-030 (17)

710 (1)(a) The term ICS is used but not defined. It should be spelled out and explained for the reader who may not be familiar with the term

Cost Benefit Analysis

The fourth paragraph of this section, Guidance, misstates the federal requirements. It is true that for facilities two deployment drills are required annually, but there are no federal requirements for vessel plan holders to conduct deployment drills if the OSRO conducts one deployment drill annually. The entire drill program for vessel plan holders is a new requirement and all costs associated with these drills, both qualitative and quantitative, should be included in the cost section of this analysis.

Cost Benefit Analysis

Section 5.0, Page 21, Existing rules as a baseline for drills. The third paragraph in this statement is problematic. "Nonetheless, as described elsewhere in this document, the cost benefit analysis is looking at existing rules to proposed rules rather than using the guidance as the baseline." Didn't the study use the planning standard guidelines as the baseline for calculating additional equipment costs? We submit that the current guidelines were developed and somewhat followed by Ecology due to the fact that the rule was excessive and too expensive for a plan holder to comply. One worse case equipment deployment drill held on a tank ship plan holder would cost hundreds of thousands of dollars. The existing rules did not go through a cost benefit analysis; if they had the rules would have been rejected. The study should use the guidance as a baseline and should also use the Ecology annual drill reports to tabulate the annualized drill costs over the past 15 years as compared to the annual estimated costs to comply with this new rule.

173-182-280

This represents a universally high expectation. We anticipate that small business owners with small vessels will not be able to comply (and should not have to) without contracting with a spill management company. ICS should be scaleable to the situation. We recommend that Ecology find a way to allow small business operators to manage their own spill responses. We doubt that this requirement was fully evaluated when Ecology considered the effects of these rules on small businesses.

Cost Benefit Analysis

We believe that the data provided by the response cost modeling done by Applied Science Associates and Environmental Research Consulting was from scenarios run using the “draft rules” from earlier versions of the planning standards and not from the proposed rules published on 7 June 2006. If that is the case the conclusions drawn as to the benefits from an improved response are not valid, since the conclusions are based on a faulty

173-182-710

710 (4)(a)&(b) These paragraphs give Ecology unlimited authority to initiate any unannounced drill or inspection on the plan holder that it deems fit. There are no limits to the amount of equipment that is called out or the amount of people who would be called away from their jobs for an unannounced table top exercise. The entire drill program section needs to be rewritten in a sensible, reasonable manner. Previous comments regarding justification of this overly burdensome program also apply. This is a new program and the Administrative Procedures Act needs to be followed.

173-182-710

710 (2)(b) Section requires the plan holder to conduct two deployment drills per year and ensure that during the three year drill cycle all types of equipment and all equipment operators listed in the plan are exercised. This requirement is overly burdensome on the plan holder and unduly expensive. PRC's should be responsible for maintaining their equipment and equipment operators' proficiency through periodic training. They are required to keep maintenance records and personnel training records for inspection by Ecology. How many checks and balances are needed to ensure that equipment and personnel are ready at all times to respond to a spill? The entire drill program section needs to go back to the drawing board and be rewritten in a sensible, realistic and reasonable

173-182-900

The cited RCW's purpose is for administrative penalty violation investigations and is an inappropriate application for a general inspection program. This is another new program whose necessity has not been demonstrated or justified.

173-182-315

The requirement for a “system” to obtain vessels of opportunity for a worse case spill is another totally new requirement that has not been justified nor supported by a rationale. For large spills there has never been a shortage of boats demonstrated in Puget Sound. More likely than a shortage is an abundance of highly capable volunteers with boats willing to assist in any way! Unless Ecology sufficiently justifies this program by documenting past shortages it should be deleted.

173-182-710

710 (2)(a) If a plan holder does not own equipment does he have to buy some in order to comply with this requirement?

173-182-510

(c), (d), (e) and (f): these planning requirements are too vague in regard to privately vs. publicly-owned resources and the definition of "sole source" aquifer. This type of resource identification is up to the State to do, so as to ensure a consistent approach. RE: (3) - the State should offer a website to share this information re: ICP's that are not controlled by the Plan holder.

173-182-450

re: (4); clarity needed re: "and / or"

173-182-270

Details need not be in the Plan, but available to DOE for inspection.

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173-182-030 (55)

This does not account for the risk that has been mitigated by double-hull and double redundant tank vessels. This means that it continues to be a struggle to design meaningful drills. You should consider altering this definition or adding something to it like the last sentence in part (b), above.

173-182-315

Suggest that the plan should address resources that would be brought in after 24 hours. This is most often a Day 2 issue, although the planning for it certainly begins on Day 1. It will take until Day 2, at a minimum to get contracts in place, as well as safety inspections and training set up.

173-182-130

18 months may be too short a time if capital improvements, permits, EIS's etc., are needed - DOE has indicated that they may consider up to 24 months for some improvements; this needs to be put in writing so we can comment specifically on practicality.

173-182-130

Also, these are some plans that would need to be submitted to EPA and DOT . This results in a complete new round of submissions, thereby increasing our compliance costs and efforts.

173-182-320

Resources, if identified and mobilized, may not be able to work in the operating environments we are in (e.g. fog) , so why require this.

173-182-335

The Industrial section of DOE may limit the ability of a facility to receive / handle oily water. Is it possible for DOE to approve additional shoreside storage for emergency operations ? Otherwise, facilities will have to re-permit their storage capabilities to meet storage related Planning Standards and cite them in their plans

173-182-345

Suggest it is sufficient to list the equipment resources. An OSCP should not be the place for a primer of how to place a skimmer in the water and which pump goes with it. This is part of the skimming system, and the PRC has the data / information needed. Capacity is the 20% of EDRC nameplate of the system.

173-182-355 through 173-182-450

Justify why 5nm is the distance selected, otherwise, this is arbitrary. This applies to the distances assigned to other High Risk areas.

173-182-450

To which Plan Holders does this section apply ?

173-182-230

Should this read "Facility Plan"?

Cost Benefit Analysis

On a more strategic level, BP still has concerns about the approach used re:

1. the Risk Based Analysis, which resulted in a "Scaled Approach" to the regulations;
2. a lack of adequate justification to exceed federal requirements (other than that stated as "a legislative mandate"), and
3. the very short time period to complete an adequate and required Cost Benefit Analysis (BP had less than a week to provide information to the contractor, which is described in the report as a "qualitative" study).

These comments are the same as those I made at the Public Hearing and at various stakeholder meetings.

I want to acknowledge the effort that you have made, throughout the process, to secure input from all stakeholders. This has been a lengthy process and there were certainly differing perspectives.

173-182-415,173-182-420,173-182-430

We need to make sure that the terminology of "on the Columbia River" applies. i.e., a terminal on the Willamette River, in Oregon, but does not transit or operate on the Columbia

173-182-530

There are both State and federal regulations that address this capability already. Adding to the OSCP is therefore duplicative. MTCA already covers this area.

173-182-510

(3) - the State should offer a website to share this information re: ICP's that are not controlled by the Plan holder.

173-182-520

1. Are these resources to be dedicated , resident ?
2. What is the extent of the clean up required? A lot of oil on a 3 mile beach will require more people over 14 days that just a little oil; clarity needed.
3. Is this tied to WCD volumes, AMPD volumes or what?

A lot more clarity is needed here.

173-182-415

Need clarity on the definition of "OPERATING" - i.e. does a submerged pipeline under the river meet this definition?

173-182-540

Until there are Wildlife reg's that can be referred to, the Plan holders have nothing to reference. I realize these are coming, but we will need to see some movement here to support this.

173-182-610

This will unnecessarily lengthen the time and increase the frustration to complete / upgrade plans; e.g., if a pipeline company is required to guess as to which standard it must comply. DOE will need to get with affected Plan holders and work this out in advance of plans being amended. How can an area have more than one planning standard?

173-182-610

Please explain the meaning of this sentence. Dedicated resources (owned, mutual aid, or PRC-held) should count for all the Planning Standards.

173-182-610

Clarity needed here - how much support documentation is required ? This is far too prescriptive.

173-182-030 (33)

Other than the reference to GRPs II and II oils later in this text, there is no effective use of the "Persistent / non-persistent definitions" . This was disappointing as it seems that although the definition we requested was re-applied, it was not used in the Transfer

regulations. In fact, the transfer reg's now refer to jet fuel and all diesels as "oil" that has to be pre-boomed. Seems like we went backwards here. This is very disappointing.

