WASHINGTON STATE
DEPARTMENT OF
ECOLOGY

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

CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-180 WAC, *Facility Oil Handling Standards*

09/25/2006
Publication: 06-08-023

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CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF

CHAPTER 173-180 WAC, Facility Oil Transfer Rule

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CONCISE EXPLANATORY STATEMENT

I. Introduction

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

The legislature of the state of Washington established a goal of zero oil spills in Washington State waters.[1] *In order to achieve this goal, the Department of Ecology (Ecology) has adopted minimum standards for safe oil transfer operations in Washington State waters. This rule attempts to use a scaled approach to prevent oil from reaching state waters due to operational error, human errors, or improper oil-handling equipment design and operations.*

Recognizing that even with a zero spill goal oil spills will still occur, this rule also attempts to minimize the size and impacts of spills and facilitate the coordination of local, state, regional, tribal and other prevention and contingency plans.
The Legislature granted Ecology the authority to adopt these rules under the following statutes:

1. *RCW 88.46.160 provides statutory authority for regulating the transfer of oil on or over waters of the state.*
2. *RCW 90.56.220 provides statutory authority for developing operations and design standards and implementing a compliance program established by this chapter.*
3. *RCW 90.56.230 provides statutory authority for operations manual preparation and review requirements established by this chapter.*
4. *RCW 90.56.220 provides statutory authority for the personnel training and certification requirements established by this chapter.*
5. *RCW 90.56.200, 90.56.300, and 90.56.310 provide statutory authority for the prevention plan preparation and review requirements established by this chapter.*

- Identify the adoption date of the rule and effective date of rule.

The adoption date of the rule is 25 September 2006 and the effective date will be 26 October 2006.

Some rules specify compliance dates based on set periods of time after the 25 October 2006 effective date. See WAC 173-180-070 Equivalent compliance plan, 173-180-210 Requirements for Class 4 Facilities Only, 173-180-215 Advance Notice of Transfer, WAC 173-180-223 Compliance schedule for prebooming and

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[1] *The law language containing the zero spills goal is found in Chapter 226, 2004 Session Laws:*
http://www.leg.wa.gov/pub/billinfo/2003-04/Pdf/Bills/Session Law 2004/6641-S.SL.pdf

*alternative measures for Rate A and Rate B transfers**,** WAC 173-180-224 Safe and effective threshold determination report, WAC 173-180-425 Class 1 facility--Operations manual submittal, WAC 173-180-465 Class 2 facility--Operations manual submittal, WAC 173-180-525 Class 1 facility--Training and certification program approval, WAC 173-180-545 Class 2 facility--Program approval, WAC 173-180-640 (Prevention) Plan submittal, and WAC 173-180-740 Class 2 facility--Response plan submittal.*

II. Describe Differences Between Proposed Rule and Final Rule Language.

♦ Describe the differences between the text of the proposed rule and the final rule language as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):

The following describes the differences between the proposed rule language in WAC 173-180 and the final rule language as adopted in WAC 173-180, other than editing changes.

The changes are highlighted by arranging the proposed rule headings and language first with ~~strikeouts~~ in red indicating language which did not make it into the final adopted rule language. The final adopted rule language follows and all amended or new language is in **blue and bolded text** to be easily seen.

Any portion of the proposed rule language that was not changed or amended is not included.

For the complete adopted rule language, please see Appendix 1.

WAC 173-180-010 Applicability of this chapter.

Proposed language in draft rule:
The requirements in this chapter apply to ~~oil transfer operations involving any nonrecreational vessel regardless of size at the following classes of facilities:~~
~~(1) Class 1 facilities (as defined in WAC 173-180-025(7)).~~
~~(2) Class 2 facilities (as defined in WAC 173-180-025 (8)).~~
~~(3) Class 3 facilities (as defined in WAC 173-180-025 (9)).~~
~~(4) Class 4 facilities (as defined in WAC 173-180-025 (10)).~~

Final language as published:
The requirements in this chapter apply to **all classes of oil handling facilities. This includes transfer operations involving any size nonrecreational vessel**.

Rationale:

We received comments that the applicability was unclear so we changed the language in this section for readability.

WAC 173-180-015 Purpose. *This section was not changed.*

WAC 173-180-020 Authority. *This section was not changed.*

WAC 173-180-025 Definitions.

Proposed language in draft rule:
The definition of boatyard was not included in the original proposed language.

Final language as published:

(3) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under 300 gross tons, regardless of fuel capacity.

Rationale:
In response to comments received from port operators, Ecology has added "boatyard" to the definitions section of this rule and defined it as a Class 4 facility. Boatyard fueling operations are not the same as a Class 3 facility's operations and this chapter now reflects this change. A boatyard may provide enough fuel for a small nonrecreational vessel to reach a fueling facility. The boatyard is not in the business to conduct regular oil transfers with vessels.

Proposed language in draft rule:
(8) "Class 2 facility" means ~~a facility as defined in RCW 90.56.010 and is~~ rolling stock ~~such as a truck, railcar, or other mobile device~~ used to transfer oil to a nonrecreational vessel.

Final language as published:
(9) Class 2 facility means a **railroad car, motor vehicle, portable device or other** rolling stock, **while not transporting oil over the highways or rail lines of the state**, used to transfer oil to a nonrecreational vessel.

Rationale:
This amendment was made based on comments by stakeholders. It is an attempt to clarify that a Class 2 facility delivers to any nonrecreational vessel regardless of size or type.

Proposed language in draft rule:
(9) "Class 3 facility" means a ~~facility~~ that:

(a) Transfers to a nonrecreational vessel with a capacity ~~to hold~~ ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Final language as published:

(10) "Class 3 facility" means a **structure** that:

(a) Transfers to a nonrecreational vessel with a capacity **of** ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: **boatyard**, Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Rationale:

For further clarification boatyard has been added to the list of things that do NOT meet the Class 3 definition. See rationale for the addition of the definition of "boatyard" above. "Structure" and "of" were changes made for clarity.

Proposed language in draft rule:

(10) "Class 4 facility"~~ or "marine fueling outlet"~~ means a ~~facility~~ that:

(a) Transfers to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Final language as published:

(11) "Class 4 facility" means a **structure** that:

(a) **Is a marina, boatyard, marine fueling outlet and other fueling installations** that transfers to a nonrecreational vessel with a capacity to hold less

than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Rationale:
This language amendment was made for clarity.

Proposed language in draft rule:
Public Vessel was not in the definitions.

Final language as published:
30) "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.

Rationale:
Ecology has added Public Vessels to the list of definitions based on comments from the US Navy.

Proposed language in draft rule:
(29) "Recreational vessel" means a vessel operated for pleasure, ~~which when~~ leased, rented, or chartered to another ~~is used~~ for ~~pleasure~~.

Final language as published:
(31) "Recreational vessel" means a vessel **owned and** operated **only** for pleasure **with no monetary gain involved, and if** leased, rented, or chartered to another for **recreational use, is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.**

Rationale:
Ecology has amended the definition for Recreational Vessel for clarity.

Proposed language in draft rule:
The definition of Transfer was not included in the proposed draft language.

Final language as published:

(39)"Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

Rationale:
The definition of transfer was added to these rules for clarity.

WAC 173-180-030 Compliance with federal rule or law. *Only editing changes.*

WAC 173-180-035 Inspections.

Proposed language in draft rule:
(1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW 90.56.410 and ~~chapter~~ 88.46 ~~RCW~~.
(2) During inspections, ecology may ask for the following:
(a) Provide proof of compliance by producing all required records and documents;
(b) ~~Demonstrate~~ the ability to meet the spill prevention equipment and procedures of this chapter;
(c) ~~Demonstrate~~ the ability to meet the transfer containment and recovery standards in WAC 173-180-~~220;~~ and
(d) Provide proof of training and certification, if applicable.
(3) Ecology may provide a preliminary inspection report to the owner and operator at the conclusion of the inspection.

Final language as published:
(1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW **90.56.050,** 90.56.410, and 88.46**.167**.
(2) **To ensure compliance with this chapter,** ecology may ask for the following during inspections **and the facility is required to:**
(a) Provide proof of compliance by producing all required records and documents;
(b) **Provide proof of compliance of** the ability to meet the spill prevention equipment and procedures of this chapter;
(c) **Provide proof of compliance of** the ability to meet the transfer containment and recovery standards in WAC 173-180-**221 and 173-180-222;** and
(d) Provide proof of training and certification, if applicable.
(3) Ecology **will** provide an inspection report to the **facility** at the conclusion of the inspection.

Rationale:
These changes were made for clarity and to reflect plan numbering changes. We changed the term "demonstrate" to address some comments that this was unclear.

Ecology has also changed the word "may" to "will" in respect to providing an inspection report to the facility at the conclusion of an inspection. This change was done in response to comments received.

WAC 173-180-040 Recordkeeping.

Proposed language in draft rule:
(1) Records required by this section must be maintained and available to ecology for a minimum of three years, except for the following:

(a) Preload plans and declaration of inspection (DOI) kept for at least thirty days from date of the oil transfer operation.

(b) The design, construction, and repair records for storage tanks, pipelines, ~~and all oil transfer equipment~~ testing and repair records kept for the life of the equipment.

(c) Oil transfer personnel training and certification records for Class 1 and 2 facilities kept for five years from the date the persons were certified.

(2) All records required in this chapter must be available to ecology for photocopying upon request.

Final language as published:
(1) Records required by this chapter must be maintained and available to ecology for a minimum of three years, except for the following:

(a) Preload plans and declaration of inspection (DOI) kept for at least thirty days from date of the oil transfer operation.

(b) The design, construction, **inspection, maintenance**, and repair records for storage tanks and pipelines **used in oil transfers** must be kept for the life of the equipment. **Inspection, maintenance, and repair records for pumps, valves, manifolds, and other ancillary equipment used in oil transfers must be kept for 10 years.**

(c) Oil transfer personnel training and certification records for Class 1 and 2 facilities kept for five years from the date the persons were certified.

(2) All records required in this chapter must be available to ecology for photocopying upon request.

Rationale:
On the advice of Ecology's engineering staff, and based on the comments from stakeholders, the above modifications were made to this section of the rule. Records for storage tanks and pipelines must be kept for the lifetime of the equipment because these are major structures that are in use for decades and any records of past repairs or modifications need to be available until the structure is replaced. Records for ancillary equipment must be kept for 10 years; a requirement intended to provide a history of the equipment for a practical number of years.

WAC 173-180-045 Threat of a spill.

Proposed language in draft rule:
(1) Ecology may determine that immediate action is necessary to suspend or delay transfer operations if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.
(2) Ecology may:
(a) Issue an administrative order that may require immediate suspension of oil transfers;
(b) Specify each condition requiring immediate action to eliminate the condition; and
(c) Notify the PICs that oil transfers may resume once ecology is satisfied the threat is no longer substantial.

Final language as published:
(1) Ecology may determine that immediate action is necessary to suspend or delay transfer operations **from a facility** if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.
(2) Ecology may **coordinate with the Coast Guard** to:
(a) Issue an administrative order that may require immediate suspension of oil transfers;
(b) Specify each condition requiring immediate action to eliminate the condition; and
(c) Notify the PICs that oil transfers may resume once ecology is satisfied the threat is no longer substantial.

Rationale:
The amendments to the language in this section were made for clarity. Ecology and the Coast Guard have a close working relationship with Memorandums of Agreement signed between the two parties. Ecology coordinates closely with the Coast Guard whenever there is a spill or threat of a spill. Ecology added the language "coordinate with the Coast Guard" to the section to reflect this partnership.

WAC 173-180-050 Oil spills.

Proposed language in draft rule:
(1) Personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:

(a) Observed in the water or on the shoreline adjoining the transfer area;
(b) Discharged into oil spill containment or on the deck; or
(c) Spilled into the water or onto the shoreline adjoining the transfer area.
~~(2) The deliverer must immediately stop the oil transfer at the request of any person on the receiving vessel.~~
(3) The PICs must make notifications as required in RCW 90.56.280.
(4) Before the oil transfer operation may resume:
(a) The source of the spill is controlled, contained, and a proper response is underway;
(b) The PICs must agree there is no ~~significant threat to waters of the state or public health~~; and
(c) The PICs must receive approval from the state on-scene coordinator in ~~coordination~~ with the federal On-Scene Coordinator.

Final language as published:
(1) **Facility** personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:
(a) Observed **or spilled into the water or on the shoreline** adjoining the transfer area;
(b) Discharged into oil spill containment or on the vessel deck.
(2) The **facility PIC** must make notifications as required in RCW 90.56.280.
(3) The **facility PIC** may resume an oil transfer **once the following conditions are met:**
(a) The source of the spill is controlled, contained, and a proper response is underway;
(b) The PICs must agree there is no **further threat of a spill.**
(4) After a spill to water, the facility PIC may resume a transfer if:
(a) the conditions in subsection (3) of this section are met; and
(b) approval is received from the state on-scene coordinator in **conjunction** with the federal on-scene coordinator.

Rationale:
Due to a number of comments on this section it has been rewritten for clarity. The changes reflect the rule's focus on facilities by substituting "facility PIC" where appropriate. The other amendment made was to clarify the rule's intention that the state on-scene coordinator and federal on-scene coordinator must give approval for restarting the transfer only after a spill to water.

WAC 173-180-055 Work hours.

Proposed language in draft rule:
(1) Personnel with oil transfer duties may not work more than sixteen hours in any twenty-four-hour period nor more than ~~thirty-eight~~ hours in any seventy-two-hour period except in an emergency or spill response operation. For purposes of this

section, "emergency" means an unforeseen situation that poses an imminent threat to human safety, or the environment, or substantial loss of property.
(2) The owner or operator of a Class 1, 2, or 3 facility must maintain records such as maintenance records or payroll records demonstrating compliance with work hour restrictions.

Final language as published:
(1) Personnel with oil transfer duties may not work more than sixteen hours in any twenty-four-hour period, nor more than **forty** hours in any seventy-two-hour period, except in an emergency or spill response operation. For purposes of this section, "emergency" means an unforeseen situation that poses an imminent threat to human safety, or the environment, or substantial loss of property.
(2) The owner or operator of a Class 1, 2, or 3 facility must maintain records such as maintenance records or payroll records demonstrating compliance with work hour restrictions.

Rationale:
Ecology received many comments from facilities worried about the effect of this regulation on their labor contracts. This amendment was made to assist companies meet their union contract obligations.

WAC 173-180-060 Personnel qualifications.

Proposed language in draft rule:
(1) The owner or operator of a Class 1, 2, or 3 facility must designate, in writing, a PIC ~~who has completed a training and certification program established by the operator and approved under Part E of this chapter. The~~ designated PIC must supervise all oil transfer operations.
(2) All personnel assigned ~~duties~~ related to an oil transfer operation must be qualified to perform those duties as required by federal law or rule, or both.
(3) Each PIC must carry or have readily available evidence of designation as a PIC when engaged in an oil transfer operation.

Final language as published:
(1) The owner or operator of a Class 1, 2, or 3 facility must designate a PIC in writing.
A designated PIC must supervise all oil transfer operations.
(2) **All Class 1 and 2 facility personnel designated as a PIC must have completed a training and certification program established by the operator and approved under Part E of this chapter.**
(3) All personnel assigned **responsibilities** related to an oil transfer operation must be qualified to perform those duties as required by federal law or rule, or both.
(4) Each PIC must carry or have readily available evidence of designation as a PIC when engaged in an oil transfer operation.

(5) All Class 1 and 2 personnel involved in a transfer must carry or have readily available evidence of completion of the facility's training and certification program.

Rationale:
The amendments to language in this section were made to better match the training requirements of this chapter.

WAC 173-180-070 ~~Alternative~~ compliance.

New section title - WAC 173-180-070 Equivalent compliance.

Proposed language in draft rule:
(1) Any owner or operator may submit a proposal for alternative compliance for requirements in WAC 173-180-~~220~~ Transfer containment and recovery standards.
(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-180-~~220(6)~~.
(b) Rate B deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-180-~~220(8)~~.
(2) The proposal must contain the following and in the order presented:
(a) Cover sheet with name of company seeking alternative compliance and point of contact information;
(b) Table of contents including supporting documents and appendices;
(c) Executive summary of the alternative proposal;
(d) A detailed description of the alternative proposal that includes, when appropriate, the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;
(e) A detailed analysis of how the proposal offers equivalent or greater protection, prevention, and response measures as compared to the requirement in this chapter that includes:
(i) Methodology of the analysis;
(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information;
(iii) Technical feasibility of proposal versus current requirements;
(iv) Cost analysis of proposal versus current requirements.
(3) The owner or operator must submit the alternative compliance proposal to ecology at least one hundred twenty calendar days before planned operation under the section.
~~(4)~~ Ecology will make the proposal available for a thirty-day public review and comment period.
~~(5)~~ Ecology may request additional information regarding any aspect of the proposal such as site-specific meteorological, water current velocity, and other monitoring data to support the proposal.

~~(6)~~ Ecology will respond to the owner or operator within ninety days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal.
~~(7)~~ The approval will be valid for no more than ~~two years~~ from the date on the letter.
~~(8)~~ Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company at the approved site.
~~(9)~~ 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 provide an equivalent or greater level of environmental protection in terms of spill prevention, preparedness, and response when compared with conventional compliance equipment, personnel, operating procedures, and maintenance systems.

~~(10)~~ The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology.

Final language as published:

WAC 173-180-070 **Equivalent** compliance **plan.** (1) Any facility may submit a proposal for equivalent compliance for the alternative measures required in WAC 173-180-**221 and 173-180-222. Any facility who submits a proposal must meet the applicable alternative measures requirements until the equivalent compliance plan is approved.**

(a) Rate A deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-**221(7).**

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-**222(2)**.

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking equivalent compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the equivalent proposal;

(d) A detailed description of the equivalent proposal that includes, when appropriate, the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;

(e) A detailed analysis of how the proposal offers equivalent or greater level of protection as compared to the requirements in this chapter. This includes:

(i) Methodology of the analysis;

(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information;

(iii) Technical feasibility of proposal versus current requirements.

(3) **Submission timeline of proposed equivalent compliance plan:** The facility must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under the section.

(a) Ecology will make the proposal available for a thirty-calendar-day public review and comment period.

(b) Ecology may request additional information regarding any aspect of the proposal such as site-specific meteorological, water current velocity, and other monitoring data to support the proposal.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the equivalent compliance proposal with a letter approving, conditionally approving, or disapproving the proposal.

(d) The approval will be valid for no more than **five years** from the date on the approval letter.

(4) Approval of proposed equivalent compliance plan: Ecology may approve the equivalent compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

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

(b) The equivalent compliance proposal would provide an equivalent or greater level of environmental protection as the alternative measures required in WAC 173-180-221 and 173-180-222.

(5) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.

(6) The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology.

Rationale:
Ecology has renamed the Alternative Compliance program, the Equivalent Compliance Plan. This change was made to distinguish this elective program from the alternative measures required in these rules. The requirements for this plan have not changed substantially and the submittal dates have not changed. However, amendments were made to this section for clarity and usability.

- *The section was given subtitles for usability.*
- *The clarifying statement was made at the beginning of the section: "Any facility who submits a proposal must preboom or meet the applicable alternative measures requirements until the equivalent compliance plan is approved."*
- *The section references were changed to reflect correct sites in the final rule language.*

In addition Ecology has changed the requirements for section 173-184-105 to reflect a plan will be valid for no more than five years. Ecology agrees with the comments that 2 years does not allow enough time to plan, follow through, and measure success in this type of program.

WAC 173-180-075 Severability. *This section was not changed.*

WAC 173-180-200 Applicability of Part B. *This section was not changed.*

WAC 173-180-205 Oil transfer equipment at Class 1, 2, 3, and 4 facilities.

This section was not changed.

WAC 173-180-210 Requirements for Class 4 facilities only.

Proposed language in draft rule:

(7) **Compliance schedule:** Class 4 facilities must implement the requirements in subsections (1) and (2) of this section within ~~ninety~~ calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this section.

Final language as published:

(7) **Compliance schedule:** Class 4 facilities must implement the requirements in subsections (1) and (2) of this section within **one hundred twenty** calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this chapter.

Rationale:

Ecology has lengthened the compliance schedule from 90 days to 120 days. Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. This change was to maintain conformity with the compliance schedule implementation dates for the class 1 and 2 facilities.

WAC 173-180-215 Advance notice of transfer for Class 1, 2, and 3 facilities.

Proposed language in draft rule:

(1) The delivering facility involved in an oil transfer must notify ecology at least twenty-four hours prior to an oil transfer operation; except: If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible.

Final language as published:

(1) The delivering facility involved in an oil transfer **of more than 100 gallons** must notify ecology at least twenty-four hours prior to an oil transfer operation; except: If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible.

Rationale:

Ecology believes that the Advanced Notice of Transfer requirement is integral to the Oil Spill Transfer rules and the legislative zero spills mandate. Advanced Notice of Oil Transfers allows Ecology inspectors to attend oil transfers in state waters and ensure compliance with the laws and regulations enforced by Ecology. Statistics show fewer spills from oil transfers when an inspection program is in place.

Ecology agrees that some transfers are more important for Ecology inspectors to attend, based on "risk". An amendment to this section exempts transfers of less than 100 gallons from making advance notice to Ecology.

Ecology believes the exempted transfers present a lower risk of spills, while the higher risk transfers would be those that have a threat of a larger volume of material spilled. Therefore, those transferring larger volumes of oil are required to provide advance notice of transfer in order for Ecology to ensure compliance with Washington State laws.

Based on this analysis Ecology has amended this section to reflect this risk.

Ecology is working with the Coast Guard on a web based reporting format which will provide "one-stop-shopping" for delivering vessels making advanced notice, and will reduce the burden on those who must provide advance notice.

Proposed language in draft rule:
(2)(c) Name of delivering facility and receiving vessel involved in the oil transfer ~~including~~ LR/IMO or official number if available;

Final language as published:
(2)(c) Name of delivering facility and receiving vessel involved in the oil transfer **and the vessel's Lloyd's Registry/International Maritime Organization (**LR/IMO**) number** or official number if available.

Rationale:
The language amendments to this section were made in response to comments for clarity.

Proposed language in draft rule:
(2)(e) Oil product type and quantity in gallons;

Final language as published:
(2)(e) Oil product type and quantity in gallons **or barrels**;

Rationale:
This change was made to address comments about ease of reporting.

WAC 173-180-220 Transfer containment and recovery ~~standards~~. *[For clarity and ease of using this rule, Section 173-180-220 was broken into the following 4 sections.]*

[New section title - WAC 173-180-220 Transfer containment and recovery requirements.

WAC 173-180-221 Rate A prebooming requirements and Rate A alternative measures requirements.

WAC 173-180-222 Rate B prebooming requirements and Rate B alternative measures requirements.

WAC 173-180-223 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers.]

Proposed language in draft rule:
This section applies to all oil transfers involving all jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. This section does not apply to vessels or facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.
(1) All persons delivering oil to nonrecreational vessels over waters of the state must comply with the following requirements:
(a) There are two rates for oil transfer containment and recovery standards. The deliverer must determine which rate is appropriate for each oil transfer operation they conduct.
(i) Rate A: Oil transfer operations at a rate over five hundred gallons per minute; and
(ii) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less.
(b) Rate A oil transfers must preboom when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measures in subsection ~~(6)~~ of this section. Prebooming requirements are found in subsection ~~(5)~~ of this section.
(c) Rate B oil transfer operations must choose one of the following:
(i) Preboom when safe and effective ~~(subsection (7) of this section)~~; or
(ii) Alternative measures ~~(subsection (8) of this section)~~.
(d) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design based on the manufacturers' specifications for the environmental conditions of the transfer area.
(e) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.
(f) If multiple oil transfers are occurring with a single vessel and one product transferred is not appropriate to preboom, then ~~the entire transfer~~ must meet the alternative measures.
(2) Determination of safe and effective: The Rate A deliverer must determine when it is not safe and effective to meet the "Rate A prebooming requirements" in subsection ~~(5)~~ of this section, ~~either prior to starting a transfer or during a transfer~~. To make this determination the deliverer must:
(a) Class 1 and Class 2 facilities must refer to the facility's operation manual safe and effective threshold values;

(b) Consider personnel safety, wind, sea state, current velocity, or other environmental conditions that would prevent the safe and effective use of boom.
(3) Rate A deliverers are required to report to ecology when the deliverer determines it is not safe and effective to preboom. The Ecology Boom Reporting Form publication may be submitted by email or facsimile. The report must be submitted prior to the oil transfer or when conditions develop which require removal of the boom.
(4) ~~Compliance schedule:~~
(a) Any class facility conducting Rate A transfers must meet all the requirements in this section except subsection ~~(5)~~ of this section within ~~ninety~~ calendar days from the effective date of this chapter. All Rate A transfers must meet the requirements of subsection ~~(5)~~ of this section within ~~one hundred eighty~~ calendar days from the effective date of the chapter.
(b) Any class facility conducting Rate B transfers must meet all the requirements of this section within ~~ninety~~ calendar days from the effective date of this chapter.
(5) Rate A prebooming requirements.
(a) Prior to starting the oil transfer operation the deliverer must:
(i) Have access to boom four times the length of the largest vessel ~~at the transfer location.~~
(ii) Deploy boom, ~~identified in (a)(i) of this subsection~~, sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or ~~the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil.~~
(iii) Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.
(iv) Check the boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.
(v) Have personnel trained in the proper use and maintenance of boom and recovery equipment.
(vi) Have the following recovery equipment available on-site:
(A) Containers suitable for holding the recovered oil and oily water;
(B) Nonsparking hand scoops, shovels, and buckets; and
(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.
(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of the remaining boom ~~(identified in (a)(i) of this subsection)~~ for containment, protection or recovery.
(6) Rate A alternative measures:
(a) Rate A deliverers may only use these alternative measures when it is not safe and effective to meet the prebooming requirements in subsection ~~(5)~~ of this section.
(b) Prior to starting the oil transfer operation the deliverer must:
(i) Have access to boom four times the length of the largest vessel ~~at the transfer location.~~

~~(ii) Give their primary response contractor advance notice of the transfer including the location, duration and product type.~~
(iii) Have the ability to safely track the spill ~~in the dark~~ if the oil transfer operation occurs during low light conditions. The tracking system must be on scene within thirty minutes of being made aware of a spill.
(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment.
(v) Have the following recovery equipment available on-site:
(A) Containers suitable for holding the recovered oil and oily water;
(B) Nonsparking hand scoops, shovels, and buckets; and
(C) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.
(c) Within one hour of being made aware of a spill the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or ~~the portion of the vessel and transfer area where oil is most effectively contained in the event of a spill.~~
(d) Within two hours of being made aware of a spill, the deliverer must have all of the following:
(i) Additional boom four times the length of the largest vessel ~~at the transfer location~~ available for containment, protection, or recovery; and
(ii) A skimming system must be available on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.
(7) Rate B prebooming requirements:
(a) A deliverer transferring at Rate B may choose to meet the prebooming requirements in this subsection or the alternative measure requirements in subsection ~~(8)~~ of this section.
(b) Prior to starting the oil transfer operation the deliverer must:
(i) Deploy boom that completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or ~~the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil;~~
(ii) Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;
(iii) Check boom positioning periodically and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;
(iv) Have personnel trained in the proper use and maintenance of boom and recovery equipment; and
(v) Have the following recovery equipment available on-site:
(A) Containers suitable for holding the recovered oil and oily water;
(B) Nonsparking hand scoops, shovels, and buckets; and
(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(vi) Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional five hundred feet of boom. This boom may be used for containment, recovery, or protection.
(8) Rate B alternative measures:
(a) Prior to starting the oil transfer operation the deliverer must:
(i) Have access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or ~~the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of oil from the transfer containment.~~
(ii) Have personnel trained in the proper use and maintenance of boom and recovery equipment.
(iii) Have the following recovery equipment available on-site:
(A) Containers suitable for holding the recovered oil and oily water;
(B) Nonsparking hand scoops, shovels, and buckets; and
(C) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.
(b) Within one hour of being made aware of a spill the deliverer must be able to complete deployment of an additional five hundred feet of boom for containment, protection or recovery.
(c) Within two hours of being made aware of a spill, the deliverer must have an additional five hundred feet of boom available on-scene for containment, protection, or recovery.

Final language as published:
WAC 173-180-220 Transfer containment and recovery **requirements.** (1) These standards apply to all oil transfers that involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(2) The deliverer must first determine the rate at which oil is to be transferred and **then follow the applicable standards outlined in this chapter:**

(a) Rate A means oil transfer operations at a rate over five hundred gallons per minute. **Rate A requirements are found in WAC 173-180-221.**

(b) Rate B means oil transfer operations at a rate of five hundred gallons per minute or less. **Rate B requirements are found in WAC 173-180-222.**

(3) To meet the requirements of this chapter, the deliverer must have personnel trained in the proper use and maintenance of boom and recovery equipment.

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for the environmental conditions encountered in the transfer area(s) based on the manufacturers' specifications.

Rationale:
For clarity and ease of using this rule, proposed section 173-180-220 has been broken into 4 sections. The first of these sections, 173-180-220, is named Transfer

Containment and Recovery Requirements. This section describes the standards for determining Rate A transfers and Rate B transfers and other basic training and equipment requirements. These requirements have not changed from the proposed rule language. Subsections (3) and (4) have been included in WAC 173-180-220, but the wording for these subsections has not changed from the proposed language in WAC 173-180-220(5)(a)(v) and (1)(d) respectively.

Final language as published:

WAC 173-180-221 Rate A prebooming requirements and Rate A alternative measures requirements. This section **generally** applies to delivering facilities, **however, any class 1 facility receiving oil from a Rate A delivering vessel must provide the safe and effective threshold values to the vessel.** (1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measure requirements found in subsection **(7)** of this section.

(2) The determination of safe and effective must be made prior to starting a transfer or, if conditions change during a transfer. To make this determination, the deliverer must use the safe and effective threshold values found in their operations manual. **Safe and effective threshold values are determined using the safe and effective threshold determination report - see WAC 173-180-224.**

(3) When it is not safe and effective, **or when conditions develop during a preboomed transfer that require removal of the boom**, the Rate A deliverer must report this finding to ecology and meet the alternative measures found in subsection **(7)** of this section. The Ecology Boom Reporting Form must be used for this purpose, and submitted by e-mail or facsimile prior to the transfer **and/or immediately** when conditions have changed.

(4) If multiple oil transfers are occurring **simultaneously** with a single vessel, and one product transferred is not appropriate to preboom, **then that portion of the transfer where it is unsuitable to preboom** must use the alternative measures found in subsection **(7)** of this section.

(5) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(6) **Rate A prebooming requirements.**

(a) In order to preboom transfers, the deliverer must have, prior to the transfer, access to boom four times the length **of the largest vessel involved in the transfer or two thousand feet, whichever is less.**

The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or **the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.**

(i) The boom must be deployed with a minimum stand-off of five feet away from the sides of a vessel, **measured at the waterline**. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(ii) The deliverer must periodically check the boom positioning and adjust as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(b) In addition to prebooming, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) For preboomed transfers, within one hour of being made aware of a spill, the deliverer must be able to complete deployment of the remaining boom, **should it be necessary** for containment, protection, or recovery purposes.

(7) **Rate A alternative measures.** Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements.

(a) To meet the alternative measures requirements the deliverer must have access to boom four times the length **of the largest vessel involved in the transfer, or two thousand feet, whichever is less.**

(b) In addition to the boom, the deliverer must have the following available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) The deliverer must have the ability to safely track the spill **in low visibility** conditions. The tracking system must be on-scene within thirty minutes of being made aware of a spill.

(d) For alternative measures: Within one hour of being made aware of a spill, the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, **or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.**

(e) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have the following:

(i) Additional boom four times the length **of the largest vessel involved in the transfer, or two thousand feet, whichever is less,** available for containment, protection, or recovery; and

(ii) A skimming system must be on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

Rationale:
For clarity and ease of using this rule, proposed section 173-180-220 has been broken into 4 sections. Section 173-180-221, Rate A prebooming requirements and Rate A alternative measures requirements, focuses on the requirements for

Rate A transfers. Several requirements have been amended in this section based on comments from stakeholders.

A requirement for delivering vessels to use the safe and effective threshold values in Class 1 facility's operations manual has been added to this section.

> *"173-180-221…* however, any class 1 facility receiving oil from a Rate A delivering vessel must provide the safe and effective threshold values to the vessel."

The class 1 facility's Safe and Effective Threshold Determination Report values will be used in a rate A transfer between a vessel and the facility. This change was made to avoid the scenario where a delivering vessel and the facility's threshold values were different and there was confusion as to which threshold values to use.

In 173-180-221(4) the word **simultaneously** *has been added to the requirement for facilities when transfers include two or more products during one transfer. This change was made for clarity and safety. The final rule language now states that if one or more of the products have been identified as inappropriate to preboom, the portion of the transfer which has volatile products transferred simultaneously with nonvolatile products must have alternative measures in place. Any portion of the transfer which is safe and effective to preboom must be preboomed.*

Section 173-180-220(5)(a)(i) Rate A prebooming requirements in the proposed rule language required the facility to have access to boom four times the length of the largest vessel at the transfer location. Title 33, section 2718 of the United States Code preserves the authority of states to impose additional liability and requirements relating to the discharge or substantial threat of a discharge of oil. However, the Department of Ecology is also required to be consistent with the Coast Guard when practicable to do so (RCW 88.46.020), and adopt risk-based requirements (RCW 88.46.165). Our requirements are also designed to be consistent with our contingency planning requirements proposed under WSR #06-12-120, published June 21, 2006.

Ecology has made a determination on the minimum length of boom needed to satisfy the requirements of this chapter based on the following. If we assume the average length of a vessel is 600 feet, with an average beam of 30 feet, and calculate the boom needed to encircle the delivering and receiving vessel involved in the transfer with a minimum standoff of 5 feet, we reach the determination that the minimum requirement for the average two vessel transfer is 2000 feet of boom.

In response to comments made by stakeholders and based on the analysis of the contingency plan rulemaking and on the determination that 2000 feet is a minimum requirement to surround the average facility transfer area and any one vessel transferring in Washington waters, we have amended the prebooming requirement so that it is now: at least 4 times the length of the largest vessel involved in the transfer or 2,000 feet, whichever is less. This change was made throughout this chapter.

The portion of the rule describing the area to be boomed:

> *"The deliverer must* deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or **the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water."**

gives the deliverer the option to boom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water was rewritten in an attempt to clarify this is not just the area under the transfer hoses and manifold connections. This means, for instance, if the transfer location has a strong current which only runs in one direction, the deliverer may locate boom on the down current side of the transfer location and not have to boom up current.

This change was made to addresses the need for flexibility within the rule language and allows for local peculiarities at transfer locations.

The language change from largest vessel at "transfer location" to largest vessel "involved in the transfer" was made for clarity.

The section has also been amended to clarify the boom standoff is measured from the vessel's waterline.

Final language as published:

WAC 173-180-222 Rate B prebooming requirements and Rate B alternative measures requirements. (1) **Rate B prebooming requirements.** The Rate B deliverer must choose to meet either the following prebooming requirements in this section or the alternative measures found in subsection **(2)** of this section. If prebooming is chosen, then:

(a) Prior to starting the oil transfer operation, the deliverer must deploy boom so that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, **or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.**

(i) The deliverer must deploy the boom with a minimum stand-off of five feet away from the sides of a vessel, **measured at the waterline.** This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;

(ii) The deliverer must periodically check boom positioning and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For prebooming: Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional five hundred feet of boom. This boom may be used for containment, recovery, or protection.

(2) **Rate B alternative measures requirements.** If a Rate B chooses alternative measures, then:

(a) Prior to starting the oil transfer operation, the deliverer must have access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, **or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.**

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For alternative measures: Within one hour of being made aware of a spill, the deliverer must be able to complete deployment of an additional five hundred feet of boom for containment, protection or recovery.

(d) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have an additional five hundred feet of boom available on-scene for containment, protection, or recovery.

Rationale:
For clarity and ease of using this rule, Section 173-180-220 has been broken into 4 sections. Section 173-180-222 is titled Rate B prebooming requirements and alternative measures requirements.

No substantive changes were made to the proposed rule language. Some amendments were made to language for clarity based on comments received.

The portion of the rule describing the area to be boomed was rewritten in an attempt to clarify this is not just the area under the transfer hoses and manifold connections:
"The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or **the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water."** *This means, for instance, if the transfer location has a strong current which only runs in one direction, the deliverer may locate boom on the down current side of the transfer location and not have to boom up current.*

This change was made to addresses the need for flexibility within the rule language and allows for local peculiarities at transfer locations.

The language for boom standoff measured from the vessel's waterline was included for clarity.

Final language as published:

WAC 173-180-223 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers.

(1) Any class facility conducting Rate A transfers must meet all the applicable requirements in WAC 173-180-**220** and 173-180-**221** except WAC 173-180-**221(6)** within **one hundred twenty** calendar days of the effective date of this chapter. All Rate A transfers must meet the requirements of WAC 173-180-**221(6)** within **three hundred sixty-five** calendar days from the effective date of the chapter.

(2) Any class facility conducting Rate B transfers must meet all the requirements of WAC 173-180-**220** and 173-180-**222** within **one hundred twenty** calendar days from the effective date of this chapter.

Rationale:
For clarity and ease of using this rule, Section 173-180-220 has been broken into 4 sections. Section 173-180-223 is titled: Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers.

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed WAC 173-180-220(4)(a)(b) had a compliance date of 90 days for Rate A alternative measures and Rate B prebooming and alternative measures. These dates have been changed to 120 days. When sitting down with the compliance schedule matrix, Ecology tried to match equipment requirements with training and report submittal requirements. Ecology used the best determination of our engineering staff to arrive at realistic compliance dates which are consistent throughout the rule requirements.

In response to many comments and strong arguments from industry, the compliance date for Rate A prebooming requirements has been changed from 180 days to 365 days from the date this rule goes into effect.

Proposed language in draft rule:

WAC 173-180-420 Class 1 facility--Operations manual content requirements.
(3)(b)(vii) Discussion of the facility's requirements regarding weather and sea conditions at the facility which may impact oil transfers to or from vessels. The supporting data for oil transfer weather and sea restrictions must be made available to ecology if requested and include at a minimum:

(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;
(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;
(C) Monitoring forecasted weather and sea;
(D) Procedures for communicating weather and sea conditions to the PICs at regular intervals;
(E) Threshold values for weather and sea conditions above which transfer operations must cease; and
(F) Procedures for shutting down the oil transfer should weather or seas exceed threshold values.
(c) Threshold values determination when a facility will not preboom under WAC 173-180-220 must be in the operations manual for approval and easily found by the PIC. The information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations. The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology.
(i) These values and the supporting data must address, at a minimum, the following site specific information:
(A) Personnel safety;
(B) Sea state values in feet including typical wave periods;
(C) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;
(D) Wind speed in knots and prevailing directions;
(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.
(ii) The facility must provide a detailed analysis of the proposed threshold values for the transfer site including
(A) Methodology of the analysis;
(B) Equipment used to measure data collected;
(C) Supporting data, references, graphs, tables, pictures, and other relevant information.
(iii) When reviewing threshold determination reports, ecology must consider the following:
(A) Personnel safety;
(B) Operating environment of the transfer site(s) such as site specific meteorological, water current velocity and other monitoring data to support the threshold values determination;
(C) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;
(D) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.
(iv) Ecology will make the report available for a thirty-day public review and comment period.

Final language as published:

WAC 173-180-224 Safe and effective threshold determination report. (1) Report requirements. The report must include at a minimum the following, in the order presented:

(a) Cover sheet with name of company submitting the report and point of contact.

(b) Table of contents including supporting documents and appendices.

(c) Summary of safe and effective threshold values.

(d) The body of the report must include the following:

(i) The information used to support these values which must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations.

(ii) These values and the supporting data must address, at a minimum, the following site specific information:

(A) Personnel safety;

(B) Sea state values in feet including typical wave periods;

(C) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;

(D) Wind speed in knots, and prevailing directions;

(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.

(iii) The facility must provide a detailed analysis of the proposed threshold values for the transfer location including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected;

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(2) **Submittal requirements. Rate A deliverers must submit a safe and effective threshold determination report to ecology for review and approval for each location at which a Rate A transfer occurs.** One paper and one electronic copy of the safe and effective threshold determination report must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
300 Desmond Drive
Lacey, WA 98503

(3) **Review and approval process.**

(a) When reviewing threshold determination reports, ecology must consider the following:

(i) Personnel safety;

(ii) Operating environment of the transfer location(s) such as site specific meteorological, water current velocity, and other monitoring data to support the threshold values determination;

(iii) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;

(iv) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.

(b) Ecology will make the report available for a thirty calendar day public review and comment period.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the report with a letter approving, conditionally approving, or disapproving the report.

(d) The approval of this report will be valid for no more than five years from the date on the approval letter.

(4) Ecology may require a new review and approval process for this report after a spill by the facility.

(5) **Compliance and submittal schedule.**

(a) The safe and effective threshold determination report must be submitted one hundred eighty calendar days after the effective date of this chapter.

(b) For facilities starting operation after the effective date of this chapter, the report must be submitted at least one hundred twenty calendar days prior to the first oil transfer operation.

Rationale:
The requirements for Safe and Effective Determination Reports were located in Section 173-180-420 Class 1 facility--Operations manual content requirements, in the proposed rule. For clarity and ease of use, these requirements have been moved into a section of their own and labeled WAC 173-180-224, Safe and Effective Threshold Determination Report.

Amendments were made to this section for readability and/or to clarify requirements in report submittal procedures. Ecology has a report format which includes at a minimum a cover sheet, a table of contents, a summary and the body of the report. These requirements are now spelled out in this section.

In addition Ecology has added an approval expiration time and the provision that Ecology may review the report after a spill by the facility. These changes were made for conformity with the other reports required in this chapter.

WAC 173-180-225 Providing safe vessel access.

<u>Proposed language in draft rule:</u>

(1) A ~~receiving vessel~~ must ~~have an accommodation ladder in place to use for access between the receiving and delivering vessel, or between the receiving vessel and facility.~~
(2) ~~If the delivering vessel determines that the ladder is inaccessible or unsafe, another means of access must be provided that meets the standards established in the International Convention for the Safety of Life at Sea, 1974, as consolidated in 1986 (SOLAS).~~
(3) ~~If the vessel master or PIC determines access is not safe due to winds, sea state, currents or other environmental conditions, the master or~~ PIC may ~~allow~~ communication ~~by~~ radio ~~or by other means described in WAC 317-40-125.~~
(4) The entire ladder and the portion of the ship's deck where access is provided must be illuminated during low light ~~situations~~ and without glare to the persons using the ~~ladder~~.

Final language as published:
A Class 1 or 3 facility must provide safe access for personnel if the vessel cannot provide the safe access.

(1) **The access must be secured both top and bottom to prevent movement of the access platform.**

(2) The entire ladder and the portion of **the facility and** ship's deck where access is provided must be illuminated during low light **or low visibility situations** and without glare to the persons using the **access.**

(3) **In the event weather conditions make the access unsafe**, the PIC**s** may **elect to use** radio communication.

Rationale:
Due to comments received in the review process the language in this section has been amended. The language now highlights the facility's responsibilities and requires the boarding device to be secured at both the top and the bottom to prevent movement.

WAC 173-180-230 Preloading or cargo transfer plan requirement.

Proposed language in draft rule:
~~(1) All nonrecreational vessels must prepare a transfer plan prior to receiving oil from a Class 1, 2, or 3 facility. The plan must be discussed with the facility PIC~~ during the pretransfer conference described in WAC 173-180-235. The plan must, at a minimum, include:
~~(a)~~ Identification, location and capacity of the vessel's tanks receiving oil;
~~(b)~~ Level and type of liquid in all bunker or cargo oil tanks prior to the oil transfer;
~~(c)~~ Final ullage or innage, and percent of each tank to be filled;
~~(d)~~ Sequence in which the tanks are to be filled; and
~~(e)~~ The vessel's procedures to regularly monitor all tank levels and valve alignments during the transfer operation.

