

WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

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

CONCISE EXPLANTORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF

Chapter 173-184 WAC, Vessel Oil Transfer Advanced Notice and Containment Requirements

09/25/2006

Publication: 06-08-026

As required by the Washington State Administrative Procedures Act, RCW 34.05.

CONCISE EXPLANTORY STATEMENT
AND
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FOR THE ADOPTION OF

CHAPTER 173-184 WAC, VESSEL OIL TRANSFER ADVANCE NOTICE AND
CONTAINMENT REQUIREMENTS

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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 has established a goal of zero oil spills in Washington State waters (*Laws of 2004, ch. 226, § 1*). As part of this goal, the legislature granted Ecology the authority to regulate the transfer of oil from vessels and facilities on or over waters of the state under RCW 88.46.160 and 88.46.165 and directed Ecology to adopt oil transfer rules by the summer of 2006. Following this direction, Ecology has adopted minimum standards for safe oil transfer operations for vessels in Washington State waters, chapter 173-184 WAC. Facility transfer rules are set forth in a different chapter.

As required by RCW 88.46.165, this chapter uses a scaled approach to set minimum standards for safe oil transfers to protect people and the environment from oil spills. Recognizing that even with a zero spill goal oil spills will still occur, this rule also attempts to minimize the size and impacts of those oil spills which do occur. The chapter also emphasizes that it is the obligation of vessel owners and operators to adopt company policies that improve the safety of oil transfers.

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

Unless otherwise specified, the effective date is 31 days after the rule is filed with the Code Reviser.

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

II. Describe Differences Between Proposed and Final Rule Language

- ◆ Describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325(6)(a)(ii)):

Ecology originally proposed that new regulations be incorporated into existing Chapter 317-40 WAC. However, during the comment period for the proposed rule changes to WAC 317-40, Ecology received comments from the United States Coast Guard (USCG). In their comments the USCG expressed concerns over portions of the proposed rule changes. Specifically the USCG stated "The rules propose new State regulation in several important areas, with the aim of preventing, preparing for, and response to discharges during oil transfers. Given the shared responsibility of the State and the Federal Government in this respect, it is imperative that we continue to work together to achieve our joint goals of protecting the waters of the State. Many of the proposed

rules, dealing with the subjects of Oil Spill Contingency Plans, responding to discharges, and oil transfer procedures for facilities, for example, are not preempted. However, I am concerned that many of the proposed regulations touch areas of regulation reserved to the Federal Government, as described in the U.S. Supreme Court decision in *US. v. Locke*, 529 U.S. 89 (2000), *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

With the exception of those regulations dealing with Vessel Oil and Hazardous Material Response Plan requirements, promulgated under Section 311(j) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(j), Liability and Compensation requirements, promulgated under Subchapter One of the Oil Pollution Act of 1990, codified at 33 U.S.C. 2701-2720, and oil transfers within waterfront facilities under 33 U.S.C.1225, it is the Coast Guard's position that the existence of a federal regulation on the subject, as well as the absence of any demonstration of a local peculiarity or unique condition justifying State regulation, serves to preempt State regulation of the subject of oil transfer to/from Coast Guard inspected vessels and/or to/from a vessel and a facility. "

Ecology does not necessarily agree with the USCG's legal interpretation of the scope of preemption. However, the concerns raised by the Coast Guard merit additional consideration in light of a recent Massachusetts federal court decision in which the court found that a Massachusetts oil spill prevention law was preempted. *See United States v. Commonwealth of Massachusetts*, -- F.Supp.2d-- (July 24, 2006). It is our understanding that Massachusetts plans to appeal the court's decision to the federal court of appeals. We intend to watch this case closely to help us determine what next steps we, as a State, can take to continue to pursue our vigorous oil spill prevention program and achieve the zero spill goal which we remain committed to. However, in light of the Coast Guard's comments and the Massachusetts' decision, we've opted to focus on the legislative mandate to develop oil transfer containment rules and to close WAC 317-40 and make no changes at this time. Instead, we have moved portions of the proposed rules which raise no preemption concerns to a new chapter, WAC 173-184, and named this chapter "Vessel Oil Transfer Advance Notice and Containment Requirements." We will continue to work with stakeholders to achieve our goals of aggressive and effective oil spill prevention.

The portions of the rule which are now in chapter 173-184 WAC include:

- WAC 173-184-010 Applicability of this chapter.
- WAC 173-184-015 Purpose.
- WAC 173-184-020 Authority.
- WAC 173-184-025 Definitions.
- WAC 173-184-030 Inspections.
- WAC 173-184-035 Drill credit.
- WAC 173-184-040 Noncompliance.
- WAC 173-184-045 Owner and operator responsibilities.
- WAC173-184-050 Severability.
- WAC 173-184-100 Advance notice of transfer.
- WAC 173-184-105 Equivalent compliance plan.
- WAC 173-184-110 Transfer containment and recovery requirements.
- WAC 173-184-115 Rate A Pre-booming and Rate A alternative measures requirements.
- WAC 173-184-120 Rate B Pre-booming and Alternative Measures Requirements.

WAC 173-184-125 Compliance schedule for Pre-booming and Alternative Measures for Rate A and Rate B Transfers.
WAC 173-184-130 Safe and Effective Threshold Determination Report.

Based on comments received from stakeholders, amendments to the above-referenced requirements have been made. The following describes the differences between the proposed rule language in WAC 317-40 and the final rule language as adopted in WAC 173-184, other than editing changes. Sections which do not have a change are not included. The proposed rule language is given first with ~~strikeouts~~ in red indicating language which did not make it into final rule language. The final adopted rule language is then given. All new language is in **blue and bolded** so it can be easily seen. The final rule language is the adopted rule language. For the complete adopted WAC 173-184 please see Appendix 1.

WAC 317-40-010 Applicability of this Chapter.

WAC 173-184-010 Applicability of this Chapter.

Proposed language in draft rule:

1. Except as provided in subsection 2 of this section, this chapter applies to ~~the following bulk oil transfers occurring~~ on or over waters of the state. ~~Any bulk oil transfer to or from a:~~
 - a. Tank vessel;
 - b. Cargo vessel;
 - c. Passenger vessel;
 - ~~d. Facility.~~
2. This chapter does not apply to:
 - a. An oil spill recovery vessel that is engaged in spill response activities.
 - b. The transfer of oil that is within a vessel.
 - ~~c. A lighter operation.~~

Final language as published:

- (1) Except as provided in subsection (2) of this section, this chapter applies to **all vessels delivering oil in bulk** on or over the waters of the state **to the following persons:**
 - (a) Tank vessels;
 - (b) Cargo vessels;
 - (c) Passenger vessels;
 - (d) **Any other nonrecreational vessels;** or
 - (e) **Class 1, 2, and 3** facilities.
- (2) This chapter does not apply to:
 - (a) An oil spill recovery vessel that is engaged in spill response activities;
 - (b) Emergency lightering of vessels to mitigate further damage;**
 - (c) A vessel's internal oil transfers;

- (d) Vacuum trucks used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels, intended for shoreside disposal;
- (e) Public vessels; and
- (f) Fuel transfers from tug to barge for operation of installed machinery.

Rationale:

Ecology added exemptions for emergency lightering, vacuum trucks, public vessels, and fuel transfers from tugs to barges for operation of installed machinery based on comments received from stakeholders. Ecology believes it makes sense to include the above exclusions as they are either operational transfers or emergency transfers that were not intended to be included in the legislative mandate to require prebooming for oil transfers involving non-recreational vessels. Ecology also excluded “public vessels” which are defined to include federal non-commercial vessels. The definition of “public vessel” does not include state-owned vessels.