173-182-280

ICS training is done 1x or 2x year. We interpret this requirement to mean that we are not able to utilize new employees in Section Chiefs or Unit Leaders until they have received the training, but we can use them for lower ICS positions. Please clarify.

173-182-240

Suggest that these plans be available electronically, and not on the vessel, as spot chartered vessels do not know when they will come into state waters.

173-182-280

The description of a shift change process is too prescriptive; this can be done in a number of ways.

173-182-230

Should this read "Vessel Plan contents"?

173-182-350

This is unclear as to how a facility will work with a PRC to document compliance. Can a facility just look to their PRC to substantiate this requirement?

173-182-710

What is meant by "...confirmed..." in the text below. If it means to actually deploy 50% of the equipment, then we need justification - if it is simply to see if it is available, see if it is in working order and ready for deployment etc., that is ok. Clarity needed here.

General

How was the policy decision to shift from a highly successful program of spill prevention (i.e., through training, drills, exercises, and safety awareness) to an untried program of spill mitigation (i.e., through pre-booming and increased spill response capability in the aftermath of a spill) rationalized, justified, and executed in the proposed rules?

General

Given the difference in operating conditions and performance on the Columbia River in comparison to other Washington waterways, why can't the Columbia River continue with its existing program of success, conforming to rules tailored to Columbia River operations and situations?

Jim Townley

COLUMBIA RIVER STEAMSHIP OPERATORS
200 SW Market Street
Portland, OR 97201

General comment

Has Oregon DEQ and the U S Coast Guard been consulted on these proposed rules? If so, what is their position?

General

Since the existing rules are a result of carefully thought-through negotiations and discussions with DEQ, DOE, the USCG, the ports, terminals, the MFSA, and the CRSOA, how does DOE explain what appears to be a unilateral modification to these rules and procedures?

Cost Benefit Analysis

Given the Columbia River zero spill record of performance as reflected and reported in the DOE Cost Benefit Analysis, what is the basis for the proposed changes?

Cost Benefit Analysis

Given the Columbia River zero spill record of performance as reflected and reported in the DOE Cost Benefit Analysis, how does DOE explain any increase in cost leading to an improved cost-benefit ratio for the Columbia River?

Cost Benefit Analysis

Can DOE explain why using California as a source of base-line measures in the Cost Benefit study is relevant to the Columbia River?

General

Can you identify the areas in which these proposed rules exceed federal requirements and explain why those areas were selected?

John Miller

Elwha Clallam Tribe

General

I would like to commend the Washington State Legislature for their goal of zero spills. We do work in the real world of probabilities. And so I would like to thank the staff of

the Department of Ecology for promulgating proposed rules which will, I hope, decrease the probability of oil spills during the transfer of oil.

Paul Jewell

Tidewater Barge Lines, Inc.
PO Box 1210
Vancouver, WA 98666

Cost Benefit Analysis

As so eloquently stated in the Cost Benefit Analysis "The impact of oil spills on an ecosystem varies by the type and degree of oiling, timing and location of spill, length of exposure...". The crux of the problem with these proposed rules is that they treat all oil spills equally. These rules target persistent oil spills "within Puget Sound" that "are not subject to large scale flushing" where "oil tends to remain in the environment and quickly begin to impact shorelines." The only petroleum products Tidewater currently transports are gasoline and distillates and they are only transported on the Columbia and Snake Rivers. According to the results of a study commissioned by Ecology (and subsequently confirmed by the NOAA Scientific Support Coordinator for USCG District 13) and presented to the Washington Oil Spill Rule Advisory Committee, refined products will not remain on the river for more than 8 hours. These refined products spread rapidly which enhance their fate of evaporating and dispersing. Ecology clearly demonstrated that any refined product spilled on the Columbia or Snake River will not be recoverable within 8 hours. Yet these proposed rules include sections **WAC 173-182-355, 410, 420, 430, and 440**, provisions that would require us to acquire the capacity to track, contain, recover, and store these refined products 12 hours, 24 hours, and 48 hours after a spill. It is not apparent that the study Washington commissioned was used to affect the development of these rules as they apply to the Columbia and Snake River. It is also apparent that the CBA for this rule neglected to take this study into consideration because, if there is no refined product available to recover after 8 hours, it seems sensible that the CBA would find that there is no benefit to these provisions of the rules when applied to the Rivers. Tidewater suggests that the above sections of this rule should apply only up to the 6 hour mark when handling non-persistent refined products on the Columbia or Snake Rivers. There are other provisions of this rule where the benefit is not apparent when applied to the Rivers we operate on.

WAC 173-182-250 (2)

The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery. Comment: We operate on a River system which has well defined, predictable currents. The environmentally sensitive areas are identified in the Northwest Area Contingency Plan. We transport only non-persistent refined products on this fairly limited, relatively unchanging river system. Any spill will move downstream at the speed

of the current until it evaporates or disperses relatively quickly. The time tested and sensible response strategy is to get ahead of the spill and deploy diversionary booming to protect the designated sensitive areas. It is obvious that this provision of the rule was included to avoid a repeat of a previous situation on Puget Sound but this provision adds little value to a River response. We know where a spill is going and it does not require us to use specialized and expensive equipment to do an initial spill assessment.

Recommendation: Add the phrase "Except on the Columbia or Snake Rivers" before "The plan.. ."

WAC 173-182-320 Planning standards for aerial surveillance.

Requires the 'identiJication of aerial oil tracking resources. Comment: This section requires planning to identify aerial surveillance resources for the initial 72 hours of an incident and, for some unexplained reason, imposes stricter standards for the Columbia River than elsewhere in the State. Given that aerial surveillance is less important on this river than anywhere else, this section should be made consistent with the rest of the State.

Recommendation: Delete the phrase "except for the high risk areas on the Columbia River where the resources could have arrived on scene within three hours."

WAC 173-182-280 Spill Management Teams.

2(b) . . .an organization list of one primary and one alternate person to lead each ICS spill management position down to the unit branch level .

Comment: Such a list would be extremely difficult to maintain with accuracy by even the most diligent company given vacations, changing work shifts, temporary assignments, sickness, travel, personnel rotations, etc. ICS is designed to be a flexible system, this provision removes that flexibility. Recommendation: Change this provision to require a list of ICS positions only to the section chief level. The Cost Benefit Analysis found that the "probable quantitative benefits may not outweigh the probable costs". Because of this, Ecology found a need to expound on the so called "qualitative benefits" of this rule. The overall theme of Section 2.1 of the CBA is that if Ecology doesn't impose these strict standards the petroleum transportation and storage sectors will "essentially return Washington to pre-Exxon Valdez standards". I could not disagree more. We answer to a whole host of interests including our customers, our investors, the insurance industry, federal regulators, the general public, our employees, our families, and our own conscience. These interests demand that we operate as safely and responsibly as possible. That is why we comply with voluntary standards such as AWO's Responsible Carrier Program, why we are pursuing an aggressive double hulling conversion project, why we use environmentally friendly hydraulic oils, and pursue voluntary air emissions reductions. Tidewater cannot afford, nor do we desire, to revert to pre-OPA practices or standards. I don't think I'm stepping out on a limb when I insist that the rest of the industry shares this sentiment.

I hope that these comments are taken constructively and in the spirit they are offered. We at Tidewater strive to maintain a leadership position through constant innovation and improvement. But it doesn't appear that these proposed rules as written will improve our spill readiness. In fact they seem to force us to step back from the real progress we are making in the area of prevention by forcing us to resort to adding another layer of costly response methods that Ecology has shown not to be necessary, or effective, for companies such as ours that handle only non-persistent refined products. In the executive summary of the CBA Ecology refers to the "technical expertise and administrative experience" that Ecology has gained during the past 15 years through lessons learned, drills, technical studies, and more. During the last 15 years this country has experienced a few high profile responses to non-persistent product spills. I don't think that these proposed rules reflect the lessons learned from those responses or the results of the technical study Ecology commissioned for this rule. It seems apparent that those lessons and studies indicate that the "one size fits all approach" does not serve the best interests of the public when attempting to develop meaningful regulations.