~~(2) A covered vessel may use the preloading plan or cargo plan required in chapter 317-40 WAC to meet the requirements of this section.~~

Final language as published:
Prior to any oil transfer, a transfer plan must be filled out and discussed between the delivering and receiving PICs. A facility must not begin a transfer until this plan has been discussed during the pretransfer conference described in WAC 173-180-235. The plan must, at a minimum, include:
(1) Identification, location and capacity of the vessel's tanks receiving oil;
(2) Level and type of liquid in all bunker or cargo oil tanks prior to the oil transfer;
(3) Final ullage or innage, and percent of each tank to be filled;
(4) Sequence in which the tanks are to be filled; and
(5) The **facility or** vessel's procedures to regularly monitor all **receiving** tank levels and valve alignments during the transfer operation.

Rationale:
The language in this section has been amended to reflect changes in the vessel oil transfer rule, now WAC 173-184. The facility is required to discuss this plan before conducting transfers. This is not a requirement of the vessel.

WAC 173-180-235 Pretransfer conference.

Proposed language in draft rule:
(1) Before the start of an oil transfer operation, the PICs must hold a face-to-face pretransfer conference ~~unless the vessel's master/officer-in-charge determines it is unsafe under WAC 317-40-120~~.
(2) The PICs must discuss and agree upon:
(a) The preloading or cargo plan;
(b) The contents of the declaration of inspection (DOI) required under 33 CFR 156.150;
(c) Procedures for communicating soundings, changing over tanks, and beginning topping off;
(d) Shift change procedures;
(e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and
(f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.
(3) During the pretransfer conference, that involves a covered vessel, ~~the receiving vessel PIC must identify for the facility PIC those personnel designated as~~ point-of-transfer watch and deck rover watch.
(4) An oil transfer operation will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.

~~(a) The receiving vessel's owner or operator must provide an interpreter proficient in English and a language common to the vessel's officers and crew at the request of ecology, the facility's PIC, or the U.S. Coast Guard.~~
~~(b) If the delivering vessel's PIC is not satisfied with the receiving vessel's representative's English proficiency, the delivering PIC must request an interpreter at the expense of the receiving vessel's owner or operator.~~

Final language as published:
(1) Before the start of an oil transfer operation, the PICs must hold a face-to-face pretransfer conference. **If the PICs determine weather conditions prevent safe access, PICs may communicate via radio.**

(2) The PICs must discuss and agree upon:

(a) The preloading or cargo plan;

(b) The contents of the declaration of inspection (DOI) required under 33 CFR 156.150;

(c) Procedures for communicating soundings, changing over tanks, and beginning topping off;

(d) Shift change procedures;

(e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and

(f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.

(3) During a pretransfer conference that involves a covered vessel, **the point-of-transfer watch and deck-rover watch must be identified to PICs.**

(4) An oil transfer operation will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.

Rationale:
The language amendments to this chapter were made to reflect the changes in the vessel oil transfer rule as adopted, WAC 173-184.

WAC 173-180-240 Communications.

Proposed language in draft rule:
(1) The ~~delivering~~ PIC must ensure continuous two-way voice communication is usable and available in all weather conditions as well as all phases of the transfer operation between the PICs.
(2) The ~~delivering~~ PIC must ensure at least the following are available for use during the oil transfer operation:

(a) Two portable communication devices that are intrinsically safe; and

(b) An air horn for emergency signals.

(3) The PICs must ensure personnel involved in the oil transfer operation know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

Final language as published:
(1) The **facility** PIC must ensure continuous two-way voice communication is usable and available in all weather conditions as well as all phases of the transfer operation between the PICs.
(2) The **facility** PIC must ensure at least the following are available for use during the oil transfer operation:
(a) Two portable communication devices that are intrinsically safe; and
(b) An air horn for emergency signals.
(3) The PICs must ensure personnel involved in the oil transfer operation know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

Rationale:
These amendments were made to reflect the chapter's focus on facility requirements.

WAC 173-180-250 Emergency shutdown.

Proposed language in draft rule:
(1) Class 1, 2, or 3 facilities must have an emergency shutdown capable of stopping the flow of oil from the fixed or mobile facility to a vessel.
(2) The emergency shutdown must be located at the PICs usual operating station and at the dock manifold if not the same location.
(3) For oil transfers, the emergency shutdown must stop the flow:
(a) Within ~~thirty~~ seconds for a facility with fixed piping system; or
(b) ~~Immediately for a facility equipped with flexible hoses~~.
(4) Both PICs must be capable of ordering or activating the emergency shutdown.
(5) If a PIC orders an emergency shutdown, the shutdown must be activated immediately.

Final language as published:
(1) Class 1, 2, or 3 facilities must have an emergency shutdown capable of stopping the flow of oil from the fixed or mobile facility to a vessel.
(2) The emergency shutdown must be located at the PICs usual operating station and at the dock manifold if not the same location.
(3) For oil transfers, the emergency shutdown must stop the flow:
(a) Within **sixty** seconds for **any facility or portion of the facility that started transferring oil on or before November 1, 1980.**
(b) **Within thirty seconds for any facility or portion of the facility that transfers oil after November 1, 1980.**
(4) Both PICs must be capable of ordering or activating an emergency shutdown.
(5) If a PIC orders an emergency shutdown, the shutdown must be activated immediately.

(6) To meet the requirements of subsection (3) of this section, the emergency shutdown must be either of the following:

(a) An electrical, pneumatic, or mechanical linkage to the facility; or

(b) An electronic voice communications system continuously operated by a person on the facility who can stop the flow of oil.

Rationale:
Ecology received a number of comments regarding the safety aspect of a thirty second shutdown requirement. After consulting with our engineers the language was amended to reflect the current Coast Guard shutdown time requirements.

WAC 173-180-400 Applicability of Part D.

Final language as published:
(5) All operations manuals will be valid for no more than five years from the date on the approval letter. Ecology will review the facility operations manual to ensure compliance with this chapter.

Rationale:
Subsection 5 was added for clarity and readability. WAC 173-180-430 and 173-180-440 give additional information about manual review and approval, and re-approval process.

WAC 173-180-420 Class 1 facility--Operations manual content requirements.

Proposed language in draft rule:
(3)(b)(vii) ~~Discussion~~ of the facility's requirements ~~regarding~~ weather and sea conditions ~~at~~ the facility which may impact oil transfers to or from vessels. The supporting data for oil transfer weather and sea restrictions must be made available to ecology if requested and include at a minimum:
(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;
(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;
(C) Monitoring forecasted weather and sea;
(D) Procedures for communicating weather and sea conditions to the PICs at regular intervals;
(E) Threshold values for weather and sea conditions above which transfer operations must cease; and
(F) Procedures for shutting down the oil transfer should weather or seas exceed threshold values.

Final language as published:
(3)(b)(vii) **Description** of the facility's requirements **or actions taken** regarding **unexpected** weather and sea conditions **and the threshold values developed by** the facility which may impact oil transfers to or from vessels. The supporting data for oil transfer weather and sea restrictions must be made available to ecology if requested and include at a minimum:
(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;
(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;
(C) Monitoring forecasted weather and sea;
(D) Procedures for communicating weather and sea conditions to the PICs at regular intervals;
(E) Threshold values for weather and sea conditions above which transfer operations must cease; and
(F) Procedures for **communicating with the vessel** and shutting down the oil transfer should weather or seas exceed threshold values.

Rationale:
The language amendments were made for clarity.

WAC 173-180-420 Class 1 facility--Operations manual content requirements.

Proposed language in draft rule:
(c) Threshold values ~~determination~~ when a facility will not preboom under ~~WAC 173-180-220~~ must be in the operations manual ~~for approval~~ and easily found by the PIC. ~~The information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations.~~ The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology.
~~(i) These values and the supporting data must address, at a minimum, the following site specific information:~~
~~(A) Personnel safety;~~
~~(B) Sea state values in feet including typical wave periods;~~
~~(C) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;~~
~~(D) Wind speed in knots and prevailing directions;~~
~~(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.~~
~~(ii) The facility must provide a detailed analysis of the proposed threshold values for the transfer site including:~~
~~(A) Methodology of the analysis;~~
~~(B) Equipment used to measure data collected;~~
~~(C) Supporting data, references, graphs, tables, pictures, and other relevant information.~~

~~(iii) When reviewing threshold determination reports, ecology must consider the following:~~
~~(A) Personnel safety;~~
~~(B) Operating environment of the transfer site(s) such as site specific meteorological, water current velocity and other monitoring data to support the threshold values determination;~~
~~(C) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;~~
~~(D) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.~~
~~(iv) Ecology will make the report available for a thirty-day public review and comment period.~~

Final language as published:
(c) **Safe and effective threshold determination. The** threshold values **which personnel will use to determine** when a facility will not preboom under **Part B of this chapter,** must be in the operations manual and easily found by the PIC. **The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology. See WAC 173-180-224.**

Rationale:
These specific report requirements were taken out of the operations manual requirements and placed in their own section in WAC 173-180-224. The move was made for clarity and no substantive changes were made to the requirements. See discussion under WAC 173-180-224 above.

Proposed language in draft rule:
(3)(d)Facility emergency procedures, at a minimum:
(i) Procedures for reporting and initial ~~containment of~~ oil discharges;

Final language as published:
(3)(d) Facility emergency procedures, at a minimum:
(i) Procedures for reporting **spills to the appropriate agencies** and initial **response actions taken in the event of an** oil discharge;

Rationale:
This language amendment was made for clarity.

WAC 173-180-425 Class 1 facility--Operations manual submittal.

Proposed language in draft rule:
(1) The owner or operator of an existing facility must submit the operations manual to ecology within ~~ninety~~ calendar days from the effective date of this chapter.

Final language as published:
(1) The owner or operator of an existing facility must submit the operations manual to ecology within **one hundred twenty** calendar days from the effective date of this chapter.

Rationale:
Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. The changes to the operations manual are now due in 120 days.

WAC 173-180-460 Class 2 facility-Operations manual content requirements.

Proposed language in draft rule:
(2)(e) If a Class 2 facility conducts Rate A transfers, then the operations manual must include threshold values ~~when a facility cannot preboom under WAC 173-180-220 and data supporting this decision for a specific transfer location. These values and the supporting description must include at a minimum site specific information:~~

~~(i) Personnel safety;~~
~~(ii) Sea state;~~
~~(iii) Current velocity;~~
~~(iv) Wind speed; and~~
~~(v) Other environmental conditions.~~

Final language as published:
(2)(e) If a Class 2 facility conducts Rate A transfers, then the operations manual must include the **safe and effective** threshold values **as identified in the safe and effective threshold determination report**. **These values must be for each location where a Rate A transfer occurs. See WAC 173-180-224 for requirements for this report.**

Rationale:
These specific report requirements were taken out of the operations manual requirements and placed in their own section in WAC 173-180-224. The move was made for clarity and no substantive changes were made to the requirements. See discussion under WAC 173-180-224 above.

WAC 173-180-465 Class 2 facility--Operations manual submittal.

Proposed language in draft rule:
(1) All existing Class 2 facilities must submit an operations manual to ecology within ~~ninety~~ calendar days after the effective date of this chapter.

Final language as published:
(1) All existing Class 2 facilities must submit an operations manual to ecology within **one hundred twenty** calendar days after the effective date of this chapter.

Rationale:
Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. The changes to the operations manual are now due in 120 days.

WAC 173-180-500 Applicability of Part E.

Proposed language in draft rule:
(1) Part E applies to Class 1 and 2 facilities. All Class 1 and Class 2 facilities must have training and certification programs that are developed, approved, and implemented, pursuant to requirements in this chapter.
(2) Class 3 facilities must meet the training requirements in 33 CFR 154.

Final language as published:
(1) Part E applies to Class 1 and 2 facilities. All Class 1 and Class 2 facilities must have training and certification programs that are developed, approved, and implemented, pursuant to requirements in this chapter.
(a) Class 1 and 2 facilities training and certification program will be valid for no more than five years from the date on the approval letter. Ecology will review Class 1 and 2 facilities training and certification program to ensure compliance with this chapter.

Rationale:
This amendment was made for clarity and readability. WAC 173-180-525 gives additional information about manual review and approval, and re-approval process.

WAC 173-180-540 Class 2 facility--Certification of personnel.

Proposed language in draft rule:
~~(2) Initial certification:~~
~~(a) For all Class 2 facilities operating on or before the effective date of this chapter:~~

~~(i) The facility must develop or modify their training and certification program to meet the requirements in this chapter and implement the program within ninety days of the effective date of this chapter.~~
~~(ii) Within ninety days from the effective date of this chapter, the Class 2 facility must have all key supervisory and operations personnel trained and certified in the program developed under this chapter.~~
~~(b) For all Class 2 facilities that begin operating after the effective date of this chapter:~~
~~(i) The facility must develop and implement their training and certification program before the first oil transfer operation.~~
~~(ii) Within ninety calendar days before the first oil transfer operation the Class 2 facility must train and certify all key supervisory and operations personnel.~~
~~(c) All new facility employees with oil transfer duties must be trained and certified within ninety days from date of hire.~~

Final language as published:
This language was deleted from the adopted rule.

Rationale:
This language was deleted. The compliance deadline for Class 2 facilities is found in WAC 173-180-545 Class 2 facility--Program approval. "(1) Ecology must approve all training and certification programs.

(2) Class 2 facilities operating on the effective date of this chapter:

(a) Must develop or modify their training and certification program to meet the requirements in this chapter and implement the program within ninety calendar days of the approved date of the operations manual.

(b) Must train and certify all key supervisory and operations personnel under the facility's training and certification program within ninety calendar days from the approved date of the operations manual."

WAC 173-180-650 Plan review **and approval.**

Final language as published:
(1) Ecology must endeavor to review each plan in sixty-five calendar days. If the plan is submitted in conjunction with a contingency plan required under chapter 173-182 WAC, ecology may extend the prevention plan review period an additional sixty-five calendar days. Upon receipt of a plan, ecology must evaluate promptly whether the plan is incomplete. If ecology determines that a plan is incomplete, the submitter must be notified of deficiencies. The review period will not begin until ecology receives a complete plan.

(a) All prevention plans will be valid for no more than five years from the date on the approval letter. Ecology will review prevention plans to ensure compliance with this chapter.

Rationale:
This amendment was made for clarity and readability. WAC 173-180-670, Plan Update Timeline, gives additional information about the re-approval process.

WAC 173-180-670 Plan update timeline.

Proposed language in draft rule:
(5) Ecology may review a plan following any spill at the facility.

Final language as published:
(5) Ecology may **require a new** review **and approval process for** a **prevention** plan following any spill at the facility.

Rationale:
The language was amended for conformity in the chapter.

WAC 173-180-810 Type ~~and frequency~~ of ~~unannounced~~ drills.

New section title - WAC 173-180-810 Type of drills.

Rationale:
The section title was changed to better reflect the section contents. The rule language within the section was not changed.

III. Summarize 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)):

Comments by Section of WAC 317-180

Section 173-180-010 – Applicability of this chapter

1. **Ecology needs to clarify who the responsible party is throughout the rule.**

It is difficult to determine the responsible party as we read though the draft rules. Many of these small fueling operations are owned by, in our case the public port, but are leased out to individual operators. Many of the requirements were not clear as to who bears the responsibility of reporting, training, providing equipment, et cetera. - 229 Larry Crockett

Response

We have made clarifying changes to the chapter and the applicability section of this chapter. See strike out summary for language changes.

Section 173-180-015- purpose

2. Ecology should delete paragraph (5) of this section - "Facilitating coordination of local, state, regional, tribal, and other prevention and contingency plans".

Delete or move since it admits failure and pertains to response or coordination of a response after an incident occurs. - 221 Eric Haugstad

Response

Ecology will not remove this subsection because this statement is about facilitating coordination of both prevention and response issues among our many stakeholders. Ecology believes this is an important mission for this rulemaking.

Section 173-180-025 - Definitions

3. Ecology should better define Best Achievable Protection and Best Achievable Technology. Open-ended regulations based on "director's determination" is unacceptable.

As we have repeatedly stated, we have a serious problem with the application of "best achievable protection" and "best achievable technology" except in the general sense and as a guiding principle. These terms should not be used in specific regulation. However, Ecology seems compelled to use these terms because they are in law. It is one thing to put them in law and leave flexibility to the agency in developing the implementing regulations, however, at the time of issuing those implementing regulations, these items should be better defined with specific detailed requirements. Otherwise they are open-ended regulation based on the "director's determination." The latter implies that an owner/operator would have upgrade to the best achievable each and every time something new is introduced, likely a never ending evolution. While it is good that the director must consider the effectiveness, engineering feasibility, and commercial availability, open-ended regulation is unacceptable. Ecology recognizes this in their incorporation by reference of the Federal regulations "in effect on the effective date of this section …." The details of the regulations at the time of publication are the best achievable standards and changes to those standards should be subject to rulemaking per the APA and not the director's determination. - 203 Michael Moore

In several places (e.g. 173-182-30 (18)(contingency rule) and 173-180-25 (1) & (2)), the proposed rules allow a "Director's determination" to have the effect of law/regulation. I would strongly recommend that you definitively spell out what you need in these instances and remove this open-ended regime. - 230 Richard Wright

Response

This is language that was taken from the old rule and was not changed. We believe in the idea and issues this raises, however, we do not actively pursue this agenda at this time.

4. We support the rule in its application to mobile facilities.

We support the application of the rule to mobile facilities, marinas and small fueling facilities. This application is necessary to update the regulations to current practices. As stated in the report to the legislature on oil transfers, mobile facilities have become much more common in recent years. Given that, it is necessary that this practice also fall within the rule requirements. - 216 Brad Ack

Response

Thank you for your comment and support of this rule.

5. Boatyards should be considered a Class IV facility not a Class III facility.

One area of concern for us is the issue of a vessel with a capacity for more than 10,000 gallons being hauled out and worked on in a boatyard. These vessels typically remove most of their fuel prior to haul-out, for obvious safety and environmental reasons. When they launch, they need take on a small amount of fuel before proceeding to their primary fueling station. It would be both unnecessary and contrary to the spirit of this rule to classify a boat-yard's operations as a Class III, rather than a Class IV, if this is the only interaction with a larger commercial vessel that the boat yard has. We encourage the Department to create an administrative procedure that will not require this re-classification, so that our state's high-quality boat yards do not end up turning away occasional work on a larger vessel (with no added spill risks) because of the costs of technically complying with this rule. - 225 Eric Johnson

Of particular note is the concern of classifying a facility such as ours as a Class Ill versus a Class IV solely based on the vessel's capacity to hold fuel. We run a permitted haul out facility with accompanying boatyard operation which can haul up to 330-ton vessels- Many of these large yachts and commercial fishing vessels may have the capacity to hold 10,000 gallons. As stated in the WPPA letter, these vessels will usually come in light on fuel for obvious reasons and only will take on enough fuel, once back in the water, to get back to their home port. Our on site fueling operation - does not even have the capacity to hold 10,000 gallons of any particular type of fuel. As I read the draft rules - our facility will be classified as Ill versus IV. 229 Larry Crockett

Response

We have responded to your concern by defining "boatyard" and declaring boatyards class 4 facilities. See strike out summary for language changes.

6. In paragraph 10(c) the term "motor vehicle motor fuel outlet" is unclear and needs further definition.

"Motor vehicle fuel outlet" seems more clear than "motor vehicle motor fuel outlet" - 204 Tammy Brown

"Motor vehicle motor fuel outlet" should be defined. Additionally, "motor vehicle fuel outlet" seems more clear. - 204 Tammy Brown

Response

This term is in statute and therefore will not be changed.

7. Marine fuel outlet is not defined.

"Marine fuel outlet" is not defined (I know it is the same as a "Class 4 facility," but it is used as a stand alone term and unless your read through all the definitions and find it as part of the "Class 4 facility" definition, it is unclear). Recommend addition of a separate definition or just use "Class 4 facility" and drop all reference to a "marine fuel outlet". - 204 Tammy Brown

The definition of a marine fuel outlet that shows up several times here does not show up in the actual definitions as such as a separate item. – 210 Warren Aakervik

Response

This term is in statute and therefore will not be changed. We include it as a reference phrase for class 4 facilities since it is more a description than a phrase in need of being defined.

8. Ecology needs to further develop and define the concept of Public Vessel.

The definition of "covered vessel" includes "passenger vessel" but it isn't defined. Also, rewrite as recommended. Recommend exempting public vessels from definition of covered vessel. A definition of "public vessel" needs to be added. While these are facility transfer standards, we need to be clear requirements for PICs, etc. do not apply onboard Navy (or other public vessels), although Navy facilities will comply with facility transfer standards. The Navy believes that Washington State lacks the jurisdiction to regulate vessels of the Armed Forces. "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel, as defined by this rule. PUBLIC VESSELS ARE EXEMPT FROM THIS RULE. "Public vessel" means a vessel that is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and is not engaged in commercial service. - 204 Tammy Brown

Response

Ecology has added the definition of public vessel to 173-180-25 Definitions. In addition Ecology has added the definition the vessel rule and specifically exempting public vessels from compliance with Chapter 173-184. See strike out summary for language changes.

9. Ecology's definition of the term "oil" needs to be further clarified.

Definition of "oil" includes oil or any fractionation thereof, and oil mixed with wastes other than dredged spoil. This makes it appear this entire rule applies to oil or any oil mixture, to include tank cleaning waste, bilgewater, etc. Thjs will bring many more facilities under regulation. Although it states it applies to transfers in "bulk", bulk is defined as in a certain form, not as pure petroleum products. - 204 Tammy Brown

Response

The definition of "oil" is in statue and therefore will not be changed.

10. Ecology should define the term "chartering by demise".

Recommend defining the term “chartering by demise”. Also, rewrite as recommended. “In the case of a COVERED vessel, a person who owns…” 204 Tammy Brown

Response

Ecology decided not to include this definition since it is only used within the definition of "public vessel" and is a common maritime term.

11. Ecology should define “vessel”

Recreational vessel in definition means a vessel. What's a vessel? I think in several places they come up without a clear determination of what the actual definition of terms are. 210 Warren Aakervik

Things that differ on determination bothers me because there is no process in it. It analyzes the cost of measures. Cargo vessel, 300 or more gross tons, and commercial fish processing vessel. Is a catcher boat the same as a processing boat? Is it a catcher/processor. Is it defined as a processor or as a catcher. – 210 Warren Aakervik

Response

Ecology decided not to include this definition since the related term, “ship” is defined in this chapter and in RCW 88.46.010. Generally, any terms that are not specifically defined should be accorded their ordinary meaning, as found in a dictionary. For example, the dictionary definition of vessel, in this context is “a watercraft bigger than a rowboat; especially: SHIP.” Merriam-Webster Dictionary, “vessel” definition 2, last accessed online at www.m-w.com on September 11, 2006.

12. Ecology needs to ensure the definition of Class 2 facility covers all transfers to nonrecreational vehicles and not just to tank vessels and pipelines.

A Class 2 Facility is defined as “a facility as defined in RCW 90.56.010 and is rolling stock...used to transfer oil to a nonrecreational vessel” In RCW 90.56.010, a facility is defined as “any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.” If a Class 2 facility has to meet the RCW definition, then it appears only to apply to transfers from Class 2 facilities to a tank vessel or pipeline. That was not my understanding of the intent. Clarification is needed to ensure all intended transfers are covered. -223 Michael Tucker

Response

We revised the definition to be clearer and better reflect what we intended in the legislative report, following our discussions with the Oil Transfer Advisory Committee and our outreach and public hearings. See strike out summary for language changes.

Section 173-180-030 Compliance with federal rule or law

13. **Ecology should adopt the federal regulations and drop all of the proposed regulations.**

Since you are recognizing the federal regulations, please adopt them and remove the current draft regulations since they are vague and confusing and duplicative to regulations that industry already complies with for the most part. This was stated at the April 20, 2006 meeting in Olympia. - 221 Eric Haugstad

recommend federal rules be adopted - 209 David Sawicki

Response

This rulemaking process is required to meet multiple criteria in order to be lawful and valid. Although there are federal rules for oil handling facilities, and you state "(federal) regulations that industry already complies with for the most part", accidents, discharges, and spills continue to occur in state waters.

The legislature has again mandated Ecology to move beyond the federal rules to reach the "zero spills" goal and develop rules that are "additional measures to be taken in conjunction with the deployment of containment equipment" - RCW 88.446.165(4) set by the legislature.

Also, please see response to comment # 78.

Section 173-180-035 Inspections

14. **Ecology needs to clarify what is meant by the term "demonstrate" in this section.**

It's not clear how a facility would demonstrate the ability to meet the spill prevention equipment and procedures of this chapter, or demonstrate the ability to meet transfer containment and recovery standards of Section 220. The word "demonstrate" implies that a list of equipment or copy of procedures would not be adequate for the purposes of the inspection. - 204 Tammy Brown

Response

The rule language has been clarified to require the facility to provide proof of compliance to ensure that applicable oil transfer rule requirements have been met by producing equipment records, personnel training files and other documentation to show compliance with the rules.

15. **Ecology is asking the planholder to duplicate their SPCC plan.**

NB to DOE -this reg is essentially asking the Planholder to duplicate it's SPCC plans in this Chapter. - 209 David Sawicki

Response

Thank you for your comment. This section has new language for clarity. See strike out summary for language changes.

This requirement from the existing regulation for spill prevention planning for Class 1 facilities and is similar to the federal SPCC plan, with some differences. A facility may submit its SPCC plan with any necessary amendments or additions to satisfy the state requirement.

One of the chief differences between the federal and the state spill prevention planning requirements is that the state regulation requires the facility to submit its spill prevention plan for review and approval, while the federal requirement does not. Any deficiencies in the plan will be noted at the time of review, rather than later during a facility inspection. The advantage to the facility is that the prevention plan can be modified, if necessary, by the registered engineer under whose auspices the plan was prepared.

Another difference is the requirement for risk assessment. The state regulation requires the facility to evaluate the oil handling and storage equipment to identify and prioritize changes to reduce the risk of oil releases. This ensures that a facility's resources are directed at the highest priority projects.

The state's spill prevention planning requirements focus on all aspects of marine oil transfer operations, whereas the federal SPCC requirements emphasize oil storage. Taken together with the Oil Handling Facility Design Standards and Operator Training and Certification requirements, the state spill prevention plan requirement addresses the major root causes of oil spills to surface water associated with oil transfer operations.

16. <u>The Office of Pipeline Safety does not require all facilities to have a SPCC plan.</u>

The Office of Pipeline Safety does not require all facilities to have a SPCC. 209 David Sawicki

Response

Ecology recognized some classes of facilities are not required to have a SPCC plan. However, any class facility with a SPCC plan can modify it to meet the requirements of this chapter and submit this to Ecology for approval.

17. <u>Ecology needs to re-word 173-180-035(2)</u>

Re-wording needed in (2) - 209 David Sawicki

Response

This section has new language for clarity. See strike out summary for language changes.

18. <u>Ecology needs to clarify if a final report will be submitted to the facility.</u>

This discusses a preliminary inspection report but will a final report be prepared by ecology and submitted to the facility? 204 Tammy Brown

Response

The word "preliminary" was removed to indicate that a report will be provided to the facility at the conclusion of the inspection. See strike out summary for language changes.

Section 173-180-040 Recordkeeping

19. The requirement to keep the design, construction, and repair records for storage tanks, pipelines, and all oil transfer equipment testing and repair records, for the life of the equipment is unreasonable. Suggest a shorter length of time.

recommend this be changed to 5 years - 209 David Sawicki

Keeping repair records for equipment for the life of the equipment is unreasonable and Tesoro suggests a 10 year record retention requirement. 221 Eric Haugstad

Response

On the advice of Ecology's engineering staff, and based on the comments from stakeholders, the above modifications were made to this section of the rule. Records for storage tanks and pipelines must be kept for the lifetime of the equipment because these are major structures that are in use for decades and any records of past repairs or modifications need to be available until the structure is replaced. Records for ancillary equipment must be kept for 10 years.

Section 173-180-045 Threat of a Spill

20. Ecology does not have the authority to enact this portion of the rule. The Coast Guard has the primary, and likely preempting authority, in this regard.

As with 317-40-045, this is a requirement for which we believe DOE is overstepping its authority, particularly where a vessel may be involved. We believe the CG Captain of the Port has the primary, and likely preempting authority, in this regard. 203 Michael Moore

Response

These rules focus on oil transfer facilities, rather than vessels. Other rules proposed to regulate vessels involved with oil transfers have been withdrawn for the time being, due in part to USCG comments and concerns. See chapter 173-184 WAC.

States are authorized under federal law (the Ports and Waterways Safety Act) to enact their own safety standards for oil-handling facilities, including safety standards that are more stringent than federal standards. Therefore, the State is not federally preempted from suspending or delaying oil transfers to or from a state

facility in the event of a threatened oil spill, and Ecology believes that this authority does not rest exclusively with the Coast Guard. See strike out summary for language changes.

21. **The word "substantial" needs to be defined. The rule needs additional clarity on when Ecology feels a threat to be substantial.**

Please add "Substantial" to the definition since it is unclear to the reader what it means. Whenever oil transfer operations take place there is a risk of a spill unfortunately. Please clarify the meaning and intent. - 221 Eric Haugstad

Is "substantial" placed in the right location here? Suggest that the wording be redone so as to direct attention to a "Substantial spill". A drip is not a substantial threat. - 209 David Sawicki

Response

Ecology feels this is a standard term used in many federal and state laws and chose not to define this term separately. This section refers to condition(s) outside the normal operations that exist at the transfer location.

22. **Paragraph 2(c) needs to clarify that a transfer will not be resumed unless the threat of a spill has been eliminated or minimized and the permission to resume the transfer must be coordinated with the Coast Guard.**

Subparagraph (2)(c) requires "Notify the PICs that oil transfers may resume once Ecology is satisfied the threat is no longer substantial." Once a transfer has been terminated due to threat of spill, transfer should only be resumed after the threat is eliminated/minimized. Additionally, resumption needs to be coordinated with the COTP/FOSC particularly when a vessel is involved. - 203 Michael Moore

Response

The language in this section was changed for clarity. See strike out summary for language changes.

Section 173-180-050 Oil Spills

23. **PICs should have the discretion to resume a transfer if it has been stopped for small leaks or drips.**

Too burdensome to receive approval from the SOSC and FOSC whenever oil could originate form the current oil transfer operation and is (b) discharged into oil spill containment or on the deck. USCG regulations let the PIC have discretion for small leaks or drips into containment that can be stopped and transfer deemed safe. And while a receiving vessel may stop the transfer for items of concern, it should be able to be restarted by agreements by both PICs. - 204 Tammy Brown

What if there is no FOSC on site? Does an RP really have to wait for an FOSC to show, if there was a spill and the volume was only large enough to make a sheen? This will unnecessarily slow the transfer process. The USCG regulates this activity; permission should come from the USCG and not the DOE. Will the DOE / USCG be available 24 / 7 to assist with this decision making process, especially if there was no spill and the operation was shut down because someone thought

something was unusual and shut down the operation because of the possibility that some oil “could originate”. .. - 209 David Sawicki

Section 4 before the oil transfer can resume here again is a spill. It could have been a drop in a containment. The PICs must receive approval from the state-on-scene coordinator in coordination with the federal on-scene coordinator. If there was a two-drop spill into containment you would consider that a spill. So it appears that I need to call an on-scene coordinator to ask him if I can re-start refueling because it was in containment. – 210 Warren Aakervik

Response

When a spill occurs it is a valid and essential exercise of the state police power to insist on measures that best protect the public and the environment. It should be noted, however, that Ecology and the Coast Guard have worked to establish coordinated responses that recognize each agency’s legitimate authority. See strike out summary for language changes.

24. Ecology needs to clarify the terms “could originate” and “any person” in this section.

clarity needed; what is meant by"...could originate " ? Is the word, “that” needed before the word “could …”? - 209 David Sawicki

"any "person is inadequate; this should have been pre-identified during the DOI - pre-transfer conference. - 209 David Sawicki

Response

This section has new language for clarity. See strike out summary for language changes.

25. Ecology needs to clarify how the PICs will receive approval to resume the transfer and how it will be documented.

Please clarify how this is documented and does it need to be sent to anyone? Is this decision process done outside of Unified Command? - 221 Eric Haugstad

Response

This section has new language for clarity. See strike out summary for language changes.

26. Can the receiver shut off the transfer?

shut down at the request of the receiving vessel. We tend to give everbody on the receiving vessel complete control. There is no reason why they can't shut it off, but that isn't allowed for the way this rule is written. – 210 Warren Aakervik

Response

This section has new language for clarity. The facility can shut the transfer down for any reason it thinks may, or could, cause a spill. We leave this decision making

process up to the individuals involved in the transfer. In the case the receiver is pumping at a gas station they have the ultimate ability to stop the flow.
See strike out summary for language changes.

Section 173-180-055 Work hours

27. Ecology should adopt the federal work hour standards. The industry has labor agreements which will be affected by these new regulations.

Please Adopt Federal Regulations, the draft work hours will cause hardship for negotiated labor agreements that are in-place. - 221 Eric Haugstad

Recommend that this be changed to 40 hours, instead of 38, which is more consistent with industry practices. Existing labor contracts may need to be renegotiated, and for what value? - 209 David Sawicki

It is possible to exceed the proposed “thirty-eight hours in any seventy-two hour period” standard. Increasing the standard to “forty hours in any seventy-two hour period” would allow facilities to continue their standard 12-hour rotating shift schedules without periodically exceeding this new regulation due to the reasons mentioned above. As written, the “thirty-eight hours in any seventy-two hour period” standard will cause major scheduling and contract disruptions at facilities, with no significant improvement to oil spill prevention or response. - 226 Frank Holmes

WSPA requests that the work duration of “thirty-eight hours in any seventy-two hour period” be replaced with “forty hours in any seventy-two hour period”. This revision is intended to be consistent with fixed facility work standards. Experience has shown that most personnel with oil transfer duties, other than vessel personnel, can effectively monitor their transfers within these additional hours of operation. -- 226 Frank Holmes

USOR requests that the work duration of "thirty-eight hours in any seventy-two hour period" be replaced with "forty hours in any seventy-two hour period". This revision Is intended to be consistent with fixed facility work standards. Experience has shown that most personnel with oil transfer duties, other than vessel personnel, can effectively monitor their transfers within these additional hours of operations. As currently written, it is possible to exceed the proposed "thirty-eight hours in any seventy two hour period" standard. Increasing the standard to "forty hours in any seventy-two hour period" would allow facilities to continue their standard 12 hour rotating shift schedules without periodically exceeding this new regulation due to the reasons mentioned above. As written. the "thirty-eight hours in any seventy-two hour period" standard will cause major scheduling and contract disruptions at facilities, with no significant improvement to oil spill prevention or response. - 224 Ty Gaub

ConocoPhillips requests that the work duration of thirty-eight hours in any seventy-two hour period" be replaced with 'forty eight hours in any seventy-two hour period". It is possble to exceed the proposed "thirty-eight hours in any seventy-two hour period' standard. Increasing the standard to "forty-eight hours in any seventy-two hour period" would allow facilities to continue their standard 12-hour rotating shift schedules without periodically exceeding this new regulation due to the reasons mentioned above. As written, the "thirty-eight hours in any seventy-two hour period' standard will cause major scheduling and contract disruptions at facilities, with no significant improvement to oil spill prevention or response. - 213 Gary Solari

Response

Thank you for your comment. Ecology received many comments from facilities worried about the effect of this regulation on their labor contracts. This language was changed to "forty hours in any seventy-two hour period" to assist companies meet their union contract obligations. See strike out summary for language changes.

28. <u>The work hour limits for facilities should match those found in the vessel rule 317-40-085.</u>

This paragraph would limit the work of personnel with oil transfer duties to not more than thirty-eight hours in any seventy two hour period. WSF recommends that the vessel rules found in 317-40-085 be modified to be consistent with this language. - 232 Michael Anderson

Response

The vessel rule has changed and this comment no longer applies. See the vessel rule strike out summary for language changes.

29. <u>How long must the owner or operator retain work hour records as per 173-180-055(2)?</u>

time frame? - 209 David Sawicki

Response

The requirement for these records is three years as found in Recordkeeping 173-180-040.

<u>Section 173-180-060 Personnel qualifications</u>

30. <u>The section is confusing. Please clarify who needs what qualifications.</u>

This section is a bit confusing. –060(1) discusses PICs, but (2) states "All personnel...must be qualified..." Does that mean all "PIC" personnel or all personnel? If it is ALL personnel, then mention of Part E of this rule would be appropriate. - 204 Tammy Brown

Response

This section has new language for clarity. See strike out summary for language changes.

<u>Section 173-180-070 Alternative Compliance</u>

<u>New Title - 173-180-070 Equivalent Compliance Plan</u>

(In proposed WAC 173-180-070 the "alternative compliance program" has been named the "equivalent compliance plan" in an attempt to clarify the difference between this elective program and the alternative measures required in this

chapter. The plan requirements are spelled out in WAC 173-180-070, Equivalent Compliance Plan.)

31. The rule provides loopholes to compliance. The process needs performance standards and additional opportunity for public review.

The rule provides loopholes to compliance without establishing firm performance standards and with no public review. The net effect of this process is to make these rules optional. - 200 Gerald Joyce

This process also allows for changes to the documented procedures yet has no stringent procedure for evaluating whether these changes weaken compliance. The rules should require that whenever there are substantive changes to the operational manual, the entire manual should undergo a full review by Ecology and be available for public comment. - 200 Gerald Joyce

Response

(In proposed WAC 173-180-070 the "alternative compliance program" has been named the "equivalent compliance plan" in an attempt to clarify the difference between this elective program and the alternative measures required in this chapter. The plan requirements are spelled out in WAC 173-180-070, Equivalent Compliance Plan.)

The rules do allow for public review and comment of any "Equivalent Compliance Plan" submitted by a company under the rules. One objective of the rules is to set some clear standards for pretransfer containment while also providing flexibility to regulated entities that are incapable of meeting the containment standards either because it is unsafe or ineffective to do so. This approach is consistent with the legislative mandate in RCW 88.46.160. These rules are mandatory, not optional, for owners and operators of facilities that deliver oils on Washington waters.

32. Ecology should allow alternative compliance proposals for pre-booming and alternative measures.

WSPA requests that this section be modified to read "(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-180-220 (5) and (6)". This additional language provides deliverers with opportunity to submit alternative compliance proposals for subsection (5) pre-booming requirements as well as subsection (6) alternative measures. There may be innovative approaches to transfer containment that are as protective or greater than pre-booming. - 226 Frank Holmes

ConocoPhillips requests that this section be modified to read: '(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC 173-1 80-220 (5) and (6)". This additional language provides deliverers with opportunity to submit alternative compliance proposals for subsection (5) pre-booming requirements as well as subsection (6) alternative measures. There may be innovative approaches to transfer containment that are as protective or greater than pre-booming. - 213 Gary Solari

Response

The legislature required Ecology to develop standards for prebooming when it is safe and effective, and standards when it may not be safe and effective. The intent of the law is to preboom oil transfers if it is safe and effective. The Equivalent

Compliance Plan is offered only for the alternative measures required in this chapter. If the Equivalent compliance plan were to include prebooming, this would circumvent the legislative mandate to preboom oil transfers.

33. Ecology should supply data, graphs, etc to show evidence the proposed regulations are justified in going beyond federal standards to achieve BAP/BAT.

The data the Plan Holder is required to submit is far more detailed than that provided by DOE supporting the proposed regulation. Can DOE share any data, graphs, etc, that show their proposed regulations will provide the BAP / BAT levels desired? This would help support any justification the DOE might have to go beyond Federal standards. - 209 David Sawicki

Response

Under RCW 34.05.328 of the Administrative Procedures Act (APA), Ecology is required to "determine if the rule differs from any federal regulation or statue applicable to the same activity or subject matter and, if so, determine that the difference is justified." This analysis is in the Significant Rule Making Criteria document that is included as part of the final rule packet available for public review. Please refer to this document for further information. Ecology has also included many other documents and data in the rule making file that has been used in the process of evaluating federal standards and developing the oil transfer rules. Ecology has developed the rules in response to the legislative mandates in RCW 88.46 160 and 88.46.165.

34. Ecology does not need to know the cost of an alternative compliance.

the cost of an alternative, to be borne by the Planholder, is it's business; Why does the DOE need a cost comparison? - 209 David Sawicki

Response

We removed this requirement to address you concern. See strike out summary for language changes.

35. It would appear that to follow the required timelines I would need to submit my alternative compliance package 30 days prior to the rules adoption date. How is Ecology handling alternative compliance requests?

I cannot find the effective date or time period contained in the proposed rule in the following regard: On the FAQ sheets, the last question says Q: How long will I have to comply with these rules? The answer contains the following bullet: • Alternative compliance is due from Rate B deliverers 120 days before planned alternative operation. My question is this – how are we to get our Alternative plans in for approval 4 months prior to the first time we need to fuel a vessel if your timeline shows adoption of this rule on September 25th so that by adding the 90 days mentioned in the FAQ in question, it would go into effect on Christmas day which would back us up to August 25th as the drop dead date to get our Planned Alternative in to your department? – 215 Nancy Hodge

Response

In chapter 173-180 WAC the "alternative compliance program" has been named the "equivalent compliance plan" in an attempt to clarify the difference between this elective program and the alternative measures required in chapter 173-180 WAC. The plan requirements are in WAC 173-180-070, Equivalent Compliance Plan

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. The compliance date for this section was changed to 120 days. While reviewing comments with the compliance schedule matrix, Ecology tried to match the new requirements for this new equivalent compliance proposal to alternative measures and other manuals and plan submittal requirements. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

The delivering facility must meet the appropriate alternative measures in 120 days. If the owner or operator of the facility vessel chooses to use the Equivalent Compliance Plan program, the plan proposal must be submitted to Ecology at least one hundred twenty calendar days before planned implementation of the equivalent measures. Ecology will make the proposal available for a thirty-calendar-day public review and comment period, and Ecology will respond to the owner or operator within ninety calendar days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal.

If there is a gap between the Equivalent Compliance Plan approval and the compliance date for alternative measures, the alternative measures must be used until the Equivalent Compliance Plan is approved.

Section 173-180-205 Oil transfer equipment at Class 1, 2, 3, and 4 facilities

36. We recommend that Ecology sets the same requirements as the USCG.

Recommend just requiring USCG procedures in 33 CFR 156.170. - 204 Tammy Brown

Response

Ecology's rules apply to a much broader set of oil handling facilities than the USCG regulates. We developed equipment requirements that are compatible with the USCG but are now applied to this wider audience.

37. The requirement for record retention is too long.

record retention for the life of the facility is onerous and Tesoro suggests a 10 year record retention requirement. - 221 Eric Haugstad

recommend to go to 5 years, instead of "life". – 209 David Sawicki

Response

We changed the language to reflect pipelines and storage tanks keep lifetime records with other equipment records kept for at least 10 years. See strike out summary for language changes.

Section 173-180-210 Requirements for Class 4 facilities only

38. The rule does not take into account the self service aspect of the Class 4 facility for training purposes.

"...posted at the dock for fueling customers." This sounds as if self-service customers may utilize this facility...how would the owner be able to ensure those customers are properly trained as required in –210(2). I realize this is in reference to employees, but for self service facilities, employees may rarely, if ever, be the person conducting the fueling. It may also be that we are not talking about self-service and so it should be clarified. 204 Tammy Brown

Response

Ecology realizes some Class 4 facilities are self service facilities that operate when no employees are present. Ecology uses a combination of outreach and prevention measures to ensure safe fueling practices. In addition, we are conducting field verification inspections to ensure compliance with this rule as well as providing additional resources to the facilities.

39. The semiannual reporting form required for Class 4 facilities should be available for online submission.

This report should also be available online for submission. - 204 Tammy Brown

we would ask that the final rules enable a marine fuel outlet's semi-annual volume reporting to be done electronically or in writing. Ease of reporting will encourage compliance with the requirement. - 225 Eric Johnson

Response

Class 4 facilities can submit the report electronically or in writing. See WAC 173-180-210 (6) (c).

40. The date for compliance for Class 4 facilities should be increased.

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. – 204 Tammy Brown

Response

We have increased the compliance time to 120 calendar days for training and response equipment. See strike out summary for language changes.

Section 173-180-215 Advance notice of transfer for Class 1, 2, and 3 facilities

41. The acronyms "LR" and "IMO" should be defined.

Definition of LR/IMO: The acronym "LR/IMO" is undefined in the rules. It is requested that LR/IMO be defined in the definition section located in WAC 173-180-025. - 226 Frank Holmes

It is unknown as to what LR/IMO means. Please define the acronym LR/IMO in the definitions section located in WAC 173-1 80-025. - 224 Ty Gaub

You use some terminologies in here, L R I M O. I don't know what those are. – 210 Warren Aakervik

Response

We have addressed your concerns in the rule by spelling out the acronyms. See strike out summary for language changes.