WAC 317-40-015 Purpose.

WAC 173-184-015 Purpose.

Proposed language in draft rule:

1. This chapter establishes minimum standards for safe oil transfer ~~operations~~ to meet a zero spill goal established by the legislature. This chapter emphasizes:
 - a. Using a scaled approach to protect people and the environment;
 - ~~b. The importance of proper procedures, communication, and monitoring before, during and after oil transfer operations;~~
 - ~~c. That the duties of each person involved in an oil transfer operation are clearly defined; and~~
 - d. It is the vessel owners and operators obligation to adopt company policies that improve the safety of oil transfer operations.
2. The purpose of this chapter is ~~to implement 88.46 RCW Vessel Oil Spill Prevention and Response~~ to regulate the transfer of oil on or over waters of the state.

Final language as published:

- (1) This chapter establishes minimum standards for safe oil transfers to meet a zero spill goal established by the legislature. This chapter emphasizes:
 - (a) Using a scaled approach **that sets standards for safe oil transfers** to protect people and the environment;
 - (b) **That** it is the obligation of vessel and facility owners and operators to adopt company policies that improve the safety of oil transfers;

(c) Minimizing the size and impacts of those oil spills which do occur.

(2) **A second** purpose of this chapter is **the further implementation of chapter 88.46 RCW** to regulate the transfer of oil on or over waters of the state.

Rationale:

Ecology has modified the section on Purpose to reflect the focus of WAC 173-184 on advance notice, and transfer containment and recovery requirements.

WAC 317-40-020 Authority.

WAC 173-184-020 Authority. No changes were made to this section.

WAC 317-40-025 Definitions

WAC 173-184-025 Definitions.

Proposed language in draft rule:

The definition of boatyard is not in the proposed rule language.

Final language as published:

(1) “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 were not intended to be encompassed as Class 3 facility’s operations and the rules now reflect this. A boatyard may provide enough fuel to a small nonrecreational vessel for the vessel to reach a fueling facility. The boatyard is not in the business of regularly conducting oil transfers.

Proposed language in draft rule:

9) "Facility" means:

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

- (i) Transfers oil in bulk to or from a tank vessel or pipeline; and
- (ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

- (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;
- (ii) Underground storage tank regulated by ecology or a local

- government under chapter 90.76 RCW;
- (iii) Motor vehicle motor fuel outlet;
- (iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or
- (v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a tank covered vessel, in a single transaction.

Final language as published:

- (6) **"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 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.
- (7) **"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.**
- (8) **"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.**
- (9) **"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.

Rationale:

For clarity and consistency Ecology has added to the vessel rule the definitions for the classes of facilities as found in the facility oil transfer rule, WAC 173-180. This does not change the definition of a class 1 facility; it defines the other classes of facilities.

For further clarification, boatyard has been added to the list of things that do NOT meet the Class 3 definition.

Proposed language in draft rule:

The definition of public vessel is not in the proposed rule language.

Final language as published:

(21) "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. Public vessels were added to the applicability section under subsection (2) as vessels that are not governed by this chapter.

Proposed language in draft rule:

(23) "Recreational vessel" means a vessel ~~operated for pleasure, which when leased, rented, or chartered to another is used for pleasure.~~

Final language as published:

(22) "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.

WAC 317-40-030 Compliance with federal rule or law. Compliance with federal rule or law was not included in WAC 173-184.

WAC 317-40-035 Inspections.

Proposed language in draft rule:

- (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with RCW 88.46.160.
- (2) To ~~demonstrate~~ compliance with this chapter, ecology may ask for ~~the following~~ documents, ~~as they relate to oil transfers, to be made available for review:~~
 - ~~(a) Official, deck, cargo operations, and engineering logs;~~
 - ~~(b) Written company policies, procedures, and checklists;~~
 - ~~(c) Standing orders;~~
 - ~~(d) Preloading plans or cargo transfer plans;~~
 - ~~(e) Declaration of inspections (DOI);~~
 - ~~(f) Oil transfer procedures;~~
 - ~~(g) Training materials related to oil transfer operations; and~~
 - ~~(h) Any wind speed and direction information and swell height information if it is recorded independently of the deck log book.~~
- (3) ~~Ecology may require the vessel to demonstrate the ability to meet transfer containment and recovery standards in WAC 317-40-110.~~
- (4) Ecology ~~may~~ provide a preliminary inspection report to the owner or operator at the conclusion of the inspection.

Final language as published:

WAC 173-184-030 Inspections

- (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with Chapter 88.46.167 RCW.
- (2) To ensure compliance with this chapter, ecology may ask for documents required by this chapter.
- (3) Ecology **will** provide an inspection report to the vessel at the conclusion of the inspection.

Rationale:

Ecology has removed the portions of the proposed rule language in WAC 317-40-035 Inspection that refer to documents which are not included in WAC 173-184. Also, from comments received Ecology has changed the word “may” to the word “will” in respect to providing an inspection report to the vessel at the conclusion of an inspection. Also, to simplify the rule language, the rule now states that the inspections shall be in accordance with RCW 88.46.167.

WAC 173-184-035 Drill credit.

The owner or operator may request that performance under applicable sections of this chapter be credited for portions of the Contingency Plan drill requirements.

Rationale:

Ecology has added a section on Drill Credits to WAC 173-184. WAC 173-184 does not require delivering vessels to demonstrate the ability to meet the transfer containment and recovery standards in the rule during an inspection. Ecology is, however, providing owners and operators the opportunity to apply for drill credits required in the Contingency Plan by executing performance of these standards.

WAC 317-40-040 Recordkeeping. This section is not included in WAC 173-184.

WAC 317-40-045 Threat of an oil spill. This section is not included in WAC 173-184.

WAC 317-40-050 Oil spills. This section is not included in WAC 173-184.

WAC 317-40-055 Noncompliance. This section is included in WAC 173-184-040. No changes were made to the language in this section.

WAC 317-40-060 Alternative compliance. This section is included in WAC 173-184-105 and renamed Equivalent Compliance Plan. See below under WAC 173-184-105.

WAC 317-40-065 Owner and operator responsibilities. This section is included in WAC 173-184-045. No changes were made to the language in this section.

WAC 317-40-070 Severability. This section is included in WAC 173-184-050. No changes were made to the language in this section.

WAC 317-40-100 Advance notice of transfer.

WAC 173-184-100 Advance notice of transfer.

Proposed language in draft rule:

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

Final language as published:

(1) The delivering vessel (or designee) involved in an oil transfer of more than 100 gallons must provide prior notice of the oil transfer to ecology. The notice must be provided in the time frame set forth by the applicable Coast Guard captain of the port.

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. Statistics show fewer spills from oil transfers when an inspection program is in place.

The proposed rule had more stringent advance notice requirements than the Coast Guard. Several commenters questioned whether Ecology had authority to enact more stringent standards. Ecology believes that it does have this authority under both state and federal law. However, Ecology is aware of the potential difficulty for regulated vessels of complying with different state and federal standards for advance notice of a fuel transfer. Therefore, we've responded to this concern by removing sections of the proposed rule and matching the local Coast Guard requirements for advanced notice. 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.