Adopted rule language

Oil Spill Contingency Rules

Chapter 173-182 WAC

Chapter 173-182 WAC

OIL SPILL CONTINGENCY PLAN

Adopted Rule Language

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PART I: PURPOSE, AUTHORITY, APPLICABILITY AND DEFINITIONS

NEW SECTION

WAC 173-182-010 Purpose. The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan (Part II) and drill and equipment verification requirements (Part III), primary response contractor standards (Part IV) and recordkeeping and compliance information (Part V). The provisions of this chapter, when followed, should be implemented and construed so that they will:

- (1) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;
- (2) Ensure continual readiness, maintenance of equipment and training of personnel;
- (3) Support coordination with state, federal, and other contingency planning efforts; and
- (4) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills.

NEW SECTION

WAC 173-182-015 Applicability. (1) This chapter applies to owners and operators of onshore and offshore facilities and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to Washington nonprofit corporations, their enrolled members, and agents that submit plans on behalf of onshore and offshore facilities and covered vessels.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

NEW SECTION

WAC 173-182-020 Authority. RCW 88.46.060, 88.46.070, 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 90.48.080, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.270, 90.56.280, 90.56.310, 90.56.320, 90.56.340, and chapter 316, Laws of 2006, provide statutory authority for the contingency plan preparation and review requirements, drill and response contractor standards established by this chapter for onshore and offshore facilities and covered vessels.

NEW SECTION

WAC 173-182-030 Definitions. (1) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F

625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(4) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(5) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that identifies personnel, equipment and services capable of being provided by the primary response contractor within stipulated planning standard times; acknowledges that the primary response contractor intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(7) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(8) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(9) "Director" means the director of the state of Washington department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(12) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(13) "Ecology" means the state of Washington department of ecology.

(14) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(15) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(16) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(17) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(18) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(19) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(20) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(21) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(22) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(23) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(24) "Nonpersistent or group 1 oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(a) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(b) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(25) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(26) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(27) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(28) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(29) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(30) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(31) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

and

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(32) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(33) "Persistent oil" means petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(a) Group 2 - specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(b) Group 3 - specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(c) Group 4 - specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(d) Group 5 - specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(34) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(35) "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (14) of this section.

(36) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(37) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(38) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(39) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(40) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(41) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(42) "Resident" means the spill response resources are staged at a location within the described planning area.

(43) "Responsible party" means a person liable under RCW 90.56.370.

(44) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(45) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(46) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(47) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

- (a) Operates on the waters of the state; or
- (b) Transfers oil in a port or place subject to the jurisdiction of this state.

(48) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(49) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(50) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(51) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(52) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(53) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(54) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(55) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

PART II: COVERED VESSEL AND FACILITY OIL SPILL CONTINGENCY PLANS

Section A--General Planning, Information and Timing

NEW SECTION

WAC 173-182-110 Authority to submit contingency plan. (1) For tank vessels, a plan may be submitted by any of the following:

- (a) The owner or operator of the tank vessel; or
- (b) The owner or operator of the facilities at which the tank vessel will be unloading its cargo;

or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the tank vessel owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the tank vessel company.

(2) For covered vessels other than tank vessels, a plan may be submitted by any of the following:

(a) The owner or operator of the covered vessel; or

(b) The agent for the covered vessel provided that the agent resides in this state; or

(c) A Washington state nonprofit corporation established for the purpose of oil spill response and contingency plan coverage and of which the covered vessel owner or operator is a member; or

(d) A PRC contractually obligated to provide containment and cleanup services to the covered vessel company.

(3) For facilities, a plan may be submitted by any of the following:

(a) The owner or operator of the facility; or

(b) A PRC contractually obligated to provide containment and cleanup services to the facility.

(4) One plan, or one umbrella plan, may be submitted for multiple covered vessels, and/or for multiple facilities, provided that the plan contents meet the requirements in this chapter for each covered vessel or facility.

NEW SECTION

WAC 173-182-120 Submitting a contingency plan. (1) Plan holders shall submit a plan to ecology no less than sixty-five days prior to the beginning of operations in Washington.

(2) The plan holder shall submit two copies of the plan and all appendices. However, if the plan and appendices are submitted with an acceptable use of electronic copy, the plan holder shall submit at least one paper copy.

(3) Once approved, plan holders shall resubmit their plans to ecology every five years for review and approval.

(4) The plans shall be delivered to:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

Preparedness Section, Contingency Plan Review

Mailing address:

P.O. Box 47600

Olympia, WA 98504-7600

Physical Address:

300 Desmond Drive

Lacey, WA 98503

NEW SECTION

WAC 173-182-130 Phase in language. (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications.

(2) For existing approved facility plan holders:

(a) Plans holders for onshore facilities capable of storing one million gallons or more of oil shall submit a revised contingency plan to ecology six months after the effective date of this chapter; except, plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In submitting the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other onshore facilities shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(3) For existing approved vessel plan holders:

(a) Plan holders for tank vessels submit a revised contingency plan to ecology six months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within twelve months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have eighteen months from the effective date of this chapter to reach compliance.

(b) All other covered vessels shall submit revised plans to ecology within twelve months after the effective date of this chapter; except plan holders that received plan approval six months prior to the effective date of this chapter must submit a revised plan within eighteen months of the effective date of this chapter. In the revised plan, plan holders must include a compliance schedule describing how they will meet the requirements in WAC 173-182-310 through 173-182-440. Plan holders shall have twenty-four months from the effective date of this chapter to reach compliance.

(4) PRCs shall submit new applications to ecology within twelve months.

NEW SECTION

WAC 173-182-140 Plan maintenance and reporting obligations. (1) At least once annually, plan holders shall review the plan for accuracy and either:

(a) Update and distribute the amended page(s) of the plan to ecology for review and approval; or

(b) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

(2) If there is a temporary, significant change to response readiness, the plan holder shall notify ecology in writing within twenty-four hours and provide a schedule for the prompt return of the plan to full operational status. Changes which are considered significant include loss of equipment that affects the planning standards provided in the plan, or permanent loss of initial response personnel listed in command and general staff ICS positions provided in the plan or changes in normal operating procedures. A facsimile or electronic mail will be considered sufficient written notice.

(3) Failure to notify ecology of significant changes shall be considered noncompliance with this chapter.

(4) If the change to the plan is permanent, the plan holder then shall have thirty calendar days to distribute the amended page(s) of the plan to ecology for review.

(5) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or revoke approval of the plan.

NEW SECTION

WAC 173-182-145 Plan implementation procedures. (1) Every plan holder, including each person whose vessel or facility enrolls in coverage under an umbrella plan, is required to implement the Washington approved plan throughout the response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

(2) Approval from ecology must be received before any significant aspect of the spill response is conducted in a manner contrary to the plan unless:

- (a) Such actions are necessary to protect human health and safety; or
- (b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or
- (c) State and federal on-scene coordinators have directed such actions.

NEW SECTION

WAC 173-182-150 Post-spill review and documentation procedures. Plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if: Unified command has been established during a spill; and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

Section B--Contingency Plan Format and Content

NEW SECTION

WAC 173-182-210 Contingency plan format requirements. (1) Plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans will contain job aids, diagrams and checklists for maximum utility.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

NEW SECTION

WAC 173-182-220 Binding agreement. (1) Each plan shall contain a written statement binding the plan holder to its use. Form number ECY 070-217 may be used. The binding agreement shall be signed by the owner or operator, or a designee with authority to bind the owners and operators of the facility or vessel covered by the plan. The agreement is submitted with the plan and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

- (a) Verify acceptance of the plan and commit to a safe and immediate response to spills in Washington;
- (b) Commit to having an incident commander in the state within six hours after notification of a spill;
- (c) Commit to the implementation and use of the plan during a spill, and to the training of personnel to implement the plan; and
- (d) Verify authority and capability of the plan holder to make necessary and appropriate expenditures in order to implement plan provisions.

NEW SECTION

WAC 173-182-230 Contingency plan general content. (1) Contingency plans must include all of the content in this section.

(2) In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections on the entire pipeline may be submitted to ecology for consideration.

(ii) For vessel umbrella plans, a worst case volume for each port of operation may be submitted to ecology for consideration, if the operations of enrolled vessels differ by port.

