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State of Washington

Small Business Economic Impact Statement

Chapter 173-182 WAC

Oil Spill Contingency Plan

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Small Business Economic Impact Statement

Chapter 173-182 WAC
Oil Spill Contingency Plan

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Executive Summary

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined the proposed rule amendments (Chapter 173-182 WAC; Oil Spill Contingency Plan) are likely to have a disproportionate impact on small business. Therefore, Ecology included disproportion-minimizing features in the rule where it is legal and feasible to do so.

This Small Business Economic Impact Statement (SBEIS) presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by Ecology.
- Expected net impact on jobs statewide.

This document is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #16-08-015), which contains more in-depth discussion of the analyses, as well as references.

A small business is defined by the RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the way oil spill contingency planning would be regulated in the absence of the rule amendments. The SBEIS only considers costs to "businesses in an industry" in Washington State.

While several of the covered pipelines are operated by businesses with many thousands of employees (at the parent company level), at least one has indicated that they currently employ less than 50 employees. Compliance costs for the proposed rule amendments do not vary by business size. This inherently causes disproportional impacts, with small firms (firms with less than 50 employees) facing larger compliance costs on a per-employee basis than larger firms.

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and must therefore include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Ecology included elements in the proposed rule amendments that reduce costs, but may be available to small and large businesses. Elements of the proposed rule amendments that reduce compliance costs include:

- Allowing phase-in for plan holders allows them to update plans for new requirements when they submit normally scheduled updates in some cases.
- By providing standards specifically for tank farms, it allows them to use smaller storage volumes than would have otherwise been prescribed. These higher volumes may not be necessary in some of the inland environments tank farms are located in.

Ecology also has implementation plans that:

- Include provision of many of the spreadsheets and forms covered pipelines would need to use.

The proposed rule amendments will result in transfers of money within and between industries; plan holders and primary response contractors (PRCs) complying with the rule amendments will pay employees or businesses providing equipment or services.

Assuming the work done to meet the proposed requirements is completed internally, the Washington State economy could experience a net loss of two to three jobs over 20 years, as compliance costs incurred internally are not fully offset by transfers of funds to entities providing response assets and personnel.

Chapter 1: Introduction and Background

Based on research and analysis required by the Regulatory Fairness Act (RFA) – RCW 19.85.070 – Ecology has determined the proposed rule amendments (Chapter 173-182 WAC; Oil Spill Contingency Plan) are likely to have a disproportionate impact on small business. Therefore, Ecology included disproportion-minimizing features in the rule where it is legal and feasible to do so.

This Small Business Economic Impact Statement (SBEIS) presents the:

- Background for the analysis of impacts on small business relative to other businesses.
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A small business is defined by the RFA as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the way oil spill contingency planning would be regulated in the absence of the rule amendments. The SBEIS only considers costs to "businesses in an industry" in Washington State. This means that impacts, for this document, are not evaluated for non-profit or government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

1.1 Description of the proposed rule

The proposed rule amendments:

- Update definitions to ensure clarity and consistency with existing federal regulations.
- Clarify the Worst Case Discharge calculation for pipelines.
- Create a new pipeline geographic information planning standard which will use available geo-referenced data to support preparedness planning and initial decision making during pipeline oil spills.
- Enhance our existing air monitoring requirements for pipelines to ensure safety of oil spill responders and the general public.
- Enhance our spills to ground requirements to ensure rapid aggressive and well-coordinated responses to spills to ground which could impact ground water.
- Update our pipeline planning standard requirements to ensure the equipment required is appropriate for the environments pipelines may impact.
- Expand the Best Achievable Protection (BAP) Review Cycle to facilities and pipelines.
- Other changes to clarify language and make any corrections needed.

1.2 Reasons for the proposed rule

The rule requirements were last updated for pipelines in 2006. At that time the pipeline planning standards were developed to align with the marine oil terminal standards. In Washington pipelines exist in both marine and inland areas. After several years of implementing the rule, we have identified the need to update our standards to ensure that required oil spill response equipment is appropriate for the pipeline risks and operating environments (marine and inland). We also feel the need to better incorporate and embrace available technology and geo-referenced data in our planning requirements.

Increased crude-by-rail transport has changed the risk picture for oil spills in Washington State. During the 2015 legislative session, the legislature directed Ecology to apply the concept of Best Achievable Protection to facilities. This includes pipelines.

1.3 Regulatory baseline

In most cases, the regulatory baseline for analysis is the existing rule. Where there is no existing rule, federal and local regulations are the baseline. In the case of the proposed rule amendments, the existing state and federal requirements comprise the baseline. See the associated Cost-Benefit Analysis for extensive discussion of the baseline.

The federal component of the baseline consists of requirements for oil spill response plans in 49 CFR Part 190. The state component of the baseline consists of the rule as currently written.