Ecology agrees with comments by stakeholders that some transfers are more important for Ecology inspectors to attend, based on "risk" and Ecology does not want to place undue regulatory burden on lower risk deliverers. An amendment to this section was made to exempt transfers of less than 100 gallons from making advance notice to Ecology.

Ecology sees these lower-volume transfers as posing a lower risk while the higher risk transfers would be those that have a threat of a larger volume of material spilled. Therefore, larger volume oil transfers 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-based approach.

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 Lloyds Registry/International Maritime Organization (LR/IMO) number** or official number if available.

Rationale:

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

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 based on comments and for ease of reporting.

Proposed language in draft rule:

WAC 317-40-060 Alternative compliance.

(1) Any owner or operator may submit a proposal for alternative compliance for requirements in WAC ~~317-40-110~~ Transfer containment and recovery standards.

(a) Rate A deliverers may only submit an alternative compliance proposal for alternative measures in WAC ~~317-40-110(6)~~.

(b) Rate B deliverers may only submit an alternative compliance proposal for alternative measures in WAC ~~317-40-110(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; and

(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 days before planned operation under this 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:

The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Alternative Compliance Review
P.O. Box 47600
Olympia, WA 98504-7600
Or
The Department of Ecology
Spill Prevention, Preparedness, and Response Program
Alternative Compliance Review
300 Desmond Drive
Lacey, WA 98503

Final language as published:

WAC 173-184-105 Equivalent compliance plan.

(1) Any owner or operator may submit a proposal for equivalent compliance for the alternative measures required in WAC **173-184-115 and 173-184-120**. **Any owner or operator who submits a proposal must preboom or meet the alternative measures until the equivalent compliance plan is approved.**

(a) Rate A (**see WAC 173-184-110**) deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC **173-184-115(7)**.

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC **173-184-120(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; and
 - (iii) Technical feasibility of proposal versus current requirements.
- (3) **Submission timeline of proposed equivalent compliance plan.**

The owner or operator must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under this 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 owner or operator within ninety calendar days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal; and
- (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;
- (b) The equivalent compliance proposal would provide an equivalent or greater level of environmental protection **as the alternative measures required in WAC 173-184-115 and 173-184-120.**

(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

Rationale:

The requirements for this program have not changed substantively and the submittal dates have not changed.

However, amendments were made to this section for clarity and to better ensure compliance.

- *The section was given subtitles for easier readability.*
- *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.*

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 317-40-110 Transfer containment and recovery standards.

For clarity, readability and ease of complying with this rule, Section 317-40-110 was broken into following 5 sections:

- **WAC 173-184-110 Transfer Containment and Recovery Requirements.**
- **WAC 173-184-115 Rate A Prebooming and Rate A Alternative Measures Requirements.**
- **WAC 173-184-120 Rate B Prebooming and Alternative Measures Requirements.**
- **WAC 173-184-125 Compliance Schedule for Prebooming and Alternative Measures for Rate A and Rate B Transfers.**
- **WAC 173-184-130 Safe and Effective Threshold Determination Report.**

WAC 317-40-110 Transfer containment and recovery standards.

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 manufacturer's 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:

(a) If an owner or operator conducting Rate A transfers believes a transfer will not be safe and effective to preboom an oil transfer operation, the owner or operator must: Determine the threshold values when a delivering vessel will not preboom under WAC ~~317-40-110(5)~~ and submit this information in a report to ecology. The information used to support these values must be based upon on-site environmental monitoring data recorded at specific times, dates, and locations. These values and the supporting data must address, at a minimum, the following site specific information during typical oil transfer operations:

(i) Personnel safety;

(ii) Sea state values including typical wave periods;

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

(iv) Wind speed in knots and prevailing directions;

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

(b) The owner or operator must submit the threshold values determination report to ecology for review and approval. Existing delivering vessels must submit the report within one hundred eighty calendar days from the effective date of this chapter. Delivering vessels that begin operating in Washington water after the effective date of this chapter must submit the report at least one hundred twenty days prior to the first oil transfer operation. The report must include, at a minimum, and in the order presented:

- (i) Cover sheet with name of company submitting the report and point of contact information;
- (ii) Table of contents including supporting documents and appendices;
- (iii) A detailed description of the equipment, personnel, operating procedures, and maintenance systems and any other alternatives that are being proposed;
- (iv) 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.
- (c) When reviewing threshold determination reports, ecology must consider the following:
 - (i) Personnel safety;
 - (ii) 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;
 - (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.
- (d) Ecology will make the report available for a thirty-day public review and comment period.
- (e) Ecology will respond to the owner or operator within ninety days of receipt of the threshold values determination report with a letter approving, conditionally approving, or disapproving the report.
- (f) One paper and one electronic copy of the threshold values determination report and appendices must be delivered to:

The Department of Ecology
 Spill Prevention, Preparedness, and Response Program
 Threshold Values Determination Report
 P.O. Box 47600
 Olympia, WA 98504-7600

- (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 vessel conducting Rate A transfers must meet all the requirements of this section except subsection (2) of this section within ~~ninety~~ calendar days from the effective date of this rule.
 - (b) Any vessel conducting Rate B transfers must meet all the requirements of this section within ~~ninety~~ days from the effective date of this rule.
- (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) Have a stand-off of at least five feet from the sides of a vessel;

(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.

(c) 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; and

(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 for containment, protection, or recovery.

Final language as published:

WAC 173-184-110 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 vessels 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: Oil transfer operations at a rate over five hundred gallons per minute. **Rate A requirements are found in WAC 173-184-115.**

(b) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less. **Rate B requirements are found in WAC 173-184-120.**

(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 based on the manufacturer's specifications.

Rationale:

(For clarity, readability, and ease of complying with this rule, proposed Section 317-40-110 has been broken into 5 different sections in Chapter 173-184.) Section 173-184-110 is titled: Transfer Containment and Recovery Requirements. This section describes the standards for determining Rate A transfers and Rate B transfers. These requirements have not changed from the proposed rule language. Subsections (3) and (4) have been included in WAC 173-184-110, but the wording for these subsections has not changed from the proposed language in WAC 317-40-110(1)(d) and (5)(a)(v) respectively.

Final language as published:

WAC 173-184-115 Rate A Prebooming and Rate A Alternative Measures Requirements.

(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 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. This safe and effective determination must use the following threshold values:

(a) Transfers at a class 1 facility must use the class 1 facility's values found in the facility's operations manual - see WAC 173-180-420.

(b) Transfers that do not occur at class 1 facilities must use the values found in the vessel's approved report submitted in accordance with WAC 173-184-130, the Safe and Effective Threshold Determination Report.

(3) When it is not safe and effective or when conditions develop during a preboomed transfer which requires removal of the boom, the Rate A deliverer must report this finding to ecology and meet the alternative measures of 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 meet the alternative measures 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 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 portion of the vessel and transfer area that provides for maximum containment of any oil spilled.**

(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 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.

(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 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) The deliverer must have the ability to safely track an oil spill **in low visibility conditions**. The tracking system must be on-scene within thirty minutes of being made aware of the 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 portion of the vessel and transfer area that provides for maximum containment of any oil spilled**.