42. The advanced notice of transfer should allow Class 1 facilities the option to report amounts in barrels.

The advance notice of transfer requires (in part) that class 1, 2 and 3 facilities provide the oil product quantity in gallons. The volume of oil transferred for a class 1 facility is orders of magnitude greater than the other facility classifications and typically ranges from several thousand barrels to several hundred thousand barrels per transfer. It makes more sense to report oil volumes transferred for class 1 facilities in terms of barrels, which is a commonly recognized unit of volume used in our industry. At a minimum, Class 1 facilities should have the option to report oil quantities in barrels or gallons. - 224 Ty Gaub

The advance notice of transfer requires (in part) that class 1, 2 and 3 facilities provide the oil product quantity in gallons. The volume of oil transferred for a class 1 facility is orders of magnitude greater than the other facility classifications and typically ranges from several thousand barrels to several hundred thousand barrels per transfer. It makes more sense to report oil volumes transferred for class 1 facilities in terms of barrels, which is a commonly recognized unit of volume used in our industry. At a minimum, Class 1 facilities should have the option to report oil quantities in barrels or gallons. - 226 Frank Holmes

In here you use gallons and several other places you use barrels. I think you should be consistent in the terminology that you use for volumes so that we know exactly what you're talking about. – 210 Warren Aakervik

Response

Thank you for your comment. We now require advance notice to be in barrels or gallons to address your concerns. See strike out summary for language changes.

43. Ecology and the Coast Guard should work together on the Advance Notice requirement to minimize duplication and the burden on the industry.

Please utilize the MOU WADOE has with MSO Puget Sound on information sharing. What happens when cargo orders change once the ship is alongside? Please clarify the procedures for transfer changes - 221 Eric Haugstad

DOE should coordinate with the Coast Guard, per the MOA, to minimize the duplication of effort by the agencies and burden on the industry. Per Federal regulation, the COTP may require advance notice of transfer up to 4 hours, and does so. DOE is proposing a separate notification system with their own form. There should be one form with the ability to submit one report to cover both the COTP's need and the state's need. - 203 Michael Moore

Response

We worked with the Coast Guard to develop these standards. Ecology is continuing to working closely with the Coast Guard to set up a web based advance notice of transfer system with "one-stop-shopping" for delivering vessels and facilities making advanced oil transfer notices. Changes or updates to an advance notice of transfer are not required by Ecology. We will assume the responsibility of verifying the advance notice if when we attend the transfer in the field.

44. Ecology's requirement for Advance Notice of transfer will be difficult for the Washington State ferries to comply with due to their schedules.

It is routine business for ferries to move from one route to another on short notice, with cascading impacts on other vessels and fueling schedules. WSF would certainly be willing to work with the facility (fixed or mobile) and Ecology to satisfy this notification standard, but compliance with the required twenty-four hour advance notice will routinely be difficult if not impossible to provide. WSF is always willing to have Ecology witness our fueling operations, but this standard will likely present a problem for the facilities that service WSF vessels. - 232 Michael Anderson

Response

We require the deliverer to provide notice of oil transfers and not the receiver. The WSF vessels are on a fairly set schedule and the fueling of these vessels is frequent and also fairly routine. The deliverer currently provides the notice to the Coast Guard and would now be required to still provide the notice but with a longer timeframe.

Ecology understands that there are many times the deliverer has very little notice of a transfer and we allow for these unforeseen circumstances within the rule. However, all transfers must be reported to Ecology as soon as possible with the best available information the deliverer has if it is within the 24 hour requirement. See strike out summary for language changes.

45. Do Class 3 facilities need to give 24 hour notice for yachts?

24 hours notice in Class 1, 2, and 3 facilities. I think that a Class 3 facility is required to give 24 hours notice. Nowhere in here does it say we are not required to give that notice for yachts. So, in the case of my particular facility, I would have to give you at least 1450 transfer notices a year. – 210 Warren Aakervik

Response

If the vessels in your example are nonrecreational and the transfer is over 100 gallons, then yes, we expect advance notice of the transfer. See strike out summary for language changes.

Section 173-180-220 Transfer containment and recovery standards

46. Ecology needs to explain and justify why this rule has expanded to include "any other oils that are recoverable when spilled to water".

No longer refers to Persistent or non-persistent oils. This includes jet fuel, diesel, heating oils and ANY OTHER OILS THAT ARE RECOVERABLE WHEN SPILLED TO WATER: NB to DOE -Please justify why this change has been implemented. The definition has been applied to oil spill response in the industry and is consistent with 33 CFR 155.1020. This is a major change as it includes diesels and jet fuel, excepting for the possibility to "use the alternative measures in subsection (6). - 209 David Sawicki

Please justify why diesels / jet fuels classified as "non-persistent" ,i.e. those products that "evaporate relatively quickly", are now required to be pre-boomed ? Adios 2 model: For a 1000 gal jet A spill in 15 mph wind onto 60 degree F water, 50 % will evaporate in 2 hours and 60 % will evaporate in 3 hours. .. with substantial natural dispersion - up to 25 % in the same time period. The bottom line is that there is not much left to recover. 209 David Sawicki

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. – 209 David Sawicki

Response

Ecology has followed the legislative mandate to require pre-booming of oil transfers. The reasoning behind this decision is based upon many factors, but the leading factor is the language in RCW 88.46.160 - "The rules shall include standards for the circumstances under which containment equipment should be deployed including standards requiring deployment of containment equipment prior to the transfer of oil when determined to be safe and effective by the department." and similar language in the law calling for "all" or "any" oil transfer if safe and effective. The law does not differentiate between types or grades of oils besides the safety of the transfer personnel. Other factors include the legislature's goal of zero spills and reduction of pollution within state waters.

In the specific comment about jet fuel that you use, you do not mention if the transfer was preboomed and if the spill was inside containment. Jet fuel, lets say Alaska jet fuel, spilled into containment with the parameters you use, would be available for recovery for over 18 hours after a spill.

This does not take into account that a vessel within the containment would help shield the oil from the wind's effect on evaporation and water current. A current may aid in pooling the oil against the boom which reduces the surface area and extends the recovery time. The lighter ends of the jet fuel would evaporate relatively quickly but the remaining heavier ends would stay within containment and be recoverable for a considerable period of time.

A great deal of thought went into the decision to define risk by transfer rate and to include less persistent oils in the definition and scope of this rule. In early meetings with the Oil Transfer Operations Advisory Committee Ecology talked about the different types and amounts of oil commonly transferred. We also discussed how some states require prebooming of non-persistent oils and the lack of consistency in booming regulations.

Ecology recognizes that the general rule of thumb with oil types is the more persistent or long-lived the oil, the move effective the response. Conversely, the less persistent the oil is, the more likely the oil spill clean-up community is to see a need for a small response or even no response efforts. The old term "the solution to pollution is dilution" has been applied to non-persistent oils.

However, research shows that prebooming or quick response with fast spill containment and recovery operations will greatly increase the probability of catching much of the non-persistent oil in a spill. Most oils that are considered non-persistent are also the most toxic to the organisms in the water column. Gasoline is widely known as very toxic, however, diesel and jet fuels are even more so due to the composition of the hydrocarbons within the liquid. See "Effects of oil and chemically dispersed oil in the environment" API 2001 (specifically from pg 2); "Fate, effect, behavior and environmental impacts as the products weather" Environment Canada - Pacific & Yukon Region.

We understand that the response to a jet or diesel spill will not be a prolonged effort over weeks as may occur with more persistent oil. However, with the prebooming of a transfer that subsequently spills, or rapid deployment of containment boom after a spill, a significant portion of the spill can be recovered. The critical idea here is reducing the amount of toxic poisoning from the jet fuel or diesel by removing the source from the water. As an example, the U.S. Navy has a policy in Puget Sound to preboom all vessels taking jet fuel and has effectively responded and recovered spilled oil.

47. <u>Ecology needs to clarify the language in this section.</u>

-220 States “This section does not apply to vessels or facilities delivering gasoline, aviation gasoline...” Confusing verbiage. Does this mean the section doesn’t apply to Vessels, period, or to facilities delivering gasoline, etc. Or does it mean the section doesn’t apply to vessel delivering gasoline, etc or facilities delivering gasoline, etc - 223 Michael Tucker

Response

This section has new language for clarity. See strike out summary for language changes.

48. <u>Making the “deliverer” responsible for the transfer containment and recovery standards is unworkable in the real world.</u>

Requiring the "deliverer" to a facility, rather than the facility, to fulfill the listed requirements (pre-booming, alternative measures, etc.) will cause confusion and potential liability issues between the deliverer and the facility. Note that in this section, the term "deliverer" is used in defining requirement responsibility. USOR is concerned that use of this term did not anticipate the range of potential "deliverers" (i.e. vessel-to-vessel, vessel-to-facility, facility-to-vessel, etc.) and their ability/need to meet the requirements of this section. As such, this regulation needs to provide clarifying language as to the applicability of the requirements to "deliverers" as well as include provisions necessary to allow the receiving facility to fulfill the listed requirements (pre-booming, alternative measure, etc.) provided both parties can reach agreement. - 224 Ty Gaub

WSPA believes that requiring the "deliverer" to a facility, rather than the facility, to fulfill the listed requirements (pre-booming, alternative measures, etc.) will cause confusion and potential liability issues between the deliverer and the facility. As such, the regulation language needs to include a provision to allow the receiving facility to fulfill the listed requirements (pre-booming, alternative measure, etc.) provided both parties can reach agreement. 226 Frank Holmes

Note that in this section, the term "deliverer" is used in defining requirement responsibility. WSPA is concerned that use of this term did not anticipate the range of potential "deliverers" (i.e., onshore facility, vessel-to-vessel) and their ability/need to meet the requirement of this section. WSPA requests that WDOE provide clarifying language as to the applicability of the requirements to "deliverers". - 226 Frank Holmes

Response

RCW 88.46.160 requires the provider of the oil during an oil transfer operation to provide the containment and recovery equipment. Therefore, the rules reflect this statutory assignment of responsibility to the delivering vessel or facility.

49. <u>The section applies to all persons delivering oil to nonrecreational vessels over the water. It is confusing how the rest of the Chapter can apply to an operation in which one of the components is not subject to the rules, ie. Vessels under 300 gt or small passenger vessels. Please clarify.</u>

Paragraph (1) states that "All persons delivering oil to nonrecreational vessels over the waters … must comply with" the transfer containment and recovery standards. Thus, we could have cargo vessels under 300 GT or small passenger vessels to which this Chapter does not apply receiving oil from a facility that, as a deliverer, would then have to provide for containment and recovery. As in any other case, this section applies to the deliverer, however, it is confusing how the rest of the Chapter would apply to such an operation in which one of the components is not subject to the rules. This appears to be a product of bad definitions that mix definition and applicability. - 203 Michael Moore

Response

This issue has been addressed by creating WAC 173-184 and the definition section and applicability section no longer conflict. See strike out summary for language changes.

50. <u>Ecology needs to require a greater stand-off distance for Rate A pre-booming.</u>

Requiring a minimum boom stand-off of five feet is not adequate for spills from overboard discharges or even some deck spills. Recommend staying with the original 15 foot stand-off from last draft. - 204 Tammy Brown

Response

Ecology feels that a five foot stand-off will be adequate to capture any oil spill down the side of the vessel. Catastrophic spills may spill beyond the five foot standoff, but a vast majority of transfer related spills would be captured with the 5 foot standoff. See strike out summary for language changes.

51. <u>The alternative measures requirements are inadequate.</u>

What you have for these alternatives in the class A is even more disconcerting. I mean, you have containers suitable for holding recovered oil, but then no specified volume. And then later on you say enough sorbent material and storage capacity for a seven-barrel oil spill appropriate for use on oil or land. Seven barrels when you're transferring over 500 gallons a minute? Where did this number come from, and how is it possibly justifiable for a rate A transfer? – 205 Fred Felleman - oral

With the alternative measures which is just remarkable to me, is that in order to have the ability to do this you have to have -- you have to have a seven-barrel spill, and then within one hour of being made aware of the spill you have to boom the dock. It seems to me if you're not booming the dock but your transferring anyway then you should be able to deploy that boom. It should be preloaded ready to go, not an hour, but more importantly two hours before you get a spill in the water. - 205 Fred Felleman - oral

Transfer rule requirements provide many of the planning standards for the first 6 hours in Puget Sound related contingency plans. While the standards provide good protection in the early stages of a spill response, we believe that they should be strengthened in a few areas. – 207 Bruce Wishart- oral

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. – 207 Bruce Wishart

Response

The spill recovery and clean-up materials required in the vessel and facility rules are meant to be available to clean-up small discharges and spills. These requirements are then available to jump start a spill response to a larger spill. The vessel and facility contingency plans have additional requirements for spill clean up materials in the event of larger spills. This 1 and 2 hour set of requirements does not reduce the responsibility of the spiller to provide for a prompt and proper response according to state and federal requirements.

The alternative measures we initially developed from the California prebooming standards which we researched during the rule language development. During stakeholder meetings we had general agreement that the California prebooming

model was a good working example of state regulations and workable in Washington state.

52. <u>The risk should not be based on the flow rate, but instead on reaction time to the spill.</u>

Looking at the rules I'm not totally sure if you're looking at the class of facilities correctly on how you would define them based on flow rate. Over 500 gallons a minute or under 500 gallons, the flow rate is not going to determine what a spill will be. It is going to be the reaction time to react to a problem if there is a problem. Our flow rate is well under 500 gallons a minute, and I think the easiest thing right now -- we're classified as a Class 3 facility in Westport, but the easiest thing for us to do to get around a lot of these restrictions is what Warren said to do. Why not lower yourself to a Class 4 facility? However, by doing that you would really be hurt the large fishing industry that the state supports. – 238 Sean Mason - oral

Response

We do not classify facilities on flow rate, but we do classify the requirements for prebooming by flow rate. We scale the facility requirements by the type of facility or the capacity of the vessels transferring at the facility. Essentially, there are two things that determine the amount of oil that will be spilled to water: the time required to stop the oil pumping and the amount of oil flowing through the hoses or piping. We cannot write a rule that speeds detection of a spill or impending spill, but we can address the second item.

Ecology developed these rules, as required by the legislature, with input from many sectors of the industry and hopefully found the balance between too much regulation and too little. We will continue to work with the regulated and unregulated parties that participated in this rulemaking. We encourage your further interest working with Ecology and your work in informing others in your community about rule.

53. <u>Ecology could set prebooming goals for facilities to meet – ie. Preboom 95 percent of all oil transfers.</u>

We seems to have a hard time getting around safe and effective, and perhaps we don't really need to define it particularly so much as just how often we preboom. I would suggest that we establish some numbers like the goal is 95 percent of the time you preboom, and their plans to deal -- to explain how their equipment and their capabilities will handle the conditions they have 95 percent of the time to start with. If they fall below 90 they have to start over, do a new plan, and show that they can exceed to 95 or not fuel when they cannot preboom. – 239 Lee Moyer - oral

Response

We have set the requirements to preboom based on the type of oil and the rate at which the vessel or facility delivers or transfers oil. Ecology may additional discussions about this performance goal setting at future stakeholder meetings.

54. <u>Ecology needs to re-write the section 173-180-220(2)(a).</u>

the following sentence appears to be out of place or needs to be re-written "Class 1 and Class 2 facilities must refer to the facility's operation manual safe and effective threshold values;" - 209 David Sawicki

Response

We have addressed your concerns in the rule. See strike out summary for language changes.

55. The boom reporting form in section 173-180-220(3) should be available on-line and the vessel person may not have access to a fax machine or computer.

This report should also be available online for submission. - 204 Tammy Brown

A person on the vessel person (deliverer) may not have the capability to email / fax etc…. the form. - 209 David Sawicki

Response

Thank you for your comment. We will make this form available on-line for the deliverer to fill out.

56. Ecology should make sure facilities preboom all transfers.

I am continually dismayed by the BP exemption that is specific the rate A prebooming requirements, ii, where you have deployed boom identified in Ai of this subsection, sufficient to completely surround the vessel and the dock area, the work involving the oil transfer operation, or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of the spill. That's the BP exemption and that's their mean boom situation, where the boom doesn't even adhere to the tanker. They don't want to use magnetic ends because of sparking, and basically with the current running alongside the vessel you're going to have oil in your mini booms spewing straight out along the Cherry Point herring beds.
You need to make then do what they said they were going to do when they apply in the first place, which was to preboom all transfers. Not the mini boom where it's going to be following the recovery from a vessel on site. – 205 Fred Felleman - oral

Response

The language in section 173-184-115 and 120 has been clarified as follows: "The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation. Or the portion of the vessel and transfer area that provides for maximum containment of any oil spilled."

This language is intended to allow some flexibility for owners and operators of delivering vessels to place boom as it is most effective in the transfer location asked for by stakeholders. For instance if the delivering vessel knows the current in the transfer location always runs in one direction, they could place the boom down current and not waste time and money with the up current side of the transfer. Ecology has determined that this meets the preboom requirements for a vessel which is transferring at a location with variable currents.

57. The compliance schedule for facilities conducting Rate A transfers is too onerous.

220(4)(a) Compliance schedule ConocoPhillips requests that this section be modified to read: transfers must meet the requirements of subsections (5) and (6) of this section within eighteen (18) months from the effective date of the chapter". Facilities will need to modify existing, as well as add new, improvements, equipment and personnel resources to comply with many of the pre-booming and alterative measure requirements of this standard. These modifications and additions will require significant investments in resources and time. The current draft compliance schedule of 180 days will not allow adequate time to properly design, engineer, permit, procure, install, nor train personnel to safely utilize, the necessary improvements and equipment. The compliance schedule should be modified to eighteen (18) months from the chapter effective date, and include both subsections (5) and (6) to allow for proper implementation of the equipment and resources needed to meet the oil transfer requirements. 213 Gary Solari

As stated at the April 20, 2006 meeting in Olympia between industry and WADOE, the 180 day compliance timeframe was commented on as not being workable. Equipment has to be ordered and then the manufacture has to make it. This equipment built until an order has been placed and in some case's a portion of the cost paid. Tesoro suggest a 365 day implementation time frame. – 221 Eric Haugstad

In Section (4) (a), the stated time periods allowed for compliance are not sufficient in all cases for design, procurement, equipment delivery, permitting, and installation. USOR requests that this section be modified to read "Rate A transfers must meet the requirements of subsections (5) and (6) of this section within eighteen (18) months from the effective date of the chapter". Facilities will need to modify existing, as well as add new, improvements, equipment and personnel resources to comply with many of the pre-booming and alternative measure requirements of this standard. These modifications and additions will require significant investments in resources and time. The current draft compliance schedule of 180 days will not allow adequate time to properly design, engineer, permit, procure, install, nor train personnel to safely utilize, the necessary improvements and equipment. - 224 Ty Gaub

The 90 days that the requirement to pre-boom 90 days after the effective day of the regulation is not sufficient. The engineering design and also permitting process takes a lot longer to accomplish than 90 days. I believe the that the requirement has to be lengthened to at least over a year to have the pre-booming go into effect. – 235 Ed Shu - oral

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. – 204 Tammy Brown

180 days is too short for permitting and major equipment purchases. 18 months is a minimum. - 209 David Sawicki

In Section (4) (a), the stated time periods allowed for compliance are not sufficient in all cases for design, procurement, equipment delivery, permitting, and installation. WSPA requests that this section be modified to read "A transfers must meet the requirements of subsections (5) and (6) of this section within eighteen (18) months from the effective date of the chapter". Facilities will need to modify existing, as well as add new, improvements, equipment and personnel resources to comply with many of the pre-booming and alternative measure requirements of this standard. These modifications and additions will require significant investments in resources and time. The current draft compliance schedule of 180 days will not allow adequate time to properly design, engineer, permit, procure, install, nor train personnel to safely utilize, the necessary improvements and equipment. - 226 Frank Holmes

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. - 204 Tammy Brown

Response

Ecology tried to match equipment requirements with training and report submittal requirements within the compliance schedule matrix. Ecology used the best determination of its engineering staff to arrive at these realistic compliance dates which are now consistent throughout the rule requirements.

In response to many comments and strong arguments from industry, the compliance date for Rate A prebooming requirements found in WAC 173-180-221 (6) has been changed from 180 days to 365 days from the date this rule goes into effect. The requirement to preboom a transfer for Rate A deliverers was increased to 365 days after the effective date of this chapter. Rate A and Rate B alternative measures must be met within 120 days after the effective date of this chapter. Until the Rate A prebooming equipment is installed and functioning, the alternative measures requirements must be met. - See strike out summary for language changes.

58. <u>The facility should have the ability to cease a transfer based on weather conditions.</u>

We have guidelines that we will cease a transfer if weather conditions reach X miles per hour, X knots sustained. And I think that needs to be incorporated into the legislation so that each facility has the ability to cease a transfer based on weather conditions. – 236 Brian Wuellner

Response

As in the proposed draft, we now require Class 1 facilities to develop weather based criteria for shutdowns, incorporate this into the operations manual, train the facility PIC's on this criteria, and inform or give this information to vessels that transfer at the facility. See strike out summary for language changes.

59. <u>Please clarify the amount of boom needed to satisfy the requirement in 173-180-220(5).</u>

Please clarify if this means that facilities with two docks have to have boom = 4x the longest vessel length, times 2 (one for each dock)? - 209 David Sawicki

Have access to boom four times the length of the largest vessel at the transfer location." Does this mean the largest "receiving vessel" or any vessel? What if there is a facility that only fuels tug boats but happens to moor an aircraft carrier at the fuel pier? See suggested wording. - 204 Tammy Brown

Response

We changed the language for clarification. The requirement is 4 times the length of the largest vessel involved in the transfer or 2000 feet, whichever is less. If you have two independent transfers occurring at two different docks, they must each be capable of meeting the requirements of this chapter. See strike out summary for language changes.

60. <u>To satisfy 173-180-220(5) is there a 2 hour equipment requirement if the vessel is pre-boomed?</u>

Is there a 2 hour equipment requirement if the deliver pre-booms? - 209 David Sawicki

Response

There is no two hour requirement for extra boom if a deliverer prebooms a transfer.

61. <u>May a facility pre-boom just the portion of the vessel and transfer area where, if oil spills into the water, it provides for maximum containment of spilled oil?</u>

Note the "or" inserted here; this refers to the "transfer area" discussed with DOE "or the portion of the vessel and transfer area where oil may spill into the water that provides for maximum containment of spilled oil - 209 David Sawicki

Response

The portion of the rule describing the area to be boomed was rewritten in an attempt to clarify this is not just the area under the transfer hoses and manifold connections:

"The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water." This means, for instance, if the transfer location has a strong current which only runs in one direction, the deliverer may locate boom on the down current side of the transfer location and not have to boom up current.

This change was made to addresses the need for flexibility within the rule language and allows for local peculiarities at transfer locations. See strike out summary for language changes.

62. <u>If a spill is pre-boomed, it is not practical to be required to complete the deployment of additional boom within one hour of a spill. Would like wording changed to "initiate deployment of additional boom within one hour, if it is safe to do so".</u>

Completing the deployment of additional boom within one hour for any spill, regardless of spill size, may not be feasible without a continuous standby crew. This is not practicable for a transfer that is already pre-boomed prior to the spill. Suggest re-wording to "initiate deployment of additional boom within one hour, if the spill is not fully confined within the pre-boom perimeter." - 224 Ty Gaub

Completing the deployment of additional boom within one hour for any spill, per Sections (5)(b) and (6)(c) and regardless of spill size, may not be feasible without a continuous standby crew. This is not practicable for a transfer that is already pre-boomed prior to the spill. Due to site-specific conditions (sea, weather, physical constraints of launching support vessels), practical experience at some facilities has demonstrated repeatedly that it is extremely difficult, even with trained and highly-qualified spill responders and appropriate equipment in standby mode, to meet a one-hour completion requirement. Also, boom should be deployed only if sea conditions are deemed safe for

launch and operation of response vessels. In Section (5)(b), the following language changes are recommended “Within one hour of being made aware of a spill, the deliverer must be able to complete initiate deployment of the remaining boom (identified in (a)(i) of this subsection) for containment, protection or recovery, if it is safe to do so”. - 226 Frank Holmes

In Section (6)(c), the following language changes are recommended “Within one hour of being made aware of a spill the deliverer must be able initiate boom deployment to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil is most effectively contained in the event of a spill, if it is safe to do so”. - 226 Frank Holmes

ConocoPhillips requests that this section be modified to read: Within one hour of being made aware of a spill the deliverer must initiate boom deployment to completely surround the vessel(s) and facility terminal dock area directly involved in the oil transfer operation or the portion of the vessel and transfer area where oil is most effectively contained in the event of a spill, if it is safe to do so". Completing the deployment of additional boom within one hour for any spill, per Sections (5)(b) and (6)(c) and regardless of spill size, may not be feasible without a continuous standby crew on the water. This is not practicable for a transfer that is already pre-boomed prior to the spill. Due to site-specific conditions (sea, weather, physical constraints of launching support vessels), practical experience at some facilities has demonstrated repeatedly that it is extremely difficult, even with trained and highly qualified spill responders and appropriate equipment in stand by mode, to meet a one hour completion requirement. Also, boom should be deployed only if sea conditions are deemed safe for launch and operation of response vessels. - 213 Gary Solari

ConocoPhillips requests that this section be modified to read: "Within one hour of being made aware of a spill, the deliverer must be able to initiate deployment of the remaining boom (identified in (a)(i) of this subsection) for containment, protection or recovery, if it is safe to do so. - 213 Gary Solari

Response

Ecology has made the determination that the boom must be able to be deployed as a performance standard to meet the legislative goal of prebooming and mitigating spills once they do occur. The actual deployment of the boom will depend on the first responder, responsible party, or the unified command determination of what is safe and will work to contain, capture or deflect the oil as the response plans dictate. This may require some personnel to be quickly available or on-scene to complete deployment within that first hour to reduce the spread of oil which facilitates the recovery of the product.

This requirement is very similar to federal standards for facilities found in 33 CFR 154.1045(c) which states "(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in §154.1028(a)(1)(4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum—
(1) 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts petroleum oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the spill site <u>within 1 hour of the detection of a spill</u>"

A spill response is a much different circumstance than prebooming a transfer before a spill and has a different set of standards for the response. The one and two hour standards are to ensure the proper equipment and personnel are available for an immediate response.

The goal of 1 hour and 2 hour post-spill deployment is very important since the longer a spill is left to spread into the environment, the less can be recovered and removed from the water. Additionally, if a spill is left to spread or the booming is delayed, the greater the chance the oil will impact the shoreline. All oils become much harder to remove from the environment once wind and wave action drive it into soft soils like sand. It is critical to contain the oil while it is on the water and not on the shoreline.

63. <u>Ecology should define the water bodies' characteristics so that the boom characteristics are matched to the sea states.</u>

The issues with the vessel transfer rule that I have at this point in time pertains to the lack of guidance of safe and effective, and my concern about Ecology's misapplication of the ASTM rule in the state -- on water bodies in the State of Washington and the type of boom being called for. I would assume that that's the best guidance that we have right now as to what they're thinking. And the waters of Puget Sound are not sheltered waters, and the Strait of Juan de Fuca is not sheltered waters so we're going to need more robust boom to meet ASTM standards. Ecology needs to better represent what the water bodies' characteristics are so that the boom characteristics are matched to the sea states. – 205 Fred Felleman - oral

Response

Ecology attempted to write guidelines for safe and effective threshold values into the draft rule. It became clear that the scope of this rule covers so many types of environments that a "one-size-fits-all" approach was not going to work.

Ecology determined that flexibility is needed to address the diversity of environments where transfers occur and also determined that facility owner and operators are in the best position to make the initial determinations due to their intimate knowledge of the environments within which they work.

Ecology will then review the Safe and Effective Threshold Determination Reports for results and methodology and will approve the determinations if the reports provide sufficient protection for the environment and appropriately account for environmental factors that truly impact the safety and effectiveness of pre-booming in a particular circumstance. In the review process, Ecology will consider the water body type, the proposed boom type, and the boom type's effectiveness in the particular waterway. In addition, Ecology inspectors will monitor and verify the requirements of this chapter are met.

64. <u>The requirement to notify our primary response contractor when using alternative measures prior to the start of an oil transfer operation provides no value.</u>

(ii) For Class 1 /Rate A deliverers, this notice provides no value, as the PRC is already aware that the facility transfers very regularly. - 209 David Sawicki

Response

We have addressed your concerns in the rule by deleting this requirement. See strike out summary for language changes.

65. <u>The requirement to have the ability to safely track the spill in the dark will effectively eliminate nighttime transfers.</u>

Section (6)(b)(iii) requires deliverers to "Have the ability to safely track the spill in the dark if the oil transfer operation occurs during low light conditions. The tracking system must be on scene within 30 minutes of being made aware of a spill." This requirement effectively eliminates the ability to conduct nighttime transfers unless done with the support of special equipment such as a FLIR-equipped helicopter. WSPA requests clarification of this section requirement. - 226 Frank Holmes

Response

Although a FLIR-equipped helicopter could certainly be called out by the responsible party or unified command in a spill response, Ecology will accept lesser technology for meeting this requirement. For example, the use of a device such as a lighted buoy with a transponder which could be thrown into the water and would move with the same wind, current and/or waves that are moving the spilled oil would be acceptable.

66. <u>The 180 day implementation time frame will force the majority of the industry to comply with alternatives to pre-booming.</u>

A majority of industry will be complying with an Alternative to pre-booming since WADOE insists with 180 day implementation. This issue will be resolved if you had a 365 day implementation time frame. - 221 Eric Haugstad

Response

See response to comment 56. See strike out summary for language changes.

67. <u>The alternatives are to be used in the event of bad weather. The rules state that in the event of a spill a facility must be able to completely surround the vessel with in one hour. What if the weather is still bad enough that booming is dangerous?</u>

This presents alternatives to pre-booming in the event of bad weather, but then says a facility must be able to completely surround the vessel w/in one hour of a spill occurring….what if the weather is still such that booming is dangerous? - 204 Tammy Brown

Response

The one and two hour performance standards are designed to meet the legislative goal of prebooming and mitigating spills once they do occur. This ensures the proper equipment and personnel are available for an immediate response.

The actual deployment of the boom will depend on the first responder, responsible party, or the unified commands determination of what is safe and will work best to contain, capture or deflect the oil as the response plans dictate. They would determine the next best action to take until the weather allows for a safe response.

Section 173-180-225 Providing safe vessel access

68. Please clarify what Ecology determines is "safe access". Whose responsibility is it? The rule mentions "access between the delivering and receiving vessel" doesn't this belong in the vessel rule?

What if it is impossible to put a ladder or brow into place? Would a Jacobs' ladder be acceptable? Should clarify what "ladder" means in this section. - 204 Tammy Brown

A receiving vessel must have an accommodation ladder in place..." Whose responsibility is this? - 204 Tammy Brown

"...for access between the receiving and delivering vessel..." Wouldn't this transfer operation (between two vessels) be covered under the vessel rule? - 204 Tammy Brown

"If the delivering vessel..." Again, a vessel rule issue? - 204 Tammy Brown

Response

We clarified the language in this section to address your concerns. We changed the language to state if a vessel does not have or cannot provide its own safe access, the facility must provide this safe access. See strike out summary for language changes.

Section 173-180-230 Preloading or cargo transfer plan requirement

69. The requirement for a preloading plan or cargo plan is redundant with the requirement for a pre-transfer conference. The federal language should be adopted instead.

This requirement is redundant with the next requirement Wac 173-180-235. It is called a pre-transfer conference which is required under 33 CFR 156. Tesoro recommends deleting this section since it is redundant and adequately defined in Wac 173-180-235. Tesoro also suggest adopting the federal language since it is clearer than your current draft. - 221 Eric Haugstad

Recommend that 33 CFR 156 be adopted. Clarity will be provided if this is done. - 209 David Sawicki

Response

This section requires a transfer load plan that must be filled out prior to the oil transfer conference occurring. This plan must be discussed during the pretransfer conference.

Ecology is not aware of any federal requirement for a load plan to be discussed during the pretransfer conference between the facility and vessel PIC's. We feel that this is critical information for the facility and vessel personnel to have and discuss to reduce the incidence of tank overfilling.

Section 173-180-235 Pretransfer conference

70. The pretransfer conference requirement is redundant with the reloading plan or cargo plan requirement. The federal language should be adopted instead.

The Pretransfer Conference requirement is duplicative of the previous new regulation. WSPA suggests a merging of the two regulations into one since they both cover pre-transfer conferences. In addition, it is urged that the state to adopt the U.S. Coast Guard pre-transfer conference requirements to simplify and streamline this process. - 226 Frank Holmes

Response

The transfer load plan must be filled out prior to the pretransfer conference. This plan must be discussed during the pretransfer conference.

The pretransfer conference that Ecology requires compliments the Coast Guard requirements and moves beyond them in a few key areas. Ecology is not aware of any federal requirement for a load plan to be discussed during the pretransfer conference between the facility and vessel PIC's. We feel that this is critical information for the facility and vessel personnel to have and discuss to reduce the incidence of tank overfilling.

Ecology determined that to reach a zero spill goal it would be necessary to develop regulations exceeding the federal standards. Ecology compiled inspection compliance reports, spill investigation findings, updated best industry practices, and lessons learned from other federal and state agencies regarding safe oil handling practices. Using this information, Ecology developed the rule language to reflect the minimum best practices which we believe meet the legislative goal for zero spills.

71. Ecology needs to clarify who the "vessel's master" is.

"...unless the vessel's master..." Does this refer to the "receiving vessel"...use of "vessel" and "receiving vessel" seem to be used interchangeably, but need to clarify and be consistent. - 204 Tammy Brown

Response

We have addressed your concerns in the rule by deleting this requirement. See strike out summary for language changes.

72. <u>The facility rule is talking about delivering and receiving vessel PICs. This looks like it belongs in the vessel oil transfer rule not the facility rule.</u>

"If the delivering vessel's PIC is not satisfied with the receiving vessel's representative's..." again, shouldn't this be "the facility's PIC"...issues of a vessel to vessel transfer should be in the vessel rules. - 204 Tammy Brown

Response

We have addressed your concerns in the rule by deleting this requirement. See strike out summary for language changes.

<u>Section 173-180-245 Oil transfer procedures</u>

73. <u>Ecology should either remove these requirements or adopt federal standards for all sections dealing with operating standards, inspections, corrosion, cathodic protection, SPCC, valves, secondary containment, DOI, etc.</u>

There is a considerable amount of repetition here which is also part of USCG and federal regulations. Suggest that USCG and federal standards are adopted and referenced herein. This will take away any lack of clarity, confusion, etc. This suggestion applies to all sections dealing with operating standards, inspections, corrosion, cathodic protection, SPCC, valves, secondary containment, DOI etc.. and continues thru PART C. , similar to the references made in - 400 and – 410 - 209 David Sawicki

Tesoro recommends removing this line since it is redundant to the pre-transfer and DOI requirements - 221 Eric Haugstad

Tesoro recommends deleting this section also. It is repetitive to previous new sections and required in 33 CFR 156.150. - 221 Eric Haugstad

Recommend incorporating this information into the DOI so there is one form that PICs can use, rather than having to go through the DOI and then remember that there are these additional state requirements. - 204 Tammy Brown

Response

Ecology developed the requirements in this section to be incorporated into any current applicable federal requirements and also be stand alone requirements for those new facilities we regulate. It is necessary to include all the components of the oil transfer procedures for these newly regulated parties to reduce confusion.

We do incorporate those federal requirements pertaining to oil transfers with some critical new requirements that further the legislative goals of zero spills. The new requirements are easily slipped into the current Declaration of Inspection the Coast Guard requires. We anticipate companies will incorporate these changes into whatever forms are currently in use.

Ecology determined that to meet the legislative goal of zero spills, we needed to go beyond the federal requirements for facilities transferring oil. See response to comment 78.

Section 173-180-250 Emergency Shutdown

74. The 30 second shutdown time requirement is too quick for both fixed piping and flexible hoses.

30 seconds may be too fast for some transfer rates; shutting it down too fast can create problems in other areas. Recommend that this be changed back to 60 seconds - the present USCG and State Rules, or justify why not. – 209 David Sawicki

WSPA believes that Section 3 should distinguish the emergency shut down requirements for flexible hoses associated with class 1 facilities versus those used with class 2 and 3 facilities. Class 1 facilities utilize large diameter flanged commercial grade transfer hoses that require cranes to move whereas the size and grade of transfer hose used for class 2 and 3 facilities will vary to match their service needs. Further, class 1 facilities utilize large diameter flanged commercial grade transfer hoses as a continuation of their fixed piping systems in order to facilitate the transfer of oil between the dock manifold and the vessel manifold. While the flow of oil is significantly reduced once the transfer pump is shutdown, there remains a diminishing amount of flow within the piping system due to fluid pressure, fluid kinetic energy, etc. When it is safe to do so, the affected piping segment is then isolated by closing the valves at either end (also called blocking in). In contrast, the premature closing of these valves in order to meet an arbitrary regulatory limit can cause further damage to the affected piping segment due to the tremendous amount energy associated with fluids that are still in motion. For these reasons it is not practical to “immediately stop” the flow of oil at class 1 facilities once the transfer pump(s) have been shutdown. As such, the amount of time necessary to stop the flow of oil using a flexible hose to transfer oil between the dock manifold and the vessel manifold should be the same as that for a fixed piping system. - 226 Frank Holmes

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- 224 Ty Gaub

It's also important to note that the complete stoppage of fluid flow within these piping systems cannot be safely accomplished within the mandated 30 second window for the reasons cited above. The important point for this regulation to cover is that the shutdown process should be initiated immediately upon discovery of a spill or an unsafe condition that could lead to a spill and that this shutdown process be completed as soon as possible in a practical and safe manner. – 224 Ty Gaub

It’s also imperative to note that the complete stoppage of fluid flow within these piping systems cannot be safely accomplished within the mandated 30-second window for the reasons cited above. The important point for this regulation to cover is that the shutdown process should be initiated

immediately upon discovery of a spill or an unsafe condition that could lead to a spill and that this shutdown process be completed as soon as possible in a practical and safe manner. WSPA recommends the following addition to Section 3 “For oil transfers, the emergency shutdown must stop the flow: (a) Within thirty seconds for a facility with fixed piping system; or for those facilities who initially transferred product prior to 1 November 1980, WDOE and individual facilities shall determine applicable closure rates based on the design standards and pressure rating of the piping, as well as existing 33 CFR regulation”. 33 CFR 154.550 permits those facilities that initially transferred product prior to 1 November 1980, to have a valve closure rate requirement of 60 seconds vs 30 seconds as proposed for this rule. A faster than 30 second closure rate at some facilities, where the transfer of product is accomplished via gravity flow, creates the potential for a hydraulic pressure surge far greater than the design of the piping and a resultant catastrophic failure of the piping. WDOE should work with individual facilities to determine what the closure rate should be based on the design standards and pressure rating of the piping, as well as existing 33 CFR regulations. - 226 Frank Holmes

ConocoPhillips recommends the following addition to Section 3: 'For oil transfers, the emergency shutdown must stop the flow: (a) Within thirty seconds for a facility with fixed piping system; or for those facilities who initially transferred product prior to 1 November 1980, WDOE and individual facilities shall determine applicable closure rates based on the design standards and pressure rating of the piping, as well as existing 33 CFR regulation". - 213 Gary Solari

ConoPhillips believes that Section 3 should distinguish the emergency shut down requirements for flexible hoses associated with class 1 facilities versus those used with class 2 and 3 facilities. - 213 Gary Solari

It's also important to note that the complete stoppage of fluid flow within these piping systems cannot be safely accomplished within the mandated 30-second window for the reasons cited above. The important point for this regulation to cover is that the shutdown process should be initiated immediately upon discovery of a spill or an unsafe condition that could lead to a spill and that this shutdown process be completed as soon as possible in a practical and safe manner. - 213 Gary Solari

Response

We have addressed you comments in the rule. We changed the requirement for existing facilities and equipment to meet the current federal requirements to stop the flow of oil within 60 seconds or 30 depending on the age of the facility. However, any new equipment installed after the effective date of this chapter such as piping, valves, and other oil transfer equipment must be designed and constructed to stop the flow within 30 seconds. See strike out summary for language changes.

Section 173-180-320 Secondary containment requirements for aboveground storage tanks

75. Ecology should require the use of impermeable barriers if soil is used as a containment system.

Under (1) (d) it is stated that soil can be used for the secondary containment system. PSA does not support this unless the containment area is lined with an impermeable barrier to prevent soil and groundwater contamination. Ecology should require the use of impermeable barriers if soil is used as a containment system. 217 Sue Joerger

I notice that you have ability to have soil as an adequate substrate for secondary containment for storage tanks, and I thought this was some sort of bad joke. I mean, I thought this was -- historically we had some facilities on dirt, but I thought at this point this is the opportunity now to have containment actually contain the oil spill, not that it seep into the ground water. – 205 Fred Felleman - oral

Response

This section is beyond the scope of this rule making and will not be changed at this time. Therefore, this section is not open to public comments.

76. <u>The requirement for secondary containment capacity seems to be duplicated in 173-180-320(1)(b) and 173-180-320(4).</u>

what is the difference with this and part 1(b)_, above ? - 209 David Sawicki

Response

This section was not changed from the previous rule except for numbering and small clarifications. The reasoning for the difference is one is a design criteria and the other is a performance standard which ensures the design criteria [173-180-320(1)(b)] is not compromised. See strike out summary for language changes.

77. <u>There is a need to have a minimum threshold for oil containers secondary containment, when the oil container is less than 600 feet from state waters.</u>

Need to set a minimum threshold for oil containers to have secondary containment when the container is located less than 600 feet from navigable waters of the state or a storm water or surface drain which may impact navigable waters of the state. - 204 Tammy Brown

Response

This section is beyond the scope of this rule making and therefore will not be changed at this time. Therefore, this section is not open to public comments.

<u>Section 173-180-410 Class 1 facility operations manual preparation</u>

78. <u>Ecology needs to provide justification for going beyond federal standards.</u>

DOE needs to justify why it needs to go beyond federal standards. - 209 David Sawicki

Response

Title 33, section 2718 of the United States Code preserves the authority of states to impose additional liability and requirements relating to the discharge or substantial threat of a discharge of oil. However, the Department of Ecology is also required to be consistent with the Coast Guard when practicable to do so (RCW 88.46.020), and adopt risk-based requirements (RCW 88.46.165).

The legislature of the state of Washington has established a goal of zero oil spills in Washington State waters. As part of this goal, the legislature granted Ecology the

authority to regulate the transfer of oil on or over waters of the state under RCW 88.46.160 and directed Ecology to adopt oil transfer rules.

Ecology determined that to reach a zero spill goal it would be necessary to develop regulations exceeding the federal standards. Ecology compiled inspection compliance reports, spill investigation findings, updated best industry practices, and lessons learned from other federal and state agencies regarding safe oil handling practices. Using this information, Ecology developed the rule language to reflect the minimum best practices which we believe meet the legislative goal for zero spills.

As part of the rule making process, Ecology completed the Significant Legislative Rules Criteria *document and it is included in the CR-103 packet. This document is the way the state insures Ecology has met all the elements of Washington's Administrate Procedures Act.*

79. <u>Ecology needs to define "the threshold values for weather and sea conditions above which transfer operations must cease".</u>

(3)(b)(vii)(E) requires the operator to set "threshold values for weather and sea conditions above which transfer operations must cease" but provides no clear direction to the operator. Ecology must define threshold values as noted above. - 217 Sue Joerger

Response

Ecology attempted to write guidelines for safe and effective threshold values into the draft rule. It became clear that the scope of this rule covers so many types of environments that a "one-size-fits-all" approach was not going to work.

Ecology determined that flexibility is needed to address the diversity of environments where transfers occur and also determined that facility owner and operators are in the best position to make the initial determinations due to their intimate knowledge of the environments within which they work. Ecology will then review the Safe and Effective Threshold Determination Reports for results and methodology.

Ecology will approve the determinations if the reports provide sufficient protection for the environment and appropriately account for environmental factors that truly impact the safety and effectiveness of pre-booming in a particular circumstance.