Chapter 2: Compliance Costs

The costs analyzed here include:

- Pipeline plan holder phase in.
- General plan content – redefine Worst Case Discharge (WCD) and include concept of response zone.
- Planning standards for pipelines carrying crude oil.
- Identification of all locations where pipeline crosses a shoreline of statewide significance to identify necessary planning points.
- Geographic information planning standards for pipeline plan holders.
- Pipeline planning standards for air quality monitoring.

Ecology estimated present value compliance costs over 20 years.

There are currently seven approved pipeline contingency plans that this rule applies to:

- Kinder Morgan Transmountain Pipeline LLC
- Olympic Pipe Line Company
- Phillips 66 Integrated Contingency Plan
- Tesoro Logistics NW Pipeline
- Tidewater Transportation and Terminals
- U.S. Oil & Refining Co. and McChord Pipeline Co.
- Targa Sound Terminal

The total estimated costs over 20 years due to the proposed rule amendments ranges from $170,500 to $251,200.

Chapter 3: Determination of proportionality

While several of the covered pipelines are operated by businesses with many thousands of employees (at the parent company level), at least one has indicated that they currently employ less than 50 employees. Compliance costs for the proposed rule amendments do not vary by business size. This inherently causes disproportional impacts, with small firms (firms with less than 50 employees) facing larger compliance costs on a per-employee basis than larger firms

We conclude that the proposed rule is likely to have disproportionate impacts on small businesses, and must therefore include elements in the proposed rule to mitigate this disproportion, as far as is legal and feasible.

Chapter 4: Action Taken to Reduce Small Business Impacts

Ecology included elements in the proposed rule amendments that reduce costs, but may be available to small and large businesses. Elements of the proposed rule amendments that reduce compliance costs include:

- Allowing phase-in for plan holders allows them to update plans for new requirements when they submit normally scheduled updates in some cases.
- By providing standards specifically for tank farms, it allows them to use smaller storage volumes than would have otherwise been prescribed. These higher volumes may not be necessary in some of the inland environments tank farms are located in.

Ecology also has internal implementation plans that:

- Include provision of many of the spreadsheets and forms covered pipelines would need to use.

Chapter 5: Small Business and Government Involvement

Ecology involved small businesses and local government in its development of the proposed rule, using:

- Providing notice that including updates about rule development and how to get involved:
  - Letter to tribes
  - Spills listserv (mailing list)
  - Press release
  - WAC Track listserv
- Rule workshop announcements:
  - Email to tribes
  - Spills listserv (mailing list)
  - Press release
  - Email to interested parties:
    - Washington Environmental Council
    - Western States Petroleum Association
    - Association of Washington Cities
    - OR Department of Environmental Quality
    - Planning Association of Washington
    - Washington Public Ports Association
    - Washington State Association of Counties
    - CA DFW Office of Spill Prevention and Response
    - ID Department of Environmental Quality
    - Utilities and Transportation Commission
    - U.S. DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA)
    - Federal Railroad Administration (FRA)
    - Environmental Protection Agency (EPA)
    - The Pipeline Safety Trust
    - Citizens Committee on Pipeline Safety
    - Pacific States/BC Task Force
  - Regulated industry
    - Pipelines regulated by the existing rule
    - Other entities regulated by the Spills Program
  - Local Emergency Planning Committee (LEPA) contacts – County Emergency Managers
  - Public workshop and webinar

Chapter 6: NAICS Codes of Impacted Industries

The Standard Industry Classification (SIC) system required in the RFA has long been replaced by the North American Industry Classification System (NAICS).

The proposed rule is likely to impact covered pipelines in NAICS 486 (Pipeline Transportation).

If primary response contractor's (PRCs) incur costs, they (at the parent company level) are classified as:

- NAICS 2371 (Utility System Construction)
- NAICS 3366 (Ship and Boat Building)
- NAICS 4883 (Support Activities for Water Transportation)
- NAICS 5417 (Scientific Research and Development Services)
- NAICS 5619 (Other Business Support Services)
- NAICS 5629 (Remediation and Other Waste Management Services)
- NAICS 8139 (Business, Professional, Labor, Political, and Similar Organizations)

Chapter 7: Impact on Jobs

Ecology used the Washington State Office of Financial Management's 2007 Washington Input-Output Model[1] to estimate the impact of the rule on jobs in the state. The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output.

The proposed rule amendments will result in transfers of money within and between industries; plan holders and PRCs complying with the rule amendments will pay employees or businesses providing equipment or services.

Assuming the work done to meet the proposed requirements is completed internally, the Washington State economy could experience a net loss of two to three jobs over 20 years, as compliance costs incurred internally are not fully offset by transfers of funds to entities providing response assets and personnel.

These prospective changes in overall employment in the state are actually the sum of multiple small increase and decreases across all industries in the state.

[1] See the Washington State Office of Financial Management's site for more information on the Input-Output model. http://www.ofm.wa.gov/economy/io/2007/default.asp