(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, readability, and ease of complying with this rule, proposed Section 317-40-110 has been broken into 5 different sections in Chapter 173-184.) Section 173-184-115, Rate A Prebooming 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. **173-184(2)(a)** Transfers at a class 1 facility must use the class 1 facility's values found in the facility's operations manual - see WAC 173-180-420.*

The delivering vessel does not submit Safe and Effective Threshold Determination Reports to Ecology for Class 1 facilities which they deliver to and must use the threshold values Ecology has approved in the class 1 facility's Safe and Effective Threshold Determination Report. 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 173-184-115(4) the word **simultaneously** has been added to the requirement for vessels discharging two or more products during one transfer. This change was made for clarity and safety. The rule 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 317-40-110(5) Rate A prebooming requirements in the proposed rule language required the delivering vessel 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 rule requirements 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 vessels 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 two vessel transfer 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.

Some commenters suggested that, under federal regulations, 1200 feet of boom is the most boom likely to be required based on average vessel length. We disagree to the extent that some vessels may be as long as 1000 feet, so that boom double the length of the vessel (as required by federal law) could be up to 2000 feet. These commenters suggested we change the state requirement to 1200 feet to be consistent with federal regulations. For the reasons described above, we have determined that 1200 feet is insufficient to contain spilled oil in some circumstances and, therefore, it was not possible to implement the statutory “zero spills” goal without requiring up to 2000 feet of boom for transfers involving larger vessels.

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 portion of the vessel and transfer area that provides for maximum containment of any oil spilled.**”*

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 address 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 173-184-120 Rate B Prebooming and Alternative Measures

Requirements. (1) **Rate B prebooming requirements.** The Rate B deliverer must choose to meet either the following prebooming requirements 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) **The Rate B alternative measures requirements.** If a Rate B deliverer 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, readability, and ease of compliance with this rule, proposed Section 317-40-110 has been broken into 5 different sections in Chapter 173-184 WAC.) Section 173-184-120 is titled Rate B Prebooming and Alternative Measures Requirements.

No substantive changes were made to the proposed rule language in WAC 317-40-110. Some amendments to language were made for clarity based on comments received. The portion of the rule giving 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 address 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 173-184-125 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. (1) Any delivering vessel conducting Rate A transfers must meet all the applicable requirements in WAC 173-184-110 and 173-184-115 except WAC 173-184-115(6) within **one hundred twenty calendar days** of the effective date of this chapter.

(2) All Rate A transfers must meet the requirements of WAC 173-184-115(6) within **three hundred sixty-five calendar days** from the effective date of the chapter.

(3) Any delivering vessel conducting Rate B transfers must meet all the applicable requirements in WAC 173-184-**110** and 173-184-**120** within **one hundred twenty calendar days** from the effective date of this chapter.

Rationale:

(For clarity, readability, and ease of compliance with this rule, proposed Section 317-40-110 has been broken into 5 different sections in Chapter 173-184 WAC.) Section 173-184-125 is titled: Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers.

Ecology has made compliance schedule changes based on comments received. 317-40-110(4)(a)(b) proposed 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 (four months). Ecology developed a compliance schedule matrix and, in response to comments, Ecology tried to match equipment requirements with training and report submittal requirements. Ecology used the best determination of its engineering staff to arrive at realistic compliance dates which are consistent throughout the rule requirements. 120 days was determined to be a more realistic and achievable timeframe than the previous 90 days.

Also, in response to many comments, 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. The deliverer must comply with the compliance date for alternative measures and must use these measures until prebooming is equipment is installed and functioning on, or before, the 365 day requirement. The change was made because Ecology determined that the 365 day period was more realistic and achievable.

Final language as published:

WAC 173-184-130 Safe and effective threshold determination report.

Rationale:

(For clarity, readability, and ease of compliance with this rule, proposed Section 317-40-110 has been broken into 5 different sections in Chapter 173-184.) The safe and effective threshold determination requirements which were in proposed rule language WAC 317-40-110(2)(a) have been highlighted by moving them into their own section in 173-184-130. The following are the only two changes made to these requirements:

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

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

These changes were made to ensure clarity and conformity with other compliance date in this chapter.

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)):

Vessel Comments for proposed rule language in WAC 317-40

Section 317-40-010 Applicability of this chapter

Included in 173-184-010 Applicability of this chapter

1. Ecology should add additional categories under paragraph 2.

We are pleased that DOE added an applicability paragraph. This makes it much easier to identify applicability without having to dig it out of the definitions. We recommend that the following additions be made to paragraph (2) under this section – “This chapter does not apply to: (c) The transfer of fuel between a tug and its tow to operate installed equipment or machinery, e.g., generators, pumps, refrigeration units. (d) Vacuum trucks used to pump (remove) bilge slops, waste oil, contaminated ballast water, and contaminated or excess fuel. (e) Emergency lightering of vessels to mitigate further damage or a worsening situation. - 203 Michael Moore

Crowley supports the inclusion of vacuum trucks, transfers between a tug and its tow and emergency lightering of vessels in the subsection (2) list of exclusions. Vacuum trucks perform a necessary service that would be cost prohibitive if the draft rule is adopted in its current form. Vacuum trucks are used to remove waste product and do not pose a risk to the environment. In the event that a vacuum truck loses hose pressure, the product returns to the tank from which it was being pumped. A transfer of fuel between a tug and its tow to operate installed equipment or machinery is an important practice that needs to be excluded from the regulation. It is vital that the tug be allowed to perform these small transfers necessary to conduct business, without first pre-booming the transfer site, notifying the department, or adhering to the other onerous sections of the draft rule. This is a low risk transfer of fuel between a tug and its tow and the increased regulatory burden significantly outweighs any possible benefit the rule may offer. Emergency lightering of vessels to mitigate further damage or a worsening situation should be included in subsection (2) as well. It is important that the department write a rule that gives enough flexibility to industry to prevent a spill or lessen a spill should one occur. There may be situations where emergency lightering would be necessary, and as of now, the draft regulation does not allow for a rapid response to prevent an incident from worsening. – 233 Stephen Wilson

AWO recommends the inclusion of vacuum trucks, transfers between a tug and its tow and emergency lightering of vessels in the subsection (2) list of exclusions. Vacuum trucks are used to remove waste product and do not pose a risk to the environment. In the event that a vacuum truck loses hose pressure, the product returns to the tank from which it was being pumped. Vacuum trucks perform a necessary service that would be cost-prohibitive if the draft rule is adopted in its current form. The transfer of fuel between a tug and its tow to operate installed equipment or machinery is an important practice that needs to be excluded from the regulation. It is vital that the tug be allowed to perform these small transfers necessary to conduct business, without first pre-booming the transfer site, notifying the department, or adhering to the other onerous sections of the draft rule. This is a low risk transfer of fuel between a tug and its tow and

the increased regulatory burden significantly outweighs any possible benefit the rule may offer. Emergency lightering of vessels to mitigate further damage or a worsening situation should be included in subsection (2) as well. It is important that the department write a rule that gives enough flexibility to industry to prevent a spill or lessen a spill should one occur. There may be situations where emergency lightering would be necessary, and as of now, the draft regulation does not allow for a rapid response to prevent an incident from worsening. - 208 Jason Lewis

WSPA recommends that this section be amended as follows: "This chapter does not apply to: (c) The transfer of fuel between a tug and its tow to operate installed equipment or machinery, e.g., generators, pumps, refrigeration units. (d) Vacuum trucks used to pump (remove) bilge slops, waste oil, contaminated ballast water, and contaminated or excess fuel. (e) Emergency lightering of vessels to mitigate further damage or a worsening situation. - 226 Frank Holmes

Response

Section 317-40-010 Applicability has been included in WAC 173-184 as Section 173-184-010 Applicability. Ecology has added the following to subsection (2) list of exclusions: vacuum trucks, transfers between a tug and its tow and emergency lightering of vessels. Ecology believes it makes sense to include the above exclusions as they are either operational transfers or emergency transfers that were not intended to be included in the legislative mandate to require prebooming for oil transfers involving non-recreational vessels.