<u>Section 173-180-415 Class 1 facility – Operations manual format requirements</u>

80. <u>The format differs significantly from the present format. The effort to redo the manual will provide little value added.</u>

If this format differs significantly from the present formats, this will cause a significant time effort to re-do. I see very little value added. - 209 David Sawicki

Response

The operations manual format has not changed from the previous rule to this rule. We reorganized the previous rule that contained scattered references to the manual format and placed them into one section. See strike out summary for language changes.

Section 173-180-420 Class 1 facility – Operations manual content requirements

81. Transfers should be banned when it is unsafe or ineffective to pre-boom.

Our strong preference is to ban all transfers when it is unsafe or ineffective to preboom. If conditions are such that prebooming is either unsafe or ineffective, is it not likely that these same conditions would make it unsafe or ineffective to mount a response to a spill? Wouldn't an effective response require that the facility operator encircle the vessel with boom or at a minimum deploy boom and absorbent pads to attempt to contain the spill? Failure to do so would almost certainly result in widespread damage to shorelines. These are exactly the situations in which transfers should be prohibited. At a minimum, the rule should offer some direction on threshold values for making these determinations. Otherwise, this is not really a meaningful requirement, but left wide open for interpretation by the facility owner. It would be little more than a voluntary approach. – 207 Bruce Wishart

Response

The legislature did not give Ecology the authority to prevent oil transfers from occurring at facilities and vessels. Instead, the legislature required Ecology to develop safe and effective pre-booming standards and alternative measures to help prevent oil spills and minimize environmental harm when oil transfers do occur. There is not necessarily a correlation between environmental conditions or product type that may influence the effectiveness and safety of pre-booming or other spill response activities and the ability to safely transfer oil at facilities and vessels. For example, it might not be safe or effective to pre-boom in conditions that would have little, if any, effect on oil transfers due to the size of the vessels and facilities involved in the transfers and other operational factors that are unrelated to boom performance. Also, gasoline, while unsafe to pre-boom, is commonly transferred to vessels and facilities.

Even if it is unsafe or ineffective to pre-boom an oil transfer, it may still be possible to deploy boom and other response gear to deflect, contain or recover spilled oil and protect environmental resources in the area. Physical structures such as docks, vessels or other facilities might provide shelter or the local geography might allow response resources to be effectively deployed in the vicinity even if it was not effective to do so at the transfer location. Deflection and/or protection boom might be deployed in a river system downstream that would provide environmental protection even when currents might otherwise prevent effective pre-booming to take place.

Ecology attempted to write guidelines for safety values for transfer shutdown in the event of severe environmental conditions into earlier drafts of the rule. It became clear that the scope of this rule covers so many types of facilities and transfer

location environments in the state that a "one-size-fits-all" approach was not going to effectively work.

Ecology decided that facility owner and operators are in the best position to make the determinations due to their extensive knowledge of the equipment and the environments in which they work. Therefore, the rules require that facilities develop criteria for determining when oil transfers can be safely conducted including threshold values for weather and sea conditions at which transfers must stop. In addition, facilities must develop procedures for shutting down oil transfers when environmental conditions exceed the pre-determined threshold values. Ecology reviews the oil transfer threshold values and shutdown procedures as part of its approval of the operations manual.

Ecology will gather data regarding the various shutdown values required by the rules to provide site specific information of the environmental peculiarities at each transfer location and the state as a whole. Ecology may use this information to identify potential issues for future rule making.

82. <u>Booming should be considered effective if only 5% of the product was recovered. The rule should clarify effective, safety, and technology issues around booming and pre-booming.</u>

In our view, even if only 5% of the product is recovered, the procedure was effective. In the event of a spill in Puget Sound, it is rare that no boom is deployed, regardless of sea state. It's generally felt that some recovery is better than none. In terms of safety, facilities must be required to utilize all available technology and trained personnel so that the procedure can be made as safe as possible. The rule should clarify these matters. - 207 Bruce Wishart

California requires under 18 AAC 75.025(b) that oil tankers and barges pre-boom unless it is "technically unfeasible" to do so. This helps to clarify that facility operators must use existing technology to overcome any hurdles that might make pre-booming either unsafe or ineffective. Addition of this language would constitute a reasonable clarification of the requirement. – 207 Bruce Wishart

There needs to be some clear guidance, however, for these facilities to make site-specific determinations. What is considered "effective" pre-booming, for example? Is 2% recovery effective or do we need 90% recovery? We urge the department to develop narrative standards for the "threshold values" - 207 Bruce Wishart

accepted standards for boom failure / entrainment is ~ .75 kt. perpendicular to the boom face. – 209 David Sawicki

Response

Ecology attempted to write guidelines for the safe and effective criteria and the equipment for this rulemaking to meet the requirements of RCW 88.46.160. It became clear that the scope of this phrase "safe and effective" could not be contained in a "one-size-fits-all" approach along with other parts of the new rule.

Ecology determined that flexibility is needed to address the vast differences among the many different facilities and vessels that were to be affected by this rule.

Because Ecology does not have the resources to conduct a specific environmental study at each transfer location, we felt the facility or vessel was best able to assess and determine these safe and effective values. The effectiveness of boom has been previously studied and quantified, but each transfer location poses unique variables. Therefore Ecology determined that each delivering facility or vessel must develop the safe and effective threshold values for Ecology to evaluate and approve.

Additionally, this places Ecology in a position to gather data regarding these values, and other data from separate requirements, to create a seasonal snapshot of the environmental peculiarities of each transfer locations overall and the state as a whole. This information may be useful to the public when determining proper thresholds for future transfer locations.

In answer to the boom failure comment, yes, 0.75 is widely know as the "beginning" of entrainment for conventional boom, however, Ecology does not consider this number a factor to be used when determining boom effectiveness. A water current velocity of 0.75 knots will cause a very small percentage of oil to escape; the boom will continue to contain an overwhelming majority of the spilled oil. Depending upon the boom configuration and construction, boom deployment, water current velocity, wind speed, oil type, and wave action, a Rate A deliverer must determine what the effectiveness threshold values are for each transfer location.

83. <u>In section 173-180-420(3)(c)(iii)(D)(d)(i) it states "procedures for reporting and initial containment of oil discharges". What does this mean?</u>

"procedures for reporting and initial containment of oil discharges" what does this mean ? Clarity needed. - 209 David Sawicki

Response

The language in this section was changed to address your concern about clarity. See strike out summary for language changes.

84. <u>What is the value of stating the other regulations within the operations manual? (173-180-420(3)(e)(xviii))</u>

what is the value of stating the other reg's? - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

85. <u>The last provision 173-180-420(3)(e)(xxiv) duplicates all of the requirements laid out above it.</u>

(xxiv) duplicates all of the above, which were supposed to be either brief statements, examples or discussions. – 209 David Sawicki

Response

The language in this section was removed to address your concern. See strike out summary for language changes.

Section 173-180-425 Class 1 facility – Operations manual submittal

86. The compliance deadline is too short.

90 days is far too short; See -220; 4(a) for comparison for pre-booming. . Compliance should all be on the same schedule and be 180 days. - 209 David Sawicki

WSPA requests that these sections be amended to allow WDOE the flexibility to approve a deadline extension beyond ninety (90) calendar days on a case-by-case basis to allow facilities some regulatory flexibility as necessary due to unforeseen circumstances, other mandatory workload requirements with similar deadlines, etc. The proposed schedule is untenable since facilities do not have the ability within multiple shifts and vacations to achieve this requirement in such a limited time frame. Smaller class 1 facilities, for example, with a limited amount of oil transferred and associated staffing levels, would be required to meet the same requirements/deadlines as large class 1 facilities that have large staffs. Assuming that the effective date of WAC 173-180 is early October 2006, the following deadlines during 4th quarter 2006 would need to be met by one small Class 1 facility, in addition to the new requirements of this regulation: • Mid October – conduct worst case tabletop oil spill drill • Early November – prepare and submit National Pollution Discharge Elimination System (NPDES) permit renewal application to Ecology • Mid December – prepare and submit Toxic Substance Control Act Inventory Update Rule (TSCA IUR) Report to the Environmental Protection Agency (EPA) • Late December – prepare and submit Title V Air Operating Permit renewal application to the Puget Sound Clean Air Agency (PSCAA) • Late December – update and implement oil handlers & training certification program in accordance with WAC 173-180-525 (1). Due to the uniqueness of these requirements, smaller facility staffs would simply not able to meet all of these deadlines. - 226 Frank Holmes

USOR requests that these paragraphs be amended to allow Ecology the flexibility to approve a deadline extension beyond ninety calendar days on a case by case basis to allow facilities some regulatory flexibility as necessary due to unforeseen circumstances, other mandatory workload requirements with similar deadlines, etc. - 224 Ty Gaub

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. - 204 Tammy Brown

Response

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed chapter 173-180 WAC had a compliance date of 90 days for Class 1 and 2 facilities for operations manual submittal. These dates have been changed to 120 days. While reviewing comments with the compliance schedule matrix, Ecology tried to match the new requirements for training and report submittal requirements. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

87. <u>There should be additional methods and forms of submitting an operations manual.</u>

consideration should be made of the facility submitting the Plan. Not all facilities treat prevention, preparedness and response in the same manner. – 209 David Sawicki

Response

Ecology has a standard for submittal, review, and approval that has not changed in this rulemaking. We do allow amendments to be sent via mail or electronic mail and also by chapter or section instead of the entire document.

88. <u>Sections 7 through 10 are all required under federal law. All the language which is found in the federal regulations should be removed.</u>

Sections 7 through 10 are all required by federal law to be in compliance with the DOI regulations. None of the Sections 7 through 10 circumstances could even occur if the DOI was filled out and complied with. WSPA requests that all wording that emulates federal regulations be removed since this language may be taken out of text and create confusion. – 226 Frank Holmes

Response

We believe the section you refer to is WAC 173-180-245 and not WAC 173-180-425. While subsections 7 through 10 are similar to the federal standards, there are significant differences in our rule. Subsection 7 refers to the transfer load plan a facility is required to discuss during the pretransfer conference; this has no federal equivalent.

This section is written to compliment federal regulations as well as apply to a newly regulated community unfamiliar with federal requirements.

Ecology developed the requirements in this section to be compatible with and incorporated into any current applicable federal requirements and also be stand alone requirements for those new facilities we regulate. Ecology determined it is necessary to include all the components of this section to reduce confusion.

<u>Section 173-180-430 Class 1 facility – Operations manual review and approval</u>

89. <u>The rule language should be changed so Ecology is reviewing the manual for "adequacy" not "completeness". The rule should also require a public comment period for the operations manual.</u>

First, in section 430(1) although the intent would seem to have a review of the manual to determine the adequacy of the manual, the rule refers to a review for "completeness." The rule language should substitute the term "adequacy." This process has no public involvement procedures. This is a major flaw. The operations manual will contain requirement on prebooming, transfer restrictions, and other matters that are central to this rulemaking. The rule must contain notice and a 30 day comment period for operations manuals after which time Ecology will determine whether to approve the manual. – 207 Bruce Wishart

Response

This is an internal process that was developed to reduce overhead and wasted time on the part of our limited review staff. The first part of the review process is to ensure the manual is complete before starting the adequacy part of the review process. This reduces the time wasted duplicating a review on an incomplete manual and then asking for and waiting for the whole or parts of the manual to be re-sent to Ecology to start the process over again. Ecology will not change this language.

We currently review and approve operations manual updates and retain a copy for our staff. There is no current requirement for a public review of operations manuals during this time period.

Section 173-180-435 Class 1 facility – Operations manual updates

90. Significant changes in the operations manual which alter the ability of the facility to meet requirements should cause the plan to be revoked.

Similarly, the rule allows, in section 173-180-435, for "significant changes" in the manual so that it "no longer meets approval criteria" (i.e.- no longer meets the standards set in this rule). Under this scenario, Ecology may "at its discretion" allow the changes. If the change alters the ability of the facility to meet requirements set forth in the rule or an approved operations plan or any other legal requirement, the plan should be revoked. - 207 Bruce Wishart

This process also allows for changes to the documented procedures yet has no stringent procedure for evaluating whether these changes weaken compliance. The rules should require that whenever there are substantive changes to the operational manual, the entire manual should undergo a full review by Ecology and be available for public comment. – 200 Gerald Joyce

Response

Ecology has an internal process for approving operations manuals outlined in the rule under Part D that mandates the manual "provide best achievable protection from damages caused by the discharge of oil into waters of the state" which Ecology takes seriously when considering any change to the equipment or processes under question.

However, there are unforeseen circumstances in which some limited flexibility may be necessary. Ecology also needs flexibility when reviewing these changes to the operations of the facility while still keeping the "best achievable protection" goal in mind. Ecology makes the determination that this language will not change and our trained engineers will have flexibility when applying their best discretion.

We currently review and approve operations manual updates and retain a copy for our staff. There is no current requirement for a public review of operations manuals during this time period.

91. <u>The term “substantial” in the paragraph 2(c) “A substantial change in the facility’s oil-handling capacity”, needs to be defined.</u>

"substantial" needs to be defined. – 209 David Sawicki

clarity needed re; "substantial" vs. "any other change". - 209 David Sawicki

Response

Ecology feels the term "substantial" is a standard term used in many federal and state laws and chose not to define this term separately. Ecology will consult with a facility to determine if the level of change to an operations manual is of such a nature that just an amendment is needed or a reapproval may be necessary.

92. <u>Suggest all compliance and update schedules/requirements be on a 180 day time frame.</u>

Here is another example of where 30, 90 and 180 days need to be made consistent. Suggest that all compliance and update schedules / requirements be on a 180 day time frame - provides consistency and lessens the opportunity for errors / misinterpretations. - 209 David Sawicki

Response

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed chapter 173-180 WAC had a compliance date of 90 days for Class 1 and 2 facilities for operations manual submittal. These dates have been changed to 120 days.

While reviewing comments along with the compliance schedule matrix, Ecology tried to match the new requirements for training and report submittal requirements. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

<u>Section 173-180-440 Class 1 facility – submitting the operations manual for reapproval</u>

93. <u>The rule language should require that manuals be resubmitted for approval on a five year basis to determine if they should be updated to meet “advances in technology or oil handling practices” or simply “due to a better understanding of risk.</u>

the rule calls for review and approval of operations manuals on 5 year basis. This is a good provision, but the rule language should require that manuals be resubmitted for approval on a five year basis to determine if they should be updated to meet “advances in technology or oil handling practices” or simply “due to a better understanding of risk. “ Review and approval should be based on clear standards. This will benefit the public, the department, and the regulated community. - 207 Bruce Wishart

Response

Ecology does take into account newer technologies and process during the reapproval process. The personnel who approve of any manual or plan determines the applicability of newer technologies or processes and the potential benefits this may provide and may consult with the facility to address any ideas or factors involved.

Section 173-180-465 Class 2 facility – operations manual submittal

94. The compliance deadline should be increased to 180 days.

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. - 204 Tammy Brown

Response

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed chapter 173-180 WAC had a compliance date of 90 days for Class 1 and 2 facilities for operations manual submittal. These dates have been changed to 120 days.

While reviewing comments with the compliance schedule matrix, Ecology tried to match the new requirements for training and report submittal requirements. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

Section 173-180-500 Applicability of Part E

95. Add the spill prevention drill back into the Oil Handling Training rule.

In the current Oil Handling Training rule, there is a requirement for a spill prevention drill...that appears to have been dropped. Would suggest adding back in. - 204 Tammy Brown

Response

The current Prevention Plan requirements found in WAC 173-180D do not require a drill of the prevention plan. No substantial changes were made to this section.

Section 173-180-510 Class 1 facility – training requirements

96. Does Ecology intend to offer evidence or certification to show its staff has the experience to evaluate the training procedures of the facility?

Does DOE intend to offer evidence / certification that it's staff has the experience to evaluate the procedures of facilities, especially those with excellent records and have been doing this for years. - 209 David Sawicki

Response

Ecology's inspectors are very experienced, well trained and qualified to perform their duties. However, Ecology staff credentials are beyond the scope of this rulemaking.

97. Please clarify why management or maintenance and construction staff need the training you are requiring.

why does management need detailed operations training ? Note that "management"; is not defined in the following parts. - 209 David Sawicki

why would maintenance and / or construction staff need awareness training on environmental sensitivities and oil spill impacts ? - 209 David Sawicki

as before, the detailed training for management and "indirect" personnel provides no significant additional protection. It just creates extra forms and tracking. – 209 David Sawicki

The scope of these sections (both 510(6)(h) and 510(5)(j)) requires some clarification to accurately reflect actual job responsibilities for these respective groups of oil handlers at class 1 facilities. Both of these sections require that operations and supervisory personnel and management personnel receive training on the safe use and handling of response equipment including, but not limited to, containment, personal protection and recovery equipment. As written, this requirement is rather prescriptive and is a "one size fits all requirement" that is being applied to both of these classes of oil handling personnel regardless of their actual job responsibilities in the event of an oil spill. In general, oil handling personnel whose actual job responsibilities involve using response equipment in the event of an oil spill should be required to receive this training. In contrast, this training should be limited to an overview of spill response equipment capabilities for those oil handling personnel whose job responsibilities do not involve operating response equipment. - 226 Frank Holmes

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why does management need detailed operations training ? Note that "management" is not defined in the following parts. - 209 David Sawicki

Response

We addressed some of comments by changing or removing the language in the applicable sections. We reduced the training of management to a more overview level for spill response operations and limited the spill response training to those with spill response responsibilities.

We did not change other language that was carried over from the previous rule. Ecology determined the remaining language sets a minimum standard that meet

the goal of this statement that is in the beginning of this section found in (1) (a): "the maximum extent practicable, to promote job competency and environmental awareness for the purpose of preventing oil spills."

The facility develops the list of persons identified as needing the training by job type that meets the definitions in this chapter. Additionally, the facility develops the classroom and on-the-job training necessary that meets the requirements of this part. The facility must develop this program, identify the persons, train the persons to promote spill prevention with awareness of environmental issues, keep track of this training, and ensure the training is up to date. A majority of this part was not changed from the proposed rule language or the previous rule language. See strike out summary for language changes.

98. <u>Unless Ecology can show how the federal regulations are not meeting Ecology's needs, the federal standards should be applied in sections 510(4) and 510(11). Please provide specific information showing why Ecology needs to exceed the federal standards.</u>

Please provide specific information where the federal reg's described in Part 11 of this section are not meeting DOE's needs, and therefore allows DOE to exceed the federal standards. If this can't be done, then just apply the federal standards. - 209 David Sawicki

Response

See response to comment 78.

99. <u>Section 173-180-510(5)(6) ads unnecessary duplication and complexity. Why is Ecology requiring these? Some terms are too vague. How can an "overview" be applied to "all system…"?</u>

What justification is available to warrant the details that follows. PSM and federal reg's address all of this - why repeat this here - ads unnecessary duplication and complexity. Terms like "Overview", "awareness" are too vague. Then, as in 6(a) the term "overview" is applied to " all systems...", which seems contradictory. - 209 David Sawicki

Response

Thank you for your comment. This rule language was changed for clarity to address your concern. See strike out summary for language changes.

100. <u>It is not a practical to require facilities to train operations and supervisory personnel on vessel transfer and spill containment systems.</u>

It is not a practical to require facilities to train operations and supervisory personnel on vessel transfer and spill containment systems since these are unique to the numerous types of vessels/barges that transfer oil at our facility. For liability reasons, we do not control, inspect or maintain responsibility for vessel transfer and spill containment systems on board vessels/barges since they are under the direct control of the respective vesse!/barge. Our operations and supervisory personnel are trained extensively on equipment/operations located on the facility side of

the transfer manifold much like the vessel is required to ensure that their personnel are trained on equipment/operations located on the vessel side of the transfer manifold. – 224 Ty Gaub

WSPA feels that it is not practical to require facilities to train operations and supervisory personnel on vessel transfer and spill containment systems since these systems are unique to the numerous types of vessels/barges that transfer oil at a facility. For liability reasons, facilities may not control, inspect, or maintain responsibility for vessel transfer and spill containment systems on board vessels/barges since they are under the direct control of the respective vessel/barge. Facility operations and supervisory personnel are, however, typically trained extensively on equipment/operations located on the facility side of the transfer manifold much like the vessel is required to ensure that their personnel are trained on equipment/operations located on their side of the transfer manifold. - 226 Frank Holmes

Response

Thank you for your comment. This rule language was removed to address your concern. See strike out summary for language changes.

Section 173-180-520 Class 1 facility – minimum criteria for certification programs

101. Please add an eighth paragraph to this section.

Add "-520(8) All certified personnel must carry a proof of certification during oil transfer operations" - 204 Tammy Brown

Response

Thank you for your comment. This rule language was changed to address your concern. See strike out summary for language changes.

102. The requirement to have the name of the trainer on the written certificate or other record for supervisory and operations personnel is too prescriptive.

What if the training program is CBT or there are several trainers. This is too prescriptive a requirement. - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

103. Facilities should be able to use existing training programs rather than develop new ones.

Facilities should be able to use existing training programs rather than develop new ones. – 209 David Sawicki

Response

Ecology will accept a new training program or an existing program if it is amended to meet the applicable requirements in this chapter. Ecology will work with a facility to help develop a new program or adapt an existing program if the facility contacts Ecology.

104. What is the purpose of this section?

what is the purpose of this section. It seems that you would only train, certify and re-certify those who were involved.... why would you do this for other's not involved, and not keep their records ? This needs clarity. - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

Section 173-180-525 Class 1 facility – training and certification program approval

105. The implementation date is not obtainable.

Tesoro suggests a six month re-write of the training and a 12 month re-certification implementation time frame. Again the WADOE has missed the points of discussion during our April 20, 2006 meeting when this was clearly pointed out as unobtainable. - 221 Eric Haugstad

WSPA requests that these sections be amended to allow WDOE the flexibility to approve a deadline extension beyond ninety (90) calendar days on a case-by-case basis to allow facilities some regulatory flexibility as necessary due to unforeseen circumstances, other mandatory workload requirements with similar deadlines, etc. The proposed schedule is untenable since facilities do not have the ability within multiple shifts and vacations to achieve this requirement in such a limited time frame. Smaller class 1 facilities, for example, with a limited amount of oil transferred and associated staffing levels, would be required to meet the same requirements/deadlines as large class 1 facilities that have large staffs. Assuming that the effective date of WAC 173-180 is early October 2006, the following deadlines during 4th quarter 2006 would need to be met by one small Class 1 facility, in addition to the new requirements of this regulation: • Mid October – conduct worst case tabletop oil spill drill • Early November – prepare and submit National Pollution Discharge Elimination System (NPDES) permit renewal application to Ecology • Mid December – prepare and submit Toxic Substance Control Act Inventory Update Rule (TSCA IUR) Report to the Environmental Protection Agency (EPA) • Late December – prepare and submit Title V Air Operating Permit renewal application to the Puget Sound Clean Air Agency (PSCAA) • Late December – update and implement oil handlers & training certification program in accordance with WAC 173-180-525 (1). Due to the uniqueness of these requirements, smaller facility staffs would simply not able to meet all of these deadlines. - 226 Frank Holmes

USOR requests that these paragraphs be amended to allow Ecology the flexibility to approve a deadline extension beyond ninety calendar days on a case by case basis to allow facilities some regulatory flexibility as necessary due to unforeseen circumstances, other mandatory workload requirements with similar deadlines, etc. - 224 Ty Gaub

Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. - 204 Tammy Brown

This should be 180 days [both 525(1)(a) and 525(1)(b)]. There are so many proposed changes to the reg's that having differing time frames makes compliance much more difficult. Again, for facilities with an excellent record, this is too demanding. Why would they change processes that are working just to meet new processes, developed by people who do not run facilities? - 209 David Sawicki

Response

Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed chapter 173-180 WAC had a compliance date of 90 days for Class 1 and 2 facilities for training and certification programs implementation. This requirement was changed to 120 days.

While reviewing comments with the compliance schedule matrix, Ecology tried to match the new requirements for training and certification programs. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

106. <u>The requirement for Ecology to consider the sensitivity and value of natural resources that could be affected by a spill when reviewing the facility's training and certification program needs to be explained.</u>

Does this imply that DOE could elect to pull certification for a facility that has met all of the training and certification standards, and has obtained permits to operate, if DOE feels the location of the facility has somehow changed? NB - reference to seismic activity and value of natural resources - both things that were in place BEFORE the facility was started. This needs to be justified. - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

107. <u>The rules states Ecology's decisions under this chapter are reviewable in superior court. Why?</u>

Why state a specific court ? PLEASE EXPLAIN. - 209 David Sawicki

Response

Ecology expects that most of Ecology's decisions applying these rules to regulated entities would likely fall under the definition of "agency action," as that term is defined in the Administrative Procedure Act (APA), Chapter 34.05 RCW. Under the APA, "agency actions" are subject to judicial review in superior court. See generally RCW 34.05.510-598 for judicial review provisions.

108. <u>Does Ecology intend to offer evidence or certification to show it's staff has the experience to evaluate the training procedures of the facility?</u>

Does DOE intend to offer evidence / certification that it's staff has the experience to evaluate the procedures of facilities, especially those with excellent records and have been doing this for years. - 209 David Sawicki

Response

Ecology's inspectors are highly experienced, well trained and qualified to perform their duties. However, Ecology staff credentials are beyond the scope of this rulemaking.

109. <u>The items in sections 9 to 13 are duplicative and should be deleted.</u>
the items below are COMPLETELY DUPLICATIVE of the details set out n the steps above. Delete, or explain this section. - 209 David Sawicki

Response
The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

<u>Section 173-180-545 Class 2 facility – program approval</u>

110. <u>Please increase the compliance schedule to 180 days.</u>
Increase compliance deadline to 180 days. 90 days is too short of a time, particularly for facilities that have to start fresh, request funding, hire personnel, etc. 204 Tammy Brown

Response
Based on the number of comments Ecology received on compliance dates throughout this rule, Ecology reexamined the entire compliance schedule matrix and made adjustments. Proposed chapter 173-180 WAC had a compliance date of 90 days for Class 1 and 2 facilities for training and certification programs implementation. This requirement was changed to 120 days.

While reviewing comments with the compliance schedule matrix, Ecology tried to match the new requirements for training and certification programs. Ecology used the best determination of our staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. See strike out summary for language changes.

<u>Section 173-180-550 Class 2 facility – minimum requirements for a certification</u>

111. <u>Ecology needs to re-write this sentence.</u>
The sentence, "All certified personnel must carry a proof of certification during oil transfer operations;" seems out of place. Should be added at end as (f) or moved to the front - 204 Tammy Brown

Response
Thank you for your comment. This rule language was changed to address your concern. See strike out summary for language changes.

Part F: Prevention plans for class 1 facilities
<u>Section 173-180-630 Plan content requirements</u>

112. <u>This requirement duplicates the drug and alcohol plan or SPCC plan. Why not just reference?</u>

[630(10)(a)(i)]why not just reference the drug and alcohol plan? - 209 David Sawicki

[630(11)(a)] why not just reference the drug and alcohol plan ? - 209 David Sawicki

[630(12)] this is in the SPCC - why add it here ? - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments. See response to comments 15.

113. <u>What exactly is the P.E. certifying in paragraph 16?</u>

If other information is used to satisfy requirements for a PE to certify the risk assessment, what exactly is the PE certifying? Is it acceptable to simply state on a certification page that information in documents X and Y meet the requirements of this part? - 204 Tammy Brown

Response

The P.E. is certifying the risk analysis and the engineering techniques used therein. Any material used in the risk assessment must have been reviewed by P.E. and is used under his/her professional authority.

114. <u>There are too many plans referenced for which a facility must be compliant. [comment under 630(8)]</u>

There are too many plans referenced for which a facility must be compliant. e.g. do we document this in the requirements under -500 , -510 ; in the SPCC ? or under "federal Process Safety Management requirements (29 CFR 1910), Coast Guard person-in-charge requirements (33 CFR 154.710), and other federal/state training requirements in order to meet the above oil transfer training requirements" ... (taken from the -500 section of this document) ? - -209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

<u>Section 173-180-650 Plan review</u>

115. <u>Doesn't section 650(3) repeat what section 530 requires? If it is not different it should be left out. If it is different state the difference.</u>

doesn't this just repeat what section 530 requires ? If it is different, say so, if not - leave it out - this just becomes more confusing / cumbersome. - 209 David Sawicki

Response

The subsection in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

Section 173-180-660 Plan maintenance and use

116. Recommend delete the requirement to include a cc of the prevention plan in an orientation package for new employees.

to include a cc of the prevention plan in "an orientation package" is ineffective. If employees are assigned to those task, they will get the training. Recommend to delete this requirement. - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

Section 173-180-670 Plan update timeline

117. Please explain and justify the lower limit requirement. Also please better define substantial and significant.

Please explain and justify the 5% lower limit of this requirement. Is this on an annual rate, an occasional daily rate? Substantial and significant need to be better defined. - 209 David Sawicki

Response

The rule language in question is an existing requirement and was not changed in this rulemaking. Therefore, this language is not open to public comments.

Part G: oil transfer response plans

Section 173-180-700 Applicability of part G

118. This part should be deleted. Any facility that is in compliance or plans to be in compliance needs to have an approved contingency plan.

WSPA believes that Part G (Oil Transfer Response Plans) should be deleted from the regulation since any regulated facility that is in compliance or plans to be in compliance needs to have an approved contingency plan. - 226 Frank Holmes

Response

This section refers class 1and 2 facilities requirements for oil transfer response and contingency plans. Class 1 facilities are directed to chapter 173-182 WAC, which contains the requirements for approved contingency plans. Class 2 facilities are required to have an approved response plan. The content of the response plan is described in Part G.

Part H: Drill Program

Section 173-180-810 Type and frequency of unannounced drills

119. **Ecology should have a better definition on their ability to have unannounced drills.**

Finally, what we don't drill we don't have, in my opinion. And the drill program here has section 188-10 has a description of the type of unannounced drills and then proceeds to -- and this is for 80/20 as well as for Class 2 facilities, and I'm sure for the other one, but we have no definition of how unannounced spills would go other than just meeting the national prep requirements. So it strikes me that we should have a better definition on the ability for the state to have unannounced drills especially as this program starts ramping up and we want to confirm compliance. – 205 Fred Felleman

Response

WAC 173-180-810 *requires Class 2 facilities to meet all of the drill requirements within the National Preparedness for Response Exercise Program (PREP). Class 2 facilities may use PREP to meet their requirements to demonstrate their ability to deploy personnel, boom, recovery, and storage equipment. If Class 2 facilities do not meet this standard, then Ecology may use unannounced drills to test the response plans. A guidance manual will be developed to assist the community with compliance.*

120. **Are Class 2 facilities required to conduct PREP drills or is this section just about agency unannounced drills?**

This section is confusing. Are Class 2 facilities required to conduct PREP drills or is this section just about agency unannounced drills? - 223 Michael Tucker

Response

Class 2 facilities must meet both the drill requirements set forth in the National Preparedness for Response Exercise Program and participate in any unannounced drills Ecology may require. Class 2 facilities must meet the drill requirements found in 33 CFR 154 Subpart F and WAC 173-180. Compliance with PREP standards will meet federal and state drill requirements.

General Comments on 173-180

121. **This rule fails to address the motivation for the legislation that lead to this rule making by focusing on mobile transfers instead of facility transfer.**

This rule fails to address the threats posed by large and growing transfer facilities and has chosen instead to focus on mobile sources. Given the numerous problems encountered at Pt. Wells you have failed to address the motivation for the legislation that lead to this rule making.
- 205 Fred Felleman

After we had a spill Ecology really embraced the opportunity to get mobile transfers, which is the major goal of this exercise, and my goal is to get the largest volume, highest potential spill. I believe they are all important to get to, but it seems to me that we have done a far poorer job on the highest risk aspects than the lower risk aspects, including boom transfers. It is a good thing, but it should not be at the expense of doing the right job for the higher volume transfers. – 205 Fred Felleman

Response

We have met the legislative mandate to set transfer containment and recovery prebooming standards and alternative measures that include those situations that are not safe and effective to preboom. In addition, we included new prevention standards for Class 1, 2, and 3 facilities as well as Class 4 facility requirements.

We appreciate your dedication to protection of the environment from oil spills which is a goal shared by the Department of Ecology. The rules reflect our attempt to implement the requirements of RCW 88.46.160 and 88.46.165. This legislation strikes a balance by providing for strong environmental protection while allowing for sufficient flexibility to ensure continued viability of industries impacted by these rules.

122. These rules are much more workable and understandable than proposed in earlier drafts.

Port districts do perform many of the operational duties that are covered by these rules at marinas and boatyards. These ports own and operate dozens of facilities that moor, fuel and maintain the recreational vessels and smaller commercial vessels that ply our waters. These proposed rules regulate marina fueling and contingency planning in a much more workable and understandable manner than was proposed in earlier drafts, and we appreciate this improvement. - 225 Eric Johnson

Response

Thank you for your comment and support of these rules.

123. These rules need to be as clear as possible about which particular party within a complex transfer or contingency framework has responsibility for what.

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. - 225 Eric Johnson

Response

Ecology wrote these rules to be as clear as possible, however, we know there are issues with the language and interpretation of any set of regulations. We will continue to work with the regulated and unregulated parties affected by this rulemaking. We hope that after a time and gathering information on the new rules will enable future rulemaking to reduce the language and clarity problems. We encourage your further interest working with Ecology and your work in informing others in your community about rule.

124. The rules should be as consistent with the Coast Guard as our law will allow.

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 any one particular separate state requirement. - 225 Eric Johnson

Response

We do incorporate those federal requirements pertaining to oil transfers with some critical new requirements that further the legislative goals of zero spills. The new requirements are easily slipped into the current Declaration of Inspection the Coast Guard requires. We anticipate companies will incorporate these changes into whatever forms are currently in use.

125. Recommend the vessel oil transfer rule and the facility oil transfer rule be combined.

Recommend that the Vessel Oil Transfer Standards (WAC 317-40) and WAC 173-180 be combined. They overlap, have similar definitions and with the new mobile facility requirements, vessels have a larger role in the facility rule. Additionally, the vessel rule includes facilities in the applicability section (-010). - 223 Michael Tucker

Response

Ecology believes that it will be cleaner and easier for the different interested parties to find and understand the applicable rules if it has separate chapters addressing facility and vessel transfers. We have therefore determined to preserve this separation.

126. Ecology needs to use a risk-based approach taking into account the different characteristics of the oil and of the transfer operation.

First, the rules impose similar containment and recovery standards for both fixed (Class 1) facilities and mobile (Class 2) facilities. In so doing, the rules roughly equate the risk of these two modes of fuel transfer. Understanding oil spill risk to be defined as the product of spill likelihood and spill consequence, the risks are simply not the same; or even similar in scope. If the oil transfer risk factors of transfer rates, transfer pressures, transfer volumes, relative tank volumes, fuel types, and (in the case of ferries) transfers over or not over the water are compared between a mobile and fixed facility, the risk of a spill is considerably different. WSF is not aware of any statistical analysis showing the comparative likelihood of a spill between mobile and fixed facilities, or of any analysis that looks at the relative consequence of a spill from either facility. Absent a statistical basis for the standards proposed, the regulations seem to impose standards for mobile transfers that are inconsistent with the level of the risk. By roughly equating the risk of these two fueling modes, the mobile facilities may be driven out of business. Fueling operations may also be driven towards fixed facilities, and in the interest of improving safety have the unintended consequence of actually elevating the risk, or making things less safe. - 232 Michael Anderson

Second, with the exception of some highly volatile fuels, the rules treat nearly all oils in a similar manner, even though they possess widely varying physical and chemical properties, with dramatically different impacts on the environment, and with notable differences in the ability to clean them up should a spill occur. This seems to be generally inconsistent with the risk-based approach that serves as the foundation for the regulations. - 232 Michael Anderson

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). - 209 David Sawicki

We are concerned that the rules impose similar containment and recovery standards on both fixed (Class 1) and mobile facilities (Class 2), thus suggesting that these two very different modes of transfer are essentially comparable on a risk basis and they are not. The rules do differentiate between the two operations by rate of transfer and this is appropriate but this factor is only one of many risk factors. However, when all the risk factors are considered, the risks (both probability and consequence) are very different. - 203 Michael Moore

I do believe that Ecology needs to perform a formal risk base analysis on what transfer of most likely could result in oil spills and damages to the water of the state. I don't believe this was done for this rule and would like to request that Ecology do so. - Ed Shu

Response

Ecology believes it has followed the legislative mandates to scale the rule requirements to risk. The new oil transfer standards are scaled to risk in the following ways:

- *Ecology used oil transfer flow rates to set pre-booming and response standards. An oil spill occurring during a high rate oil transfer (Rate A, > 500 gallons per minute) would likely result in a larger spill, and therefore pose a potentially greater level of threat to the environment than a spill from a lower rate oil transfer (Rate B, <500 gallons per minute).*

- *The rules establish oil transfer standards by the different type of facilities (Classes 1-4). For example, large Class 1 facilities (e.g. refineries) must meet broad, comprehensive oil transfer requirements, while Class 4 facilities (e.g. small marinas) only have to meet minimal standards. Class 2 facilities (e.g. tank trucks) are required to meet oil transfer standards that fall in between those required of marinas and refineries in terms of stringency. For example, Class 2 facilities are required to submit operations manuals and a personnel training program to Ecology for review and approval while Class 4 facilities do not have to meet this standard. Rule requirements for Class 3 facilities that include two small refueling terminals on the Lake Washington Ship Canal are less stringent than Class 1 and Class 2 facilities, but more than Class 4 facilities.*

- *Advance notice of oil transfers to Ecology is not required for Class 4 marinas but is required for Class 1, 2 and 3 facilities. A 100 gallon threshold for reporting oil transfers for Class 1, 2 and 3 facilities is also included as recognition of risk. This is explained in more detail in the strike out portion of this document.*

- *The rules also allow vessels and facilities to submit equivalent compliance plans in lieu of alternative measures if it provides an equal or greater level of protection than the rule requirements. This was added to provide flexibility for*

deliverers to develop others ways to meet the intent of the alternative measures that would address issues specific to each company's own particular oil transfer operations, environmental conditions and risk factors.

This is similar to how the Coast Guard approached scaling prevention, preparedness and response standards for fixed facilities and mobiles. In Title 33 Code of Federal Regulations Part 154, mobile facilities have a lower amount of prevention requirements as well as lower response planning requirements.

127. <u>Ecology should establish a "feedback loop" in the form regular meetings with maritime groups monitor the effect of this rule.</u>

Both draft rules contain many, many phrases and requirements that can mean different things to different people, and even the best editing of the final rule draft will be unable to completely resolve this. There are simply too many site-specific and unforeseen operational situations within the complex world of oil transfers and spill prevention planning for any rule to anticipate them all. For this reason our Association strongly encourages the Department to build an official maritime 'feedback loop' into the implementation of these rules. This should take the form of a regular meeting (quarterly, perhaps) with the maritime groups that implement this rule for at least the first two years of its implementation. Such a forum will enable the type of back and forth conversation that will be necessary as these rules move forward, and it will undoubtedly prove of immense value to both the Department and the working waterfront. 225 Eric Johnson

Lastly, we also endorse the WPPA idea of establishing a Maritime community Implementation Committee. As you are probably aware - there are so many individual incidents that simply will not fit the first draft of these rules. It will take a number of years to refine the documents to a point where they truly provide the protection we all are seeking for the environment, but also allowing our state's marine industry to flourish. - 229 Larry Crockett

Response

We agree with the concept of a continuing body of regulators, industry representatives, and other invested parties working together to help prevent any accidents in this arena. We will continue to work with existing stakeholders and advance the legislative goals for zero spills and a cleaner and more prosperous Washington.

128. <u>The rule should state that the public has access to the manual required by this rule. The manuals should be kept on line and paper copies at Ecology's offices.</u>

Somewhere in the rule, it should be made clear that manuals are available to the public at any time. In other words, copies should be kept on file at Ecology offices or available on line. - 207 Bruce Wishart

Response

As a part of the approval process for Operations Manuals, we keep a copy on-file for our inspectors. There is no current requirement for a public review of operations manuals during this time period. Ecology does not believe that sufficient public interest warrants scanning these documents and posting them on the Internet, but if this belief proves inaccurate; it will look more closely at whether

it makes sense to post them on the Internet. Ecology determined this rule language was not necessary for this rule making.

129. Several parts of this rule should be removed entirely.

Part C of this draft regulation to Part E should be removed altogether since they have absolutely nothing to do with Marine Transfers and should be stand alone regulations much like the federal regulations you are attempting to mimic. This was pointed out at the April 20, 2006 meeting in Olympia were industry representatives and WADOE met and pointed these issue's out. When you sight the federal regulations and take only a portion the regulation it deters from your end goal and makes it difficult at best for your staff to review let alone inspect. Please pay close attention to the comments that you receive from us and other industry representatives since we are attempting to improve what you and us will have to implement. - 221 Eric Haugstad

Part C through Part F, Delete or make stand alone under a different regulation. This is SPCC and DOT RSPA language that has nothing to do with Marine Transfers. - 221 Eric Haugstad

Suggest that DOE simply adopt the Federal Regulations for Sections C thru E. Operations Manuals, secondary containment issues, inspections, leak detection, cathodic protection, pipeline coatings, pipeline operating parameters etc. are all parts of other plans. This was also recommended at stake holder meetings. - 209 David Sawicki

Response

Thank you for your comments. Ecology plans to move forward with the implementation of chapter 173-180 WAC. See response to comment 78.

130. We support the comments which the Washington Public Ports Association (WPPA) sent.

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. - 229 Larry Crockett

Response

Thank you for your comment. Ecology is considering all comments in this rule making process.

131. We generally support Ecology's rule 173-180.

In short, we support Department of Ecology's proposals. - 231 Rachael Pecore

We are generally supportive of these proposed rules, and encourage Ecology's adoption of them, however we do have some specific comments and concerns: - 216 Brad Ack

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. - 212 Lauren Goldberg

CRK likewise supports the proposed Oil Transfer Rules, which takes the necessary steps to achieve the 2004 Legislature's "zero spills" goal. CRK believes the proposed rule achieves the Legislatures

directive for safe oil transfers in Washington. Specifically, CRK supports the rule's pre-booming requirements, training and certification program, and specifications for Advance Notice of Oil Transfers. - 212 Lauren Goldberg

We also support the use of buoys or floats with GPS units placed in spill to help track its movement. - Bruce Wishart

These standards represent a proactive step in the control of spills from oil transfer operations. While these standards are certainly a start, over the long haul, efforts should be directed toward locating and designing oil transfer facilities in such a way that spills are always contained recovered before any environmental damage occurs. - 211 Mike Doherty

Response

Thank you for your comments. Ecology will continue to develop efforts to reach the zero spill goal set by the legislature and appreciates your support in this effort.

132. We feel the rules do not go far enough to reach the goal of zero spills and should have additional requirements for the first 2 hours.

Although these proposed rules are a step forward in protecting Puget Sound from oil spills, the Puget Soundkeeper Alliance (PSA) believes that the proposed rules do not go far enough. In 2004, the State Legislature, in SSB 6641, concluded "that the primary objective of the state is to adopt a zero spills strategy to prevent any oil or hazardous substances from entering the waters of the state." - 217 Sue Joerger

So I guess I would say that if the goal is zero spills, to totally prevent spills, then the standards should be clear -- and somebody said robust. And I would urge maybe less -- I don't know what the problem is, but it seems there is a big problem about being really specific and defined on this, but I would urge you all to push past that and to come up with something that will really have some advantages. – 237 Jan McMillan

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. We also support the use of buoys or floats with GPS units placed in spill to help track its movement - 207 Bruce Wishart

Response

Ecology feels the rules developed will further our efforts to meet the zero spill goal set by the legislature. We appreciate your comments and your support in this effort. Air monitoring is a part of the safety assessment and response actions taken by the first responders, however, this current rule was written to meet the legislative goals and therefore concerns the prevention of spills and a speedy response in case of a spill.