(iii) For multiple facilities using a single umbrella plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

(a) The name, location, type and address of the facility;

(b) Starting date of operations;

(c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) List by group and amount the oil handled.

(iii) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(iv) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(5) Additional vessel plan content:

(a) Name of each vessel covered under the plan;

- (b) The name, location, and address of the owner or operator;
- (c) Official identification code or call sign;
- (d) Country of registry;
- (e) All ports of call or areas of expected operation in Washington waters;
- (f) Type of oil(s) handled (group);
- (g) Oil volume capacity by group;
- (h) Description of the operations covered by the plan.

Include a written description and diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) Special exemptions for vessel umbrella plans shall, at a minimum, include the following:

(a) In lieu of providing vessels names, call signs and country of registry, vessel umbrella plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall make the information available to ecology upon request.

(b) Umbrella plans for vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

NEW SECTION

WAC 173-182-240 Field document. (1) Each plan shall contain a field document which lists time critical information for the initial emergency phase of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that vessel umbrella plan holders shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

Umbrella vessel plans shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

WAC 173-182-250 Initial response actions. (1) Plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(2) The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery.

(3) The plan must state how safety assessment including initial air monitoring will be conducted for all types of spills, including spills to groundwater.

(4) The plan must list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly.

NEW SECTION

WAC 173-182-260 Notification and call-out procedures. (1) Each plan shall include procedures which will be taken to immediately notify appropriate parties that a spill has occurred. The plan shall identify the central reporting office or individuals responsible for implementing the notification process.

(2) Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(3) The procedure shall establish a clear order of priority for immediate notification.

(4) In addition, facility plans shall also address how notifications will be made to required government agencies for spills to ground or into permeable secondary containment, and threatened or confirmed spills to ground water.

NEW SECTION

WAC 173-182-270 Maintenance records for response equipment. (1) Plan holders and PRCs are required to maintain response equipment in a state of constant readiness, and in accordance with manufacturer specifications.

(2) Plan holders and PRCs that own equipment shall develop schedules, methods, and procedures for equipment maintenance. Maintenance records shall be kept for at least five years and made available if requested by ecology.

NEW SECTION

WAC 173-182-280 Spill management teams. (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS organizational chart. In lieu of being placed in the plan, this list may be maintained at the plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.

(c) A job description for each spill management position; except if the plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with the NWACP, then the plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of

the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) Covered vessel plan holders shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours. The plan shall include estimated time frames for arrival of the remainder of the spill management team to the spill site, or at the incident command post as appropriate.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel, including transitions between shift changes.

(5) Covered vessel umbrella plans must describe the transition from umbrella plan personnel to the vessel owner or operator's team.

Section C--Planning Standards

NEW SECTION

WAC 173-182-310 Planning standards. (1) Ecology shall apply a planning standard when determining the ability of a plan holder to meet the purposes of these regulations. Each planning standard is subject to being verified at scheduled or unannounced drills. In an actual spill event, initial deployment shall be guided by safety considerations. The responsible party must address the entire volume of an actual spill regardless of the planning standards.

(2) The planning standards described in this chapter do not constitute cleanup standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this section does not constitute failure to comply with a contingency plan for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

NEW SECTION

WAC 173-182-315 Planning standards for nondedicated work boats and operators. Each plan holder shall plan to obtain nondedicated work boats and operators that will be available to deploy GRPs, enhance skimming, to provide platforms as vessel of opportunity skimming systems, logistical support or other uses during a spill. At a minimum, the plan shall describe a plan that will support the worst case spill response with work boats and operators that could have arrived on scene beginning at forty-eight hours.

NEW SECTION

WAC 173-182-320 Planning standards for aerial surveillance. Each plan shall provide for aerial oil tracking resources capable of being on-scene within six hours of spill awareness. At a minimum, these resources must be capable of supporting oil spill removal operations for three, ten-hour operational periods during the initial seventy-two hours of the discharge.

NEW SECTION

WAC 173-182-325 Planning standards for dispersants. (1) Plan holders with vessels carrying group II or III persistent oil as a primary cargo that transit in any area where preapproval or case-by-case use of dispersants is available as per the NWACP, must plan for the use of dispersants.

(2) The plan holder must identify the locations of dispersant stockpiles capable of dispersing the lesser of five percent of the worst case spill volume or twelve thousand barrels per day, using a dispersant to oil ratio of one to twenty.

(3) The plan holder must describe the methods of transporting equipment and supplies to a staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness.

(4) These resources must be capable of being on scene within twelve hours of spill awareness.

NEW SECTION

WAC 173-182-330 Planning standards for in situ burning. (1) Based on the NWACP, plan holders operating in areas where in situ burning has an expedited approval process must plan for the use of in situ burning.

(2) The plan holder must identify the locations of two fire booms, air monitoring equipment, igniters and aircraft or vessels to be used to deploy the igniters.

(3) The fire booms must be five hundred feet in length each and have an additional one thousand feet of conventional boom, tow bridles and work boats capable of towing the boom for burning operations.

(4) The plan holder must describe the methods of transporting the equipment to a staging area, and appropriate aircraft or vessels to monitor its effectiveness at the scene of an oil discharge.

(5) These resources must be capable of being on scene within twelve hours of spill awareness.

NEW SECTION

WAC 173-182-335 Planning standards for storage. Plan holders shall identify both on-water devices and shoreside interim storage locations. For marine waters, shoreside storage can be identified to meet fifty percent of storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage. For freshwater environments, shoreside storage can be identified to meet sixty-five percent of the storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage.

NEW SECTION

WAC 173-182-345 Determining effectiveness of recovery systems. Plan holders and PRCs that own equipment shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. To avoid duplication, plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by the department. Ecology will use the criteria in ASTM International F 1780-97 (Reapproved 2002).

Determination of efficiency of recovery systems in varied operating environments and product types:

(1) For all skimmers, describe how the device is intended to be transported and deployed. List the boom and work boats associated with each water based skimming system. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

(2) For all oil recovery systems that rely on a vessel of opportunity or nondedicated transport asset, include a statement on how the asset would be located and secured. Include in the plan the mobilization time needed to ensure the assets are available, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations. This may require longer mobilization time than those found in this chapter.

NEW SECTION

WAC 173-182-348 Determining effective daily recovery capacity. (1) Plan holders and PRCs that own recovery equipment shall request an EDRC using the following procedures and the criteria in Title 33 CFR 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices."

(2) When calculating the EDRC, the formula $R = T \times 24 \text{ hours} \times E$ will be used.

R = Effective daily recovery capacity

T = Throughput rate in barrels per hour (nameplate capacity)

E = 20 percent (efficiency factor).

(3) Equipment owners may request an alternative EDRC by providing all of the following information:

(a) A description of the recovery system which includes skimmer, boom, pump, work boats, and storage associated with the device;

(b) Description of deployment methods that will be used to enhance the recovery system to maximize oil encounter rate during spills;

(c) Documented performance during verified spill incidents; and

(d) Documentation of laboratory testing using ASTM standard methods (ASTM F 631-80) or equivalent test approved by the U.S. Coast Guard.

(4) The following formula will be used to calculate the effective daily recovery capacity for this alternative approach:

$R = D \times U$

R = Effective daily recovery capacity

D = Average oil recovery throughput rate in barrels per hour

U = 10 (hours of operation). 10 hours is used for potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material.

EDRC is limited to the storage capacity of the proposed recovery system.

For each skimming system identify the oil storage associated with each recovery system.

State the storage capacity integral to the oil recovery system, if applicable. Describe how recovered oil is to be transported to/from interim storage.

NEW SECTION

WAC 173-182-350 Documenting compliance with the planning standards. The plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) For purposes of determining plan adequacy, plan holders will include time for notification and mobilization of equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the plan holder, the mobilization planning factor to be used by the plan holder, PRC and ecology is thirty minutes. For all other dedicated response equipment the mobilization planning factor is one hour. Nondedicated resources shall have a mobilization planning factor of three hours.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land and five knots for water. Ecology will use standard nautical charts and street maps and available on-line mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Plan holders may request approval for alternative notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills or unannounced drills.

(a) The request shall include date and time of performance or test, weather/sea state conditions and transportation information.

(b) If ecology accepts these alternative response times then these response times will be tested in unannounced drills to verify alternative calculations.