Section 317-40-020 Authority

Included in 173-184-020 Authority

2. Ecology does not have the authority to board vessels. There are also security issues with boarding vessels.

Crowley believes the department is overstepping its regulatory authority by requiring companies to allow ecology staff to board their vessels to ensure compliance with the regulation. First, the authority to board the vessel is under the domain of the United States Coast Guard. Second, because of security requirements, there are many instances where department personnel would not be allowed to board the vessel. The department needs to take into account the atmosphere in which the maritime industry is operating today in terms of heightened security. It is critical that the rule is written in such a manner as to protect the integrity of existing federal regulations and requirements and security procedures. - 233 Stephen Wilson

We believe that DOE is likely entering in to territory preempted by Federal statute and regulation. These state rules incorporate the Federal regulations by reference, but also repeat and, in many cases, add onto the Federal requirements. On the other hand, we believe that DOE should be working closely with the Coast Guard to "achieve a coordinated and efficient working relationship so as avoid conflict and minimize duplication of effort" as stated in the Memorandum of Agreement on Oil Spill Prevention and Response between the Thirteenth Coast Guard District and the State of Washington. These rules not only duplicate, they add confusion. - 203 Michael Moore

AWO believes the department is overstepping its regulatory authority by requiring companies to allow ecology staff to board their vessels to ensure compliance with the regulation. First, the authority to board the vessel is under the domain of the United States Coast Guard. Second, because of security requirements, there are many instances where department personnel would

not be allowed to board the vessel. The department needs to take into account the atmosphere in which the maritime industry is operating today in terms of heightened security. It is critical that the rule is written in such a manner as to protect the integrity of existing federal regulations, requirements and security procedures. – 208 Jason Lewis

Response

We do not agree that Ecology lacks authority to board vessels as RCW 88.46.167 and 90.56.410 grant Ecology broad authority to board vessels for inspection purposes. When a vessel is within state waters, the State has concurrent jurisdiction with the Coast Guard and the State is entitled to board vessels within state waters and at state ports for the purpose of inspecting for compliance with state law.

Ecology has boarding procedures and guidance for inspectors which include security issues at ports and coordination with the Coast Guard. These issues will not be addressed in this rule.

Section 317-40-025 Definitions

Included in 173-184-025 Definitions

3. The phrase substantial threat needs to be defined.

Substantial threat as discussed in 317-40-045 needs to be defined - 203 Michael Moore

WSPA suggests that the term “substantial threat” be defined in WAC 317-40-025 - 226 Frank Holmes

Response

Section 317-40-045 Threat of an Oil Spill is not included in chapter 173-184 WAC and therefore, the definition for “substantial threat” is not needed.

4. Ecology should define high risk transfers, and persistent and non-persistent oil. These definitions should be used by Ecology in a risk based approach to the rule.

The department should define persistent and non-persistent oil in the definition section. Non-persistent oil should include light diesel, since the risk of long term environmental impact is much lower. These rules need to be risk based and capturing light diesel under the rule does not reflect a risk based approach. – 233 Stephen Wilson

The rules need to define persistent and non-persistent oil as they did in earlier draft versions and as the C-Plan rules still do. Further, the rules should distinguish the difference in risk between these oils and regulate accordingly. - 203 Michael Moore

The proper scaling of the risk for any given transfer cannot be undertaken without properly defining the two basic types of oils that are found in a liquid oil transfer persistent and non-persistent oil. The following definitions should be added to this section: (XX) "Non-Persistent Oil" is an oil which at the time of shipment at least 50 per cent of the hydrocarbon fractions, by volume, distill at a temperature of 340 OC (645 OF), and at least 95 per cent of the hydrocarbon

fractions, by volume, distill at a temperature of 370 OC (700 OF), when tested in accordance with the American Society for Testing and Materials' Method D86178 or any subsequent revision thereof. Non-persistent oils include gasoline, light diesel oil and kerosene. (XX) "Persistent Oil" means petroleum-based oils that do not meet the distillation criteria for non-persistent oils. Oils which are normally classified as persistent include crude oils, fuel oils, heavy diesel and lubricating oils. – 220 Robert Dorn

The department should define persistent and non-persistent oil in the definition section. Non-persistent oil should include light diesel, since the risk of long-term environmental impact is much lower. These rules need to be risk-based and capturing light diesel under the rule does not reflect a risk-based approach. – 208 Jason Lewis

given the oil spill risk associated with Rate B transfers and the cost to benefit relationship for fueling operations such as those performed by WSF, we recommend that Ecology use the definition of persistent oils, contained in federal regulations and in Ecology's proposed contingency plan rules, to add an additional threshold for when pre-booming is required. Specifically, we recommend that Rate B transfers of non-persistent oils be excluded from these pre-booming requirements. The cost to benefit ratio simply does not warrant the expense. – 232 Michael Anderson

The department should also define a "high risk transfer." - 233 Stephen Wilson

The department should also define a "high risk transfer." - 208 Jason Lewis

We believe an attempt should be made to define a "Higher Risk Transfer" as inferred by the Legislature in ESSB 6244 and recommend the following definition be added to this section: (X) "Higher Risk Transfer" means an oil transfer between a facility and vessel, or a vessel and another vessel, which is characterized by at least one of the following elements: (a) Either a vessel or facility involved in the transfer has had an on-water spill in waters of the State in the past 6 months; (b) The transfer is a lightering evolution between two vessels undertaken in conjunction with an emergency response for one of the vessels; - 220 Robert Dorn

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, although it does authorize Ecology to consider the safety of the transfer personnel. Other factors include the legislature's goal of zero spills and reduction of pollution within state waters.

A great deal of thought went into the decision to define risk by transfer rate rather than fuel type 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 more effective the response needs to be for effective cleanup. Conversely, the less persistent the oil is, the more likely the oil spill will require a lesser response or even no response efforts. .

However, research shows that prebooming or quick response with fast spill containment and recovery operations will greatly increase the probability of catching and recovering much of the non-persistent oil in a spill, thereby mitigating impacts from these types of spills. 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 a 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.

We reject the definition proposed by commenter 220 because it captures too few oil spills and does not go far enough in implementing the statutory mandate to utilize containment equipment to mitigate spill impacts during fuel transfers.

5. Gross ton needs to be defined as the “domestic tonnage” the Coast Guard uses.

The definition of “Gross Ton” needs to clearly stipulate that Coast Guard domestic tonnage is used. Washington State has historically used domestic tonnage and that needs to continue with the new regulation. The unintended consequences of changing the tonnage definition would significantly impact the SBEIS and cost benefit analysis. - 233 Stephen Wilson

The definition of “Gross Ton” needs to clearly stipulate that domestic or regulatory tonnage measurement is used. Washington State has historically used domestic tonnage and that needs to continue with the new regulation. The unintended consequences of changing the tonnage definition would significantly impact the SBEIS and cost benefit analysis. – 208 Jason Lewis

Gross Tons -- Need to clearly define that domestic tonnage is used. Washington State has historically used domestic tonnage. A change that might also include gross tonnage under the international tonnage convention will capture significantly more vessels and raise costs substantially beyond the CBA. – 203 Michael Moore

Paragraph 10 is ambiguous as to the tonnage which is applicable for the purpose of these rules. The suggested wording is as follows: (10) "Gross ton" means a vessel's gross regulatory tonnage

(GRT) as shown on the vessel for which the GRT is not listed, the Gross Tons as defined in Title 46 CFR 69 or the "Convention Tonnage" as shown on the International Tonnage Certificate shall apply. – 220 Robert Dorn

Response

The definition included in 173-184-025 for Gross Ton is the same definition that the Coast Guard uses. Ecology has not changed its definition nor use of the term "gross ton".