133. We are unhappy with this poorly written rule.

After 45 years of being directly involved in this industry, and continually testifying at meetings and at Senate hearings, I find the proposed rules confusing and I believe they will cause complacency and most facilities will not be able to comply with them. It is very clear to me that Ecology has been played a pawn in Cholly Mercer's plan to become a monopoly in the State of Washington. I have

suggested several times that Ecology sit down with the people that perform these transfers and operate facilities to solve the concerns and needs of the public, not with the chosen advisory panel that has no idea what really happens in the real world. After trying to decipher the proposed rules I believe the best course of action, for an intelligent person, would be to class as a recreational vessel facility only, under which, no rules apply. The future of the Maritime industries in the state depend on effective and understandable regulations. These emotional and unrealistic proposed regulations will do very little to prevent spills. Please evaluate regulations by historical data and a risk analysis using all assets at your disposal before you remove a large portion of a 28 billion dollar sector of our state economy. I find that your SBEIS are inaccurate and should have been edited for accuracy prior to distribution. If you persist along the current course please advise me the day that these rules will be enforced so I can determine if I need to close down my facility at that time. - 210 Warren Aakervik Jr.

Tesoro has provided numerous comments on this proposed rule and is tremendously frustrated that there was no effort to clean this poorly written rule up. I hope your department is prepared to handle all the fallout from this? The only operators that will be in compliance will be those that were (a) already pre-booming in some fashion and not to say it works or (b) those that were suppose to be and weren't and are in negotiations to settle out of court. The implementation time frames are unrealistic and will force all others for alternative compliance in the beginning. In general these regulations are poorly written and where done with little input from the end users who have the most experience in this subject matter. It is unfortunate that the WADOE attempted to use this as a catch all when time was running out to get something in place to meet the legislature's deadline. - 221 Eric Haugstad

We have never had Ecology ask or come out and do an analysis of how we transfer fuel, and how we do it safely and the precautionary measures that we take and how well we have everyone trained. – 238 Sean Mason - oral

Response

Ecology has listened carefully to all of the comments it received in this rulemaking process, and endeavored to be responsive with changes whenever possible, or with comments explaining its actions whenever the requested changes were not possible. To the extent that any ambiguities within the rules cause problems for either Ecology or the regulated community, Ecology may clarify those rules if and when experience indicates such clarifications are necessary.

134. <u>We feel Ecology has not complied with the Washington State Administrative Procedures Act (APA) by providing the required rationale and justification for exceeding the Federal standards.</u>

We are on record recommending that the Department of Ecology (DOE) provide the required rationale and justification for these rules where they exceed the Federal standards not only to comply with the Washington Administrative Procedures Act (APA) but also to facilitate review and comment. Unfortunately, this was not done. - 203 Michael Moore

Response

Please see the Significant Legislative Rulemaking Criteria document and the response to comment 78.

135. <u>The public comments were planned for Port Angeles on a Saturday and on the last day of the Lavender Festival. I was disappointed in the timing and the concurrent low turnout.</u>

I was extremely disappointed by the very low turnout for the Port Angeles public hearings on the subject draft regulations, although a low turnout was predictable. The hearings were held on a Saturday, and on the day of the local Lavender Festival – the largest local festival of the summer in Clallam County. In the West End, "Quileute Days" and two other events were held. A major local event. As fun as testifying on oil transfer and contingency planning regulations may be, competing events won out. Also, the only public notice I observed in local media was a very small legal notice two weeks before the hearing. - 211 Mike Doherty

Response

We will take this into consideration for future rule making. The rule timeline was very short and scheduling hearings on such a short timeline very difficult. Ecology apologizes for any conflict in scheduling which may have resulted for persons interested in attending the hearings. All comments, either written or oral, are given equal weight in the rule process.

136. <u>Ecology should require class four facilities to be staffed.</u>

Why are Class 4 facilities not staffed? - 210 Warren Aakervik

Response

It's unclear exactly what is meant by this question. The legislature directed Ecology to establish standards for safe oil transfers and the rules are intended to meet this mandate. Ecology believes that the legislative intent was to avoid costly regulations to fueling installations that primarily transfer to small recreational vessels and only occasionally to larger non-recreational vessels.

The rules set performance standards that must be met by facilities and vessels involved in transfer oil. Rules for Class 4 facilities were developed that considered the scale of oil transfer operations, spill risk, economics, the burden of regulatory compliance and other issues. Ecology believes the requirements we developed achieve the legislative goals for safety training, notifications, response, and recovery for this class facility.

137. <u>The rules need to define biodiesel as an oil.</u>

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. - 214 Arthur Grunbaum

Response

We are limited to oils as defined in the law as found in RCW 88.46.010 and 90.56.010; therefore we cannot consider Biodiesel for regulation. We are working with the parties constructing the facility in your comment. This particular party referred to in this comment expressed their desire to be fully in compliance with our regulations even though our requirements may not apply directly to their operations.

Cost Benefit Analysis and Small Business Economic Impact Statement Comments

General Comments

1. <u>The complexity of the preliminary cost benefit analysis renders it nearly inconsequential. The assumption that more oil will be spilled each year is in contrast to industry statistics which have shown a downward trend.</u>

The complexity of the preliminary cost benefit analysis renders it nearly inconsequential. The evaluation document itself states in numerous places that it was "difficult to determine" or "difficult to estimate" the cost or benefit for a given factor. One assumption that we take issue with is the assumption that the number of spills will continue to increase, resulting in more oil spilled each year. This is in contrast to our own industry statistics which have indicated a general downward trend in spills and spill volumes. A small number of larger spills tends to skew the data analysis, due to the numerous variables attendant to each spill situation. – 220 Robert Dorn

Response

The goal of Cost Benefit Analysis is to provide information to decision makers whether or not the proposed action is an efficient use of resources. The nature of the analysis is to anticipate and estimate the magnitude of all significant benefits and costs. Inevitably, actual future events may not be identical to the estimates provided in a cost benefit analysis. However, the intent is to anticipate to the greatest degree possible all benefits and costs given available information. This includes both quantitative analyses and qualitative analyses which are used together to arrive at a final determination.

In the case of predicting future oil spills, there are a number of uncertain factors that may not be known on a spill by spill basis. It may not be known that a person makes an error in protocol, or that a valve malfunctions. What is known is that these unexpected events have happened in the past, and the history and frequency of these events may be studied. For oil spills, these data about past spills are used to predict future spills. However, simple trends and facts about the data may not be taken in isolation when estimating future spills. While it is true that there has been a general downward trend in oil spills over time, much of the credit for that is due to increases in safety measures and the passage of the Oil Pollution

Control Act of 1990. In the wake of the Exxon Valdez oil spill this act increased regulation and safety efforts nationwide. For this reason, spill data prior to 1990 has not been used to predict future spills because there were more spills prior to the control efforts. Had the full period of spill history for which there are records been used instead of just the post-1990 data, this would have increased the estimated magnitude of future spills, and not decreased it.

The increased incidence of anticipated future oil spilled in the State of Washington is associated with the expected increase in volume of cargo oil that will be transported in Washington State in the future, and not with an expected increase in spills per volume of oil transferred. Section 3.2.3 of the Preliminary Analysis of Probable Costs and Benefits of the Oil Transfer Regulation (PCBA) describes the forecast for increased cargo oil transported in Washington State that serves as the basis for the increase.

It is true that a small number of large spills "skew" or influence data analysis. That is because larger spills are much more costly to the environment and economy than small ones. Although these large spills only occur rarely, they do have a strong influence on the expected average annual volume of spills. For example, suppose there are five children in a room with an average age of seven. If an 85 year old person joins the group, the average age now become 20, nearly tripling the previous average. In the same way rare, large oil spills are capable of having a large influence on the average annual expected spill volume.

The inclusion of terms such as "difficult to determine" or "difficult to estimate" was intended to make it clear to the reader that estimates are made using the best available data, and that estimates differ somewhat in the degree of certainty that surrounds each.

2. <u>The analysis fails to explore all the unintended consequences of the rule.</u>

Section 2.7.4 titled "Economic Implications" briefly touches on potential unintended consequences that are "not clear to what degree they may come to pass." These implications could have a significant impact on the Columbia River and should be fully explored in the CBA. Missing from this section is the potential loss of ship calls on the Columbia River should we no longer have full service ports. – 218 Stuart Sanborn

The impact on the availability to take on lube oil and bunker fuel in Washington remains to be seen but we know those activities are very price sensitive. These predictable but unintended consequences need to be fully considered. If the loss of stock value after a spill is considered in the CBA then surely the loss of business and businesses must also be considered. – 203 Michael Moore

As stated in the CBA, mobile facility operators are likely to "cease mobile deliveries if forced to pre-boom each mobile transfer because of the cost and time burden." This provision of the rule is truly not an option to continued operation, and is therefore superfluous and only serves to put this segment of the industry out of business. Without change, the only option for continued mobile

transfers and regulatory compliance is to meet the alternative provisions of paragraph 110(8). – 203 Michael Moore

Response

Cost Benefit Analysis typically does not include analyses of secondary impacts, such as the implications of what may happen if additional costs associated with refueling causes ships to bunker elsewhere. Because these impacts do have serious economic implications, they are discussed in the sections titled, "Economic Implications." While the potential loss of ship calls on the Columbia River is possible, it is also likely that ships will substitute Oregon water ports for refueling if price and time considerations on the Washington side of the river are altered due to the new regulation. Such a shift might actually cause very little disruption to commerce on the river system.

Because the anticipated benefits and costs of the contingency plan rule and the oil transfer rule are different, different analyses were undertaken for each regulation. In both cases, however, the scope of the analyses was sufficient to answer the question of whether or not the net benefits of the regulation will exceed the net costs. In the analysis of the oil transfer regulation, loss of stock value is not included in the analysis. Again, cost benefit analysis only counts the primary impact of an increase in costs to the bunker fuel supplier and not whether ships will take on less lube oil and bunker fuel in Washington due to an increase in price. Whether this cost gets passed on to customers, or comes from reduced profits to the provider remains to be seen.

3. <u>Appropriately scaled standards, based on the relative risk of a spill should be the measure of successful rulemaking, not the leveling of the business playing field as suggested in Ecology's Preliminary Evaluation of Probable Costs and Benefits of the Proposed Oil Transfer Rules report</u>

Consistent with the State's adopted goal of zero spills, and Ecology's stated purpose in the CR-102 to implement rules that prevent, contain, and recover spills from oil transfer operations, WSF believes that these oil transfer risk factors, which predominantly govern the likelihood and consequence of a spill, should be considered in the rules. Appropriately scaled standards, based on the relative risk of a spill should be the measure of successful rulemaking, not the leveling of the business playing field as suggested in Ecology's Preliminary Evaluation of Probable Costs and Benefits of the Proposed Oil Transfer Rules report. – 232 Michael Anderson

Response

The regulations proposed by Ecology do take into consideration oil transfer risk factors (for a good discussion of the risk factors surrounding oil transfer spills, see "Marine Fueling and Oil Transfer Practices for Covered Vessels and Ships in Washington," Ecology Publication 04-08-005). Standards have been developed with respect to these risk factors and no attempt has been made to level the business playing field in the development of these regulations. For example, approximately one third of transfers occur as mobile tank trucks (class 2 facilities) refuel ships at docks (see Section 1.3 of the PCBA). Previously, regulatory

ambiguity surrounded how a mobile facility should be regulated because most mobile facilities are trucks operating under the authority of WSDOT. Under the current proposed regulation, this sector would be required to have boom ready to deploy and personnel trained to deploy boom.

4. <u>The Cost Benefit Analysis fails to anticipate the added cost in several areas of the rule.</u>

317-40-110(8)(b) – This section requires "within one hour of being made aware of a spill the deliverer must be able to complete deployment of an additional five hundred feet of boom…" Although not clear, this section appears to assume that the boom required in subparagraph (8) (a) (i) has already been deployed. Given the varied, and at times remote locations of the terminals at which WSF conducts fueling operations, WSF is not sure it is reasonable to assume (as is done in Ecology's Costs and Benefits report) that an oil spill response organization (OSRO) can actually satisfy this requirement. Given the earlier discussion on the staging and deployment of the boom required by subparagraph (8)(a)(i), WSF would anticipate the need to stage an additional five hundred feet of boom to satisfy subparagraph (8)(b). Compliance with this measure would add an up front cost of approximately $38,500, with additional and ongoing maintenance and replacement costs. – 232 Michael Anderson

317-40-110(8) (a) (ii) – This section requires that prior to oil transfer operations, the deliverer "have personnel trained in the proper use and maintenance of boom and recovery equipment." The details of exactly what this means are not clear. Does this mean all personnel involved in the transfer must be trained, or rather is only one person sufficient? Does this training need to be Hazwoper training? The significance of the number to be trained and the type of training is critical to understanding what is necessary to comply with this rulemaking. Ecology's Costs and Benefits report indicates a full day of training each year to satisfy this requirement. If the first option above of using WSF crews to deploy the boom were employed, we would anticipate that they would have to be trained. Assuming an eight-hour day of training for all mates (70) and all able bodied seamen (156), the annual training cost would be approximately $92,000. – 232 Michael Anderson

In summary, compliance with paragraph 317-40-110(8), as the only real option for compliance for Rate B transfers, is projected to cost WSF (and the public we serve) somewhere between $772,000 and $1.58 million the first year, and between $550,000 and $1.58 million annually thereafter. The alternative of ceasing all mobile fuel transfers and taking all vessels to a fixed facility has also been considered. This option has significant added crewing costs, negative and real impacts on service hours, increased fuel consumption costs, increased engineering life cycle costs from added underway time, increased potential for navigational mishaps, added air emissions, added cost of fuel, and increased risk of a spill. From a cost perspective alone, with costs likely on the order of $2.1 million a year to shift fueling operations to a fixed facility without accounting for the per gallon fuel cost difference, this option is not considered viable. – 232 Michael Anderson

317-40-110(8)(a)(i) – This section requires that prior to oil transfer operations, there must be "access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area…" Although not stipulated, WSF believes the intent of this standard is to have access at, or in close proximity to, the transfer location. This should be clarified. Assuming this to be the case, in order to comply, the deliverer or WSF would need to position sufficient boom at each terminal where fueling operations are to be conducted to encircle the terminal facility with the ferry in the dock, inclusive of the wing walls, dolphins and floaters. For WSF, this would equate to approximately 1,500 feet of boom for a typical terminal stored in a container at each of the nine terminals where fueling occurs. At a projected initial installation cost of nearly $25,000 per terminal, the up front cost of pre-booming material at the nine terminals where fueling occurs would be approximately $225,000. This section does not indicate if equipment has to be onsite that can be used to deploy the boom, nor how

quickly this boom would have to be deployed. These points should be clarified. Assuming that the intent of the rule would be to have immediate access to both the boom and the equipment necessary to deploy the boom, and do so upon notification of the spill, there are two viable options for compliance. The first option would be to launch and use the onboard WSF rescue boats to deploy the boom. Since fueling operations are done when the vessel is out of service and the actual operation is conducted by the engineering crews, there are a number of occasions when fueling is conducted with no deck crews onboard. Accordingly, this option would require that at least 3 extra crewmembers be onboard during those fueling operations (1 mate to launch and two able bodied seamen to be in the boat). If no changes were made to the current fueling operations, this added crewing would be necessary in approximately 450 to 500 of the fueling operations each year, which in turn equates to approximately $390,000 to $430,000 per year in added costs. Note, this cost reflects only salaries and does not include any added costs associated with training (covered later) and the need for additional employees that might be necessary to cover these additional duties (which in the worst case could double the cost projections). This also doesn't reflect any issues that the employee unions might raise. The second option is to contract out this function, and have a small boat standing by each time a transfer operation is conducted. The cost of this option is more difficult to estimate. Indeed, it appears that Ecology's Costs and Benefits report does not include a projection of this cost, which may mean this function is not required. If this function is in fact required, this provision would essentially mean that a small boat with two people aboard be located at each terminal where fueling operations are being conducted. Assuming 1320 truck transfers conducted each year, a small craft would have to be available an average of 4 times a day every day of the year somewhere in the WSF system. Our research indicates a per transfer cost of this standby service to be somewhere between $900 and $1,500, depending on the location. Based on our best cost projections, the cost of system wide compliance would be somewhere between $1.1 and $1.35 million. - 232 Michael Anderson

317-40-110(8) – The provisions of this paragraph apply to the deliverer, but in reality this cost would likely be borne in whole or in part by WSF. The comments in this section assume that WSF will shoulder the weight of compliance. – 232 Michael Anderson

317-40-110(7) – The provisions of this section, or the alternative measures allowed in subparagraph 110(8), would apply to the approximately 1320 transfers conducted by tanker truck each year. These transfers are currently conducted at nine different terminal locations, from Friday Harbor to Point Defiance. If the mobile facility or WSF were to contract out these services (again, at the expected rate of $2,500 per transfer, as stipulated in Ecology's Costs and Benefits report), then WSF would expect to incur a cost of $3.3 million annually. The time necessary to accomplish the pre-booming task isn't clear. WSF out-of-service layover periods, during which fuel operations are conducted, are as short at 1-1/2 hours. As a result, WSF would anticipate that pre-booming associated with fueling operations would negatively impact service schedules. The extent of this operational impact is unknown, but some impact is likely given the need to afford sufficient time to accomplish the requisite measures associated with fueling ops. WSF would absolutely agree with the statement in Ecology's Costs and Benefits report that facility operators would "cease mobile deliveries if forced to pre-boom each mobile transfer because of the cost and time burden." Accordingly, this provision of the rules is truly not an option and, for all intents and purposes, considered superfluous as it would serve only to put this segment of the industry out of business. Without change, the only option for continued mobile transfers and regulatory compliance is to meet the alternative provisions of section 110(8). – 232 Michael Anderson

Assuming no changes in WSF's current fueling operations, this section would apply to between 250 and 300 transfers a year that WSF conducts at the fixed facility at Harbor Island. Although the new regulatory compliance cost would be borne by the facility, and we would expect the facility to perform these functions using in-house assets, WSF expects these additional costs will be passed along to the user, and ultimately to the consumer. Although facility figures are not known, given WSF's operating history, we anticipate being one of the largest users of the facility. Accordingly, WSF would expect to incur a large share of the added costs (either through a surcharge or added

cost per gallon of fuel). Our preliminary cost projections indicate that the facility may actually not be able to accomplish the WSF pre-booming (let alone their other customers) at the amount predicted by Ecology's Preliminary Evaluation of Probable Costs and Benefits of the Proposed Oil Transfer Rules report. Under this same scenario, if the facility was to contract out these services (at the expected rate of $2,500 per transfer, as stipulated in Ecology's Preliminary Evaluation of Probable Costs and Benefits of the Proposed Oil Transfer Rules report), then WSF would expect to incur a cost of $720,000 annually, using the number of transfers conducted in 2004 as the basis. – 232 Michael Anderson

Response

Because most industries involved in oil transfers are still developing strategies to respond to the new regulations, it is difficult to imagine all of the ways in which different sectors and firms may respond. After discussions with representatives from many different segments of the affected industries, it is evident that, in general, one of two approaches will be taken depending on the number and nature of transfers that the organization undertakes. It is expected that each affected company or organization will explore the options between in-house compliance and outside contracting with an OSRO, eventually selecting the least costly alternative. A number of OSROs are anticipating an increase in demand for services and are preparing to expand the types of services offered.

Regarding the requirement to have personnel trained in the proper use and deployment of boom, this does not mean that all personnel aboard a ship must have this training, although an organization is free to train all if they so desire. Except for Class 4 Facilities, the rules require training for personnel who have responsibilities in the transfer [WAC 173-180-060]. If an OSRO has been contracted to pre-boom a vessel to facility transfer, the hired personnel must be trained to the same training standards as established for facility personnel in WAC 173-180-510(14). If an in-house strategy is used, only two trained people are assumed to be needed to meet the pre-boom requirement of a transfer, and these may be facility personnel or might be special personnel whose sole work is to pre-boom vessels.

For Rate B transferors using mobile tank trucks, it is assumed that the delivering truck companies (Class 2 facilities) will bear the cost of compliance. Consequently, it is not that these costs were overlooked in the analysis, but that these were assumed to accrue to an organization other than WSF. In an effort to analyze the total costs of the new regulation, the cost benefit analysis approach counts each cost or benefit only once, despite the fact that both costs and benefits may be passed along to others in related economic sectors.

If not pre-booming a transfer, Class 2 Facilities are required to have "access" to sufficient length of boom prior to initiating the transfer [WAC 173-180-222(2)(a)]. "Access" may be interpreted as requiring response equipment on-site prior to initiating a transfer. The total length of boom required is first, the amount needed to completely encircle the transfer operation, and then another 500 feet of boom to be deployed within one hour in the event of a spill, and then another 500 feet to be

deployed within a second hour. For details of the assumptions used in Class 2 facility transfers, please see Section 2.4 in the PCBA.

5. <u>The failure to include the zero spill data of the Columbia River and the decision to analyze the entire state of Washington in total punishes the rivers system.</u>

The data obtained showed no spills in the Columbia River during the Cost Benefit Analysis period of 2000-2005. Surprisingly, Section 3.2 of the Cost Benefit Analysis (CBA) states that data for the Columbia River was not available for the period of 2000-2005. Both the failure to include the zero spill data of the Columbia River and the decision to analyze the entire state of Washington in total, punishes our region despite its impressive record of success, and will undo or diminish the effectiveness of our carefully partnered programs. – 210 Heather Moats

When the CBA is finalized with the information provided by Tidewater and other operators on the River system the costs of this rule will prove to outweigh the benefits. I ask that you include an exemption provision in the rule that will allow Tidewater and all other Columbia River operators that transfer only refined products an opportunity to seek relief from the burden of complying with this rule. – 222 Paul Jewell

The Cost Benefit Analyses gives no consideration to the unique operating features and conditions of the Columbia River, or to system users' exemplary performance record. Further, the Cost Benefit Analysis does not support its own conclusions. The facts and data presented show that many important costs were not included, and that purported benefits could be assumed and imagined that should eventually justify the substantial and very real costs of the new program at some yet-to-be-determined point in the distant future. This approach is unacceptable. The conclusions are unsubstantiated. The proposed rules are not supportable. – 201 Heather Moats

We strongly object to having the Columbia River evaluated in terms that relate primarily to freight mobility situations occurring on lakes, bays, and sounds, environments considerably different from rivers and maritime transportation operations. We strongly suggest that the Columbia River be evaluated as a river system and be treated as the unique multiple-user multi-jurisdictional system that it is. – 201 Heather Moats

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? - 227 Jim Townley

Response

The river system accounts for approximately 20 percent of transfers, using the Ecology collected transfer data from July to December 2004 (see "Oil and Fuel Transfer Over Waters of the State of Washington: A report to the Legislature," DOE, 2005). The spill data used to analyze the benefits of the new regulation does include data for the period 2000-2005 for the Columbia River, although these data are considered to be incomplete. Furthermore, discrepancies in these data have been raised. In light of such issues the spill data are determined to be most useful in assessing spill probabilities at an aggregate or statewide level of resolution as opposed to geographic or modal subsets. Analysis based on smaller subsets

would not be defensible because spills are not common enough to derive a separate probability distribution.

If the river system is in fact a unique operating system, then an equivalent compliance plan may be the most expedient approach to compliance. Information about equivalent compliance plan is found in WAC 173-180-07 and WAC 173-184-105.

6. The conclusion of the CBA is wrong. The benefits do not outweigh the costs and these rules should not be placed into law.

I disagree with the conclusion of the CBA. As above the benefits do not outweigh the costs, a fact that is explained away with the statement that "costs will (likely) be reduced in coming years." The conclusion also describes the value of the benefits as "unclear." This combined with the omissions noted above and the lack of separations between WAC 173-180 and WAC 317-40, as well as the lack of separation between the Columbia River and Puget Sound lead me to the conclusion that the benefits do not outweigh the costs and that these rules should not be placed into law. – 218 Stuart Sanborn

we believe the preliminary cost benefit analysis (CBA) generally lacks detail for an appropriate review. It suffers from some flaws, vague assumptions, overlooked costs and certain skewed information. In the end, it concludes that even though costs exceed the benefits, they are close, and "Given the uncertainty surrounding the value of estimated benefits and the likelihood that costs will be reduced in coming years, it is the conclusion of this analysis that the benefits of the proposed transfer rules will exceed the costs." This statement seems to indicate that regardless of what the CBA revealed, a benefit over cost conclusion could be justified. This seems to discredit the CBA process. – 203 Michael Moore

It is understood that the preliminary Cost Benefit Analysis (CBA) for these rules was applied on a statewide basis. That preliminary CBA came to a fairly tenuous and certainly debatable conclusion that these rules will have a greater net benefit than cost. If a separate analysis were conducted for these rules as they apply to the Columbia/Snake River system I am confident that the conclusion would be different. The preliminary CBA asserts that boom will need to be replaced once every 5 years. It would be more reasonable to assume replacement (because of the damage caused by current pushed debris) far more frequently when deployed on the Columbia and Snake River, a significant expense given that MMS has demonstrated that containment booming will have no demonstrable benefit in our operating environment. A River specific CBA would find little benefit from these rules and the real costs would be far greater than estimated in the preliminary CBA. – 222 Paul Jewell

As noted in Tables ES-3 and 25, the benefits do not outweigh the costs. I agree. – 218 Stuart Sanborn

Response

There are a number of reasons that the benefits were determined to outweigh costs in the preliminary cost benefit analysis. Foremost among these was that in the initial analysis, several items were excluded from both quantifiable benefits, and quantifiable costs. The list of items excluded from costs were minor purchases such as radios and other safety equipment, time lost for ships refueling as they wait for pre-booming, and possibly administrative costs of compliance. Benefits that

were excluded were benefits to citizens outside the state of Washington (measured to be significant), potential long-term ecosystem damages, and savings to firms that might otherwise lose operation time and money during spill response and cleanup efforts. Research regarding these two sets of excluded features suggested that the wide variation in ecological and environmental costs associated with the excluded benefits was enough to outweigh the excluded costs. This determination was in part based on the knowledge that firms tend to innovate over time, and were likely to develop less costly ways to comply after the new regulations were in place.

Another reason this determination was made is that the regulation provides ample opportunity for firms and groups that can develop cheaper methods for achieving the equivalent of protection against transfer-related oil spills to present these methods to Ecology for approval (see WAC 173-180-070 and WAC 173-184-105).

Finally, as shown in Tables ES-3 and Table 25, the discounted present value of costs is less than the present value of benefits from the year 2023 on. This trend signifies that if cost benefit analysis is extended further into the future (which might easily be without loss of theoretical integrity), then those future benefits would always be higher than the costs. The 20 year horizon of costs is not a critical stopping point, but one that assists the reader and analyst in understanding the trends. In this case, the trend is clear – the farther into the future that the analysis is carried; the greater the benefits will outweigh the costs. For example, in the current analysis, the present value of quantified benefits is estimated to be under $165.0 million while the present value of costs is estimated to be just over $162.8 million. However, if the analysis were carried out just ten more years, the benefits would be $232.0 million compared with costs of $223.5 million.

7. <u>A separate CBA should have been done for each rule.</u>

Why was not a separate CBA done for each rule? These are separate rules with separate requirements and separate costs. Lumped together, the much higher cost of pre-booming vessel to vessel transfers, as noted on page ES-4 and section 2.7 of the CBA, is diluted with the cost effective measures proposed for pre-booming at facilities. A separate CBA should be done for each rule. – 218 Stuart Sanborn

Response

The two rules were analyzed together for several reasons. They were developed together, stemmed from the same legislation, and were designed to achieve the same goal, and as such may be considered the same "rule." Furthermore, spill data from which benefits were derived were not sufficiently detailed, nor comprehensive nor consistent enough to discern the cause of each spill. Given this fact it would not be appropriate to apportion future anticipated spills according to vessels versus facilities; nor to different types of transfers, etc.

8. A separate CBA should have been done for the Columbia River system.

Why was not a separate CBA done for the Columbia River? The Columbia River is a separate and unique waterway in all respects with the only exception that is shares a boarder with Washington State. Lumped together with the much larger Puget Sound, the issues and concerns on the Columbia become diluted as well. A separate CBA should be done for the Columbia River. – 218 Stuart Sanborn

The Columbia River system is only just beginning to recover from the 2001-2003 recession therefore costs matter. Unfortunately the Columbia River is already one of, if not the most expensive port system for vessels to call on the west coast. Port costs charged to vessel owner operators are at this time 2-3 times greater than other ports. A prime example of this fact is pilotage. The same vessel calling the Columbia River and Puget Sound will pay $8580 for a bar pilot alone in the Columbia River and $5460 for an entire call in the Puget Sound. Add a river pilot cost in order for this vessel to call Portland or Vancouver and this vessel pays several thousand dollars more to call the Columbia River in just pilots alone, only one of the several port costs incurred by the vessel operators. Adding costs to mitigate potential oil spill with no appreciable benefit to be gained in an already extremely effective system, means simply adding cost. In addition, unlike the rest of the west coast, vessel volumes have been dropping since 2000 when 2018 ships called the Columbia River now down to 1509 ships calling in 2005. Therefore, any increase in cost has to be socialized over the much smaller cargo volumes our river system has been handling since the recession. Every cost increases will make the attraction of more ships to our ports, with the attendant cargo volumes, revenue streams, and jobs, much more difficult.. – 201 Heather Moats

Given our history of cooperation in developing exemplary practices that have achieved Washington State's zero tolerance goal, the unique operational challenges presented by our river system, and the significant costs involved in implementing these rules, we firmly believe that the Department of Ecology has not met the standards required in the Washington Administrative Procedures Act. We would strongly suggest that the Department of Ecology use a different risk analysis approach and consider the Columbia River separately from other Washington waters. – 201 Heather Moats

The benefits identified in the proposed rules are questionable at best, but the costs are extremely significant and very real. Given our history of cooperation in developing exemplary practices that have achieved Washington State's zero tolerance goal, and given the unique operational challenges presented by our river system, we would strongly suggest that the Department of Ecology use a different risk analysis approach and consider the Columbia River separately from other Washington waters. – 227 Jim Townley

Unfortunately for Tidewater and others on the Columbia River, because of the political and economic construct of Washington, these rules target Puget Sound where operating conditions are vastly different. In general, we agree with the American Waterways Operators' position on the rules. But the input and concerns of the Columbia River interests have been largely ignored in the development of these rules and I feel compelled to comment specifically as to how these proposed rules could affect Columbia and Snake river operators. – 222 Paul Jewell

Response

It is the purpose of the Cost Benefit Analysis to establish whether expected benefits outweigh anticipated costs. This measures changes in economic efficiency by focusing on the net impact of the regulation across broad aggregates of people (e.g., producers and consumers), without consideration of how certain economic sectors or groups of people (e.g. firms in an already depressed sector) are affected.

In addition, economic efficiency effects do not address issues related to impacts on local or regional economies. Thus, a discussion of efficiency effects alone may miss important distributional considerations, as well as impacts on local economies. Such an analysis considers several types of distributional effects, including impacts on small entities; impacts on energy supply, distribution, and use; and regional economic impacts. It is important to note that these impacts on local economies or sectors are fundamentally different measures of economic costs than efficiency effects and, thus, cannot be added to or compared with estimates of changes in economic efficiency.

9. <u>The cost benefit analysis should not have compared costs that occurred in the Exxon Valdez spill. The Exxon Valdez spill occurred in Alaska in 1989 in a remote location with little or no dedicated resources in place.</u>

It seems that any cost benefit analysis we read usually ends up mentioning and comparing a spill in Washington State waters to the Exxon Valdez spill that occurred in Alaska in 1989. The resulting costs are then applied to a spill occurring in Washington State waters without accounting for the fact that the Exxon Valdez spill occurred in a remote location with little or no dedicated resources in place, compared to the degree of dedicated response resources available in Washington State waters today. – 220 Robert Dorn

Response

The Exxon Valdez spill is important because the general public became aware of the potential for a large oil spill to do extensive damage to the environment. This raised public interest in oil spill protection, and thus affected the economic value placed on protection.

The cost benefit analysis for the oil transfer regulation does not explicitly link the Valdez spill to measurement of costs and benefits for this regulation. Benefits in terms of saved spill cleanup costs are linked to the most recent spill costs in Washington State. Because the Valdez spill brought about many policy changes, it is also referenced in this analysis because it is in the post Valdez interpretation of CERCLA that the importance of including nonuse values was raised. The analysis instead borrows a value derived from a study in California several years ago that addresses how Californians place an economic value on oil spill containment on the California coast, and not how Californians value spill containment in Alaska or anywhere else.

10. <u>Why are costs in California relevant to costs on the Columbia River?</u>

Can DOE explain why using California as a source of base-line measures in the Cost Benefit study is relevant to the Columbia River? – 227 Jim Townley

Response

The California study is used to estimate the baseline household value for oil spill containment. This value, while well recognized as an important type of value to

include when considering the estimation of economic damages from oil spills, is one that is particularly difficult to measure and subject to much debate regarding the measurement approach within the discipline of economics. However, it is common practice in resource damage assessments to rely on previous estimates of value when a relatively costly, site specific valuation study does not appear warranted. This reliance on previous value estimates is known as the benefit-transfer method. The study referenced in California bears remarkable similarities to the proposed legislation in Washington State, and is considered an excellent estimate of what households might be willing to pay for spill containment in Washington, and hence the benefits from the California study were transferred to Washington.

The California study asked households what they would be willing to pay for a program that would have all ships transiting the central coast of the State be escorted by another ship with boom and response equipment ready in the event of an oil spill. The analogy to the oil transfer spill rule holds because pre-booming and the other measures essentially ensure that response and containment could occur more rapidly than at present for most of the spills. In the end, it is assumed that Washington households on average would be willing to pay $2.23 (2005 dollars) per year for the oil transfer regulation.

11. <u>These rules, when applied to companies such as Tidewater which only carry refined products, cannot survive the final cost benefit analysis as required by Washington law.</u>

I think it also valuable to underscore the fact that section 3.1.1 of the preliminary CBA further weakens the State's position that these rules have positive benefits when applied to our operations. That section notes the type of oil spilled is an important factor in calculating the costs of a spill response. It correctly notes that heavy oils are more expensive to clean up than light refined products. Consequently these rules, when applied to companies such as Tidewater which only carry refined products, cannot survive the final cost benefit analysis as required by Washington law under RCW 34.05.328. The costs of these proposed rules likely exceeds the perceived benefit, particularly and clearly as it applies to the Columbia/Snake River system with refined, non-persistent petroleum products. – 222 Paul Jewell

Response

Cost benefit analysis includes a total of all the costs to all parties, and the benefits to all parties regardless of who is paying or receiving. Still, Ecology has made efforts to collaborate with affected parties in order to prevent the kind of disproportionate impact referred to in the comment. Throughout the rulemaking process suggestions from affected parties about alternative approaches to compliance have been taken and used to improve the regulation. The final version of both facility standards and vessel standards includes the option to submit to Ecology an equivalent compliance plan (see WAC 173-180-070 and WAC 173-184-105 for details) for the alternative measures. That is, for Rate A transferors, when pre-booming is either not safe or not effective, alternative measures as defined must be followed. However, if a different approach to the alternative

measures would provide an equivalent level of protection, then a plan to do so may be submitted to Ecology for approval, and may be followed. If Tidewater's unique circumstances (including operations on the Columbia River, and transfers of non-persistent products) point toward less costly measures that provide equivalent protection, then it is recommended they submit an equivalent compliance plan to Ecology. For rate B transferors, an equivalent compliance plan may also be submitted for alternative measures.

12. <u>The CBA fails to show how the benefits of the new requirements justify the costs.</u>

Additionally, MSRC believes that certain of the new requirements are extremely expensive and that the Cost Benefit Analysis fails to justify, as required by the Washington Administrative Procedures Act, those increases over Federal standards. – 230 Richard Wright

Response

There are a number of reasons that the benefits were determined to outweigh costs in the preliminary cost benefit analysis. Foremost among these was that in the initial analysis, several items were excluded from both quantifiable benefits, and quantifiable costs. The list of items excluded from costs were minor purchases such as radios and other safety equipment, time lost for ships refueling as they wait for pre-booming, and possibly administrative costs of compliance. Benefits that were excluded were benefits to citizens outside the state of Washington (measured to be significant), potential long-term ecosystem damages, and savings to firms that might otherwise lose operation time and money during spill response and cleanup efforts. Research regarding these two sets of excluded features suggested that the wide variation in ecological and environmental costs associated with the excluded benefits was enough to outweigh the excluded costs. This determination was in part based on the knowledge that firms tend to innovate over time, and were likely to develop less costly ways to comply after the new regulations were in place.

Another reason this determination was made is that the regulation provides ample opportunity for firms and groups that can develop cheaper methods for achieving the equivalent of protection against transfer-related oil spills to present these methods to DOE for approval (see WAC 173-180-07 and WAC 173-184-105).

Finally, as shown in Tables ES-3 and Table 25, the discounted present value of costs is less than the present value of benefits from the year 2023 on. This trend signifies that if cost benefit analysis is extended further into the future (which might easily be without loss of theoretical integrity), then those future benefits would always be higher than the costs. The 20 year horizon of costs is not a critical stopping point, but one that assists the reader and analyst in understanding the trends. In this case, the trend is clear – the farther into the future that the analysis is carried; the greater the benefits will outweigh the costs. For example, in the current analysis, the present value of quantified benefits is estimated to be under

$165.0 million while the present value of costs is estimated to be just over $162.8 million. However, if the analysis were carried out just ten more years, the benefits would be $232.0 million compared with costs of $223.5 million.

13. <u>The costs of delays and demurrage for ships should not be omitted from the CBA.</u>

On page ES-10, the CBA notes that costs "such as potential delays and demurrage fees for ships that must wait" were not included in this analysis. Section 2.7.2 goes on to say "this could delay vessels up to 2 hours." It should be noted the delay will be a minimum of 2 hours. Section 2.7.2 also states "that it is nearly impossible to estimate the number of times" a ship would be delayed. I agree that this is difficult to estimate but I disagree that it should be omitted from the CBA. – 218 Stuart Sanborn

Response

The reason these were omitted is that it is difficult to know how often the ships that are refueling are actually delayed because of the additional time for refueling. A number of factors including weather, tide, and other scheduled activities determine how long a ship will stay in port. Also, rate B transfers are not expected to engage in pre-booming at all times, in which case no delay is expected. Further, on the Columbia River it has been pointed out by the Columbia River Steamship Operators Association that pre-booming may be less common for vessel to vessel transfers due to typical currents on the River that may make prebooming unsafe or ineffective. Similarly, pre-booming may also not always be safe and effective for vessel to facility transfers on the river.

14. <u>The problem this rule was written to address is not identified on the Columbia River.</u>

Section 1.2.1 describes a process that first identifies a problem. Section 3.2 identifies that data from 2000 to 2005 was used to provide an overview of oil spills in Washington. Section 3.2 also states that data for the Columbia River was not available. I requested and received WDOE's spill data for the Columbia River covering the same time period which showed no spills in Washington waters from vessel to vessel transfers covered by WAC 317-40. I don't see where a problem on the Columbia River has been identified. – 218 Stuart Sanborn

Response

The river system accounts for approximately 20 percent of transfers, using the Ecology collected transfer data from July to December 2004 (see "Oil and Fuel Transfer Over Waters of the State of Washington: A report to the Legislature," DOE, 2005). The spill data used to analyze the benefits of the new regulation does include data for the period 2000-2005 for the Columbia River, although these data are considered to be incomplete. Furthermore, discrepancies in these data have been raised. In light of such issues the spill data are determined to be most useful in assessing spill probabilities at an aggregate or statewide level of resolution as opposed to geographic or modal subsets. Analysis based on smaller subsets would not be defensible because spills are not common enough to derive a separate probability distribution.

If the river system is in fact unique then an equivalent compliance plan may be the most expedient approach to compliance. Information about equivalent compliance plan is found in WAC 173-180-070 and WAC 173-184-105.

15. The CBA and SBEIS fail to make a quantitative and qualitative examination of business impact and economic loss to the state and its citizens.

To make matters worse, the cost benefit analysis does not accurately reflect the admitted costs the industry will face. The regulation will be an enormous burden on the industry and it is highly likely that some companies will be forced to stop doing business in the state. There is not an impact statement given in the SBEIS or cost benefit analysis that looks at the lost revenue to the businesses in the state, the lost wages from laid off employees and the loss of business to other states and/or countries. There must be a quantitative and qualitative examination of business impact and economic loss to the state and its citizens. – 233 Stephen Wilson

The cost-benefit analysis does not even accurately reflect the inputted costs the industry will face. The regulation will be an enormous burden on the industry and it is highly likely that some companies will be forced to stop doing business in the state. There is not an impact statement given in the SBEIS or cost benefit analysis that looks at the lost revenue to the businesses in the state, the lost wages from laid off employees and the loss of business to other states and/or countries. Before proceeding with any regulation, the department must conduct a quantitative and qualitative examination of business impact and economic loss to the state and its citizens. – 208 Jason Lewis

the proposed rules still ignore the positive efforts and success experienced in the Columbia River, add tremendous cost to this port system with at best negligible benefit given the standards currently achieved, ignores the fundamental differences between rivers and other bodies of water and although the rules allow for alternative measures, makes the burden of proof onerous and costly and leaves the method of approval subjective. We therefore, strongly oppose the proposed rules and standards. Further, we support the written comments provided by American Waterways Operators, the Maritime Fire and Safety Association and Pacific Merchant Shipping Association and implore WDOE to thoroughly consider their comments as well. – 201 Heather Moats

We are also concerned about the rule's impact on the Columbia and Snake River. These rules target Puget Sound, where operating conditions are vastly different. The input and concerns of the Columbia and Snake River interests have been largely ignored in the development of these rules. The Columbia and Snake River must be addressed independently from the Puget Sound when developing oil transfer regulations. A one-size-fits-all approach will not work in the dramatically different operating environment companies face on the Columbia and Snake River. For example, containment booming of oil in a riverine environment is neither effective nor safe. The greater the current velocity, the less effective boom becomes and the more dangerous it is to the crew charged with placing the boom. Most areas where transfers take place on the Columbia and Snake River are subject to current. In the high water periods of the spring and early summer, the strength of that current can exceed 7 knots. Pushed by the current in the rivers come large quantities of flotsam and jetsam, including entire trees and a whole host of other floating and subsurface dangers that can harm persons in small boats and damage or destroy deployed boom on contact. The primary thrust and expense of this proposed regulation, booming oil transfers, is a response tactic that will not work on the Columbia or Snake Rivers. – 208 Jason Lewis

The proposed regulation on oil transfers in the state of Washington goes against the legislature's intent for passage of a significant legislative rule, where business impact must be evaluated. Industry has attempted to work with the department on a common sense approach, utilizing our expertise to achieve the goals outlined in the enabling legislation. However, the department has

unfortunately ignored our attempts at crafting a reasoned regulation and is now on the verge of passing a rule that may devastate the tug and barge industry. There does not appear to be an appreciation from the state on how severely impacted the entire maritime community will be by these regulations. – 233 Stephen Wilson

The rules ultimately will force more fuel transportation from the water to our already hopelessly congested streets and highways, where an accident will have much more dire consequences than a spill on the water. Should we not be working to promote water transportation in our area, or do you prefer to have more speeding gasoline tanker trucks within an arm's reach of your family when on the road? – 220 Robert Dorn

Response

It is the purpose of the Cost Benefit Analysis to establish whether expected benefits outweigh anticipated costs. This measures changes in economic efficiency by focusing on the net impact of the regulation across broad aggregates of people (e.g., producers and consumers), without consideration of how certain economic sectors or groups of people (e.g. firms in an already depressed sector) are affected.

In addition, economic efficiency effects do not address issues related to impacts on local or regional economies. Thus, a discussion of efficiency effects alone may miss distributional considerations, as well as impacts on local economies. Such an analysis considers several types of distributional effects, including impacts on small entities; impacts on energy supply, distribution, and use; and regional economic impacts. It is important to note that these impacts on local economies or sectors are fundamentally different measures of economic costs than efficiency effects and, thus, cannot be added to or compared with estimates of changes in economic efficiency.