NEW SECTION

WAC 173-182-355 Transfer sites for covered vessels at locations where transfers occur, and for facilities with a vessel terminal.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage
6	Additional 10,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	2 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	Additional 20,000 feet of boom to be used for containment, recovery or protection could have arrived	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-360 General planning standards for covered vessel transit locations for all of Puget Sound.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
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3	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
6	Additional 10,000 feet of boom appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-365 Transmission pipelines and pipeline tank farms. (1) To determine the amount of boom necessary for the two hour standard the plan holder must identify by WRIA, surface waters of the state with the potential to be impacted by a spill from the pipeline.

- (a) To determine the two-hour booming requirements, select the widest river within the WRIA.
 - (b) Determine the average river speed at this location.
 - (i) For rivers with a current of two knots boom in the amount of three times the widest point in the river that the pipeline could affect.
 - (ii) For rivers with a current of three knots the requirement would be for five times the widest point in the river that the pipeline could affect.
 - (iii) For rivers with a current of five knots the requirement would be for seven times the widest point in the river that the pipeline could affect.
 - (2) Or alternatively, the two hour standard will be two thousand feet of boom.
 - (3) Boom required for the two hour standard shall be dedicated to spill response and should be staged in various locations along the pipeline.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
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1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	Boom available at the spill source or downstream of the source could have arrived		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-370 San Juan County planning standard. Those covered vessel and facility plan holders that transit or operate within San Juan County must meet this standard. The resources to meet the two and three hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 10,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-375 Padilla Bay planning standard. Those covered vessel and facility plan holders that transit or operate north of State Highway 20, east of a line drawn from Shannon Point on Fidalgo Island to Kelly's Point on Guemes Island, south of a line drawn from Clark Point on Guemes Island and William Point on Sammish Island must meet the following standards. Some of the GRPs may be deployed by land.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1.5	A safety assessment of the spill by trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived on scene. At least 20% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-380 Commencement Bay--Quartermaster Harbor planning standard. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°19'29"N Long. 122°27'23"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
1.5	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
2	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 10,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-385 Nisqually planning standard. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 47°06'43"N Long. 122°41'53"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 12,000 feet of boom with at least 2,400 feet of boom being calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 50% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC

12	Additional 20,000 feet of boom with at least 1,000 feet of boom calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-390 Dungeness planning standard. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°10'56"N Long. 123°06'38"W (WGS 1984) must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived on scene		
6	Additional 7,000 feet of boom with at least 3,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1 times the EDRC

12	Additional 20,000 feet of boom appropriate for all potential areas of impact for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be capable of working in open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-395 Neah Bay staging area. Those covered vessel and facility plan holders that transit or operate within a five nautical mile radius of a point at Lat. 48°23'06"N Long. 124°35'59"W (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs. The boom and recovery resources to meet the two, three and six hour standards must be resident.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the length of the largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 6,000 feet of boom with at least 4,000 feet of open water boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC

12	Additional 20,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of appropriate types of boom for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-400 Copalis, Flattery Rocks and Quillayute Needles planning standard. Those covered vessel and facility plan holders that transit or operate within the jurisdictional waters of Washington state east of the Three Nautical Mile Line and north of latitude 47°06'00"N, and south of latitude 48°09'00"N (WGS 1984) must meet the following standards. This area is very rugged, in order to accomplish deployment of resources logistical considerations will need to be planned for. Access to GRP locations may need to be done by helicopter or by land access, plans must identify all of the equipment that could be used to deploy GRPs.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet or 4 times the length of the largest vessel of open water boom whichever is less, to be used for containment, protection or recovery could have arrived on scene		
6	Additional 12,000 feet of boom with at least 6,000 feet of open water boom for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 100% of the recovery devices must be able to work in open water environments	1 times the EDRC

12	Additional 20,000 feet of boom combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 60% of the skimming capability must be able to work open water environments	1.5 times the EDRC
24	Additional 20,000 feet combination of types appropriate for containment, protection and recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-405 Grays Harbor planning standard. Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. 46°54'52.25"N Long. 124°10'26.45"W (WGS 1984) outside the entrance to Grays Harbor must meet these standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom or 4 times the length of the largest vessel of boom to be used for containment, protection or recovery could have arrived on scene		
6	Additional 6,000 feet of boom with at least 2,000 feet of open water boom and 3,000 feet of calm water - current capable appropriate for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 25% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC

12	Additional 20,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-410 Willapa planning standard. Those covered vessel and facility plan holders that transit or operate within Washington waters in a five nautical mile radius of a point at Lat. 46°44'00"N Long. 124°11'00"W (WGS 1984) outside the entrance to Willapa Bay must meet these standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 10,000 feet of boom with at least 6,000 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC

12	Additional 20,000 feet of boom with at least 1,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 50% must be able to work in open water, 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-415 Cathlamet staging area. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 36 and statute mile 42 must meet the following standards. The resources to meet the two and three must be resident

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		
6	Additional 7,000 feet of boom with at least 4,200 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC

12	Additional 20,000 feet of boom with at least 5,000 feet of calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less and 25% must be open water capable	1.5 times the EDRC
24	Additional 20,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived. At least 25% must be open water capable	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-420 Vancouver planning standard. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 99 and statute mile 107 must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill by work boat with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 6,000 feet of boom with at least 3,000 feet of boom being calm water - current capable containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-430 Tri-cities planning standard. Those covered vessel and facility plan holders that transit or operate on the Columbia River between statute mile 316 and statute mile 322 must meet the following standards.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage Volume
2	A safety assessment of the spill with trained crew and appropriate air monitoring, with 1,000 feet of boom could have arrived		
3	Additional 2,000 feet of boom, or 4 times the length of the largest vessel whichever is less, to be used for containment, protection or recovery could have arrived		

6	Additional 8,000 feet of boom with at least 4,800 feet of boom being calm water - current capable for containment, protection or recovery could have arrived	Capacity to recover the lesser of 3% of worst case spill volume or 12,000 barrels within 24-hour period could have arrived. 10% must be able to work in shallow water environments - depth of 10 feet or less	1 times the EDRC
12	Additional 20,000 feet of boom with at least 5,000 feet of boom being calm water - current capable, for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived. At least 25% of the skimming capability must be able to work in shallow water environments - depth of 10 feet or less	1.5 times the EDRC
24	Additional 20,000 feet of boom with at least 10,000 feet of boom being calm water - current capable for boom containment, protection or recovery could have arrived	Capacity to recover the lesser of 14% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-450 Planning standards for the Washington coast. These standards apply to covered vessels that enter Washington waters at the Columbia River, Grays Harbor or the Strait of Juan de Fuca, and offshore facilities.

Plan holders shall be capable of sustaining a worst case spill response and shall develop an addendum specific to Washington's coast, including:

- (1) The capability, if applicable, for in situ burning, dispersant, and mechanical recovery;
- (2) Surveillance equipment (including fixed wing, helicopters and low visibility equipment) to provide for aerial assessment of spill within six hours of spill awareness;
- (3) Time frames and mechanisms to cascade in equipment and other resources for up to seventy-two hours;
- (4) Ten thousand feet of boom appropriate for shoreline protection, containment and/or ten thousand feet of open water boom for enhanced skimming, containment or other use to arrive within twelve hours; and
- (5) Twenty thousand feet of boom appropriate for containment, protection or recovery to arrive within twenty-four hours.

Section D--Response and Protection Strategies for Sensitive Areas

NEW SECTION

WAC 173-182-510 Requirements for response and protection strategies. (1) Plan holders shall have methods to track and contain spilled oil and enhance the recovery and removal operations that are described in the plan.

(2) Each plan shall include a description of how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;
(b) The plan shall include a description of the sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics;

(c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;

(d) Identification of shellfish resources and methods to protect those resources;

(e) Identification of significant economic resources to be protected in the geographic area covered by the plan; and

(f) Each facility with the potential to impact a "sole source" aquifer or public drinking water source must identify the types of substrate and geographical extent of sensitive sites.

(3) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect.

(4) Each plan shall identify potential initial command post locations.

NEW SECTION

WAC 173-182-520 Planning standards for shoreline cleanup. Each plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations. This standard will be evaluated using the criteria found in 33 CFR Part 155 Appendix B and 33 CFR 154 Appendix C.