6. In the definition of oil Ecology sites the wrong table. The reference should be to table 302.4 of 40 CFR part 302 adopted August 14, 1989.

Table 302 adopted August 14, 1989, under section 101(4) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499. Ecology does not accurately site the table that is being referenced. It is believed that Ecology meant to site table 302.4 of 40 CFR part 302 adopted August 14, 1989. Ecology should revise the proposed rule to site the appropriate table. - 202 Michael Crye

Response

Thank you for your comment. Ecology has made the change in the definition of oil. See strike out summary for language changes.

7. The definition for facility is inconsistent with the facility regulations.

(9)(b) – This section defines what a facility is, and is not. It is both confusing and potentially misleading. It talks largely about tank vessel operations. It is inconsistent with the definition found in the facility regulations. It indicates that a facility does not include, among other things, "marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a tank covered vessel, in a single transaction." Section 317-40-010 stipulates that the rules apply to all bulk oil transfers (regardless of quantity) whether to or from vessels and facilities. - 203 Michael Moore

This section defines what a facility is, and is not. It is both confusing and potentially misleading. It talks largely about tank vessel operations. It is inconsistent with the definition found in the facility regulations. It indicates that a facility does not include, among other things, "marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a tank covered vessel, in a single transaction." Section 317-40-010 stipulates that the rules apply to all bulk oil transfers (regardless of quantity) whether to or from vessels and facilities. – 232 Michael Anderson

Response

Thank you for your comment. This language was changed for clarity. The definitions for the different classes of facility are now consistent between this rule and the facility transfer rule. See strike out summary for language changes.

8. The definitions for tank barge, ship and vessel do not accurately reflect the nature of the vessels.

The definitions for Tank Barge, Tank Ship, and Tank Vessel do not accurately reflect the nature of these vessels. WSPA recommends the following definitions: • "Tank barge" means any tank

vessel without a means of self-propulsion. • “Tank ship” means any self-propelled tank vessel (when it is carrying oil as cargo or cargo residue). • “Tank vessel” means a ship or barge that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue. - 226 Frank Holmes

Response

Ecology opted to use definitions for vessels in the rule that are consistent with the definitions in RCW 88.46.010.

Section 317-40-030 Compliance with federal rule or law

Not included in 173-184.

9. The state’s proposed incorporation of federal regulations which come from PWSA Title I is not directed toward local peculiarities and are therefore preempted.

This proposed section of the WAC regulations would incorporate by reference a number of existing federal regulations regarding chemical testing of vessel personnel, shipboard containment procedures, designation of persons in charge, emergency shutdown procedures, transfer procedures, and declarations of inspection. By incorporating these federal regulations into the proposed WAC regulations, the state would overlap the federal government's efforts to regulate in these areas. The State would thereby place itself in the impermissible position of interpreting and enforcing federal regulations, which would lead to conflict, confusion and inefficiency. The Coast Guard's authority to issue chemical testing regulations at 46 CFR Part 16 comes from 46 U.S.C. 5 2103 and 2303a. The statutory language preempts the State from imposing or enforcing the proposed incorporated regulations with regard to chemical testing of licensed mariners. Furthermore, the State's proposed incorporation of federal regulations from Title 33 of the CFR, the primary authority for which comes from PWSA Title I, is not directed toward local peculiarities that call for special precautionary measures when operating in Washington State waters. For all these reasons, the proposed incorporation of regulations from Title 33 CFR is preempted. - 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule. See strike out summary for language changes.

10. Ecology needs to change paragraph 2 to reflect the correct citation.

Paragraph (2)(c) should read “46 CFR Part 13.” Part 13 addresses certification of tankerman and Part 16 addresses chemical testing.- 203 Michael Moore

Subsection (a) should read (in sequential order): (a)33 CFR 155.310, 155.700, 155,720, 155.750, and 155.780. Subsection (c) should reference 46 CFR Part 13 (and not Part 16). Part 13 addresses certification of tankerman and Part 16 addresses chemical testing. - 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule. See strike out summary for language changes.

Section 317-40-035 Inspections

Included in 173-184-030 Inspections

11. To the extent that this section authorizes inspections to enforce regulations that are preempted, the proposed section is preempted.

Washington's proposed inspection and recordkeeping regulations call for announced and unannounced inspections of documents and procedures that the Coast Guard currently regulates and inspects. To the extent that these proposed sections of the WAC regulations authorize inspections to enforce regulations that are preempted, the proposed inspection regulations are likewise preempted. Special concern also stems from provisions which might tread upon international protocols to which the United States is signatory. Specifically, the WAC seeks to authorize inspections of company policies and management procedures on vessels that the International Maritime Organization (IMO) has addressed in the form of the International Safety Management (ISM) Code. - 234 W.D. Baumgartner

Response

Although this section is included in WAC 173-184 the language has been changed to reflect that inspections will be for the purpose of determining if the vessel is complying with the requirements in WAC 173-184.

12. Ecology should change any section which allows photocopying of documents. Once a document is taken by the state it becomes a public document and proprietary information can not be protected.

Crowley would like to suggest the following language change to this section of the draft regulation, "(2) To demonstrate compliance with this chapter, ecology may ~~ask for~~ examine the following documents, as they relate to oil transfers, ~~to be made available for review~~. This is a small amendment to the regulation, but it is essential to protect the proprietary information of the company. Once a copy of any document is taken by the state, it essentially becomes a public document. - 233 Stephen Wilson

Paragraph (2) should be reworded as follows: "(2) To demonstrate compliance with this chapter, ecology may ~~ask to~~ examine the following documents" As worded, it suggests that ecology may take the documents, some of which may contain proprietary information. Once such documents are in the possession of the state, they are essentially public documents. - 203 Michael Moore

AWO would like to suggest the following language change to this section of the draft regulation, "(2) To demonstrate compliance with this chapter, ecology may ~~ask for~~ examine the following documents, as they relate to oil transfers, to be made available for review: This is a small amendment to the regulation, but it is essential to protect the proprietary information of the company. Once a copy of any document is taken by the state, it essentially becomes a public document - 208 Jason Lewis

Section 2 should be modified as follows: "(2) To demonstrate compliance with this chapter, ecology may ask to examine the following documents, ...". As currently worded, the section suggests that WDOE may take the documents, some that may be proprietary. Once obtained, these documents would be subject to public release under FOIA. 226 Frank Holmes

Response

Ecology understands industry's concern with photocopying. WAC 173-184-030 states that inspectors may ask for records required by this chapter. The records

required by this chapter are documents pertaining to pretransfer containment, alternative measures, and advanced notice of transfer. Ecology believes that these documents will not contain essential proprietary information of the company. See strike out summary for language changes.