16. <u>The CBA's criteria for weighing the benefits versus the costs are skewed. The report increases its own spill data by 69% while decreasing the total cost to the industry by excluding expenses.</u>

Crowley concurs with AWO's assessment of the cost benefit analysis. It appears that the cost benefit analysis report prepared for the department suffers from the same flaws and inaccuracies as the SBEIS. On top of the miscalculations contained within the report, the criteria for weighing the benefits versus costs are skewed. The report states that: "For the purposes of this analysis, a total volume of expected oil transfer-related spills was estimated for the future based on past data and expected future trends. This annual value is higher than actual recent spills because the analysis assumes that the recent past does not include some of the "worst case" scenarios that are possible. A probability distribution was developed to estimate future spills for Washington; over 99 percent of this distribution is based on recent Washington State data with the remainder including worst case scenarios based on national data for large volume transfer spills. A probability distribution was used to estimate future spills on an annual basis. Spills are then assumed to increase in proportion to the projected volume of oil cargo transported in Washington State. The current expected volume of oil spilled annually is 4,571 gallons using this probabilistic approach. By the year 2026, this value is expected to increase to 5,312 gallons." The report's data shows that only 2,700 gallons are spilled annually, so the report increases its own spill data by 69%. Then the report goes on to decrease the total cost to the industry by excluding expenses, "some costs are not included in the analysis, such as potential delays and demurrage fees for ships that must wait to be pre-boomed prior to

bunkering." The report's reasoning is that the companies will find new and innovative ways to reduce overall costs. – 233 Stephen Wilson

The cost-benefit analysis report prepared for the department suffers from the same flaws and inaccuracies as the SBEIS. On top of the miscalculations contained within the report, the criteria for weighing the benefits versus costs is skewed. The data on which the report is based shows that only 2,700 gallons are spilled annually, so the authors of the report increase the spill data by nearly 70%! At the same time, the report decreased the total cost to the industry by excluding significant expenses. ("Some costs are not included in the analysis, such as potential delays and demurrage fees for ships that must wait to be pre-boomed prior to bunkering.") The report's reasoning is that the companies will find new and innovative ways to reduce overall costs. – 208 Jason Lewis

Response

- *Parts of this comment are answered in the Response to Comments #1, 7, and 9 **

Section 3.2.3 outlines the probability distribution used to estimate expected annual spills. Based on data from 2000 -2005, a probability distribution was developed. In the second column of Table 21, the number of spills during the 5-year period is shown. For the last two categories of spills, one category for a spill of size 7,500 to 10,000 gallons, and one for a spill of size 155,000 gallons, no incidences of these spills had occurred during the 5 year period. However, based on national transfer spill distributions developed by NRC (see Etkin, 2006) it is assumed that the larger spill would occur once in every 100 years, and that the smaller one would occur once in every 25 years. Still, even these small probabilities do increase the annual average.

17. <u>The CBA fails to take into consideration the full impact on the barge industry in the Columbia River.</u>

Section 2.7.2 also states "Cost to the receiving vessels are assumed to be negligible." I disagree; the profit margin for the delivering company is so slim that all additional costs must be passed on to the receiving vessel or else the delivering company will cease to exist. Such as the case with Foss Maritime's tank barge operations on the Columbia River. – 218 Stuart Sanborn

The true cost of these regulations is still being evaluated but at the first cut, they will take approximately 5% of OTB's (Olympic Tug and Barge) gross revenue away from the bottom line. That is an annual cut that can only be made up by an increase in costs to the customers. Most people see the price of oil going up around us on a daily basis and consider it just a part of living these days. The bunker fuel business is a bit more complex and reacts to world wide pricing rather than merely local issues. When the State of California imposed an approximately 8% sales tax, ships chose to take bunker fuel in other ports in other parts of the world. 75% of the market left California. The state lost income from lost jobs, lost property taxes from equipment moved out of state, and lost business opportunities. We anticipate this increase in the cost of delivering bunker fuel in Washington may well result in an approximately 50% reduction in bunker deliveries here. Jobs WILL be lost. Tax collection revenues WILL decrease The ports of the region will not be as attractive to shipping companies and discretionary cargo deliveries WILL go elsewhere to places where it is easier to do business. – 228 George Clark

The ramifications of this regulation will be felt across the entire state. The bunkering business could well decrease by 50% if this rule is adopted in its current form. When California imposed an 8% sales tax on bunker fuel, ships chose to take fuel in other ports or in other parts of the world. Approximately 75% of the market left California and the bunkering business there has never recovered. The state lost income from lost jobs, lost property taxes from equipment moved out of state, and lost business opportunities. – 208 Jason Lewis

Response

It is the purpose of the Cost Benefit Analysis to establish whether expected benefits outweigh anticipated costs. This measures changes in economic efficiency by focusing on the net impact of the regulation across broad aggregates of people (e.g., producers and consumers), without consideration of how certain economic sectors or groups of people (e.g. firms in an already depressed sector) are affected.

In addition, economic efficiency effects do not address issues related to impacts on local or regional economies. Thus, a discussion of efficiency effects alone may miss distributional considerations, as well as impacts on local economies. Such an analysis considers several types of distributional effects, including impacts on small entities; impacts on energy supply, distribution, and use; and regional economic impacts. It is important to note that these impacts on local economies or sectors are fundamentally different measures of economic costs than efficiency effects and, thus, cannot be added to or compared with estimates of changes in economic efficiency.

The regulations do not place responsibility on the receiving vessel and, therefore, costs to the receiving vessel were not considered independently in the cost benefit analysis. To the extent costs are shifted to the receiving vessel through implementation of the rules, those costs are captured in the overall analysis which assumes the delivering vessel will bear the costs.

18. AWO would like the opportunity to examine the data used to calculate the cost of doing business under the new regulation, as it is obvious the state does not fully understand the economic consequences of the draft rule. State law dictates that if a regulation is deemed to unfairly place costs on small businesses, the rule must be revisited. This regulation has enormous financial impact on small businesses.

AWO strongly disagrees with the projections made in the SBEIS. The cost-per-employee figure is not based on the actual requirements of the draft regulation. The small business community would have dramatically more costs associated with adhering to the regulation than asserted in the SBEIS. AWO members contributed to the SBEIS and it is clear that their information was not accurately tabulated. The tug and barge industry will see significantly higher business costs per employee if the rule is passed in its current form. AWO would like the opportunity to examine the data used to calculate the cost of doing business under the new regulation, as it is obvious the state does not fully understand the economic consequences of the draft rule. Some of the costs imposed by the regulation that were not accurately captured include the additional administrative costs, the increased expenses for manning, increased expenses for training, increased expenses for booming a vessel and removing the boom, having a crew on stand-by to boom a vessel, and the lost work

because of the increased time needed for the new regulation. The small businesses of the state represent the vessel portion of the SBEIS, yet their true costs are not reflected. State law dictates that if a regulation is deemed to unfairly place costs on small businesses, the rule must be revised. With smaller profit margins than the large businesses captured in the SBEIS, any fair calculation of costs associated with this regulation will show the enormous financial impact on small business. The true economic impact to small business would require the department to adhere to RCW 19.85.030 (2) (a) Reducing, modifying, or eliminating substantive regulatory requirements. – 208 Jason Lewis

Crowley concurs with AWO's strong disagreement with the projections made in the SBEIS. The cost per employee figure does not appear to be based in the reality of the draft regulation. The small business community would have dramatically more costs associated with adhering to the regulation than asserted in the SBEIS. AWO members contributed to the SBEIS and it was clear that their information was not accurately tabulated. The tug and barge industry will see significantly higher business costs per employee if the rule is passed in its current form. It would be useful for an open review of the data used to calculate the cost of doing business under the new regulation, as it is obvious the state does not fully understand the economic consequences of the draft rule. The true economic impact to small business would require the department to adhere to RCW 19.85.030 (2) (a) Reducing, modifying, or eliminating substantive regulatory requirements. – 233 Stephen Wilson

Response

The contribution of AWO members to the cost benefit analysis was greatly appreciated. Based on discussions with representatives from the affected vessel sector of the analysis, the sector includes one small business, and four larger businesses. Furthermore there is only one tug and barge company that is primarily engaged in vessel to vessel transfers. It is assumed that this company will adopt an in-house strategy for compliance by outfitting ten barges with equipment, boom reels, and labor to conduct pre-booming. The other companies engaged in transfers do so primarily with facilities, and it is assumed that facilities will also be in compliance via the facility regulation. Lightering operations, and deliveries to facilities that do not regularly receive oil products are assumed to be conducted with the assistance of an OSRO, and this financial cost is accounted for in the vessel sector cost section (see Cost Benefit Analysis section 2.7.2). However, it may be that the one firm does not outfit ten barges, but possibly just fewer and instead some of the other four companies (including the one small business) elect to outfit one or more of their barges. The costs to the sector in this case would be the same, though the cost to each firm might be less than what is estimated.

The data used in estimating the CBA will be made available to the public as part of the rulemaking record.

19. <u>The analysis for a small business did not take into account that the rule does not just involve buying more equipment, but also managing the operation to meet the rule requirements.</u>

The analysis for a small business did not appear to take into account that the rule does not just involve buying more equipment, but also managing the operation to meet the rule requirements. Just the regulatory process to employ alternatives as described in the proposed WAC 31 7-40-1 10 will be daunting for our small company. This will not only involve the staff costs but divert valuable

time away from the management of oil transfer operations which prevents spills, to spending needless time managing an onerous regulatory process as outlined by the Department. – 220 Robert Dorn

Response

There are many different ways that companies are expected to respond to the new regulations depending on their unique situations. Estimates have been developed based on the best available information on a sector by sector basis and may not all apply to each firm's unique situation. Most firms interviewed suggested that administrative costs were not significant because most industry representatives are already engaged in detailed documentation of procedures, and already expend a great deal of management manpower to oversee operations.

20. <u>The analysis compares the estimated costs of a small business to a large refinery. This is not a fair comparison.</u>

The economic analysis commissioned by the Department determined that the rules would not have an effect on small business, on the basis of the percentage of costs borne by a small business as compared to a large business. The analysis compares the estimated costs of a small company, such as Sirius Maritime, against 5 large refineries such as Shell and BP to make this determination. There is no distinction made between the refining business which has realized huge growth in profit margins, to the transportation side of the business as represented by Sirius. The barge transportation sector has not enjoyed this same increase in profitability and will be forced to absorb the costs of compliance against our current financials. – 220 Robert Dorn

Response

The description of the different circumstances in the refining and the transportation businesses may be legitimate. However, the purpose of the Small Business Economic Impact Statement is to assess whether or not the regulation imposes a disproportionate impact on small businesses (in general, not on each and every one), when compared with the impact on the top 10 percent of businesses in terms of size. The refineries comprise the largest businesses, and for most, but not all small businesses, the impact is much less than the impact on large businesses based on a per employee basis. Sirius Maritime and the three Class 3 facilities are the exceptional small businesses that will bear a greater per employee cost when compared with the large businesses.

21. <u>The SBEIS is incorrect is assuming that "...additional record keeping/reporting rules are not expected to incur additional costs to facility or vessel business."</u>

Although we are still digesting the draft rules - the Small Business Economic Impact Statement seems to have been written with many assumptions. It is hard to believe that "...additional record keeping/reporting rules are not expected to incur additional costs to facility or vessel business. As the state wide Marina Committee Chair for the WPPA, I expect even the $2,079 per year additional cost for a facility operator is too much for many of the "small" operations. – 229 Larry Crockett

Response

Costs and benefits used in this study were estimated based on the best available information which included extensive interviews with representatives from different industries. Few if any representatives interviewed answered that they felt administrative costs for this regulation were significant.

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Sean Mason
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Warren Aakervik
Ballard Oil · 44, 45, 50, 51, 57, 58, 59, 101, 103

IV. Summary of public involvement opportunities

The Spills Program conducted a total of 10 public hearings on the above referenced rules between July 11th and July 19th in the following locations: Pasco, Vancouver, Port Angeles, Bellingham and DesMoines. The Oil Transfer Rule hearings were held at 1 pm, and the C-Plan Rule hearings at 6 pm at each location. Linda Pilkey-Jarvis, Paul O'Brien, Elin Storey, Jason Reichert, Nhi Hoang, Curt Hart, Dale Jensen, Mark Layman and Bari Schreiner were present at some or all of the hearings.

Public attendance at each of the hearings and locations varied from as few as 3 up to 25. Very few people testified and those that did, indicated that they would also be submitting detailed written comments. Each hearing was preceded by a staff presentation and a Questions and Answer session. For the most part, the Q&A was more productive in terms of actually hearing from the public.

- hearing dates and locations
  - *July 11, 2006, PASCO, Columbia Basin College, Gjerde Center 2600 N 20th Ave Pasco, WA 99301*
  - *July 13, 2006, VANCOUVER, Washington State University- Vancouver Campus, Student Services Building-Room 129-130, 14204 NE Salmon Creek Ave Vancouver, WA 98686*
  - *July 15, 2006, PORT ANGELES, City Council Chambers, Main Chamber Room, 321 E 5th ST, Port Angeles, WA 98362*
  - *July 18, 2006, BELLINGHAM, Hampton Inn, Fox Hall, 3985 Bennett Drive, Bellingham, WA 98225*
  - *July 19, 2006, SEATAC, Highline Community College, Building 2400 S 240th, Des Moines, WA 98198*
- mass mailing pieces
  - *FAQ on Oil Transfer Rules*
  - *Copies of rules*
  - *Rule Applicability Table handout*
  - *Direct emails were sent to 250 stakeholder groups (industry, advisory groups, interested parties and environmental groups)*
  - *WAC track subscription (2000 subscribers)*
- advertisements and/or newspaper announcements
  - *Press Release were done on June 8th to over 265 newspaper, radio, television and journals*
  - *Advertising to Bellingham Herald, Moses Lake Columbia Basin Herald, Port Angeles Peninsula Daily News, Seattle Times and Vancouver Columbia*

V. Appendices

Appendix I

Chapter 173-180 WAC

FACILITY OIL HANDLING STANDARDS

PART A: GENERAL REQUIREMENTS

NEW SECTION

WAC 173-180-010 Applicability of this chapter. The requirements in this chapter apply to all classes of oil handling facilities. This includes transfer operations involving any size nonrecreational vessel.

NEW SECTION

WAC 173-180-015 Purpose. This chapter establishes minimum standards for safe oil transfer operations to meet a zero spill goal established by the legislature. This chapter emphasizes:

(1) Using a scaled approach to protect people and the environment;

(2) Preventing oil spills from occurring and emphasizing that oil spill prevention is the top priority strategy for reaching the legislature's goal of zero spills;

(3) Providing improved protection of Washington waters and natural resources from the impacts of oil spills caused by operational errors, human errors, improper oil-handling equipment design and operations;

(4) Minimizing the size and impacts of those oil spills which do occur; and

(5) Facilitating coordination of local, state, regional, tribal, and other prevention and contingency plans.

NEW SECTION

WAC 173-180-020 Authority. The legislature granted ecology the authority to adopt these rules under the following statutes:

(1) RCW 88.46.160 and 88.46.165 provide statutory authority for regulating the transfer of oil on or over waters of the state.

(2) RCW 90.56.220 provides statutory authority for developing operations and design standards and implementing a compliance program established by this chapter.

(3) RCW 90.56.230 provides statutory authority for operations manual preparation and review requirements established by this chapter.

(4) RCW 90.56.220 provides statutory authority for the personnel training and certification requirements established by this chapter.

(5) RCW 90.56.200, 90.56.300 and 90.56.310 provide statutory authority for the prevention plan preparation and review requirements established by this chapter.

NEW SECTION

WAC 173-180-025 Definitions. (1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection available. The director's determination of best achievable protection must be guided by the critical need to protect the state's natural resources and waters, while considering: The additional protection provided by the measures, the technological achievability of the measures, and the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration: Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and processes that are currently in use. In determining what best achievable technology is, the director must consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(4) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil discharged onto the surface of the water.

(5) "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.

(6) "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.

(7) "Certification" means the documentation that a facility employee has met all requirements of an oil transfer training and certification program that meets the requirements of this chapter.

(8) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(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 transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A Class 1 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.

(9) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(10) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(11) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installations that transfer to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by

ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(12) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(13) "Director" means the director of the department of ecology.

(14) "Directly impact" means without treatment.

(15) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(16) "Ecology" means the department of ecology.

(17) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(18) "Innage" means the difference from the surface of the liquid to the tank bottom.

(19) "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.

(20) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(21) "Oil" or "oils" means any 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 CFR 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.

(22) "Offshore facility" means any class facility, as defined in this section, 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.

(23) "Onshore facility" means any class facility, as defined in 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.

(24) "Owner or operator" means:

(a) In the case of a vessel, a person who owns, operates, or charters by demise, a vessel;

(b) In the case of an onshore or offshore facility, a person who owns or operates this type of facility;

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

(d) "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.

(25) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(26) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(27) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(28) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for Class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

(29) "Process pipelines" means a pipeline used to carry oil within the oil refining/processing units of a Class 1 facility, process unit to tankage piping and tankage interconnecting piping. Process pipelines do not include pipelines used to transport oil to or from a tank vessel or transmission pipeline.

(30) "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.

(31) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved, and if leased, rented, or chartered to another for recreational use, is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(32) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

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

(34) "Spill" means an unauthorized discharge of oil into the waters of the state.

(35) "State" means the state of Washington.

(36) "Storage tank" means all aboveground containers connected to transfer pipelines or any aboveground containers greater than ten thousand gallons (two hundred thirty-eight barrels), including storage and surge tanks, used to store bulk quantities of oil. Storage tanks do not include those tanks

regulated by chapter 90.76 RCW, rolling stock, wastewater treatment equipment, process pressurized vessels or other tanks used in the process flow through portions of the facility.

(37) "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.

(38) "Transmission pipeline" means an interstate or intrastate pipeline subject to regulation by the United States Department of Transportation under 49 CFR 195 in effect on the effective date of this section, 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.

(39) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(40) "Transfer pipeline" is a buried or aboveground pipeline used to carry oil to or from a tank vessel or transmission pipeline, or to a vessel and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, tank vessel or storage tanks. Instances where the transfer pipeline is not well defined will be determined on a case-by-case basis by ecology.

(41) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(42) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

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

NEW SECTION

WAC 173-180-030 Compliance with federal rule or law. (1) Any person with oil handling and transfer duties must comply with applicable provisions of federal law and regulation governing licensing and documentation, equipment, operations and oil transfers.

(2) The following Code of Federal Regulations (CFR) in effect on the effective date of this chapter are incorporated by reference:

(a) 33 CFR 156.120, 33 CFR 156.150, 33 CFR 156.170;

(b) 33 CFR 154.300, 154.310, 154.570, 154.710, 154.1050, 154.1055, and Subpart F;

(c) 40 CFR 112; and

(d) 49 CFR 195.

(3) All federal regulations incorporated in this chapter are available through the National Archive and Records Administration web site located here: http://www.gpoaccess.gov/cfr/index.html

NEW SECTION

WAC 173-180-035 Inspections. (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW 90.56.050, 90.56.410, and 88.46.167.

(2) To ensure compliance with this chapter, ecology may ask for the following during inspections and the facility is required to:

(a) Provide proof of compliance by producing all required records and documents;

(b) Provide proof of compliance of the ability to meet the spill prevention equipment and procedures of this chapter;

(c) Provide proof of compliance of the ability to meet the transfer containment and recovery standards in WAC 173-180-221 and 173-180-222; and

(d) Provide proof of training and certification, if applicable.

(3) Ecology will provide an inspection report to the facility at the conclusion of the inspection.

NEW SECTION

WAC 173-180-040 Recordkeeping. (1) Records required by this chapter must be maintained and available to ecology for a minimum of three years, except for the following:

(a) Preload plans and declaration of inspection (DOI) kept for at least thirty days from date of the oil transfer operation.

(b) The design, construction, and repair records for storage tanks, pipelines, and all oil transfer equipment testing and repair records kept for the life of the equipment. Inspection, maintenance, and repair records for pumps, valves, manifolds, and other ancillary equipment used in oil transfers must be kept for ten years.

(c) Oil transfer personnel training and certification records for Class 1 and 2 facilities kept for five years from the date the persons were certified.

(2) All records required in this chapter must be available to ecology for photocopying upon request.

NEW SECTION

WAC 173-180-045 Threat of a spill. (1) Ecology may determine that immediate action is necessary to suspend or delay transfer operations from a facility if there is a condition posing a substantial threat of discharge of oil on or over waters of the state, or harm to public health and safety, or both.

(2) Ecology may coordinate with the Coast Guard to:

(a) Issue an administrative order that may require immediate suspension of oil transfers;

(b) Specify each condition requiring immediate action to eliminate the condition; and

(c) Notify the PICs that oil transfers may resume once ecology is satisfied the threat is no longer substantial.

NEW SECTION

WAC 173-180-050 Oil spills. (1) Facility personnel involved with the oil transfer must immediately stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is:

(a) Observed or spilled into the water or on the shoreline adjoining the transfer area;

(b) Discharged into oil spill containment or on the vessel deck.

(2) The facility PIC must make notifications as required in RCW 90.56.280.

(3) The facility PIC may resume an oil transfer once the following conditions are met:

(a) The source of the spill is controlled, contained, and a proper response is underway;

(b) The PICs must agree there is no further threat of a spill.

(4) After a spill to water, the facility PIC may resume a transfer if:

(a) The conditions in subsection (3) of this section are met; and

(b) Approval is received from the state on-scene coordinator in conjunction with the federal on-scene coordinator.

NEW SECTION

WAC 173-180-055 Work hours. (1) Personnel with oil transfer duties may not work more than sixteen hours in any twenty-four-hour period, nor more than forty hours in any seventy-two-hour period, except in an emergency or spill response operation. For purposes of this section, "emergency" means an unforeseen situation that poses an imminent threat to human safety, or the environment, or substantial loss of property.

(2) The owner or operator of a Class 1, 2, or 3 facility must maintain records such as maintenance records or payroll records demonstrating compliance with work hour restrictions.

NEW SECTION

WAC 173-180-060 Personnel qualifications. (1) The owner or operator of a Class 1, 2, or 3 facility must designate a PIC in writing.

A designated PIC must supervise all oil transfer operations.

(2) All Class 1 and 2 facility personnel designated as a PIC must have completed a training and certification program established by the operator and approved under Part E of this chapter.

(3) All personnel assigned responsibilities related to an oil transfer operation must be qualified to perform those duties as required by federal law or rule, or both.

(4) Each PIC must carry or have readily available evidence of designation as a PIC when engaged in an oil transfer operation.

(5) All Class 1 and 2 personnel involved in a transfer must carry or have readily available evidence of completion of the facility's training and certification program.

NEW SECTION

WAC 173-180-065 Noncompliance. Any violation of this chapter may be subject to enforcement and penalty sanctions of chapters 90.56, 90.48, and 88.46 RCW.

NEW SECTION

WAC 173-180-070 Equivalent compliance plan. (1) Any facility may submit a proposal for equivalent compliance for the alternative measures required in WAC 173-180-221 and 173-180-222. Any facility who submits a proposal must preboom or meet the applicable alternative measures requirements until the equivalent compliance plan is approved.

(a) Rate A deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-221(7).

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-180-222(2).

(2) The proposal must contain the following and in the order presented:

(a) Cover sheet with name of company seeking equivalent compliance and point of contact information;

(b) Table of contents including supporting documents and appendices;

(c) Executive summary of the equivalent proposal;

(d) A detailed description of the equivalent proposal that includes, when appropriate, the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;

(e) A detailed analysis of how the proposal offers equivalent or greater level of protection as compared to the requirements in this chapter. This includes:

(i) Methodology of the analysis;

(ii) Detailed results with supporting data, references, graphs, tables, pictures, and other relevant information;

(iii) Technical feasibility of proposal versus current requirements.

(3) **Submission timeline of proposed equivalent compliance plan:** The facility must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under the section.

(a) Ecology will make the proposal available for a thirty-calendar-day public review and comment period.

(b) Ecology may request additional information regarding any aspect of the proposal such as site-specific meteorological, water current velocity, and other monitoring data to support the proposal.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the equivalent compliance proposal with a letter approving, conditionally approving, or disapproving the proposal.

(d) The approval will be valid for no more than five years from the date on the approval letter.

(4) **Approval of proposed equivalent compliance plan:** Ecology may approve the equivalent compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

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

(b) The equivalent compliance proposal would provide an equivalent or greater level of environmental protection as the

alternative measures required in WAC 173-180-221 and 173-180-222.

(5) Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.

(6) The owner or operator must submit one paper copy and one electronic copy of the proposal to ecology.

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent Compliance Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Equivalent Compliance Review
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-180-075 Severability. If any provision of this chapter is held invalid, the remainder of this chapter is not affected.

PART B: OIL TRANSFER REQUIREMENTS

NEW SECTION

WAC 173-180-200 Applicability of Part B. (1) The general sections of Part B apply to Class 1, 2, 3, and 4 facilities.

(2) Requirements for Class 1, 2, and 3 facilities are found in WAC 173-180-205 and 173-180-215 through 173-180-250.

(3) Requirements for Class 4 facilities are found in WAC 173-180-205 and 173-180-210.

NEW SECTION

WAC 173-180-205 Oil transfer equipment at Class 1, 2, 3, and 4 facilities. (1) All hoses or piping used in an oil transfer operation must meet the following criteria:

(a) Hoses or piping must be supported so as to avoid crushing or excessive strain. Flanges, joints, hoses, and piping must be visually checked prior to the transfer for cracks and signs of leakage.

(b) All hoses and loading arms are long enough to allow the vessel to move to the limits of its moorings without placing strain on any component of the oil transfer equipment.

(c) Each hose must have no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of oil or hazardous material through the hose material and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement ("reinforcement" means the strength members of the hose, consisting of fabric, cord and/or metal).

(d) Hoses or piping must not be permitted to chafe on the dock or vessel or be in contact with any source that might affect the integrity of the hoses.

(e) Hose ends must be blanked tightly when hoses are moved into position for connection, also immediately after they are disconnected, and residue drained either into the vessel tanks or into suitable shore receptacles before they are moved away from their connections.

(2) Testing of all oil transfer equipment, including, but not limited to, pumps, valves, piping, manifolds, connections, and hoses, must be done annually, and must be conducted by using one of the following methods:

(a) In accordance with manufacturers' recommendations and industrial standards; or

(b) Procedures identified in 33 CFR 156.170.

NEW SECTION

WAC 173-180-210 Requirements for Class 4 facilities only. (1) **Response and recovery equipment:** The owner or operator of each Class 4 facility must ensure that cleanup of at least a twenty-five gallon spill can occur by having all of the following:

Response and recovery equipment maintained in a standby condition and available to the receiving vessel:

(a) Sufficient and appropriate boom of no less than two hundred feet available in the standby position;

(b) Oil spill sorbent materials appropriate for use in water and on land;

(c) Nonsparking hand scoops, shovels, and buckets;

(d) Containers suitable for holding the recovered oil and oily water; and

(e) Protective clothing and other appropriate personal protective gear necessary to safely respond to oil spills.

(2) **Trained personnel:** The owner or operator of each Class 4 facility must:

(a) Provide annual training for employees involved in an oil transfer operation, that at a minimum includes:

(i) Dangers and safe practices regarding the petroleum products transferred at that location;

(ii) Safe and effective use and handling of response and recovery equipment; and

(iii) Spill notification procedures;

(b) Train all employees with oil transfer duties within ninety calendar days of the date of hire. No employee may be in charge of an oil transfer operation at the Class 4 facility without proper training;

(c) Keep a record of oil transfer training at the facility and make the record available to ecology upon request.

(3) **Spill notification information:** The owner or operator of each Class 4 facility must provide spill notification information on a wallet-sized card for each employee and posted at the dock for fueling customers. The notification information must include:

(a) Required notifications in RCW 90.56.280;

(b) A phone number for a spill response contractor; and

(c) If the Class 4 facility is not always staffed, a twenty-four-hour phone number where someone designated by the owner or operator of the facility can be reached to start the spill response. The contact phone number must be posted on the dock or transfer location in a location that is easy to see.

(4) The owner or operator of each Class 4 facility must ensure all oil transfer equipment is properly inspected and maintained in accordance with WAC 173-180-205.

(5) Class 4 facilities, also known as marine fueling outlets, that are transferring less than three thousand gallons of oil in a single transaction, are exempt from advance notice requirements for oil transfer operations as described in RCW 88.46.165.

(6) **Semiannual reporting:** Class 4 facilities must report all bulk oil transfers conducted at the facility.

(a) The report must include types of oil transferred and total volume of transfers by oil type.

(b) The facility must submit the report to ecology by January 15 and July 15 of each year.

(c) The facility must submit the report either by e-mail or by U.S. mail to the following address:

E-mail: oiltransfernotifications@ecy.wa.gov

U.S. mail:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

P.O. Box 47600

Olympia, WA 98504-7600

(7) **Compliance schedule:** Class 4 facilities must implement the requirements in subsections (1) and (2) of this section within one hundred twenty calendar days from the effective date of this chapter. Class 4 facilities must implement the remaining requirements on the effective date of this chapter.

NEW SECTION

WAC 173-180-215 Advance notice of transfer for Class 1, 2, and 3 facilities. (1) The delivering facility involved in an oil transfer of more than one hundred gallons must notify ecology at least twenty-four hours prior to an oil transfer operation; except: If the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible.

(2) The notice of transfer must be submitted to ecology on the "Advanced Notice of Transfer" form provided by ecology or a facsimile, and must contain the following information in the order provided:

(a) Company name, address, contact person and telephone number of organization delivering the oil;

(b) Date of transfer operation, estimated starting time, and duration of the oil transfer operation;

(c) Name of delivering facility and receiving vessel involved in the oil transfer and the vessel's Lloyds Registry/International Maritime Organization (LR/IMO) number or official number if available;

(d) City name and either the address or location/anchorage where the oil transfer operation will occur;

(e) Oil product type and quantity in gallons or barrels; and

(f) Whether or not prebooming will take place? (yes or no).

(3) Notification may be made by the deliverer's agent or other contracted representative.

(4) The notification form may be submitted via internet web site that ecology established, by e-mail, or by facsimile. The notification form and contact information is found on ecology's web site: http://www.ecy.wa.gov/programs/spills/spills.html

(5) Compliance schedule: All Class 1, 2, and 3 facilities must begin submitting advance notice within thirty calendar days of the effective date of this chapter.

NEW SECTION

WAC 173-180-220 Transfer containment and recovery requirements. (1) These standards apply to all oil transfers that involve any jet fuels, diesels, heating oils, and any other oils that are recoverable when spilled to water. These standards do not apply to facilities delivering gasoline, aviation gasoline, and other highly volatile products with similar characteristics.

(2) The deliverer must first determine the rate at which oil is to be transferred and then follow the applicable standards outlined in this chapter:

(a) Rate A means oil transfer operations at a rate over five hundred gallons per minute. Rate A requirements are found in WAC 173-180-221.

(b) Rate B means oil transfer operations at a rate of five hundred gallons per minute or less. Rate B requirements are found in WAC 173-180-222.

(3) To meet the requirements of this chapter, the deliverer must have personnel trained in the proper use and maintenance of boom and recovery equipment.

(4) All boom and associated equipment, including the equipment used to deploy the boom, must be of the appropriate size and design for the environmental conditions encountered in the transfer area(s) based on the manufacturers' specifications.

NEW SECTION

WAC 173-180-221 Rate A prebooming requirements and Rate A alternative measures requirements. This section generally applies to delivering facilities; however, any Class 1 facility receiving oil from a Rate A delivering vessel must provide the safe and effective threshold values to the vessel.

(1) The Rate A deliverer must preboom oil transfers when it is safe and effective to do so. When prebooming is not safe and effective, the deliverer must meet the alternative measure requirements found in subsection (7) of this section.

(2) The determination of safe and effective must be made prior to starting a transfer or, if conditions change during a transfer. To make this determination, the deliverer must use the safe and effective threshold values found in their operations manual. Safe and effective threshold values are determined using the safe and effective threshold determination report - see WAC 173-180-224.

(3) When it is not safe and effective, or when conditions develop during a preboomed transfer that require removal of the boom, the Rate A deliverer must report this finding to ecology and meet the alternative measures found in subsection (7) of this section. The *Ecology Boom Reporting Form* must be used for this purpose, and submitted by e-mail or facsimile prior to the transfer and/or immediately when conditions have changed.

(4) If multiple oil transfers are occurring simultaneously with a single vessel, and one product transferred is not appropriate to preboom, then that portion of the transfer where it is unsuitable to preboom must use the alternative measures found in subsection (7) of this section.

(5) For the purposes of this section, the deliverer must be able to quickly disconnect all boom in the event of an emergency.

(6) **Rate A prebooming requirements.**

(a) In order to preboom transfers, the deliverer must have, prior to the transfer, access to boom four times the length of the largest vessel involved in the transfer or two thousand feet, whichever is less.

The deliverer must deploy the boom such that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(i) The boom must be deployed with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs.

(ii) The deliverer must periodically check the boom positioning and adjust as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events.

(b) In addition to prebooming, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) For preboomed transfers, within one hour of being made aware of a spill, the deliverer must be able to complete deployment of the remaining boom, should it be necessary for containment, protection, or recovery purposes.

(7) **Rate A alternative measures.** Rate A deliverers must use these alternative measures when it is not safe and effective to meet the prebooming requirements.

(a) To meet the alternative measures requirements the deliverer must have access to boom four times the length of the largest vessel involved in the transfer, or two thousand feet, whichever is less.

(b) In addition to the boom, the deliverer must have the following available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a seven barrel oil spill appropriate for use on water or land.

(c) The deliverer must have the ability to safely track the spill in low visibility conditions. The tracking system must be on-scene within thirty minutes of being made aware of a spill.

(d) For alternative measures: Within one hour of being made aware of a spill, the deliverer must be able to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(e) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have the following:

(i) Additional boom four times the length of the largest vessel involved in the transfer, or two thousand feet, whichever is less, available for containment, protection, or recovery; and

(ii) A skimming system must be on-site. The skimming system must be in stand-by status and be capable of fifty barrels recovery and one hundred barrels of storage.

NEW SECTION

WAC 173-180-222 Rate B prebooming requirements and Rate B alternative measures requirements. (1) **Rate B prebooming requirements.** The Rate B deliverer must choose to meet either the following prebooming requirements in this section or the alternative measures found in subsection (2) of this section. If prebooming is chosen, then:

(a) Prior to starting the oil transfer operation, the deliverer must deploy boom so that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will provide for maximum containment of any oil spilled into the water.

(i) The deliverer must deploy the boom with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline. This stand-off may be modified for short durations needed to meet a facility or ship's operational needs;

(ii) The deliverer must periodically check boom positioning and adjust the boom as necessary throughout the duration of the transfer and specifically during tidal changes and significant wind or wave events;

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For prebooming: Within one hour of being made aware of a spill, the deliverer must be able to completely deploy an additional five hundred feet of boom. This boom may be used for containment, recovery, or protection.

(2) **Rate B alternative measures requirements.** If a Rate B chooses alternative measures, then:

(a) Prior to starting the oil transfer operation, the deliverer must have access to boom sufficient to completely surround the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation, or the deliverer may preboom the portion of the vessel and transfer area which will

provide for maximum containment of any oil spilled into the water.

(b) In addition, the deliverer must have the following recovery equipment available on-site:

(i) Containers suitable for holding the recovered oil and oily water;

(ii) Nonsparking hand scoops, shovels, and buckets; and

(iii) Enough sorbent materials and storage capacity for a two barrel oil spill appropriate for use on water or land.

(c) For alternative measures: Within one hour of being made aware of a spill, the deliverer must be able to complete deployment of an additional five hundred feet of boom for containment, protection or recovery.

(d) For alternative measures: Within two hours of being made aware of a spill, the deliverer must have an additional five hundred feet of boom available on-scene for containment, protection, or recovery.

NEW SECTION

WAC 173-180-223 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. (1) Any class facility conducting Rate A transfers must meet all the applicable requirements in WAC 173-180-220 and 173-180-221 except WAC 173-180-221(6) within one hundred twenty calendar days of the effective date of this chapter. All Rate A transfers must meet the requirements of WAC 173-180-221(6) within three hundred sixty-five calendar days from the effective date of the chapter.

(2) Any class facility conducting Rate B transfers must meet all the requirements of WAC 173-180-220 and 173-180-222 within one hundred twenty calendar days from the effective date of this chapter.

NEW SECTION

WAC 173-180-224 Safe and effective threshold determination report. (1) **Report requirements.** The report must include at a minimum the following, in the order presented:

(a) Cover sheet with name of company submitting the report and point of contact.

(b) Table of contents including supporting documents and appendices.

(c) Summary of safe and effective threshold values.

(d) The body of the report must include the following:

(i) The information used to support these values which must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations.

(ii) These values and the supporting data must address, at a minimum, the following site specific information:

(A) Personnel safety;

(B) Sea state values in feet including typical wave periods;

(C) Water current velocity such as peak currents, sustained currents in hourly increments, and direction of flow, during typical oil transfer operations;

(D) Wind speed in knots, and prevailing directions;

(E) Other conditions such as vessel traffic, fishing activities, and other factors that influence the oil transfer operation.

(iii) The facility must provide a detailed analysis of the proposed threshold values for the transfer location including:

(A) Methodology of the analysis;

(B) Equipment used to measure data collected;

(C) Supporting data, references, graphs, tables, pictures, and other relevant information.

(2) **Submittal requirements.** Rate A deliverers must submit a safe and effective threshold determination report to ecology for review and approval for each location at which a Rate A transfer occurs. One paper and one electronic copy of the safe and effective threshold determination report must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Safe and Effective Threshold Determination Report
300 Desmond Drive
Lacey, WA 98503

(3) **Review and approval process.**

(a) When reviewing threshold determination reports, ecology must consider the following:

(i) Personnel safety;

(ii) Operating environment of the transfer location(s) such as site specific meteorological, water current velocity, and

other monitoring data to support the threshold values determination;

(iii) Accepted industry standards regarding the performance of boom and associated response equipment in various operating environments;

(iv) Types of oil transfer operations including bunkering, cargo operations, transfer rates, and other factors that influence oil transfers.

(b) Ecology will make the report available for a thirty calendar day public review and comment period.

(c) Ecology will respond to the facility within ninety calendar days of receipt of the report with a letter approving, conditionally approving, or disapproving the report.

(d) The approval of this report will be valid for no more than five years from the date on the approval letter.

(e) Ecology may require a new review and approval process for this report after a spill by the facility.

(4) **Compliance and submittal schedule.**

(a) The safe and effective threshold determination report must be submitted one hundred eighty calendar days after the effective date of this chapter.

(b) For facilities starting operation after the effective date of this chapter, the report must be submitted at least one hundred twenty calendar days prior to the first oil transfer operation.

NEW SECTION

WAC 173-180-225 Providing safe vessel access. A Class 1 or 3 facility must provide safe access for personnel if the vessel cannot provide the safe access.

(1) The access must be secured both top and bottom to prevent movement of the access platform.

(2) The entire ladder and the portion of the facility and ship's deck where access is provided must be illuminated during low light or low visibility situations and without glare to the persons using the access.

(3) In the event weather conditions make the access unsafe, the PICs may elect to use radio communication.

NEW SECTION

WAC 173-180-230 Preloading or cargo transfer plan requirement. Prior to any oil transfer, a transfer plan must be filled out and discussed between the delivering and receiving PICs. A facility must not begin a transfer until this plan has been discussed during the pretransfer conference described in WAC 173-180-235. The plan must, at a minimum, include:

(1) Identification, location and capacity of the vessel's tanks receiving oil;

(2) Level and type of liquid in all bunker or cargo oil tanks prior to the oil transfer;

(3) Final ullage or innage, and percent of each tank to be filled;

(4) Sequence in which the tanks are to be filled; and

(5) The facility or vessel's procedures to regularly monitor all receiving tank levels and valve alignments during the transfer operation.

NEW SECTION

WAC 173-180-235 Pretransfer conference. (1) Before the start of an oil transfer operation, the PICs must hold a face-to-face pretransfer conference. If the PICs determine weather conditions prevent safe access, PICs may communicate via radio.

(2) The PICs must discuss and agree upon:

(a) The preloading or cargo plan;

(b) The contents of the declaration of inspection (DOI) required under 33 CFR 156.150;

(c) Procedures for communicating soundings, changing over tanks, and beginning topping off;

(d) Shift change procedures;

(e) Emergency shutdown procedures and identify all means to shut down the oil transfer operation in an emergency; and

(f) Expected weather and/or sea conditions and threshold values for weather and sea conditions above which oil transfer operations must cease.

(3) During a pretransfer conference that involves a covered vessel, the point-of-transfer watch and deck-rover watch must be identified to PICs.

(4) An oil transfer operation will not begin unless a person proficient in both English and a language common to the vessel's officers and crew is present at the pretransfer conference.

NEW SECTION

WAC 173-180-240 Communications. (1) The facility PIC must ensure continuous two-way voice communication is usable and available in all weather conditions as well as all phases of the transfer operation between the PICs.

(2) The facility PIC must ensure at least the following are available for use during the oil transfer operation:

(a) Two portable communication devices that are intrinsically safe; and

(b) An air horn for emergency signals.

(3) The PICs must ensure personnel involved in the oil transfer operation know and use English phrases and hand signals to communicate the following instructions during the oil transfer: "Stop," "hold," "wait," "fast," "slow," and "finish."

NEW SECTION

WAC 173-180-245 Oil transfer procedures. For all transfer operations involving Class 1, 2, or 3 facilities must comply with the transfer procedures in 33 CFR 156 and 154 and the following:

(1) All oil transfer operations must be conducted in accordance with the facility's approved operations manual.

(2) Ensure that transfer connections have been made according to the operations manual:

(a) Use appropriate material in joints and couplings to ensure a leak-free seal;

(b) Use either:

(i) A bolted or full threaded connection; or

(ii) A quick-connected coupling with a means of securing the coupling to prevent accidental release.

(c) Use a new compressible gasket appropriate for the product and transfer pressure;

(d) Use a bolt in every available hole;

(e) Use bolts of the correct size in each bolted connection;

(f) Ensure that each bolt is properly torqued to distribute the load to ensure a leak-free seal;

(g) Do not use any bolt that shows signs of strain or is elongated or deteriorated.

(3) Have the means to contain and recover any drips from connections within the oil transfer system.

(4) Deliverers providing oil to vessels without fixed containment must use automatic back pressure shutoff nozzles and also provide enough portable containment for each tank vent on the vessel.

(5) Conduct a pretransfer conference as defined in WAC 173-180-235.

(6) Ensure that the available capacity in the receiving tank(s) is (are) greater than the volume of oil to be transferred and all other valves which could influence the routing of the transferred oil are properly aligned.

(7) The PICs must verify at the start of the transfer that the tanks designated in the preload or cargo transfer plan are receiving oil at the expected rate.

(8) Each PIC must ensure that the means of operating the emergency shutdown system is immediately available while oil is transferred between the deliverer and receiver.

(9) A PIC must refuse to initiate or must cease transfer operations with any vessel which:

(a) Has not provided complete information as required by the DOI;

(b) Has refused to correct deficiencies identified by the PIC during the pretransfer conference; or

(c) Does not comply with the operations manual or does not respond to concerns identified by the PIC.

(10) When a PIC shift change occurs the departing PIC must:

(a) Discuss the preload plan and transfer rate with the arriving PIC;

(b) Notify the PIC at the other side of the transfer that a shift change is taking place; and

(c) Ensure the relieving PIC reads and signs the DOI.

NEW SECTION

WAC 173-180-250 Emergency shutdown. (1) Class 1, 2, or 3 facilities must have an emergency shutdown capable of stopping the flow of oil from the fixed or mobile facility to a vessel.

(2) The emergency shutdown must be located at the PICs usual operating station and at the dock manifold if not the same location.

(3) For oil transfers, the emergency shutdown must stop the flow:

(a) Within sixty seconds for any facility or portion of the facility that started transferring oil on or before November 1, 1980.

(b) Within thirty seconds for any facility or portion of the facility that transfers oil after November 1, 1980.

(4) Both PICs must be capable of ordering or activating an emergency shutdown.

(5) If a PIC orders an emergency shutdown, the shutdown must be activated immediately.

(6) To meet the requirements of subsection (3) of this section, the emergency shutdown must be either of the following:

(a) An electrical, pneumatic, or mechanical linkage to the facility; or

(b) An electronic voice communications system continuously operated by a person on the facility who can stop the flow of oil.

PART C: DESIGN STANDARDS FOR CLASS 1 FACILITIES

NEW SECTION

WAC 173-180-300 Applicability of Part C. Part C applies to Class 1 facilities only. Ecology has not adopted design standards for Class 2, 3, or 4 facilities.