NEW SECTION

WAC 173-182-530 Planning standards for ground water spills. (1) Each facility plan shall include a description of the methods to be used to immediately assess ground water spills.

(2) Facility plan holders shall include contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to ground water.

NEW SECTION

WAC 173-182-540 Planning standards for wildlife rescue and rehabilitation. The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the capability to arrive on scene within twenty-four hours of spill awareness.

Section E--Plan Evaluation

NEW SECTION

WAC 173-182-610 Plan evaluation criteria. Plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans based on these conditions:

(1) Only ecology approved PRC resources, plan holder owned resources and resources guaranteed through written mutual aid agreements or letters of intent or agreement shall be counted when calculating the planning standards. In the case of nondedicated storage devices, these will be derated by fifty percent of maximum storage volume (counted at a one to two ratio) and acquisition of these resources will be tested in unannounced drills.

(2) If a plan holder operates in an area where more than one planning standard designation applies, ecology will determine the more stringent of planning standards.

(3) Ecology will count equipment if it is appropriate for the operating environment within the geographic area defined in the plan. Ecology will use criteria from sources such as the ASTM International documents, World Catalogue, manufacturer's recommendations, the Regional Response list, the federal Oil Spill Removal Organization guidelines, the *Field Operations Guide* resource typing guidelines and drills and spills to make approval and verification determinations on operating environments.

(4) Ecology will count boom if it is appropriate to the operating environment and support equipment is identified. Support equipment for boom means transportation devices, cranes, anchors, boom tackle, connectors, work boats and operators.

(5) Ecology will only count dedicated response resources towards the two hour standards.

NEW SECTION

WAC 173-182-620 Alternative method of evaluating planning standards. (1) A plan holder may request that ecology review and approve a plan based on alternative planning standards. Such requests should be submitted with the plan and shall be subject to a thirty day public review period.

(2) The proposal must include, at a minimum:

(a) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(b) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(c) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(3) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate; and

(b) The alternative compliance proposal provides an equivalent or higher level of protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(4) Ecology may reconsider an approval at any time, in response to significant plan changes.

NEW SECTION

WAC 173-182-630 Process for plan approval. (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the plan holder shall be notified of deficiencies within five days. The public review period does not begin until a complete plan is received.

(2) Once a plan is complete, ecology shall notify interested parties and make plans available for public review. Comments will be accepted during the first thirty calendar days of the review period.

(3) If the plan is approved, the plan holder receives a certificate describing the terms of approval, including plan expiration dates.

(a) Ecology may approve a plan conditionally and require a plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. Such notice will include specific reference to the regulatory standard in question.

(i) Precautionary measures may include, but are not limited to, additional information for the plan, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Precautionary measures may also include additional requirements to ensure availability of response equipment.

(ii) Plan holders who fail to meet conditional requirements or provide required changes in the time allowed will forfeit conditional approval status.

(b) If plan approval is denied, the plan holder shall receive an explanation of the factors for denial and a list of actions necessary to gain approval. The plan holder shall not engage in oil storage, transport, transfer, or other operations without an approved plan.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

PART III: DRILL AND EQUIPMENT VERIFICATION PROGRAM

NEW SECTION

WAC 173-182-700 Drill participation, scheduling and evaluation. (1) Plan holders and PRCs shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Drill Program (PREP), is relied on to test each component of the plan.

(2) Ecology shall be provided an opportunity to help design and evaluate all tabletop and deployment drills. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table below.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Plan deficiencies identified in the written evaluation may require plan holders to make specific amendments to the plan.

(6) A plan holder may request an informal review of the ecology evaluation within thirty days of receipt of the report.

NEW SECTION

WAC 173-182-710 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - one in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.

(1) Tabletop drills:

(a) Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the ICS. Role playing shall be required in this drill.

(b) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill, except that: At ecology's discretion, away team members may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every five years.

(2) Equipment deployment drills:

(a) During the triennial cycle, deployment drills shall include a combination of owned and contracted assets.

(b) Plan holders should ensure that each type of equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a GRP strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer.

(3) Plan holders may receive credit for GRP deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules and participates in the drill.

(4) Ecology initiated scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

NEW SECTION

WAC 173-182-720 Evaluation criteria. The PREP guidance document lists fifteen core components that shall be demonstrated during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate drills. The core components are as follows:

(1) Notifications: Test the notifications procedures identified in the plan.

(2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) Ability to operate within the response management system described in the plan. This includes demonstration of the ICS staffing and process identified in the plan.

(4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.

(5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge and provide continuing assessments of the effectiveness of the tactical operations.

(6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) Recovery: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product. Includes mitigation and removal activities, e.g., dispersant use, in situ burn use, and bioremediation use.

(8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimode. Transportation both for execution of the discharge and support functions.

(12) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(14) Procurement: Demonstrate the ability to establish an effective procurement system.

(15) Documentation: Demonstrate the ability of the plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

NEW SECTION

WAC 173-182-730 Other ways to get drill credit. (1) Plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate and evaluate the spill response. Credit from spills shall not entirely alleviate the plan holder's responsibility to drill.

To obtain credit, a written request to ecology shall be made within sixty days of completion of the cleanup operations.

(a) The request shall include documentation supporting the components of WAC 173-182-720.

(b) Plan holders shall have up to ninety days to submit a lessons learned summary supporting the request for drill credit.

(2) Plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self certification documentation shall be provided to ecology within thirty days of the drill;

(d) The plan holder has one response plan for a number of facilities or a fleet of vessels; and

(e) Plan holders seeking credit for a scheduled out-of-state drill shall notify ecology in writing ninety days in advance, to provide ecology an opportunity to participate.

NEW SECTION

WAC 173-182-740 Drill requirement waivers. (1) Plan holders may request a waiver for a deployment or tabletop drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Plan holder's requests for a drill waiver will be made available for public review for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the letter.

PART IV: PRIMARY RESPONSE CONTRACTOR (PRC) STANDARDS

NEW SECTION

WAC 173-182-800 PRC application. (1) To become a state-approved PRC, a response contractor must:

- (a) Submit an application as set forth in subsection (2) of this section;
- (b) Have a process to provide twenty-four hour/day contact for spill response;
- (c) Commit to begin mobilization efforts immediately upon notification but no later than one hour from notification of a spill;
- (d) Maintain equipment in accordance with manufacturer specifications; and
- (e) Assist plan holders in meeting the requirements for plans and drills in Washington.

(2) To apply, a contractor should complete, sign and submit the application form number ECY 070-216.

NEW SECTION

WAC 173-182-810 Submittal and review of contractor applications. (1) Once an application is received, ecology will determine whether it is complete. If not, the response contractor shall be notified of deficiencies in writing and given a time period for submitting the required information.

(2) Equipment and personnel readiness will be verified once the application is approved. Ecology may inspect equipment, training records, maintenance records, drill records, and may request a test of the call-out procedures, and require operation of each type of equipment listed in the application. These inspections may be conducted at any/all equipment locations. Any resources not on-site at the time of an inspection shall be accounted for by company records.

(3) If the application is approved and the verification is satisfactory, the contractor shall receive a letter of approval describing the terms of approval, including expiration dates and EDRC of the recovery equipment. PRC approvals will be reviewed by ecology every three years. Applications shall be resubmitted forty-five calendar days in advance of the expiration date.

(4) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval.

(5) Approval of a response contractor by ecology does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

NEW SECTION

WAC 173-182-820 Significant changes require notification. (1) The PRC is responsible to provide written notification to ecology and plan holders to whom they are obligated, within twenty-four hours, of any significant change in the information reported in the approved application. The notice shall include the identification of back up resources sufficient to maintain the PRC readiness level, and the estimated date that the original equipment shall be back in full service. Changes which are considered significant include loss of equipment that affect the planning standard spreadsheet of any plan holder covered by the PRC, personnel identified in ICS positions by plan holders, changes in equipment ownership, or a greater than ten percent decrease in available spill response equipment. Failure to report changes could result in the loss of PRC approval. Notification by facsimile or e-mail will be considered written notice.

(2) If ecology determines that PRC approval conditions are no longer met, approval may be revoked or conditionally modified. The PRC will receive a written notice of the loss of approval or conditional modifications and a time period to either appeal or correct the deficiency.