13. Ecology should leave a written preliminary report on their findings after any boarding.

The proposed rule does not require Ecology to leave a preliminary report of their findings aboard; they may leave a preliminary report at their choosing. Ecology should change the word may to must. It is important to know the results at the conclusion of any inspection so expeditious involvement and/or corrective actions by the vessel and shoreside personnel can occur if necessary. - 202 J. Michael Crye

If an Ecology inspector boards the vessel and conducts an inspection, a written report of the inspection should be provided for every boarding. The lack of a written report diminishes the value of the inspection. The suggested wording for this section is: (4) Ecology may must provide a preliminary inspection report. . . . - 220 Robert Dorn

Response

Ecology has included the language “Ecology inspectors will provide an inspection report to the owner or operator at the conclusion of the inspection.” See strike out summary for language changes.

14. Ecology should write in the rule that inspections will occur at reasonable times and will conclude at least two hours before the scheduled departure time of the vessel. Inspections should never interfere with the safe operation of the vessel.

The proposed rule contains provisions for announced and unannounced inspections. Ecology has a limited right of entry to private facilities. This section may allow Ecology additional access that they might not otherwise have under current law. Ecology must be aware of the vessel’s and facilities security requirements under ISPS. Requirements of the proposed Transportation Worker Identity Card (TWIC) may also be applicable. Depending on the security level unannounced inspections may result in the inspector being denied access. An unannounced inspection may delay the inspector from getting aboard the ship. Unannounced inspection also may result in the delay of the vessel. If the inspector is anticipating being promptly admitted to the vessel the inspector must announce their inspection ahead of time. Delay of the vessel is a highly undesirable situation. The schedule interruptions, costs, and passenger dissatisfaction should be avoided. Ecology should write in the rule that inspections will occur at reasonable times meaning the inspection should conclude at least two hours before the scheduled departure time of the vessel. – 202 J. Michael Crye

NB to DOE: applies to this and any other sections where DOE is aboard:. Concern is during cargo operations, especially at start and finish, in providing a person to produce all these documents. They must understand that vessel operations and safe cargo transfer must take precedence over providing paper work. - 209 David Sawicki

Response

RCW 88.46.167 and 90.56.410 grant Ecology broad authority to board vessels for inspection purposes. Ecology considers it contrary to the legislative purpose

to narrow this broad authority through administrative rules. However, we are sensitive to the safety concerns raised by the comments.

Ecology inspectors are required to have on the job training for all types of inspections. This training includes vessel and facility operational issues as well as transfer location safety and security issues. These types of concerns raised in these comments are addressed by training and will not be addressed in this rule.

If a party has concerns about a particular inspector's conduct during an inspection, we encourage that party to contact Ecology headquarters to report those concerns.

15. Ecology needs to further clarify the expectations around “demonstrate the ability to meet transfer containment and recovery standards”.

Paragraph (3) is much too broad and needs specificity. How exactly does ecology expect “the vessel to demonstrate the ability to meet transfer containment and recovery standards ...”? This could mean costly deployment of equipment already on station as required, now also deployed only for the purpose of satisfying an inspector's desire for a demonstration. Again, specificity is needed. – 203 Michael Moore

Demonstrating the containment and recovery standards during a transfer operation would be a major distraction that could lead to a spill as well as unnecessarily delaying the ship. Ecology should revise the section to make it clear that a vessel will not have to demonstrate the ability to meet transfer containment and recovery standards while an oil transfer is in progress, because of the distractions that it ICCL Comments WAC 317-40 July 25, 2006 2 would cause for the shipboard oil transfer teams. As the proposed rule is written if the crew members involved with the transfer operation were asked to demonstrate the containment and recovery standard it could not be done because the persons who have duties with bunkering are not permitted to have any other duties. – 202 J. Michael Crye

Section 3 is much too broad and needs specificity. Per the section language, “ecology may require the vessel to demonstrate the ability to meet transfer containment and recovery standards”. - 226 Frank Holmes

Response

The verbiage “demonstrate the ability to meet transfer containment and recovery standards” is not included in chapter 173-184. However, a new section 173-184-035, Drill Credit, was included to give owners and operators the ability to request drill credits should they execute the booming requirements in this chapter. See strike out summary for language changes.

Section 317-40-040 Recordkeeping

Not included in 173-184

16. The section duplicates federal efforts and resources. The section is field preempted because the state regulations are not tailored to matters unique to the waters of Washington.

The proposed WAC provisions for recordkeeping constitute a duplication of government efforts and resources. The Coast Guard believes that the comprehensive set of current federal regulations found in Title 33 of the CFR, authorized under PWSA Title I and other statutory authority, requiring maintenance of records such as designations of persons in charge, equipment tests/inspections, declarations of inspection (33 CFR 6 155.820(a)-(d)), and availability of transfer procedures (33 CFR 5 155.740), combined with 33 U.S.C. 5 1903, the APPS implementing MARPOL regulations for vessels subject to those regulations (which require maintenance of the vessel oil record book (33 CFR 5 15 1.25)), already address the need for appropriate record keeping. Accordingly, the proposed WAC regulations are field preempted . For those vessels to which the Coast Guard regulations apply, but which are not subject to APPS or MARPOL Annex 1, and for which the authority is the PWSA Title I, because the state regulations are not tailored to matters unique to the waters of Washington, the State is preempted from implementing these record keeping regulations. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

17. The retention of records from a bunkering operation should be 30 days other than those records statutorily required to be kept longer.

The current rule contains provisions for keeping records for 30 days. The current rule allows Ecology to verify compliance up to 30 days after a transfer is complete. The proposed rule allows compliance to be verified up to 3 years after completion of the transfer that requires the retention of records for an unreasonably long time. This seems like an opportunity for Ecology to go on a fishing expedition and does not appear to be justified. The retention of records on the bunkering operations should be limited to 30 days other than those records statutorily required to be kept longer. The proposed rule allows Ecology to photocopy records including oil record books and this requirement should suffice. - 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

18. The recordkeeping provision should not authorize photocopying of documents.

AWO suggests the following changes to the recordkeeping section, which follow the same proprietary argument as the changes made in the inspection section. (3) All records required in this chapter must be available to ecology for photocopying examination upon request. - 208 Jason Lewis

Crowley suggests the following changes to the recordkeeping section, which follow the same proprietary argument as the changes made in the inspection section. (3) All records required in this chapter must be available to ecology for photocopying examination upon request. - 233 Stephen Wilson

Paragraph (3) needs to be reworded as follows: “(3) ... must be available to ecology for examination upon request.” As mentioned above, once copies are in the possession of the state, they are essentially public documents. - 203 Michael Moore

Section 3 should be modified as follows: "(3) ... must be available to ecology for examination upon request." As previously noted, once copies are in the hands of WDOE, these documents are subject to release under FOIA. - 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-045 Threat of an oil spill

Not included in 173-184.

19. This section is preempted. Ecology does have authority to respond to or mitigate a discharge in the absence of federal action.