NEW SECTION

WAC 173-180-310 Transmission pipeline transfer requirements. (1) For the purposes of this section:

(a) "Appropriate person" means a person designated by the facility as being competent and trained to implement a designated function.

(b) "Pipeline operator" means the operator of a transmission pipeline.

(2) General requirements. No person may conduct an oil transfer operation to or from a transmission pipeline unless the

appropriate person and the pipeline operator have conducted pretransfer communications which identify:

(a) Type of oil;

(b) Transfer volume;

(c) Flow rates;

(d) Transfer startup or arrival time.

(3) Class 1 facilities which receive oil from a transmission pipeline must:

(a) Confirm that the proper manifold and valves are open and ready to receive product;

(b) Notify the transmission pipeline operator when a storage tank has less than one foot of oil above the inlet nozzle;

(c) Coordinate arrival time of oil with the pipeline operator;

(d) Confirm the available storage capacity for transfers to a facility;

(e) Ensure that only the designated tank(s) is (are) receiving oil;

(f) Ensure that proper transfer alignment of the pipeline, valves, manifolds and storage tanks have been made;

(g) Establish adequate communication in English between the facility and pipeline operator;

(h) For the purpose of scheduling inspections, ecology may require a twenty-four-hour notification to ecology in advance of any transfer of bulk oil by a facility operator. Ecology must request notification in writing when this procedure is required;

(i) Transfer operations must be supervised by an appropriate person;

(j) Each facility operator must ensure that the means of operating or requesting emergency shutdown is immediately available while oil is being transferred between the facility and the pipeline;

(k) If startup, shutdown, and/or emergency shutdown are controlled by the pipeline operator directly using instrumentation and control devices, the accuracy of these devices must be checked at least annually; and

(l) All transfer operations must be conducted in accordance with operations manuals approved under this chapter.

NEW SECTION

WAC 173-180-320 Secondary containment requirements for aboveground storage tanks. (1) Aboveground oil storage tanks must be located within secondary containment areas. Secondary containment systems must be:

(a) Designed, constructed, maintained and operated to prevent discharged oil from entering waters of the state at any time during use of the tank system;

(b) Capable of containing one hundred percent of the capacity of the largest storage tank within the secondary containment area;

(c) Constructed with materials that are compatible with stored material to be placed in the tank system;

(d) Soil may be used for the secondary containment system, provided that any spill onto the soil will be sufficiently contained, readily recoverable and will be managed in accordance with the provisions under WAC 173-303-145 spills and discharges and any other applicable regulation;

(e) Constructed with sufficient strength and thickness to prevent failure owing to pressure gradients (including static head and external hydrological forces), physical contact with the fluid stored in the storage tank, climatic conditions, and the stresses of daily operations (including stresses from nearby vehicular traffic);

(f) Placed on a base or foundation capable of providing support to the secondary containment system, resistance to pressure gradients above and below the system, and capable of preventing failure due to settlement, compression or uplift;

(g) Sloped or otherwise designed or operated to drain and remove liquids resulting from leaks, spills, or precipitation. Spilled or leaked oil and accumulated precipitation must be removed from the secondary containment system in a manner which will provide the best achievable protection of public health and the environment; and

(h) Visually inspected monthly to confirm secondary containment integrity. Items requiring attention as determined by the visual inspection must be documented. Records must be kept on-site for a minimum of three years.

(2) The secondary containment system must be maintained to prevent a breach of the dike by controlling burrowing animals and weeds.

(3) The secondary containment system must be maintained free of debris and other materials which may interfere with the

effectiveness of the system, including excessive accumulated precipitation.

(4) The facility must maintain at least one hundred percent of the working capacity of the largest storage tank within the secondary containment area at all times.

(5) All secondary containment pumps, siphons and valves must be properly maintained and kept in good working order.

(6) Drainage of water accumulations from secondary containment areas that discharge directly to the land or waters of the state must be controlled by locally operated, positive shutoff valves or other positive means to prevent a discharge. Valves must be kept closed except when the discharge from the containment system is in compliance with chapter 90.48 RCW, Water pollution control. Valves must be locked closed when the facility is unattended. Necessary measures must be taken to ensure secondary containment valves are protected from inadvertent opening or vandalism. There must be some means of readily determining valve status by facility personnel such as a rising stem valve or position indicator.

(7) The owner or operator must inspect or monitor accumulated water before discharging from secondary containment to ensure that no oil will be discharged to the waters of the state. All water discharges must comply with state water quality program regulations as described in chapter 90.48 RCW.

(8) Ecology may require oil containers less than ten thousand gallons (two hundred thirty-eight barrels) capacity to have secondary containment when the container is located less than six hundred feet from navigable waters of the state or a storm water or surface drains which may impact navigable waters of the state.

(9) A secondary containment system constructed after the adoption date of this rule must be installed as follows:

(a) In accordance with the 1993 version of the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30, section 2-3.4.3;

(b) Secondary containment systems must be capable of containing one hundred percent of the capacity of the largest storage tank within the secondary containment area;

(c) Secondary containment systems must be designed to withstand seismic forces;

(d) Drains and other penetrations through secondary containment areas must be minimized consistent with facility operational requirements; and

(e) Secondary containment systems must be designed and constructed in accordance with sound engineering practice and in conformance with the provisions of this section.

NEW SECTION

WAC 173-180-330 Storage tank requirements. (1) Storage tanks constructed after the adoption date of this section must meet or exceed the 1993 version of the National Fire Protection Association (NFPA No. 30) requirements and one of the following design and manufacturing standards:

(a) UL No. 142, Steel Aboveground Tanks for Flammable and Combustible Liquids dated April 1993;

(b) API Standard 650, Welded Steel Tanks for Oil Storage dated November 1988;

(c) API Standard 620, Design and Construction of Large Welded, Low-Pressure Tanks dated June 1990; or

(d) Another standard approved by ecology.

(2) The owner or operator must ensure that the means of preventing storage tank overfill comply with the 1993 version of the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30, Chapter 2, Section 2-10.

(3) Storage tanks must be maintained, repaired and inspected in accordance with the requirements of API 653 dated January 1991, unless the operator proposes an equivalent inspection strategy which is approved by ecology.

(4) A record of all inspection results and corrective actions taken must be kept for the service life of the tank and must be available to ecology for inspection and copying upon request.

NEW SECTION

WAC 173-180-340 Transfer pipeline requirements. (1) Pipelines replaced, relocated or constructed after the adoption date of this rule which are located in areas not controlled by the facility must be installed in accordance with 49 CFR 195.246 through 49 CFR 195.254 as amended on October 8, 1991, where feasible. Facility control is established by fencing, barriers or other method accepted by ecology which protects the pipe right of way and limits access to personnel authorized by the facility.

(2) All pipelines must be protected from third party damage in a reasonable manner and be able to withstand external forces exerted upon them. This must be done by:

(a) Registering all underground pipelines located in public right of way areas in the local one call system if available;

(b) Maintaining accurate maps for all underground piping located outside the facility. The maps must identify pipe size and location. The approximate depths of pipelines must be identified for pipelines which do not comply with 49 CFR 195.248 as amended on October 8, 1991;

(c) Marking all piping located in areas not controlled by the facility in accordance with 49 CFR 195.410 as amended on October 8, 1991;

(d) Providing easement inspections of areas identified by (b) of this subsection on a weekly basis to determine if there is any uncommon activity occurring which may affect the integrity of the pipeline;

(e) Ensuring that pipelines at each railroad, highway or road crossing are designed and installed to adequately withstand the dynamic forces exerted by anticipated traffic loads.

(3) Pipelines constructed after the adoption date of this section must be designed and constructed in accordance with the American Society of Mechanical Engineers (ASME) Standard for pressure piping ASME B31.3 or B31.4 issued March 15, 1993, in effect during the time of construction or any other standard accepted by ecology.

(4) Pipelines must be inspected in accordance with API 570, 1993, Piping Inspection Code. As an alternative to complying with API 570, the facility must comply with the following requirement: Buried pipelines constructed after the adoption date of this rule must be coated. Coatings must be designed and inspected to meet the following conditions consistent with the definition of best achievable protection:

(a) Coatings must effectively electrically isolate the external surfaces of the pipeline system from the environment.

(b) Coatings must have sufficient adhesion to effectively resist underfilm migration of moisture.

(c) Coatings must be sufficiently ductile to resist cracking.

(d) The coating must have sufficient impact and abrasion resistance or otherwise be protected to resist damage due to soil stress and normal handling (including concrete coating application, installation of river weights and anode bracelet installation, where applicable).

(e) The coating must be compatible with cathodic protection.

(f) The coating must be compatible with the operating temperature of the pipeline.

(g) Coatings must be inspected immediately before, during, or after pipe installation to detect coating faults. Faults in the coating must be repaired and reinspected.

(5) All buried coated pipelines must have properly operated cathodic protection which is maintained during the operational life of the pipeline system. Cathodic protection must be maintained on pipeline systems which are out-of-service but not abandoned unless the operator can show that the pipeline integrity has been properly monitored and secured as approved by ecology prior to operation of the abandoned pipeline. Pipeline owners or operators may perform a corrosion study to demonstrate that cathodic protection is not required as an option to installing cathodic protection. Corrosion studies must follow the following guidelines as a minimum:

(a) Corrosion studies must be completed by a professional engineer with experience in corrosion control of buried pipelines, a NACE certified corrosion specialist or by a person knowledgeable and qualified to perform the required testing and inspection who is approved by ecology.

(b) Corrosion studies for pipelines must include at a minimum, the following:

(i) Pipeline thickness and corrosion rate for existing pipelines;

(ii) Presence of stray DC currents;

(iii) Soil resistivity/conductivity;

(iv) Soil moisture content;

(v) Soil pH;

(vi) Chloride ion concentration; and

(vii) Sulfide ion concentration.

(6) All pipelines with cathodic protection are subject to the following requirements where applicable:

(a) Cathodic protection systems must be tested to determine system adequacy on an annual basis.

(b) Impressed current cathodic protection rectifiers must be inspected every two months.

(c) Where insulating devices are installed to provide electrical isolation of pipeline systems to facilitate the application of corrosion control, they must be properly rated for temperature, pressure and electrical properties, and must be resistant to the commodity carried in the pipeline system.

(d) Buried pipeline systems must be installed so that they are not in electrical contact with any metallic structures. This requirement must not preclude the use of electrical bonding to facilitate the application of cathodic protection.

(e) Tests must be carried out to determine the presence of stray currents. Where stray currents are present, measures must be taken to mitigate detrimental effects.

(7) Buried bare pipelines must be inspected in accordance with section 7 of API 570 dated June 1993. Pipeline thickness and corrosion rates must be determined at an interval of no more than half of the remaining life of the pipeline as determined from corrosion rates or every five years whichever is more

frequent. Pipeline thickness and corrosion rate must be initially established within thirty-six months after the adoption date of this section. The pipeline must be operated in accordance with American Society of Mechanical Engineers (ASME) supplement to ASME B31G-1991 entitled *Manual for Determining the Remaining Strength of Corroded Pipe* for transmission pipelines issued June 27, 1991, API 570 dated June 1993 or a standard approved by ecology.

(8) Whenever any buried pipe is exposed for any reason, the operator must provide a nondestructive examination of the pipe for evidence of external corrosion. If the operator finds that there is active corrosion, the extent of that corrosion must be determined and if necessary repaired.

(9) Each facility must maintain all pumps and valves that could affect waters of the state in the event of a failure. Transfer pipeline pumps and valves and storage tank valves must be inspected annually and maintained in accordance with the manufacturers' recommendations or an industrial standard approved by ecology to ensure that they are functioning properly. Valves must be locked when the facility is not attended. Necessary measures must be taken to ensure that valves are protected from inadvertent opening or vandalism if located outside the facility or at an unattended facility.

(10) A written record must be kept of all inspections and tests covered by this section.

(11) Facilities must have the capability of detecting a transfer pipeline leak equal to eight percent of the maximum design flow rate within fifteen minutes for transfer pipelines connected to tank vessels. Leak detection capability must be determined by the facility using best engineering judgment. Deficiencies with leak detection systems such as false alarms must be addressed and accounted for by the facility. Facilities may meet these requirements by:

(a) Visual inspection provided the entire pipeline is visible and inspected every fifteen minutes; or

(b) Instrumentation; or

(c) Completely containing the entire circumference of the pipeline provided that a leak can be detected within fifteen minutes; or

(d) Conducting an acceptable hydrotest of the pipeline immediately before the oil transfer with visual surveillance of the exposed pipeline every fifteen minutes; or

(e) A combination of the above strategies; or

(f) A method approved by ecology which meets the standard identified in this section; or

(g) Leak detection system operation and operator response must be described in the facility operations manual.

PART D: OPERATIONS MANUAL REQUIREMENTS FOR CLASS 1 AND CLASS 2 FACILITIES

NEW SECTION

WAC 173-180-400 Applicability of Part D. (1) Part D applies to both Class 1 and Class 2 facilities. Ecology has not adopted operation manual requirements for Class 3 or 4 facilities.

(a) WAC 173-180-405 through 173-180-440 covers Class 1 facilities.

(b) WAC 173-180-445 through 173-180-475 covers Class 2 facilities.

(2) Class 1 and 2 facilities must prepare, submit, and implement an operations manual pursuant to the requirements in this chapter.

(3) All oil transfer operations must be conducted in accordance with the facilities operations manual. The owner or operator and PIC for Class 1 and 2 facilities transferring oil with a nonrecreational vessel must ensure that the receiving vessel's personnel comply with the facility operations manual.

(4) Class 1 and 2 facilities must maintain all equipment and perform operations in accordance with the operations manual.

(5) All operations manuals will be valid for no more than five years from the date on the approval letter. Ecology will review the facility operations manual to ensure compliance with this chapter.

NEW SECTION

WAC 173-180-405 Class 1 facility--Operations manual. (1) Each facility must keep the operations manual in an immediately accessible location.

(2) Facilities must ensure that all employees involved in oil transfer operations, or storage operations, are familiar with the operations manual provisions through regular and new employee training.

NEW SECTION

WAC 173-180-410 Class 1 facility--Operations manual preparation. (1) Each Class 1 facility must prepare an operations manual, which at a minimum, meets the requirements of this chapter.

(2) The operations manual must be thorough and contain enough information, analyses, supporting data, and documentation to demonstrate the manual holder's ability to meet the requirements of this chapter.

(3) The Class 1 facility may submit their Coast Guard operations manuals required under 33 CFR 154.300 to satisfy operations manual requirements under this chapter if:

(a) Ecology deems that such federal requirements equal or exceed those of ecology; or

(b) The Class 1 facility modifies or appends the operations manual to satisfy requirements under this chapter.

NEW SECTION

WAC 173-180-415 Class 1 facility--Operations manual format requirements. Operations manuals must:

(1) Have a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures. Where applicable, topics identified in the table of contents may be cross referenced with other submissions required by chapter 90.56 RCW including contingency and prevention plans, or 33 CFR 154 provided that a copy of the *Coast Guard Operations Manual* has been submitted to ecology;

(2) Allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire operations manual; and

(3) Have a log sheet to record amendments to the operations manual. The log sheet must:

(a) Be placed at the front of the operations manual;

(b) Provide for a record of the section amended, the date the old section was replaced with the amended section, and the initials of the individual making the change;

(c) Include a description of the amendment; and

(d) Include a description of the amendment's purpose or filed in the form of an amendment letter immediately following the log sheet.

NEW SECTION

WAC 173-180-420 Class 1 facility--Operations manual content requirements. (1) The operations manual must describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.

(2) The operations manual submitted to ecology must contain a submittal agreement which:

(a) Includes the name, address, and phone number of the submitting party;

(b) Verifies acceptance of the operations manual by the owner or operator of the Class 1 facility by either signature of the owner or operator or signature by a person with the authority to bind the corporation which owns such facility;

(c) Commits execution of the operations manual by the owner or operator of the Class 1 facility, and verifies authority for the operations manual holder to make appropriate expenditures in order to execute operations manual provisions; and

(d) Includes the name, location, and address of the facility, type of facility, and starting date of operations of the facility covered by the operations manual.

(3) Operations manuals must address at a minimum the following topics for oil transfer operations to or from Class 1 facilities:

(a) General facility information including:

(i) The geographic location of the facility shown on a topographic map;

(ii) A physical description of the facility including a plan of the facility showing mooring areas, transfer locations, control stations, oil flow patterns, and locations of safety equipment;

(iii) A statement identifying facility operation hours;

(iv) A brief summary of applicable federal, state, and local oil pollution laws and regulations;

(v) Recordkeeping procedures and sample forms which are associated with the requirements in this chapter;

(vi) Overfill prevention procedures must be described for transfers to storage tanks and tank vessels in accordance with

the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10;

(vii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for transfer pipelines, pumps and valves;

(viii) A description of all oil types transferred to or from the facility including:

(A) Generic and chemical name;

(B) A description of the appearance of the oil;

(C) The hazards involved in handling the oil; and

(D) Instructions for safe handling of oil;

(ix) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;

(x) A list of fire fighting procedures and extinguishing agents effective with fires involving the oil;

(xi) Instructions in the use of each communication system;

(xii) Detailed procedures for:

(A) Operating each hose system and loading arm including the limitations of each loading arm;

(B) Transferring oil, including startup, topping off, and shutdown;

(C) Completion of pumping; and

(D) Quantity, type, location, and instructions for use of all transfer monitoring devices;

(xiii) A discussion of the leak detection system and/or procedures implemented by the facility;

(xiv) The location and facilities of each personnel shelter, if any; and

(xv) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system.

(b) Facility procedures for oil transfers to or from nonrecreational vessels including, at a minimum:

(i) Discussion of the sizes, types, and number of vessels that the facility can transfer oil to or from, including simultaneous transfers;

(ii) Discussion of equipment and procedures required for all vessels which transfer oil to or from the facility;

(iii) Procedures for verifying that vessels meet facility requirements and operations manual procedures;

(iv) Discussion of the minimum number of persons or equipment required to perform transfer operations and their duties, including transfer watchmen;

(v) A description and instructions for the use of drip and discharge collection and vessel slop reception facilities, if any;

(vi) If applicable, procedures for shielding portable lighting;

(vii) Description of the facility's requirements or actions taken regarding unexpected weather and sea conditions and the threshold values developed by the facility which may impact oil transfers to or from vessels. The supporting data for oil transfer weather and sea restrictions must be made available to ecology if requested and include at a minimum:

(A) Instrumentation or methodology for accurately measuring and recording this information in the facility's dock operations log book;

(B) Measuring current velocity, weather, and sea conditions before and during the oil transfer operation;

(C) Monitoring forecasted weather and sea;

(D) Procedures for communicating weather and sea conditions to the PICs at regular intervals;

(E) Threshold values for weather and sea conditions above which transfer operations must cease; and

(F) Procedures for communicating with the vessel and shutting down the oil transfer should weather or seas exceed threshold values.

(c) Safe and effective threshold determination. The threshold values which personnel will use to determine when a facility will not preboom under Part B of this chapter, must be in the operations manual and easily found by the PIC. The analysis, data, and supporting documents are not required to be in the operations manual but must be submitted separately in a report to ecology. See WAC 173-180-224.

(d) Facility emergency procedures, at a minimum:

(i) Procedures for reporting spills to the appropriate agencies and initial response actions taken in the event of an oil discharge;

(ii) The names and telephone numbers of facility, federal, state, local and other personnel who may be called by the employees of the facility in case of an emergency;

(iii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;

(iv) Quantity, type, location, instructions for use, and time limits for gaining access to containment equipment; and

(v) Quantity, type, location, and instructions for use of fire extinguishing equipment.

(e) For facilities that transfer to or from transmission pipelines the operations manual must address, at a minimum, the following topics:

(i) The geographic location of the facility shown on a topographic map;

(ii) A physical description of the facility including a plan of the facility showing transfer locations, control stations, oil flow patterns, and locations of safety equipment;

(iii) A statement identifying facility operation hours;

(iv) A description of all oil types transferred to or from the facility including:

(A) Generic and chemical name;

(B) The name of the oil;

(C) A description of the appearance of the oil;

(D) A description of the odor of the oil;

(E) The hazards involved in handling the oil; and

(F) Instructions for safe handling of oil;

(v) The procedures to be followed if the oil spills or leaks, or if a person is exposed to the oil;

(vi) A list of fire fighting procedures and extinguishing agents effective with fires involving the oil;

(vii) A discussion of the minimum number of persons required to perform transfer operations and their duties;

(viii) The names and telephone numbers of facility, federal, state, local and other personnel who may be called by the employees of the facility in case of an emergency;

(ix) The duties of the facility operator;

(x) A description of each communication system;

(xi) The location and facilities of each personnel shelter, if any;

(xii) Emergency plans and procedures including a description of and the location of each emergency shutdown system;

(xiii) Quantity, types, locations, and instructions for use of monitoring devices;

(xiv) Quantity, type, location, instructions for use, and time limits for gaining access to containment equipment;

(xv) Quantity, type, location, and instructions for use of fire extinguishing equipment;

(xvi) Maximum relief valve settings (or maximum system pressures when relief valves are not provided) for each transfer system;

(xvii) Detailed procedures for reporting and initial containment of oil discharges;

(xviii) A brief summary of applicable federal, state, and local oil pollution laws and regulations;

(xix) A description of the training and qualification program for persons in charge;

(xx) A discussion of facility operation procedures for conducting oil transfers including transfer startups and shutdowns;

(xxi) Recordkeeping procedures and sample forms to be used;

(xxii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance replacement criteria for transfer pipelines, pumps and valves; and

(xxiii) A section in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code,

No. 30-1993, Chapter 2, Section 2-10 which requires that written procedures be developed to describe overfill prevention procedures. Overfill prevention procedures must be described for transfers to storage tanks and tank vessels.

NEW SECTION

WAC 173-180-425 Class 1 facility--Operations manual submittal. (1) The owner or operator of an existing facility must submit the operations manual to ecology within one hundred twenty calendar days from the effective date of this chapter.

(a) Existing Class 1 facilities that have an ecology approved operations manual, on the date this chapter becomes effective, may submit only the new changes to the operations manual instead of resubmitting the entire operations manual.

(b) For Class 1 facilities that begin operations after the effective date of this chapter, the owner or operator must submit an operations manual to ecology at least one hundred twenty calendar days prior to conducting an oil transfer operation.

(2) One paper and one electronic copy of the operations manual and appendices must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
300 Desmond Drive
Lacey, WA 98503

(3) The operations manual submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

NEW SECTION

WAC 173-180-430 Class 1 facility--Operations manual review and approval. (1) Upon receipt of an operations manual, ecology will determine whether the operations manual is complete. If ecology determines that an operations manual is incomplete, ecology must notify the facility of the deficiencies.

(2) When reviewing operations manuals ecology must consider the following:

(a) The ability of the operations manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;

(b) The volume and type of oil(s) addressed by the facility operations manual;

(c) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;

(d) Inspection reports;

(e) The presence of operating hazards;

(f) The sensitivity and value of natural resources within the geographic area covered by the operations manual; and

(g) Any pertinent local, state, federal agency, public comments received on the operations manual.

(3) Ecology must endeavor to notify the facility owner or operator within five working days after completing the review whether ecology approves the operations manual.

(4) If the operations manual receives approval, ecology must send the Class 1 facility owner or operator an approval letter describing the terms of approval, including an expiration date.

(5) Conditional approval:

(a) Ecology may approve an operations manual conditionally by requiring a facility owner or operator to operate with specific precautionary measures until acceptable components of the operations manual are resubmitted and approved by ecology.

(b) Precautionary measures may include, but are not limited to:

(i) Reducing oil transfer rates;

(ii) Increasing personnel levels;

(iii) Restricting operations to daylight hours; or

(iv) Additional requirements to ensure availability to response equipment.

(6) After receiving notification of conditional status from ecology, a Class 1 facility must submit and implement required

changes to ecology within thirty calendar days. Ecology may issue an extension at ecology's discretion. Operations manual holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(7) If the operations manual approval is denied, ecology must send an explanation of the factors for disapproval and a list of deficiencies to the Class 1 facility owner or operator.

(a) The owner or operator of the facility must resubmit the operations manual within ninety calendar days of notification of reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(b) The facility must not continue oil storage, transfer, production, or other operations until ecology approves an operations manual for that facility.

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

(9) A facility may conduct operations if the facility properly submitted an operations manual to ecology and ecology has not provided the facility with a formal response.

NEW SECTION

WAC 173-180-435 Class 1 facility--Operations manual updates. (1) The owner or operator must notify ecology in writing prior to any significant changes to the operations manual that could affect implementation of the operations manual.

(2) A significant change includes, but is not limited to:

(a) A change in the owner or operator of the facility;

(b) A change in the types of oil handled at the facility;

(c) A substantial change in the facility's oil-handling capacity;

(d) Noncompliance with the federal Oil Pollution Act of 1990;

(e) A substantial change in oil spill prevention technology installed at the facility, or other substantial changes to facility technology, operations, or personnel procedures based on requirements of amended or new rules adopted by ecology; and

(f) Any other changes that would require modification of the operations manual.

(3) If a significant change will reduce the facility's ability to implement the operations manual, the operations

manual holder must also provide a schedule for the return of the operations manual to full implementation capability.

(4) The facility may submit a facsimile to provide written notice for the purposes of this section.

(5) If ecology finds, because of the significant change, the operations manual no longer meets approval criteria, ecology may, at its discretion, place conditions on approval, or revoke approval. Ecology may also require the operations manual holder to amend its operations manual to incorporate the change.

(6) Within thirty calendar days of making a significant change to the operations manual, the facility owner or operator must distribute the amended page(s) of the operations manual to ecology and other operations manual holders.

(7) Ecology may review an operations manual and require changes following any spill, inspection, or drill for which the operations manual holder is responsible.

NEW SECTION

WAC 173-180-440 Class 1 facility--Submitting the operations manual for reapproval. (1) Ecology must review facility manuals every five years.

(2) The Class 1 facility must submit the operations manuals for reapproval unless the operations manual holder submits a letter requesting that ecology review the operations manual already in ecology's possession.

(3) The operations manual holder must submit the operations manual or such letter at least one hundred eighty calendar days in advance of the operations manual expiration date.

NEW SECTION

WAC 173-180-445 Class 2 facility--Operations manual. (1) Each facility must keep the operations manual immediately accessible at the transfer location.

(2) Facilities must ensure that all employees involved in oil transfer operations are familiar with the operations manual provisions through regular and new employee training.

NEW SECTION

WAC 173-180-450 Class 2 facility--Operations manual preparation. (1) Each Class 2 facility must prepare an operations manual that meets the requirements of this chapter.

(2) The Class 2 facility may submit their Coast Guard operations manuals required under 33 CFR 154.300 to satisfy operations manual requirements under this chapter if:

(a) Ecology deems that such federal requirements equal or exceed those of ecology; or

(b) The Class 2 facility modifies or appends the operations manual to satisfy operations manual requirements under this chapter.

NEW SECTION

WAC 173-180-455 Class 2 facility--Operations manual format requirements. Operations manuals must:

(1) Have a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures;

Where applicable, topics identified in the table of contents may be cross referenced with other submissions required by chapter 90.56 RCW including contingency and prevention plans, or 33 CFR 156 provided that a copy of the *Coast Guard Operations Manual* has been submitted to ecology.

(2) Allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire operations manual; and

(3) Have a log sheet to record amendments to the operations manual. The log sheet must:

(a) Be placed at the front of the operations manual;

(b) Provide for a record of the section amended, the date that the old section was replaced with the amended section, and the initials of the individual making the change;

(c) Include a description of the amendment; and

(d) Include a description of the amendment's purpose or filed in the form of an amendment letter immediately following the log sheet.

NEW SECTION

WAC 173-180-460 Class 2 facility--Operations manual content requirements. (1) The operations manual must describe equipment and procedures involving the transfer, storage, and handling of oil that the operator employs or will employ to achieve best achievable protection for public health and the environment, and to prevent oil spills.

(2) Operations manuals must address at a minimum the following topics for oil transfer operations from Class 2 facilities:

(a) Each operations manual submitted to ecology must contain a submittal agreement which:

(i) Includes the name, address, and phone number of the submitting party;

(ii) Verifies acceptance of the operations manual by the owner or operator of the Class 2 facility by either signature of the owner or operator or signature by a person with the authority to bind the corporation which owns such facility;

(iii) Commits execution of the operations manual by the owner or operator of the Class 2 facility, and verifies authority for the operations manual holder to make appropriate expenditures in order to execute operations manual provisions; and

(iv) Includes the name and location for the base of operations for the mobile fleet, and the name and location of the maintenance yard for rolling stock, and the starting date of operations.

(b) General information related to the facility including:

(i) A brief summary of applicable federal, state, and local oil or hazardous material pollution laws and regulations;

(ii) A physical description of the fleet of mobile vehicles or rolling stock including capabilities;

(iii) Instructions in the use of each communication system;

(iv) A description and instructions for the use of drip and release containment for all hose connections;

(v) The maximum allowable working pressure (MAWP) of each hose assembly required to be tested by 33 CFR 156.170 of this chapter, including the maximum relief valve setting (or maximum system pressure when relief valves are not provided) for each transfer system, if any;

(vi) Recordkeeping procedures and sample oil transfer forms which are associated with the requirements in this chapter;

(vii) Example maintenance schedules incorporating manufacturers' recommendations or an industrial standard approved by ecology, preventative maintenance, replacement criteria for hose assemblies, pumps and valves; and

(viii) Written procedures to describe vessel overfill prevention procedures in accordance with the National Fire Protection Association (NFPA), Flammable and Combustible Code, No. 30-1993, Chapter 2, Section 2-10.

(c) Facility procedures for oil transfers to or from nonrecreational vessels including:

(i) Detailed procedures for transferring oil which will include, at a minimum:

(A) Number of truck/trailer combinations needed;

(B) Transferring oil, including startup, topping off, and shutdown; and

(C) Shift-change procedures;

(ii) A discussion of equipment and procedures required for all vessels which receive oil from the Class 2 facility and procedures for verifying that vessels meet Class 2 facility requirements and operations manual procedures;

(iii) A discussion regarding the time/condition constraints for deliveries;

(iv) Providing a copy of the MSDS for each type of oil transferred. The MSDS must be in the driver's possession or available at the transfer;

(v) A discussion of the minimum number of persons or equipment required to perform transfer operations and their duties;

(vi) Quantity, types, locations, and instructions for use of monitoring devices;

(vii) If applicable, procedures for shielding portable lighting;

(viii) Procedures for detecting leaks during oil transfer operations; and

(ix) Discussion of the facility's requirements regarding weather and sea conditions at the facility which may impact oil transfers to or from vessels including, at a minimum:

(A) Monitoring current weather and sea conditions;

(B) Monitoring forecasted weather and sea;

(C) Procedures for communicating weather and sea conditions to the PICs at regular intervals;

(D) Threshold values for weather and sea conditions above which transfer operations must cease; and

(E) Procedures for shutting down the oil transfer should weather or seas exceed threshold values.

(d) Class 2 facility emergency information, must include at a minimum:

(i) Procedures for reporting and initial containment of oil discharges;

(ii) The name and telephone number of the driver's supervisor or dispatcher and telephone number of the Coast Guard, state, local, and other personnel who may be called by the employees of the Class 2 facility in an emergency;

(iii) Emergency plans and procedures including a description of and location of each emergency shutdown system;

(iv) Quantity, type, location, and instructions for use of fire extinguishing equipment;

(v) Means of protecting nearby surface water from impact of discharge of oil, i.e., permanent or temporary drainage structures or devices to protect water at delivery site.

(e) If a Class 2 facility conducts Rate A transfers, then the operations manual must include the safe and effective threshold values as identified in the safe and effective threshold determination report. These values must be for each location where a Rate A transfer occurs. See WAC 173-180-224 for requirements for this report.

NEW SECTION

WAC 173-180-465 Class 2 facility--Operations manual submittal. (1) All existing Class 2 facilities must submit an operations manual to ecology within one hundred twenty calendar days after the effective date of this chapter.

(2) All Class 2 facilities that begin oil transfer operations after the effective date of this chapter must submit an operations manual to ecology at least ninety calendar days prior to the beginning of oil transfer operations.

(3) One paper and one electronic copy of the operations manual and appendices must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Operations Manual
300 Desmond Drive
Lacey, WA 98503

(4) The operations manual submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

NEW SECTION

WAC 173-180-470 Class 2 facility--Operations manual review and approval. (1) Upon receipt of an operations manual, ecology will determine whether the operations manual is complete. If ecology determines that an operations manual is incomplete, ecology must notify the Class 2 facility of the deficiencies.

(2) When reviewing operations manuals for approval ecology must consider the following criteria:

(a) The ability of the operations manual to provide best achievable protection from damages caused by the discharge of oil into waters of the state;

(b) The volume and type of oil(s);

(c) The history and circumstances of prior spills by similar types of facilities, including spills reported to the state and federal government in Washington state;

(d) Inspection reports;

(e) The presence of operating hazards; and

(f) The sensitivity and value of natural resources within the geographic area covered by the operations manual.

(3) Ecology must endeavor to notify the facility owner or operator within five working days after completing the review whether or not ecology approves the operations manual.

(4) If the operations manual receives approval, ecology must send the Class 2 facility owner or operator an approval letter describing the terms of approval, including an expiration date.

(5) Conditional approval:

(a) Ecology may approve an operations manual conditionally by requiring a facility owner or operator to operate with specific precautionary measures until acceptable components of the operations manual are resubmitted and approved.

(b) Precautionary measures may include, but are not limited to:

(i) Reducing oil transfer rates;

(ii) Increasing personnel levels;

(iii) Restricting oil transfer operations to daylight hours; or

(iv) Additional requirements to ensure availability to response equipment.

(6) After receiving notification of conditional status from ecology, a Class 2 facility must submit and implement required changes to ecology within thirty calendar days. Ecology may issue an extension at ecology's discretion. Operations manual

holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(7) If operations manual approval is denied, ecology must send the facility owner or operator an explanation of the factors for disapproval and a list of deficiencies.

(a) The owner or operator of the facility must resubmit the operations manual within ninety calendar days of notification of reasons for noncompliance, responding to the reasons and incorporating any suggested modifications.

(b) The facility must not continue oil transfer or other operations until an operations manual for that facility has been approved.

NEW SECTION

WAC 173-180-475 Class 2 facility--Operations manual updates. (1) The owner or operator must notify ecology in writing prior to any significant changes to the operations manual that could affect implementation of the operations manual.

(2) A significant change includes, but is not limited to:

(a) A change in the owner or operator of the facility;

(b) A change in the types of oil handled at the facility;

(c) A substantial change in the facility's oil-handling capacity;

(d) Noncompliance with the federal Oil Pollution Act of 1990;

(e) A substantial change in equipment in use by the facility, or other substantial changes to facility technology, operations, or personnel procedures based on requirements of amended or new rules adopted by ecology; and

(f) Any other changes that would require that the operations manual be modified.

(3) If the significant change will reduce the facility's ability to implement the operations manual, the operations manual holder must also provide a schedule for the return of the operations manual to full implementation capability.

(4) The facility may submit a facsimile to provide written notice for the purposes of this section.

(5) If ecology finds, as a result of the significant change, the operations manual no longer meets approval criteria, ecology may, at its discretion, place conditions on approval, or

revoke approval. Ecology may also require the operations manual holder to amend its operations manual to incorporate the change.

(6) Within thirty calendar days of making a change to the operations manual, the facility owner or operator must distribute the amended page(s) of the operations manual to ecology and other operations manual holders.

(7) Ecology must review operations manuals every five years.

(a) Operations manuals must be submitted for reapproval unless the operations manual holder submits a letter requesting that ecology review the operations manual already in ecology's possession.

(b) The operations manual holder must submit the operations manual or such letter at least one hundred eighty calendar days in advance of the operations manual expiration date.

(8) Ecology may review an operations manual and require changes following any spill, inspection, or drill for which the operations manual holder is responsible.

PART E: TRAINING AND CERTIFICATION FOR CLASS 1 AND CLASS 2 FACILITIES

NEW SECTION

WAC 173-180-500 Applicability of Part E. (1) Part E applies to Class 1 and 2 facilities. All Class 1 and Class 2 facilities must have training and certification programs that are developed, approved, and implemented, pursuant to requirements in this chapter.

Class 1 and 2 facilities training and certification program will be valid for no more than five years from the date on the approval letter. Ecology will review Class 1 and 2 facilities training and certification program to ensure compliance with this chapter.

(2) Class 3 facilities must meet the training requirements in 33 CFR 154.

(3) Class 4 facilities must meet the training requirements in WAC 173-180-210(2).

NEW SECTION

WAC 173-180-510 Class 1 facility--Training requirements. (1) Each Class 1 facility must develop and implement oil transfer training for key supervisory, operations, maintenance, management, and indirect operations personnel identified pursuant to subsection (3) of this section.

(a) The Class 1 facility must design a training program, to the maximum extent practicable, to promote job competency and environmental awareness for the purpose of preventing oil spills.

(b) Non-English speaking personnel subject to the facility's training requirements must be trained in a manner that allows comprehension by such personnel.

(2) Oil transfer training programs must be approved by ecology under WAC 173-180-525.

(3) The Class 1 facility must identify, in writing, the specific position titles which the facility has identified to be subject to its oil transfer training requirements. In making this determination, the facility must evaluate the functions of facility personnel positions using the following definitions:

(a) "Key" means a position with direct responsibility for performing or overseeing the transfer, storage, handling, or monitoring of oil at a facility, or a job function where typical human factors present the probability of a spill occurring.

(b) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes but is not limited to the person-in-charge, storage tank operators, pipeline operators, and oil transfer monitors.

(c) "Supervisory" means involvement in directly supervising the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state.

(d) "Maintenance" means direct involvement in maintaining and repairing the equipment used for the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state.

(e) "Indirect operations" means involvement in on-site activities, such as new construction, in a capacity that indirectly involves the risk of an oil spill to waters of the state due to potential impacts to nearby oil-handling operations (e.g., operating digging equipment next to an active transfer

pipeline). For cases where certain job titles associated with indirect operations can not be identified in advance, the facility must identify the types of job orders or work sites which may involve the need for indirect operations oil transfer training.

(4) The facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours that are appropriate for each position given the facility's training needs and human factor risks.

For the purposes of this section, "human factors" means human conditions, such as inadequate knowledge or fatigue, which can lead to incompetency or poor judgment, and "human factor risks" means risks of causing an oil spill due to the effects of human factors on competency and judgment.

(5) Operations and supervisory personnel training: Requirements for training of operations and supervisory personnel must focus on building personnel competency in operating procedures and spill prevention systems specific to the facility. Oil transfer training requirements must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;

(b) Operating procedures and checklists specific to trainee's job function;

(c) Problem assessment, including recognition of human factor risks and how they can be minimized;

(d) Awareness of preventative maintenance procedures;

(e) Awareness of local environmental sensitivity and oil spill impacts;

(f) Major components of facility's oil spill prevention plan;

(g) Major components of facility's operations manual;

(h) Major components of facility's oil spill contingency plan;

(i) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(j) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(k) Routine and emergency communications procedures;

(l) Overview of applicable oil spill prevention and response laws and regulations; and

(m) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(6) Management personnel training: Requirements for initial oil transfer training of management personnel must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at the facility;

(b) Management role in operations and oil spill prevention;

(c) Recognition of human factor risks and how they can be minimized;

(d) Awareness of local environmental sensitivity and oil spill impacts;

(e) Major components of facility's oil spill prevention plan;

(f) Major components of facility's operations manual;

(g) Major components of facility's oil spill contingency plan;

(h) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(i) Overview of applicable oil spill prevention and response laws and regulations; and

(j) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(7) Maintenance personnel training: Requirements for initial oil transfer training of maintenance personnel must incorporate the following training topics at a minimum:

(a) Overview of all oil handling, transfer, storage, and monitoring/leak detection operations at applicable maintenance work sites within the facility;

(b) Equipment problem assessment and preventative maintenance procedures;

(c) Awareness of local environmental sensitivity and oil spill impacts;

(d) Major components of facility's oil spill prevention plan;

(e) Major components of facility's operations manual;

(f) Major components of facility's oil spill contingency plan;

(g) Emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(h) Overview of applicable oil spill prevention and response laws and regulations; and

(i) Drug and alcohol use awareness, pursuant to WAC 173-180-630.

(8) Indirect operations personnel training: Requirements for initial oil transfer training of indirect operations personnel must incorporate the following training topics at a minimum:

(a) Overview of oil handling, transfer, storage, and monitoring/leak detection operations at specific indirect operations work site within the facility;

(b) Awareness of local environmental sensitivity and oil spill impacts;

(c) Notification procedures for emergency spill prevention actions; and

(d) For facility employees, drug and alcohol use awareness, pursuant to WAC 173-180-630.

(9) Training topics identified in subsections (5) through (8) of this section, do not prescribe fixed subject titles for class outlines or training organization. Facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the applicable personnel training program.

(10) The facility must identify, in writing, the specific oil spill prevention continuing education requirements for each affected position, including minimum hours, which are appropriate given the facility's training needs and human factor risks. Ongoing training must occur at least annually, and at a minimum address:

(a) Any changes in the core topics identified in subsections (5) through (8) of this section, unless affected personnel have already been informed about the change after its occurrence;

(b) Refresher awareness training on environmental sensitivity and oil spill impacts;

(c) Review and analysis of oil spills which have occurred during the past year;

(d) Refresher training on emergency spill prevention procedures; and

(e) For key supervisory, operations, and management personnel, a practice exercise of the facility's procedures for preventing a spill during a particular abnormal operations event.

(11) Facilities are encouraged to apply or modify existing training programs required under federal Process Safety Management requirements (29 CFR 1910), Coast Guard person-in-charge requirements (33 CFR 154.710), and other federal/state training requirements in order to meet the above oil transfer training requirements.

(12) Existing personnel that have entered their current position prior to adoption of this chapter can be regarded as having met the facility's initial oil transfer training requirements if:

(a) The facility has documented that those personnel have received the required training in the past; or

(b) The facility attests in writing and in detail, how those personnel have had on-the-job training or other experience equivalent to the facility's initial training requirements including type and frequency of past training when known.

(13) Facilities must develop follow up remedial training for personnel clearly responsible for causing an oil spill while functioning in their position, unless such personnel no longer

occupy a position identified under subsection (3) of this section.

(14) Contractors hired by the facility to perform key supervisory, operations, maintenance, management, or indirect operations functions, as identified by the facility under subsection (3) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility is responsible to validate that such contractors have met the facility's oil transfer training requirements before they perform a key supervisory, operations, maintenance, management, or indirect operations function.

(15) Facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.

(16) Facilities must develop and maintain written oil transfer training materials, such as training manuals or checklists.

(17) Oil transfer training must be documented, and records must be kept at the facility in a central and accessible location for at least five years from the date of training completion.

NEW SECTION

WAC 173-180-515 Class 1 facility--Certification program. (1) Each Class 1 facility must develop and implement a program to certify that key supervisory and operations personnel identified pursuant to WAC 173-180-510 have met the facility's oil transfer training program requirements, and are competent to perform the operations or supervisory functions associated with their position. The facility is not required to certify personnel other than key supervisory and operations personnel. The certification program must be designed, to the maximum extent practicable, to ensure job competency and environmental awareness for the purpose of preventing oil spills.

(2) Certification programs must meet minimum criteria pursuant to WAC 173-180-520.

(3) Certification programs must be approved by ecology pursuant to WAC 173-180-525.

NEW SECTION

WAC 173-180-520 Class 1 facility--Minimum criteria for certification programs. (1) The Class 1 facility oil spill prevention certification program must address all key supervisory and operations personnel identified pursuant to WAC 173-180-510.

(2) The Class 1 facility must develop and maintain written certification procedures, including:

(a) Minimum competency requirements to achieve certification;

(b) The process to develop and test competency in key supervisory and operations personnel;

(c) The process to issue and track certificates; and

(d) Policies regarding loss or lack of certified status.

(3) The Class 1 facility must maintain a written certificate or other record for supervisory and operations personnel which have met the facility's certification requirements. This record must document:

(a) The certified individual's name and position;

(b) Types and hours of training completed;

(c) Name of trainer;

(d) Results of performance tests and evaluations; and

(e) Signatures of the trainee and trainer.

(4) The Class 1 facility must keep copies of certification records at the facility in a central and accessible location for at least five years from the date of certification.

