



DEPARTMENT OF
ECOLOGY
State of Washington

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-183 WAC, Preassessment Screening
and Oil Spill Compensation Regulations

3/2/09

Publication: 09-08-006

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CONCISE EXPLANATORY STATEMENT

I. Introduction

- ◆ Identify the reasons for adopting this rule (RCW 34.05.325(6)(a)(i)):

In 2007, Senate Bill 5552 increased the upper limit of Natural Resource Damage Assessment (NRDA) compensation from \$50 to \$100 per gallon of oil spilled. This rule implements the Legislature's changes to the law.

- Natural Resource Damage Assessment (NRDA) mathematical formula multipliers will be changed in Washington Administrative Code (WAC) 173-183-830, 173-183-840, 173-183-850, and 173-183-860 so that the full \$1 to \$100 per gallon range of compensation mandated in statute can be calculated.
 - Upper ceiling limit values will be changed to reflect the \$1-\$100 per gallon range in WAC Chapters 173-183-830, 173-183-840, 173-183-850, and 173-183-860.
- ◆ Identify the adoption date of rule and effective date of rule.

This rule will be adopted on March 10, 2009, and effective April 10, 2009.

II. Describe Differences between Proposed and Final Rule

- ◆ Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):
- No changes were made between the proposed rule and the final rule that is being adopted.

III. Response to Comments

- ◆ Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so (RCW 34.05.325(6)(a)(iii)):

- Ecology received one comment on this rulemaking. It was sent electronically from Mr. Kip Clinton on January 6, 2009.

Comment: “I believe that an upper limit of \$100.00/gallon of spill is too LOW. It should be twice that high, especially if the rule grant Ecology the discretion to adjust the value from a minimum of \$1.00. Since rule changing is not done annually, a higher discretionary limit allows the rule to be pertinent for a longer time frame.”

Ecology’s Response: Ecology appreciates Mr. Clinton’s comment. The upper limit of \$100 per gallon of oil spilled is set in statute under RCW 90.48.366. When using the compensation schedules in Chapter 173-183 WAC, Ecology does not have the statutory authority at this time to calculate damages in a range that exceeds \$100 per gallon. Additionally, Ecology would need statutory authority to build in a cost-of-living or fiscal-growth-factor annual adjustment.

- Ecology received comments from Washington State Department of Natural Resources (DNR) on February 11, 2009, after the close of the comment period. The comments are supportive of the rule proposal.

Comment: “DNR manages about 2.6 million acres of state-owned aquatic lands, including the bedlands of Puget Sound and the coast, many of Washington’s beaches, navigable rivers, and natural lakes, all of which may be affected by oil spills. This rule would directly affect how the citizens of the state would be reimbursed for damages to these lands as well as adjacent aquatic lands.

On behalf of the people of Washington, DNR works to protect the environment, provide opportunities for public use and access, support water-dependent uses and promote sustainable use of natural resources. This rule is in line with our mandates for the following reasons:

- 1) Oil spills often halt or impede public access of aquatic resources during and oftentimes for long periods of time after a spill has occurred. This rule would allow for just compensation for these impacts.
- 2) This modification to the compensation schedule provides further motivation for water-based commerce to eliminate potential for spills, therefore ensuring these uses can occur in a sustainable manner.
- 3) Washington State is one of the few states where a Compensation Schedule has been developed and/or is used effectively to assess damages and calculate natural resource damages from minor- to

medium-sized oil spills. It is DNR's hope that rules such as these will help to promote sustainable use of natural resources by motivating all that use these waters to be ever cautious of causing spills in any amount to aquatic environments.

4) DNR works in partnership with the state departments of Ecology, Fish and Wildlife, Health, Archeology and Historical Preservation, and Parks and Recreation Commission to calculate the monetary value of natural resources injured by a spill. DNR supports the compensation this rule change will provide as it will be used to restore and enhance aquatic environments damaged by these spills.

5) We support this rulemaking in an effort to achieve our State's Zero Spill goal."

Ecology's Response: Ecology acknowledges and appreciates the comments from Washington State Department of Natural Resources.

IV. Summary of Public Involvement Opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

List or describe:

- ◆ workshop dates and locations

January 27, 2009
Federal Way City Hall, City Council Chambers
33325 8th Ave S
Federal Way, WA 98003

January 28, 2009
Washington State University, Vancouver Campus
Administration Bldg, Room 129
14204 NE Salmon Creek Ave
Vancouver, WA 98686

February 2, 2009
Highline Community College
Artists Lecture Center (Bldg 7)
2400 S 240th Street
Des Moines, WA 98198

- ◆ hearing dates and locations

January 27, 2009
Federal Way City Hall, City Council Chambers
33325 8th Ave S
Federal Way, WA 98003
Number of persons in attendance: 00

January 28, 2009
Washington State University, Vancouver Campus
Administration Bldg, Room 129
14204 NE Salmon Creek Ave
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Number of persons in attendance: 07

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Number of persons in attendance: 01

- ◆ mass mailing pieces (i.e., FOCUS sheet, news releases)

The pre-proposal inquiry (CR-101) was distributed to approximately 700 persons identified as interested in this rulemaking on August 19, 2008. The rule proposal (CR-102) and rule proposal notice were distributed electronically to approximately 700 persons on December 19, 2008. A news release regarding the rule proposal with workshop and public hearing date/location information was distributed to media on January 6, 2009.

- ◆ advertisements and/or newspaper announcements

Paid notices were published on January 12, 2009 in the Seattle Times, Tacoma News Tribune, and "The Columbian" in Vancouver, Washington.

V. Appendices

- ◆ Copy of all written comments received during the comment period.
- ◆ Copy of Rule Proposal Notice, news release, paid advertisements, and Washington State Register notices for CR-101 & CR-102 filing.
- ◆ Copy of the final rule text.