(3) Ecology will immediately notify plan holders of changes in the approval status of PRC

PART V: RECORDKEEPING AND COMPLIANCE INFORMATION

NEW SECTION

WAC 173-182-900 Recordkeeping. Ecology may verify compliance with this chapter by examining training and equipment maintenance records, drill records, accuracy of call-out and

notification lists, spill management team lists, ICS forms, waste disposal records, post-spill reviews and records on lessons learned.

NEW SECTION

WAC 173-182-910 Noncompliance. (1) If an owner or operator of a covered vessel, onshore or offshore facility, a person or plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

- (a) Place conditions on approval; and
- (b) Require additional drills to demonstrate effectiveness of the plan; or
- (c) Revoke the approval status.

(2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(3) Any violation of this chapter may be subject to the enforcement and penalty sanctions.

(4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a covered vessel, facility or person is in violation of this section shall be considered a separate violation.

NEW SECTION

WAC 173-182-920 Operation without plan. (1) A covered vessel may not enter or operate on the waters of the state without an approved, or conditionally approved, contingency plan, except that a covered vessel not in compliance with this chapter may enter waters of the state if the Coast Guard has determined that the vessel is in distress.

(2) The owner or operator of an onshore or offshore facility may not operate without an approved, or conditionally approved, plan nor transfer cargo or passengers to or from a covered vessel that does not have an approved, or conditionally approved, contingency plan. The owner or operator of a covered vessel may not transfer oil to or from an onshore or offshore facility that does not have an approved or conditionally approved contingency plan.

(3) Ecology may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. In the case of a continuing violation, each day's continuance shall be considered a separate violation.

(4) Any person found guilty of willfully violating any of the provisions of this section, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

NEW SECTION

WAC 173-182-930 Severability. If any provision of this chapter is held invalid, the remainder of the rule is not affected.

Public involvement process

Oil Spill Contingency Rules

Chapter 173-182 WAC

Public Involvement Process

Ecology has made all attempts to include the public and interested stakeholders in our decision making process as required by State statute (Chapter 34.05 RCW of the Administrative Protection Act). The following is an outline of the rule process for the Oil Spill Contingency Plan Rules (Chapter 173-182 WAC).

Timeline

February 2000 Original filing of the CR 101

August 2002 Formation of Rule Advisory Committee

Advisory Committee: To ensure a balance process and capture a broad array of stakeholders potentially affected by this rulemaking, participation on the committee was by Ecology invitation. The following table shows committee members and organizations represented. Several other groups regularly attended meetings and participated as members of the audience. The U.S. Coast Guard, Washington Department of Fish and Wildlife, the Oregon Department of Environmental Quality, and NOAA, as well as industry representatives from MSRC, Olympic Pipeline and Foss, participated in the committee proceedings. Advisory committee meetings were held from the August 2002 through October of 2005.

Informal Stakeholder Discussions: This was performed throughout the rule process, and most rigorously after a working draft had been established. Workshops were conducted and held immediately prior to the hearings. Stakeholder discussions included advisory committee meetings, reviews of draft rule language, and individual stakeholder meetings.

June 2006 Filing of the CR 102(Proposed rule language)

At the time of the filing of the CR 102, the general public is given opportunity to review rule language and give public comments on proposed rules. The public comment period opened June 7th and closed July 26th. All comments made during this period are recorded and Ecology is required to respond to comments received (Concise Explanatory Statement (CES)).

Formal Public Discussion: Public hearings were held on July 11th through July 19th in Vancouver, Pasco, SeaTac, Bellingham and Port Angeles.

Publications: Ecology developed several focus sheets throughout the process as an effort to communicate to the public about the rule process, inform and clarify intent of rules. Please see attached appendix.

September 25, 2006 Filing of CR 103(Rule Adoption)

The rule is considered adopted once the Director signs. The rule will become effective 31 days after the CR-103 is filed. In an effort to make sure all interested parties and stakeholder groups are notified, Ecology will send out the Rule Adoption Notice, press releases, emails and letters. The final rule and information about the rule will be posted on Ecology's web site.

Contingency Plan Rule Advisory Committee Members

Stakeholder Group	Names
<i>Department of Ecology</i>	Dale Jensen, Chair Program Manager
	Linda Pilkey-Jarvis, Alternate Chair Preparedness Unit Manager
<i>Committee Facilitator</i>	Lynn Lefkoff EnviroIssues
<i>Primary Response Contractors</i>	Richard Wright, Primary Clean Sound Cooperative
	Brent Way, Alternate Clean Rivers Cooperative
<i>People for Puget Sound</i>	Bruce Wishart, Primary People for Puget Sound
	Kathy Fletcher, Alternate People for Puget Sound
<i>Surfrider Foundation</i>	Kevin Ranker, primary Surfrider Foundation
	Ian Miller, Surfrider Foundation
<i>Puget Soundkeepers Alliance & Audubon Society</i>	Lee Moyer, primary Puget Soundkeepers Alliance
	Alternate
<i>Aquaculture</i>	Peter Becker, primary Little Skookum Shellfish Growers
	Alternate
<i>Umbrella planholder: Fishing vessels, cargo vessels, passenger vessels, tank ships on the Columbia River</i>	Liz Wainwright, primary Maritime Fire & Safety Association
	Alternate
<i>Steamship Operators, Columbia River</i>	Jim Townley, primary Columbia River Steamship Operators Association
	Alternate
<i>Steamship Operators, Puget Sound</i>	Mike Moore, primary Executive Director Puget Sound Steamship Operators Association
	Alternate
<i>Umbrella planholder: Fishing vessels, cargo vessels, passenger vessels, tank ships in Puget Sound</i>	John Felton, primary WA State Maritime Cooperative
	Alternate
<i>Local Government</i>	Honorable Mike Doherty, primary
	Joe Ciarlo, alternate, Dan McKeen
<i>Emergency Management</i>	Neil Clement, Primary Whatcom County Emergency Management
	Alternate
<i>Petroleum Tank Barges</i>	John Crawford, Primary Foss Maritime
	Jerry McMahan, alternate Vice President, Pacific Regional Office American Waterways Operators
<i>Small facilities</i>	Holly Robinson, Paul Jewel primary Tidewater

	Brad Roberson, alternate Rainier Petroleum Corporation
<i>Tribal Nations</i>	Primary Chad Bowchop
	Alternate
<i>Western State Petroleum Association: tank ships, pipelines, large facilities</i>	Frank Holmes, primary
	Dave Sawicki, primary BP Cherry Point
	John Schumacher, alternate Tesoro NW Refinery
	Susie King, Nicole Alessi, Mike Condon, Gary Saenz
<i>Oceans Advocates</i>	Fred Felleman, primary Northwest Director
	Alternate
<i>Washington State Tourism</i>	Jim Pearman East King County Convention & Visitors Bureau
	Alternate



Focus on Preparedness

from Spill Prevention, Preparedness, and Response Program (Spills)

Overview

The 1990 Oil and Hazardous Substance Spills Act, amended by the 1991 Oil Spill Prevention Act, requires plan holders to prepare for their worst case spill by conducting drills, pre-positioning equipment and training personnel. The statute directs the Department of Ecology (Ecology) to develop rules, which set minimum standards for facilities, and vessel contingency plans and primary response contractors in order to prepare and respond to oil spills in Washington State.



Spokane River boom deployment.

Contingency Planning

Companies who handle or transports crude oil or refined oil products as cargo must have a government-approved contingency plan for preventing and responding to spills. This plan is a written document that describes how the company will respond to an oil spill, train their personnel, and what equipment they will have access to in case of a spill. The requirements for what companies must include in their plan depend on the type of vessel or facility, the location, and the amount and type of cargo involved. Washington oil handling facilities

near waterways that transfer oil to/from tank vessel or pipeline, cargo and passenger vessel 300 gross tons or more (non-tank vessels), and all tank vessels are to prepare contingency plans for oil spill response.

There are three major areas Ecology focuses on when preparing for an oil spill: planning standards, drill program, and primary response contractors.

Planning Standards

Planning standards are used to prepare for a worst case spill situation. The planning standards include requirements for oil spill assessment, boom, recovery, storage, in-situ burn, dispersants, shoreline cleanup, aerial observation, and workboats. When submitting a contingency plan a company must describe how they will meet the planning standards given their location, where they conduct oil transfers, and where they travel in Washington State.