(5) The Class 1 facility certification program must incorporate methods to evaluate and confirm job competency, including:

(a) A written examination, or oral examination documented in writing, which tests general knowledge about training topics identified under WAC 173-180-510, with an appropriate passing score established by the facility;

(b) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:

(i) Observation of performance of each oil handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and

(ii) Practice exercises involving procedures to prevent a spill during abnormal operations events.

(6) The Class 1 facility's program must only provide for certification of an individual who has:

(a) Met the facility's oil spill prevention initial training requirements tied to the individual's position, as developed pursuant to WAC 173-180-510; and

(b) Passed a competency evaluation developed under subsection (5) of this section.

(7) Recertification of personnel must occur at least once every three years, based on:

(a) Successful completion of continuing education requirements; and

(b) Satisfactory performance in a reevaluation of competency as developed under subsection (5) of this section.

(8) All certified personnel must carry a proof of certification during oil transfer operations.

NEW SECTION

WAC 173-180-525 Class 1 facility--Training and certification program approval. (1) Existing Class 1 facilities:

(a) Must modify their training and certification program to meet requirements in this chapter and must implement the program within ninety calendar days from the approved date of the operations manual.

(b) Must train and certify all personnel under the facility's modified training and certification program within ninety calendar days of the approved date of the operations manual.

(2) Class 1 facilities that begin operations after the effective date of this chapter:

(a) Must develop or modify their training and certification program to meet the requirements of this chapter and must implement the program within one hundred twenty calendar days prior to oil transfer operations.

(b) Must train and certify all personnel under the facility's training and certification program before any oil transfer operation occurs at the facility.

(3) All new facility employees with oil transfer duties must be trained and certified within ninety calendar days from the date of hire.

(4) Ecology must review the Class 1 facility's training and certification program after the date that facilities must meet rule criteria pursuant to subsection (1) or (2) of this section. This review must be accomplished by a general on-site inspection by ecology through evaluation of the Class 1 facility's training

materials, testing records and certification records, and consultation with personnel.

(5) Ecology will notify Class 1 facilities regarding approval status within thirty calendar days from completing inspections performed under subsection (4) of this section.

(6) Class 1 facilities that do not receive approval will have ninety calendar days to address deficiencies in their training and certification program, with options for a time extension based on ecology's discretion. For those personnel that were trained or certified after the deadlines established in subsection (1) of this section but prior to program approval, retraining or recertification of such personnel due to changes required by ecology's approval process can be postponed until the next retraining or recertification cycle as established by the facility pursuant to this chapter.

(7) Training and certification program approval is valid for five years. Significant changes to the Class 1 facility's program must be documented through an update of the facility's prevention plan pursuant to chapter 173-180 WAC Part F requirements. Minor upgrades in training and certification programs, such as expansion of training hours or updates to testing materials, are not required to be submitted to ecology through a prevention plan update.

(8) Ecology may perform announced and unannounced inspections at facilities to verify compliance.

(9) A training and certification program must be approved if, in addition to meeting criteria in this section and WAC 173-180-520, the Class 1 facility demonstrates that when implemented, the facility can, to the maximum extent practicable:

(a) Provide protection from human factor oil spill risks identified in the risk analysis required by WAC 173-180-630;

(b) Minimize the likelihood that facility oil spills will occur and minimize the size and impacts of those facility oil spills which do occur;

(c) Provide effective oil transfer training to key supervisory, operations, maintenance, management, and indirect operations personnel;

(d) Ensure proper evaluation of job competency; and

(e) Provide an effective system to clearly document and track personnel training and certification.

(10) When reviewing programs, ecology must, in addition to the above criteria, consider the following at a minimum:

(a) The volume and type of oil(s) handled by the facility, and frequency of oil-handling operations;

(b) Number of facility personnel;

(c) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(d) Inspection reports;

(e) The presence of hazards unique to the facility, such as seismic activity or production processes; and

(f) The sensitivity and value of natural resources that could be affected by a spill from the facility.

(11) Ecology may approve a program with an expedited review as set out in this section if that program has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.

(12) If the program receives approval, the facility owner or operator must receive a certificate of approval describing the terms of approval, including expiration dates pursuant to subsection (6) of this section.

(a) Ecology may conditionally approve a program by requiring a facility owner or operator to operate with specific precautionary measures until unacceptable components of the program are resubmitted and approved.

(b) Precautionary measures may include, but are not limited to:

(i) Reducing oil transfer rates;

(ii) Increasing personnel levels;

(iii) Restricting operations to daylight hours or favorable weather conditions; or

(iv) Additional requirements to ensure availability of response equipment.

(c) A facility must have thirty calendar days after ecology gives notification of conditional status to make the required changes, with the option for an extension at ecology's discretion. Facilities which fail to meet conditional requirements or make required changes in the time allowed must lose conditional approval status.

(i) If approval is denied or revoked, the facility owner or operator must receive an explanation of the factors for disapproval and a list of deficiencies. The facility may be subject to penalties identified in chapter 90.56 RCW.

(ii) Ecology's decisions under this chapter are reviewable in superior court.

(iii) Approval of a training and certification program by ecology does not constitute an express assurance regarding the adequacy of the program nor constitute a defense to liability imposed under state law.

(13) Ecology may review a program following any spill, inspection, or drill at the facility.

NEW SECTION

WAC 173-180-530 Class 2 facility--Oil transfer training requirements. (1) Each Class 2 facility must develop and implement oil transfer training for key supervisory and operations personnel identified pursuant to subsection (6) of this section.

(2) Class 2 facilities must design training, to the maximum extent practicable, to provide job competency for oil transfer operations.

(3) Class 2 facilities must train non-English speaking personnel subject to the facility's training requirements in a manner that allows comprehension by such personnel.

(4) Ecology must approve oil transfer training programs for Class 2 facilities pursuant to WAC 173-180-545.

(5) Class 2 facilities must develop and maintain written training materials, such as training manuals or checklists.

(6) The Class 2 facility must identify, in writing, the specific position titles at the facility which are subject to the facility's oil transfer training requirements. In making this determination, the facility must evaluate the functions of facility personnel positions using the following definitions:

(a) "Key" means a position with direct responsibility for performing or overseeing the transfer, storage, handling, or monitoring of oil at a facility, or a job function where typical human factors present the probability of a spill occurring.

(b) "Operations" means direct involvement in the transfer, storage, handling, or monitoring of oil at a facility in a capacity that involves the risk of an oil spill to waters of the state. This functional group includes but is not limited to the person-in-charge, truck drivers and operators, and oil transfer monitors.

(c) "Supervisory" means involvement in directly supervising personnel engaged in the transfer, storage, handling, or monitoring of oil at a facility by implementing operations policies and procedures that involve the risk of an oil spill to waters of the state.

(7) The Class 2 facility must identify, in writing, the specific initial classroom and/or on-the-job oil transfer training requirements for each position, including minimum hours, which are appropriate for each position given the facility's training needs and human factor risks as defined in WAC 173-180-510(4).

(8) Key supervisory and operations personnel training: Training of key supervisory and operations personnel must focus on building personnel competency in operating procedures specific to the facility. Training requirements must at a minimum incorporate the following training topics:

(a) Overview of all oil handling, transfer, and monitoring operations at the facility;

(b) Operating procedures and checklists specific to trainee's job function;

(c) Preventative maintenance procedures;

(d) Awareness of oil spill impacts;

(e) Major components of facility's operations manual;

(f) Major components of the facility's response plan;

(g) Safe use and handling of response equipment including, but not limited to, containment, personal protection, and recovery equipment;

(h) Decision making for abnormal operating events and emergencies, including emergency spill prevention and safe shutdown conditions, responsibilities, and procedures;

(i) Routine and emergency communications procedures;

(j) Overview of applicable oil spill response laws and regulations; and

(k) Drug and alcohol use awareness.

(9) Training topics identified in this section, do not prescribe fixed subject titles for class outlines or training organization. Class 2 facilities may combine or integrate these topics as appropriate, but must ensure that information on each topic is presented in the oil transfer training program.

(10) Key supervisory and operations personnel must also attend a certified twenty-four-hour HAZWOPER training session.

(11) Continuing education training: The Class 2 facility must have continuing education requirements for key supervisory and operations personnel. Ongoing training must occur at least annually, and at a minimum address:

(a) Review and analyze oil spills for causal factors which have occurred during the past year including lessons learned;

(b) Refresher eight-hour HAZWOPER training session;

(c) Refresher training on emergency spill prevention procedures; and

(d) Refresher training on spill cleanup and recovery operations.

(12) Existing personnel that have entered their current position prior to adoption of this chapter can be regarded as having met the facility's oil transfer training requirements if:

(a) The facility has documented that those personnel have received the required training in the past; or

(b) The facility provides documentation demonstrating how those personnel meet the requirements of this section.

(13) Class 2 facilities must provide follow-up training after any spill to all key supervisory and operations personnel. The training must address the causes of the spill and must be incorporated into the continuing education training program.

(14) Contractors hired by the facility to perform key supervisory and operations functions, as identified by the facility under subsection (6) of this section, are considered "personnel" for the purposes of this chapter, and must be subject to the same oil transfer training requirements as facility employees. The facility is responsible to validate contractors have met the facility's oil transfer training requirements before they perform a key supervisory and operations functions.

(15) Class 2 facilities must develop minimum training and/or experience qualifications for trainers who will demonstrate facility-specific procedures, equipment use, supervise practice sessions, and provide other on-the-job training to new operations personnel.

(16) Facilities must develop and maintain written oil transfer training materials, such as training manuals or checklists.

NEW SECTION

WAC 173-180-535 Class 2 facility--Certification program. (1) Each Class 2 facility must develop and implement a certification program to certify key supervisory and operations personnel identified pursuant to WAC 173-180-530 to ensure they are competent to perform oil transfer duties.

(2) The certification program must be designed, to the maximum extent practicable, to ensure job competency for oil transfer operations.

(3) Certification programs must be approved by ecology pursuant to WAC 173-180-545.

(4) Certification programs must contain the minimum requirements in WAC 173-180-550.

NEW SECTION

WAC 173-180-540 Class 2 facility--Certification of personnel. (1) A Class 2 facility can only certify personnel under this program who:

(a) Are in key supervisory or operations positions at the facility;

(b) Have met the facility's oil transfer training requirements tied to the individual's position, (WAC 173-180-530); and

(c) Have passed a competency evaluation (WAC 173-180-550).

(2) All new facility employees with oil transfer duties must be trained and certified within ninety days from date of hire.

(3) Recertification. Recertification of personnel must occur at least once every three years. To be recertified personnel must:

(a) Successfully complete the facility's continuing education requirements; and

(b) Repass the facility's competency evaluation (WAC 173-180-550).

NEW SECTION

WAC 173-180-545 Class 2 facility--Program approval. (1) Ecology must approve all training and certification programs.

(2) Class 2 facilities operating on the effective date of this chapter:

(a) Must develop or modify their training and certification program to meet the requirements in this chapter and implement the program within ninety calendar days of the approved date of the operations manual.

(b) Must train and certify all key supervisory and operations personnel under the facility's training and certification program within ninety calendar days from the approved date of the operations manual.

(3) Class 2 facilities that begin conducting oil transfer operations after the effective date of this chapter:

(a) Must develop and implement their training and certification program within ninety calendar days prior to the first oil transfer operation.

(b) Must train and certify all key supervisory and operations personnel within ninety calendar days prior to the first oil transfer operation.

(4) To receive approval ecology will conduct an on-site evaluation of the facility's training materials, testing and certification records, and consult with personnel.

(5) Ecology will notify Class 2 facilities regarding approval status within thirty calendar days from completing the evaluation under subsection (4) of this section.

(6) Class 2 facilities that do not receive approval will have ninety calendar days to address deficiencies in their training and certification program. Ecology may grant an extension at ecology's discretion.

(7) For those personnel trained or certified after the deadlines established in subsections (2) and (3) of this section but before ecology approval, retraining or recertification can be postponed until the next retraining or recertification cycle as established by the facility.

(8) Training and certification program approval is valid for five years.

The facility must document changes to the facility's program and make the documentation available to ecology upon request.

(9) Ecology may perform announced and unannounced inspections at facilities to verify compliance.

(10) When evaluating programs for Class 2 facilities, ecology must consider the following at a minimum:

(a) The requirements in WAC 173-180-530 and 173-180-550;

(b) The volume and type of oil(s) handled by the facility, and frequency of oil-handling operations;

(c) Number of facility personnel;

(d) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators; and

(e) Inspection reports.

(11) If approved, ecology will send a certificate of approval to the Class 2 facility. The certificate will include the terms of approval, including expiration dates pursuant to subsection (6) of this section.

(12) Ecology may conditionally approve a training and certification program by requiring a Class 2 facility owner or operator to operate with specific precautionary measures until unacceptable components of the program are resubmitted and approved.

(13) A Class 2 facility must have thirty calendar days after ecology gives notification of conditional status to make the required changes, with the option for an extension at ecology's discretion. Facilities which fail to meet conditional requirements or make required changes in the time allowed must lose conditional approval status.

(14) If approval is denied or revoked, ecology must send the Class 2 facility owner or operator an explanation of the factors for disapproval and a list of deficiencies. The facility may be subject to penalties identified in chapter 90.56 RCW.

(15) Approval of a training and certification program by ecology does not constitute an express assurance regarding the

adequacy of the program nor constitute a defense to liability imposed under state law.

(16) Ecology may review the facility's training and certification program following any spill, inspection, or drill at the Class 2 facility.

NEW SECTION

WAC 173-180-550 Class 2 facility--Minimum requirements for a certification program. The Class 2 facility certification program must have, at a minimum the following contents:

(1) Documentation of a training program developed to meet the requirements in this chapter.

(2) Written certification procedures, including:

(a) Minimum competency requirements to achieve certification;

(b) The process to evaluate and confirm job competency for key supervisory and operations personnel that must incorporate methods to evaluate and confirm job competency, including:

(i) Written examinations, or oral examinations documented in writing, which test general knowledge about training topics identified under WAC 173-180-530, with an appropriate passing score established by the facility;

(ii) A practical evaluation of understanding and performance of routine and emergency operations specific to a position's job function, including:

(A) Observation of performance of each oil-handling, transfer, storage, and monitoring duty assigned to a position prior to unsupervised performance of that duty; and

(B) Practice exercises involving procedures to prevent a spill during abnormal operations events;

(c) The Class 2 facility must maintain written records for key supervisory and operations personnel, which have met the facility's certification requirements. These records must document:

(i) The certified individual's name and position;

(ii) Types and hours of training completed;

(iii) Name of training course and signature of the trainer upon completion of the course;

(iv) Results of performance tests and evaluations; and

(v) Copy of certificate demonstrating the individual is certified;

(d) The process to issue and track certificates confirming certification;

(e) All certified personnel must carry proof of certification during oil transfer operations;

(f) Company policies regarding how the facility will manage key supervisory or operations personnel who lose or lack certification.

PART F: PREVENTION PLANS FOR CLASS 1 FACILITIES

NEW SECTION

WAC 173-180-600 Applicability of Part F. Part F only applies to Class 1 Facilities. Ecology has not adopted prevention plan requirements for Class 2, 3, or 4 facilities.

NEW SECTION

WAC 173-180-610 Plan preparation. (1) Each onshore and offshore facility must prepare a plan for prevention of oil spills from the facility into the waters of the state, and for the protection of fisheries and wildlife, other natural resources, and public or private property from oil spills.

(2) Plans must be thorough and contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of this chapter.

(3) Spill prevention countermeasure and control plans, operation manuals, and other prevention documents which meet federal requirements under 33 CFR 154, 33 CFR 156, 40 CFR 109, 40 CFR 112, or the Federal Oil Pollution Act of 1990 may be submitted to satisfy plan requirements under this chapter if ecology deems that such federal requirements equal or exceed those of ecology, or if the plans are modified or appended to satisfy plan requirements under this chapter.

(4) Plans which meet requirements of other states may be submitted to satisfy plan requirements under this chapter if ecology deems that such state requirements equal or exceed those of ecology, or if the plans are modified or appended to satisfy plan requirements under this chapter.

(5) Prevention plans may be combined with contingency plans required by chapter 173-182 WAC.

(6) Plans, when implemented, must be designed to be capable of providing the best achievable protection from damages caused by the discharge of oil into the waters of the state. At a minimum, plans must meet the criteria specified in this chapter.

NEW SECTION

WAC 173-180-620 Plan format requirements. (1) Plans must be organized in a format which provides easy access to prevention information. Plans must be divided into a system of chapters and sections. Chapters and sections must be numbered and identified with a system of index tabs.

(2) Plans must be formatted to allow replacement of chapter and appendix pages with revisions, without requiring replacement of the entire plan.

(3) If combined with a contingency plan, the prevention plan must be clearly separated from contingency plan elements.

(4) Prevention plan content requirements specified in WAC 173-180-630 are presented in suggested but not requisite order.

(5) Computerized plans, in addition to a hard copy, may be submitted to ecology.

NEW SECTION

WAC 173-180-630 Plan content requirements. (1) Each plan must contain a submittal agreement which:

(a) Includes the name, address, and phone number of submitting party;

(b) Verifies acceptance of the plan by the owner or operator of the facility by either signature of the owner or operator or signature by a person with authority to bind the corporation which owns or operates the facility;

(c) Commits the owner or operator of the facility to execution of the plan, and verifies that the plan holder is authorized to make appropriate expenditures in order to execute plan provisions; and

(d) Includes the name, location, and address of the facility, type of facility, starting date of operations, types of oil(s) handled, and oil volume capacity.

(2) Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that ecology was notified of the amendment pursuant to WAC 173-180-670, and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Each plan must include a detailed table of contents based on chapter, section, and appendix numbers and titles, as well as tables and figures.

(4) Each plan must describe its purpose and scope, including, but not limited to:

(a) The onshore facility or offshore facility operations covered by the plan;

(b) The relationship of the prevention plan to other oil spill plans and operation manuals held by the facility;

(c) The relationship of the plan to all applicable local, state, regional, tribal, and federal government prevention plans, including the Washington statewide master oil and hazardous substance spill contingency plan; and

(d) Information required under facility oil spill contingency plan standards in chapter 173-182 WAC; spill prevention, countermeasure, and control plan standards in 40 CFR 112.4(a); or facility operations manual standards in 33 CFR 154.310(1-4) may be used to address (a) of this subsection.

(5) Each plan must describe the procedures and time periods for updating the plan and distributing the plan and updates to appropriate parties.

(6) Each plan must establish that the facility is in compliance with the Federal Oil Pollution Act of 1990. Within thirty calendar days after federal deadlines for facility requirements under that act, the plan must be updated to include any applicable evidence of compliance.

(7) Within thirty calendar days after evidence of financial responsibility is required by rules adopted by ecology pursuant to chapter 88.46 RCW, the plan must be updated to include any applicable evidence of compliance.

(8) Each plan must describe the types and frequency of spill prevention training provided to personnel.

(9) Each plan must provide evidence that the facility has an approved oil spill contingency plan or has submitted a contingency plan to ecology in accordance with standards and deadlines established by chapter 173-182 WAC.

(10) Each plan must address the facility's alcohol and drug use awareness and treatment program for all facility personnel.

(a) The plan must include at a minimum:

(i) Documentation of an alcohol and drug awareness program. The awareness program must provide training and information materials to all employees on recognition of alcohol and drug abuse; treatment opportunities, including opportunities under the Alcohol and Drug Addiction Treatment and Support Act pursuant to chapter 388-800 WAC; and applicable company policies;

(ii) A description of the facility's existing drug and alcohol treatment programs; and

(iii) A description of existing provisions for the screening of supervisory and key employees for alcohol and drug abuse and related work impairment.

(b) Evidence of conformance with applicable federal "Drug-Free Workplace" guidelines or other federal or state requirements may be used to address (a) of this subsection.

(11) Each plan must describe the facility's existing maintenance and inspection program.

(a) The description must summarize:

(i) Frequency and type of all regularly scheduled inspection and preventive maintenance procedures for tanks; pipelines; other key storage, transfer, or production equipment, including associated pumps, valves, and flanges; and overpressure safety devices and other spill prevention equipment;

(ii) Integrity testing of storage tanks and pipelines, including but not limited to frequency; pressures used (including ratio of test pressure to maximum operating pressure, and duration of pressurization); means of identifying that a leak has occurred; and measures to reduce spill risk if test material is product;

(iii) External and internal corrosion detection and repair;

(iv) Damage criteria for equipment repair or replacement; and

(v) Any other aspect of the maintenance and inspection program.

(b) The plan must include a current index of maintenance and inspection records of the storage and transfer facilities and related equipment.

(c) Documentation required under 40 CFR 112.7(e) or 33 CFR 154 Subparts C and D may be used to address elements of this subsection.

(d) Existing copies of the facility's maintenance and inspection records for the five-year period prior to plan submittal must be maintained and must be available for inspection if requested by ecology. The plan must document the use of a system to maintain such records over a five-year period for subsequent activity.

(12) Each plan must describe spill prevention technology currently installed and in use, including:

(a) Tank and pipeline materials and design;

(b) Storage tank overflow alarms, low level alarms; tank overflow cut-off switches; automatic transfer shutdown systems; methods to alert operators; system accuracy; and tank fill margin remaining at time of alarm activation in terms of vertical distance, quantity of liquid, and time before overflow would occur at maximum pumping rate; documentation required under 40 CFR 112.7(e)(2)(viii) or 33 CFR 154.310(a)(12-13) may be used to address some or all of these elements;

(c) Leak detection systems for both active and nonactive pipeline conditions, including detection thresholds in terms of duration and percentage of pipeline flow; limitations on system performance due to normal pipeline events; and procedures for operator response to leak alarms;

(d) Documentation required under 40 CFR 112.7(e)(3) may be used to address some or all of these elements;

(e) Rapid pump and valve shutdown procedures, including means of ensuring that surge and over-pressure conditions do not occur; rates of valve closure; sequence and time duration (average and maximum) for entire procedure; automatic and remote control capabilities; and displays of system status for operator use;

(f) Documentation required under 40 CFR 112.7(e)(3) may be used to address some or all of these elements;

(g) Methods to minimize post-shutdown residual drain-out from pipes, including criteria for locating valves; identification of all valves (including types and means of operation) that may be open during a transfer process; and any other techniques for reducing drain-out;

(h) Means of relieving pressure due to thermal expansion of liquid in pipes during quiescent periods;

(i) Secondary containment, including capacity, permeability, and material design;

(j) Documentation required under 40 CFR 112.7(e)(1) and (2)(iii-iv) may be used to address some or all of these elements;

(k) Internal and external corrosion control coatings and monitoring;

(l) Storm water and other drainage retention, treatment, and discharge systems, including maximum storage capacities and identification of any applicable discharge permits;

(m) Documentation required under 40 CFR 112.7(e)(1) and (2)(iii and ix) may be used to address some or all of these elements; and

(n) Criteria for suspension of operations while leak detection or other spill control systems are inoperative.

(13) Each plan must describe measures taken to ensure facility site security, including:

(a) Procedures to control and monitor facility access;

(b) Facility lighting (documentation required under 33 CFR 154.570 may be used to address some or all of this element);

(c) Signage; and

(d) Right of way identification or other measures to prevent third-party damage (documentation required under 40 CFR 112.7(e)(3)(v) and (9) may be used to address some or all of this element).

(14) Each plan must list any discharges of oil in excess of twenty-five barrels (one thousand fifty gallons) to the land or waters of the state which occurred during the five-year period prior to the plan submittal date. For each discharge, the plan must describe:

(a) Quantity;

(b) Type of oil;

(c) Geographic location;

(d) Analysis of cause, including source(s) of discharged oil and contributing factors (e.g., third party human error, adverse weather, etc.); and

(e) Measures taken to remedy the cause and prevent a reoccurrence.

The period between July 1, 1987, and January 1, 1993, the facility must provide existing information regarding (a) through (e) of this subsection for such discharges, and must document the use of a system to record complete information for subsequent discharges.

(15) Each plan must include a detailed and comprehensive analysis of facility spill risks based on the information required in subsections (11) through (14) of this section, and other relevant information.

(a) The risk analysis must:

(i) Evaluate the construction, age, corrosion, inspection and maintenance, operation, and oil spill risk of the transfer, production, and storage systems in the facility, including piping, tanks, pumps, valves, and associated equipment;

(ii) Evaluate spill minimization and containment systems within the facility;

(iii) Be prepared under the supervision of (and bear the seal of) a licensed professional engineer or another individual which ecology has deemed to have an acceptable level of expertise.

(b) Documentation required under 40 CFR 112.7(b) and (e) may be used to address some or all of the elements of this subsection.

(16) Each plan must describe how the facility will incorporate those measures that will provide best achievable protection to address the spill risks identified in the risk analysis required in subsection (15) of this section.

Information documented pursuant to 40 CFR 112.7(e) and 33 CFR 154.310(a)(1-4) may be used to address some or all of these elements of this subsection.

(17) If the prevention plan is combined with a contingency plan, the prevention plan may incorporate information required in this section by reference if that information is provided in the contingency plan.

NEW SECTION

WAC 173-180-640 Plan submittal. (1) Any onshore or offshore facility that first begins operating after the deadlines stated in this subsection must submit a plan to ecology at least sixty-five calendar days prior to the beginning of operations.

(2) Three copies of the plan and appendices must be delivered to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Prevention Plan Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
300 Desmond Drive
Lacey, WA 98503

(3) Onshore and offshore facility plans may be submitted by:

(a) The facility owner or operator; or

(b) A primary response contractor approved by ecology pursuant to chapter 173-182 WAC in conformance with signature requirements under WAC 173-180-630(1).

(4) A single plan may be submitted for more than one facility, provided that the plan meets the requirements in this chapter for each facility listed.

(5) The plan submitter may request that proprietary information be kept confidential under RCW 43.21A.160.

NEW SECTION

WAC 173-180-650 Plan review and approval. (1) Ecology must endeavor to review each plan in sixty-five calendar days. If the plan is submitted in conjunction with a contingency plan required under chapter 173-182 WAC, ecology may extend the prevention plan review period an additional sixty-five calendar days. Upon receipt of a plan, ecology must evaluate promptly whether the plan is incomplete. If ecology determines that a plan is incomplete, the submitter must be notified of deficiencies. The review period will not begin until ecology receives a complete plan.

All prevention plans will be valid for no more than five years from the date on the approval letter. Ecology will review prevention plans to ensure compliance with this chapter.

(2) Ecology must regularly notify interested parties of any prevention plans, which are under review by ecology, and make plans available for review by all ecology programs, other state, local, tribal, and federal agencies, and the public. Ecology must accept comments on the plan from any interested party during the first thirty calendar days of review by ecology.

(3) A plan must be approved if, in addition to meeting criteria in WAC 173-180-530, it demonstrates that when implemented, it can:

(a) Provide best achievable protection from damages caused by the discharge of oil into the waters of the state;

(b) Minimize the likelihood that facility oil spills will occur;

(c) Minimize the size and impacts of those facility oil spills which do occur; and

(d) After the adoption of facility operation standards by rule by ecology pursuant to RCW 90.56.220:

(i) Provide for compliance with prevention standards and deadlines established by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220; and

(ii) Provide, to the maximum extent practicable, protection from oil spill risk factors identified in the risk analysis required by WAC 173-180-630, for those risk factors not addressed by facility operations standards adopted by rule by ecology pursuant to RCW 90.56.220.

(4) When reviewing plans, ecology must, in addition to the above criteria, consider the following at a minimum:

(a) The volume and type of oil(s) addressed by the plan;

(b) The history and circumstances of prior spills by similar types of facilities, including spill reports by ecology on-scene coordinators;

(c) Inspection reports;

(d) The presence of hazards unique to the facility, such as seismic activity or production processes;

(e) The sensitivity and value of natural resources within the geographic area covered by the plan; and

(f) Any pertinent local, state, tribal, federal agency, or public comments received on the plan.

(5) Ecology may approve a plan based upon an expedited review pursuant to criteria set out in this chapter, if that plan has been approved by a federal agency or other state which ecology has deemed to apply approval criteria which equal or exceed those of ecology.

(6) Ecology must endeavor to notify the facility owner or operator within five working days after the review is completed whether the plan has been approved.

(a) If the plan receives approval, the facility owner or operator must receive a certificate of approval describing the terms of approval, including an expiration date.

(b) Ecology may conditionally approve a plan by requiring a facility owner or operator to operate with specific precautionary measures until unacceptable components of the plan are resubmitted and approved.

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

(ii) A plan holder must have thirty calendar days after ecology gives notification of conditional status to submit to ecology and implement required changes, with the option for an extension at ecology's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(c) If plan approval is denied or revoked, the facility owner or operator must receive an explanation of the factors for disapproval and a list of deficiencies. The facility must not continue oil storage, transfer, production, or other operations until a plan for that facility has been approved.

(d) Ecology's decisions under this chapter are reviewable in superior court.

(e) If a plan holder demonstrates an inability to comply with an approved prevention plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(i) Place conditions on approval pursuant to (b) of this subsection; or

(ii) Revoke its approval pursuant to (c) of this subsection.

(f) 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.

(7) Ecology must prepare a manual to aid ecology staff responsible for plan review. This manual must be made available to plan preparers. While the manual will be used as a tool to conduct review of a plan, ecology will not be bound by the contents of the manual.

(8) Ecology must work with the office of marine safety to ensure that no duplication of regulatory responsibilities occurs in the review of prevention plans from marine facilities.

NEW SECTION

WAC 173-180-660 Plan maintenance and use. (1) Each facility covered by the plan must conspicuously locate copies of the plan within the facility to ensure that a copy of the plan is immediately accessible to all facility personnel involved in supervising or implementing oil handling operations.

(2) Facilities must ensure that all employees involved in oil transfer, production, or storage operations are familiar with the plan provisions through regular training. Orientation materials for new employees involved in oil transfer, production, or storage operations must contain a copy of the plan.

NEW SECTION

WAC 173-180-670 Plan update timeline. (1) Ecology must be notified in writing as soon as possible and prior to completion of any significant change which could affect the plan. If the change will reduce the facility's ability to implement the plan, the plan holder must also provide a schedule for the return of the plan to full implementation capability.

(a) A significant change includes, but is not limited to:

(i) A change in the owner or operator of the facility;

(ii) A change in the types of oil handled at the facility;

(iii) A five percent or greater change in the facility's oil handling capacity;

(iv) Noncompliance with the Federal Oil Pollution Act of 1990;

(v) Noncompliance with state financial responsibility requirements developed under chapter 88.40 RCW; and

(vi) A substantial change in oil spill prevention technology installed at the facility, or other substantial changes to facility equipment, operations, personnel procedures, or any other change, including compliance with amended or new rules adopted by ecology, which substantially affects the level of risk described pursuant to WAC 173-180-630.

(b) Changes which are not considered significant include, but are not limited to, minor variations (less than five percent) in oil handling capacity, maintenance schedules, and operating procedures, provided that none of these changes will increase the risk of a spill.

(c) The facility must update the plan's list of discharges, as required by WAC 173-180-630, within thirty calendar days after an oil discharge by the facility in excess of twenty-five barrels (one thousand fifty gallons).

(d) A facsimile will be considered written notice for the purposes of this subsection.

(e) Failure to notify ecology of significant changes must be considered noncompliance with this chapter and subject to enforcement provisions of chapter 90.56 RCW.

(2) If ecology finds that, as a result of the change, the plan no longer meets approval criteria pursuant to WAC 173-180-650, ecology may, at its discretion, place conditions on approval or revoke approval in accordance with WAC 173-180-650. Ecology may also require the plan holder to amend its plan to incorporate the change.

(3) Within thirty calendar days of making a change to the prevention plan, the facility owner or operator must distribute the amended page(s) of the plan to ecology and other plan holders.

(4) Plans must be reviewed by ecology at least every five years pursuant to WAC 173-180-650. Plans must be submitted for reapproval unless the plan holder submits a letter requesting that ecology review the plan already in ecology's possession. The plan holder must submit the plan or such a letter at least sixty-five calendar days in advance of the plan expiration date.

(5) Ecology may require a new review and approval process for a prevention plan following any spill at the facility.

PART G: OIL TRANSFER RESPONSE PLANS

NEW SECTION

WAC 173-180-700 Applicability of Part G. Part G applies to Class 1 and 2 facilities. Ecology has not adopted oil transfer response plan requirements for Class 3 and 4 facilities.

NEW SECTION

WAC 173-180-710 Class 1 facility--Contingency plans. Class 1 facilities must have an approved contingency plan as required in chapter 173-182 WAC contingency plan, drill program, and response contractor standards.

The Class 1 facility may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

NEW SECTION

WAC 173-180-720 Class 2 facility--Oil transfer response plans. Class 2 facilities must have an approved oil transfer response plan (response plan) as required in Part G of this chapter.

The Class 2 facility may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

NEW SECTION

WAC 173-180-730 Class 2 facility--Contents of the oil transfer response plan (response plan). (1) All Class 2 facilities that transfer oil to a nonrecreational vessel must prepare and submit to ecology an oil transfer response plan (response plan) that meets the requirements of 33 CFR Part 154, Subpart F.

(2) In addition to the requirements in subsection (1) of this section, all Class 2 facilities response plans must include all of the following:

(a) A description of how the Class 2 facility meets the requirements in WAC 173-180-220;

(b) The spill response contractor the facility lists in the response plan must also be a state approved primary response contractor under WAC 173-182-800;

(c) A statement that the facility will participate in unannounced drills as described in Part H of this chapter;

(d) A description of how the facility will meet the training exercise program in 33 CFR 154.1050 and 154.1055 as well as the drill requirements in WAC 173-180-810; and

(e) A form the Class 2 facility must use to provide initial and follow-up spill notification as required in 33 CFR 154.1035 and includes notification information for state agencies as required in RCW 90.56.280.

NEW SECTION

WAC 173-180-740 Class 2 facility--Response plan submittal. (1) For a Class 2 facility that begins operations after the effective date of this chapter, the Class 2 facility must submit a response plan at least ninety calendar days prior to conducting the first oil transfer operation to a nonrecreational vessel for that facility.

(2) For a Class 2 facility operating on the effective date of this chapter, must submit the response plan at least ninety calendar days of the effective date of this chapter.

(3) The Class 2 facility owner or operator must deliver two paper copies and one electronic copy of the response plan to:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program

Response Plan Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Response Plan Review
300 Desmond Drive
Lacey, WA 98503

NEW SECTION

WAC 173-180-750 Class 2 facility--Response plan review and approval. (1) Upon receipt of the complete response plan ecology must review the response plan and then ecology will notify the Class 2 facility if ecology:

(a) Approved the response plan.

(b) Found deficiencies in the response plan.

(2) If ecology approves a response plan, ecology will send a letter indicating approval and will include an expiration date for the response plan.

(3) If ecology finds deficiencies in the response plan, ecology may grant conditional approval of a response plan by requiring the facility to operate with specific precautionary measures until the facility submits acceptable provisions of the response plan and ecology approves the response plan.

(4) If ecology grants conditional approval, ecology will:

(a) Send notice to the facility describing the deficiencies;

(b) Provide the facility with a due date by which the facility must address the deficiencies; and

(c) Provide precautionary measures the facility must implement until ecology grants full approval of the response plan.

(5) If a facility receives conditional approval, the Class 2 facility must submit and implement required changes to ecology within the due date, with the option for an extension at ecology's discretion. Plan holders who fail to meet conditional requirements or provide required changes in the time allowed must lose conditional approval status.

(6) Upon receiving the information required by conditional approval, ecology will complete the review.

NEW SECTION

WAC 173-180-760 Class 2 facility--Response plan update and timeline. (1) The facility is required to keep the response plan up-to-date with accurate information.

(2) Whenever changes are made to the response plan, two paper copies and one electronic of the changed sections must be submitted to ecology to be placed in the facility's plan on file at ecology.

(3) Ecology must review the facility's oil transfer response plan every five years.

(a) The facility must submit two paper copies or one electronic copy of the response plan for reapproval; or

(b) The facility may submit a letter to ask ecology to review the response plan that is currently on file at the agency.

(4) The facility must submit the response plan or letter at least ninety calendar days in advance of the expiration date of the response plan.

(5) Ecology may review and request changes to your response plan following any oil spill, inspection, or drill.

NEW SECTION

WAC 173-180-770 Class 2 facility--Response plan maintenance and use. The Class 2 facility must keep the response plan at each transfer location as well as the primary place of business.

PART H: DRILL PROGRAM

NEW SECTION

WAC 173-180-800 Applicability of Part H. (1) Part H applies to Class 2 facilities only.

(2) Drill requirements for Class 1 facilities are in chapter 173-182 WAC.

NEW SECTION

WAC 173-180-810 Type of drills. In addition to the National Preparedness for Response Exercise Program, ecology may conduct the following unannounced drills at Class 2 facilities:

Type of Drill	Drill Expectations and Duration
Deployment drills	These drills may involve testing whether or not the facility can deploy personnel, boom, recovery, and storage equipment as described in WAC 173-180-222.
Notification and emergency shutdown procedure drills	These drills may involve testing the facility's ability to follow the notification in the response plan and emergency shutdown procedures described in the operations manual.

NEW SECTION

WAC 173-180-820 Unannounced drills for Class 2 facilities. (1) Ecology will evaluate these drills.

(2) At the start of the unannounced drill, ecology will notify the Class 2 facility of the drill objectives, expectations and scenario.

(3) The Class 2 facility may request to be excused from an unannounced deployment drill if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If ecology approves the request, ecology will call the drill on another date.

(4) Ecology will provide the facility with a drill evaluation. If deficiencies are found during the drill, ecology may require a redrill after the facility corrects the deficiencies.

Appendix II
Copy of 2 focus sheets developed to assist in rule making

Frequently Asked Questions about

Proposed Oil Transfer Rules

Overview

The 2004 Legislature adopted a “zero spills” goal for the state and required Ecology to increase our role during oil transfers. In addition Ecology was mandated to develop standards for pre-booming oil transfers and oil spill prevention alternatives. In complying with this mandate we are in the process of rulemaking to develop two new rules for vessels (WAC 317-40) and facilities (WAC 173-80). The following FAQ will help identify some key areas of the new rules.

Q: *What is the new classification of facilities?*

A: All facilities that transfer oil in bulk over the water with non-recreational vessels will now be classified in 1 of 4 ways and each of these classes are properly defined in WAC 172-180-025. The new classification system will help identify each facility for the purpose of scaling the requirements for compliance with the new rules.

- Class 1 facilities conduct transfers with tank vessels or transmission pipelines like the oil refineries and large tank farms.
- Class 2 facilities are tank trucks, railcars, and any other portable tanks used to transfer oil to or from any non-recreational vessel regardless of size or capacity.
- Class 3 facilities conduct transfers with a non-recreational vessel with a total oil capacity of 10, 500 gallons or greater. Class 3 facilities are also regulated by the Coast Guard but do not transfer with tank vessels or pipelines.
- Class 4 facilities are marinas or marine fuel outlet that transfer oil with a non-recreational vessel with a total oil capacity under 10, 500 gallons and doesn't meet any of the other classification criteria

Q: *I own or operate a vessel. What rules apply to me?*

A: The rules do apply if you own or operate a non-recreational vessel and conduct oil transfers with any class facility or another non-recreational vessel. Non-recreational vessels that *receive* oil must comply with any facility requirements asked of them and any non-recreational vessel *delivering* oil must meet the requirements of the vessel oil transfer standards. These rules do not apply to the owner or operator of a vessel being used for personal pleasure.

Q: *What is pre-booming?*

A: Pre-booming is boom deployed in the water, surrounding the vessel and transfer area directly involved in the transfer operation. Pre-boom is done prior to the movement of oil to provide for maximum containment in an event of oil spill. The Transfer Containment and Recovery Standards section found in the facility and vessel rules pertains to the "pre-booming" requirements.

Q: *What is Rate A and Rate B and what is the difference between them?*

A: Rate A: oil transfers operations at a rate over 500 gallons per minute.

Rate B: oil transfer operations at a rate of 500 gallons per minute or less.

Rate A deliverer have a greater level of response and recovery requirements for each oil transfers. Rate A deliverers must also determine beforehand the threshold determination of safe and effective for each transfer location for personnel to use to assist in making the safe and effective determination.

Q: *Who is required to pre-boom?*

A: Any delivering person transferring oil greater than 500 gallons per minute (Rate A) must preboom if it is safe and effective to do so. Rate B deliverers may choose to pre-boom or deploy response boom after a spill.

Q: *What is Advance Notice of Oil Transfers and what information is required?*

A: Ecology is requiring 24 hours advance notice of transfers (except from Class 4 facilities) to allow us to schedule inspections of transfers around the state. The notification is in accordance with current Coast Guard requirements. Ecology is developing a web based form to consolidate the reporting. This method of reporting will ease the burden on those required to provide the notice and reduce paperwork for Ecology and Coast Guard as well. The following information will be required in the notification:

- Who is transferring oil
- What oils are being transferred
- When the transfer is occurring
- Where the transfer takes place
- How long the transfer will take

• Will pre-booming be require

Q: *How long will I have to comply with these rules?*

A: The compliance schedule varies for the section of the rule and the type of operation. Generally, most requirements are 90 days from the effective date of the rules; however, there are some significant requirements that are different.

• Advance notice of transfer from the deliverer is required 30 days from the effective date of the rule

• Safe and effective threshold determination report for delivering vessels is due for approval 180 days from the effective date of the rule

• Safe and effective threshold determination for delivering facilities is due with the Operations Manual

• Alternative compliance is due from Rate A and B deliverers 120 days before planned alternative operation.

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.

Focus on Marinas and Fuel Transfers to Non-Recreational Vessels

There are over 2000 commercial vessels in Washington that fuel at marinas on rivers and coastal communities around the state. In our experience, leaks, drips and spills inadvertently occur all too frequently during small vessel fueling. There may be a cultural belief that a small sheen upon the water causes no harm to the environment, yet the cumulative impact of small spills (considered non-point pollution because a source is not always located) can be significant to this state. In 2004 the Washington State Legislature set an ambitious goal of “Zero Oil Spills to Water.” Ecology's strategy is to develop a plan that will provide adequate and full protection against oil spills in ways that do not impose onerous costs on businesses.

A rule advisory committee was formed as a collaborative effort to write an oil transfer rule and meetings began in November 2004. Through this process, we are actively promoting cooperation between state, federal and tribal governments, industry, and local environmental and community groups to encourage the incorporation of experience and resources for effective development of an oil transfer rule. With a new rule in place, we believe that spills will be eliminated; response capability will be increased to protect Washington’s citizens, wildlife, and natural resources from the environmental hazards of oil transfer spills.

Q: Why is Ecology developing an oil transfer plan rule?

A: The 2004 legislature requires us to safeguard role during oil transfers through rules on response equipment and improved prevention measures. These rules must be finished by June 2006. We just completed a study on oil transfer practices in Washington and provided the information to the Legislature. A copy of the study can be found at www.ecy.wa.gov/biblio/0508005.html or by calling 360-407-7455.

Q: How does this rule affect marinas?

A: Almost 80 percent of Washington State’s 350 private and public marinas are located along the shores of Puget Sound or the inland rivers. Marinas fuel more than 2000 fishing vessels (Department of Licensing) and more than 165,000 power boats and 21,500 sailboats (Puget Sound Action Team 2005). The draft rules will include requirements for transfer facilities including marinas, vessels, ships, refineries, mobile facilities and other oil transfer terminals. The requirements vary accordingly to the type and volume of oil being transferred. As a marina, you may be required to have oil spill response equipment on site and training for your staff on its use. We plan to allow you time to phase in all new requirements.

Q: How does this new rule offer greater protection for our environment?

A: Improving prevention techniques such as communication of the critical

operations of an oil transfer, greater training requirements, increased management oversight, better equipment located on site, and increasing monitoring of transfers from Ecology are just some of the areas we have to improve protection. Prevention, preparedness and response to oil spills, on every level, are critical in protection of our pristine natural resources.

Q: How Can I Be Involved in the Rule Amendment Process?

A: Ecology will actively seek ideas for issues that need to be addressed in the rule revision. 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: *Jason Reichert, Department of Ecology, Spill Prevention, Preparedness, & Response, PO Box 47600, Olympia WA 98504-7600 or email: jare461@ecy.wa.gov*

If you need this information in an alternate format, please contact Spills Program at 360-407-7455. If you are a person with a speech or hearing impairment, call 711 or 1-800-833-6388 for TTY.