Ecology will use the planning standards in the rule to determine if a company's contingency plan is adequate. The rule includes standards for facility and vessel transfer locations; high risk areas in the state, vessel transit locations, pipelines, and pipeline tank farms. Ecology has developed each of these standards to address the risk posed and to ensure that a minimum amount of equipment and personnel are available if a spill occurs.





Drill Program- Triennial Cycle

Spill drills are a way to test a company's oil contingency plan. Drills enable response personnel to become knowledgeable and proficient in the strengths and weaknesses of contingency plans, equipment, and procedures by testing them in different drill scenarios. Drills are an essential tool in determining contingency plan adequacy.

The drill requirements in the state rule are very similar to those found in the Federal program. Ecology evaluates all drills and provides the plan holder with feedback on areas where their contingency plan is inadequate. In addition Ecology shares lessons learned with all plan holders in the state and provides input to plan holders while they develop or update their plans.

Primary Response Contractors (PRC)

Primary Response Contractors (PRC) are contractors approved by the state who can respond to oil spills to assist in preventing the spread and clean-up of oil after a spill occurs. To meet the planning standards plan holders must use approved primary response contractors, or with company's owned equipment and personnel.

The contingency plan rule describes the requirements for submitting a PRC application and the 45-day-review process. PRC approval criteria includes, verification of equipment and personnel readiness, including ability to meet a one hour initial mobilization requirement, and compliance with all appropriate personnel safety and training requirements. The approval process allows the state to monitor the operational readiness of the state's response system and equipment.

For more information visit our website:
www.ecy.wa.gov/programs/spills/spills.html.

If you need this publication in an alternate format, please call Spills Program at 360-407-7455. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Drill Cycle

A plan holder must schedule drills in advance and ensure Ecology has the opportunity to attend, participate, plan and evaluate the drills. A plan holder must hold the following drills during a triennial cycle:

- 3 table top drills (one per year)
 - 1 of which must be a worst case drill
- 6 deployment drills (two per year)
 - 2 of which must be a Geographic Response Plan (GRP) drills

During the triennial cycle Ecology may call unannounced drills on plan holders that may test any component of the contingency plan.

To become a state approved PRC you must:

- Submit an application;
- Have a process to provide 24 hour/day contact for spill response; and
- Commit to begin mobilization efforts immediately but no longer than 1-hour from notification of a spill.



Focus on *Oil Spill Contingency Plans Rule*

Key Issues from Responsive Summary

Response Standards

Performance standards-1 and 2 hour

This is not a change. The 1 and 2 hour standards have always been performance based. These require a spiller to begin deployment, not necessarily to complete it. Response personnel must be on-site ready to go, provided that the deployment can be done safely.

Initial deployment at a downstream location if that is the most appropriate, includes nearby GRPs as initial deployment potential.

There has been a misunderstanding that the early boom deployment standards require booming a vessel even if this wasn't safe or feasible. This may be because the early booming standard is written in a way that ties it to the size of the vessel (4X the length of the vessel). We have added language/concept about downstream location to clarify that issue.

Dedicated/Non-Dedicated Equipment and Personnel

Dedicated means that it is solely committed 100% of the time to spill response, otherwise it is inconsistently available. For the 1 and 2 hour standards, only dedicated equipment will be used. Initially we considered 6 hours, but found it difficult to implement. We will be studying the effect of the 6 hour non-dedicated equipment on drills and in spills.

Planning Standards

Federal vs. State

The environment and climate in Washington State require us to have our own stringent standards for spill preparedness. This means in all locations where spills may occur. We have always said we are at the very least bringing our guidance into rule. This should no longer even be a discussion point. Things we can discuss are phase-in times, and gathering data for the future.

Calculating response times: Measurable standards

We've added things like mobilization times, equipment ownership and travel time, call out time and general methodology to calculate whether the standards are met. This methodology has been taken directly from the federal program.

Outer Coast protection

We are pulling over the guidance into rule. The standards will drive the caching of equipment around areas where spill risks are greater (at the entrances). We have jurisdiction as vessels enter into the Strait of Juan de Fuca, Grays Harbor and Columbia River. We have modified the outer coast zones to afford more opportunities to stage equipment and we intend to hold exercises on the outer coast and continue to improve our ability to respond to this incredibly rugged and fragile environment.

We absolutely see the need to discuss an Emergency Response System for the Strait, and will put that on the agenda for the future. Two things we have done is to set standards that require caches and continued to fund the rescue tug.

Prevention Credits

Credit for prevention measures is a positive thing to promote, as long as the measures are measurable and enforceable, and the trade off is meaningful. We brainstormed a good list of possible prevention actions, but weren't able to find measurable standards that could be applied consistently.

Storage

Planning standards generally 1 times EDRC at 6 hours and 3 times EDRC for the rest of the standards.

We have landed in a position which we believe affords the minimum protection. We intend to continue studying this issue. We have strengthened on water storage capacity by limiting the amount of shore side storage that can be counted towards planning standard credit. We listened to your comments on the first draft about the initial need for storage and you will see a change in the second draft.

Another strengthening position is our view on requiring systems for recovery and storage. As we assess capability, we will be looking to see storage associated with each skimming system and have evolved from our system where numbers were a game.

PRC's

Systems

Boom, storage and workboats associated with skimmers. If there are shortfalls this method may help to illuminate them. As we assess capability, we will be looking to see storage associated with each skimming system and have evolved from our system where numbers were a game. We are not just looking for a total, but appropriate to the skimmers, recovery systems and the environment.

Vessel of Opportunity Skimming Systems

Continue with our study to determine if more and different kinds of vessels are needed and ways to enhance the current system. Securing Vessels of Opportunity is currently done on an ad-hoc basis.

Operating Environments

Equipment counted towards planning standards must be appropriate for the operating environment. This is a particular issue for the Strait and the outer coast, and shallow or fast water environments. We didn't classify zones as a particular type of operating environment.

When reviewing applications, Ecology will use data from sources such as the World Catalogue, manufacturer's recommendations, the Regional Response list, the Federal OSRO guidelines, the Oil Field Operations Guide (FOG) resource typing guidelines to make approval and verification determinations.

Contract/Letter of Intent

Our experience has been that we need to clarify coverage and commitment between the plan holders and PRCs. We need to understand what level of commitment a PRC has towards the plan holder. For example, initial response capability, response standards, planning standards, incident management team, initial incident commander.

Environmental Protection

Shellfish language

New requirements for plan holders to protect shellfish resources. We are working through the NW Area Plan and look forward to your support.

Boom at the 6, 12 and 24 hour standards

We have done a detailed analysis of the GRP's and feel very justified in our continued need to have boom available to respond at 6, 12, and 24 hours.

Ground Water

We continue to see problems with spills to ground water or to soil that concern us. Issues are reporting requirements, lessons learned from near misses, and slow and unorganized responses which in some cases have led to wider spread ground water contamination. We put in minimum notification requirements and the need to immediately investigate spills to containment. We also encourage plan holders to consider identifying resources that could be used in a ground water spill.

Shoreline Cleanup

Plan for people, equipment and training. While you have seen from the modeling we did that it looks like shoreline impacts are not immediate, but we need to be prepared to protect the critical habitat as soon as possible. 12 hours to have a plan for equipment and personnel is very reasonable, we will continue to evaluate this standard in drills and spills.

Spill Management Teams

For Vessel plan holders, an initial incident commander representative on scene immediately and Incident Initial IC on scene within 4 hours of notification. This is critical, our lessons learned from the Dalco Passage spill identified the need for a strong Initial Incident Commander. We feel this person must be on scene to ensure the state and federal agencies that the spill is being handled appropriately.

How Can I Be Involved in the Rule Amendment Process?

Ecology will actively seek ideas for issues that need to be addressed in the rule revision. The information received will be compiled into issue papers to be presented at a series of workshops. In addition, once draft rule language is written, Ecology will sponsor workshops and hearings to present the proposed changes to the public. If you would like to be notified of the public involvement opportunities or wish more information, please contact: *Linda Pilkey-Jarvis, Department of Ecology, Spill Prevention, Preparedness, & Response, PO Box 47600, Olympia WA 98504-7600 or email: jpil461@ecy.wa.gov.*

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