The proposed WAC regulations provide that the Department of Ecology (DOE) will make the threshold determination of when a threat of discharge of oil or harm to the public health and safety exists, and when it is thereby necessary to order a suspension of oil transfer operations. The proposed regulation would have the DOE assuming regulatory authority in conflict with that the Coast Guard Captains of the Port (COTP) and/or Officers in Charge Marine Inspection (OCMI) currently exercise under 33 CFR 5 156.1 12 (PWSA Title I). For these reasons, we believe this proposed WAC section is preempted. Although this proposed WAC regulation is preempted, this does not affect existing state authority to respond to or mitigate a discharge in the absence of federal action. - 234 W.D. Baumgartner

This is a requirement for which we believe DOE is overstepping its authority. The rules appear to give DOE the primary authority regarding suspension of transfer operations and decisions to resume. We believe the CG Captain of the Port has the primary, and likely preempting authority, in this regard. This would be better written: "(2) Ecology will coordinate with the Coast Guard to: (a) have transfer operations suspended; (b) specify conditions requiring immediate action; and (3) provide that a transfer may be resumed once ecology and the Coast Guard are satisfied that the threat has been properly addressed." - 203 Michael Moore

The authority to suspend, delay or resume an oil transfer rests with the Coast Guard Captain of the Port. The department is clearly overstepping its legal authority in this section and it needs to be amended. Should a situation arise that requires a transfer to be shut down or suspended, the department should notify the Coast Guard. AWO suggests the following changes to this section of the draft regulation: (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) Uncontrolled discharged into oil spill containment or on the deck; or (c) Spilled into the water or onto the shoreline adjoining the transfer area. AWO objects to the department usurping the Coast Guard's authority to resume the transfer operation. The federal on-scene coordinator has the authority over any incident that may occur. - 208 Jason Lewis

Ecology may determine that immediate action is necessary to suspend or delay oil 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 transfer operations; (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 has been addressed. The authority to suspend, delay or resume an oil transfer rests with the Coast Guard Captain of the Port. The

department is clearly overstepping its legal authority in this section and it needs to be amended. Should a situation arise that requires a transfer to be shut down or suspended, the department should notify the Coast Guard. – 233 Stephen Wilson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

20. Ecology needs to clarify what is meant by substantial risk.

The proposed rule allows Ecology to shut down an oil transfer if it is deemed unsafe by Ecology. We believe that Ecology needs to clarify what conditions constitute a substantial threat of discharge of oil or harm to public safety. For example: If a name or rating is omitted from the deck log book when all other requirements of the rule are being met, this omission should not be considered a substantial threat; however, the way is open for interpretation that would run contrary to reason. - 202 J. Michael Crye

what is the state's definition of "substantial" - 209 David Sawicki

WSPA suggests that the term “substantial threat” be defined in WAC 317-40-025. In addition, coordination with federal agencies is absent from this section. WSPA requests Section 2 be modified as follows: “(2) Ecology may coordinate with the Coast Guard to: (a) have transfer operations suspended; (b) specify conditions requiring immediate action; and (c) provide that a transfer may be resumed once ecology and the Coast Guard are satisfied that the threat has been properly addressed.” - 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-050 Oil Spills

Not included in 173-184.

21. The state does not have the final say over resuming the transfer. It is the Coast Guards authority to allow transfer operations to resume.

Crowley suggests the following changes to this section of the draft regulation: (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) Uncontrolled discharged into oil spill containment or on the deck; or (c) Spilled into the water or onto the shoreline adjoining the transfer area. Crowley objects to the department usurping the Coast Guard's authority to resume the transfer operation. The federal on-scene coordinator has the authority over any incident that may occur. - 233 Stephen Wilson

Paragraph (4)(c) appears to be another attempt to take a superior role to that of the Coast Guard. In this case, at least the rules mention coordination with the FOSC, however, the implication is the state has final say. This might be reworded as follows: (c) The PICs must receive approval from the State and ultimately the COTP/FOSC.” – 203 Michael Moore

Response

Ecology has removed this section from chapter 173-184, and refocused Chapter 173-184 on pretransfer containment and advanced notice requirements.

22. Ecology needs to rewrite this section to clarify what is meant by shutting down when oil enters the containment.

A literal reading of (1)(b) would have transfer operations terminated due to drops of oil into containment. The purpose of the containment is to capture such discharges. We suggest this might be reworded as follows: “(b) Uncontrolled discharge into oil spill containment or on deck.” - 203 Michael Moore

A literal reading of this subparagraph, in conjunction with section 050(3) and the definition of discharge, would require notification any time a few drops are spilled into the containment area. In practice, it is relatively common during the hose connection/disconnection process for a few drops of fuel to drip from the male connection into the portable or permanent spill containment. This is precisely why this containment is in place. This “discharge” is routinely wiped up with a rag that is disposed of properly. Notification of this type of “discharge” would represent an unnecessarily ambitious expectation and is not necessary. – 232 Michael Anderson

This requirement to shut down cargo operations and not restart in the condition described in (1)(b) until approved by an SOSOC is not needed for two reasons. First, if a line or gasket adjustment is needed due to a drip, it is already industry practice to shut down cargo operations to correct, especially if the drip could lead to the probability of a discharge to sea. The design and intent of oil spill containment is to capture leaks and drips that often happen when connecting lines with gaskets. A ship should not have to wait for SOSOC approval to restart. Leaks can happen several times before a good seal is obtained when starting a transfer operation, and can happen several times during the transfer. Second, if a leak occurs on deck that poses a probability of a spill, then the USCG and State will be notified of this probability per the reporting requirements in 33 CFR 151.15 (e)(3). If a leak on deck is one such that it is reported, it is already industry practice to shut down cargo operations to correct the situation. It is unreasonable and unfair economic burden on the marine transportation industry to require a ship to shut down cargo operations and wait for SOSOC approval to resume cargo operations every time a ship has a drop of oil leak out of primary containment. With ship day rates on the order of \$60,000 or more, this will cost the industry millions of dollars/year. This cost was not addressed nor mentioned in the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules. The only time it is reasonable to require SOSOC approval to restart cargo operations is when a spill has occurred as mentioned in WAC 317-40-050 (1) (a) and (c). - 209 David Sawicki

WSPA suggests that the follow statement in Section (1)(b) be deleted: “ Discharged into oil spill containment or on the deck; or...” This requirement to shut down cargo operations and not restart in the condition described in (1)(b) until approved by an SOSOC is not needed for two reasons. First, if a line or gasket adjustment is needed due to a drip, it is already industry practice to shut down cargo operations to correct, especially if the drip could lead to the probability of a discharge to sea. The design and intent of oil spill containment is to capture leaks and drips that often happen when connecting lines with gaskets. A ship should not have to wait for SOSOC approval to restart. Leaks can happen several times before a good seal is obtained when starting a transfer operation, and can happen several times during the transfer. Second, if a leak occurs on deck that poses a probability of a spill, then the USCG and State will be notified of this probability per the reporting requirements in 33 CFR 151.15 (e)(3). If a leak on deck is one such that it is reported, it is already industry practice to shut down cargo operations to correct the situation. It is unreasonable and unfair economic burden on the marine transportation industry to require a ship to shut down cargo operations and wait for SOSOC approval to resume cargo operations every time a ship has a drop of oil leak out of primary containment. With ship day rates on the order of \$60,000 or more, this will cost the industry millions of dollars/year. This cost was

not addressed nor mentioned in the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules. The only time it is reasonable to require SOSC approval to restart cargo operations is when a spill has occurred as mentioned in WAC 317-40-050 (1)(a) and (c). - 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

23. If the SOSC and FOSC need to give permission any time the operations starts and stops again due to a drip into containment, does that mean they will be required to be on scene the entire transfer?

Does this require that a SOSC and FOSC is on scene? - 209 David Sawicki

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

24. Operators should be required to be proactive and stop operations when conditions exist that pose a foreseeable risk of a spill.

As proposed in WAC 317-40-050(1), operators must “. . . stop an oil transfer operation whenever oil could originate from the current oil transfer operation and is . . . "observed in the water, spilled into containment, or spilled into the water. (My emphasis in the quote.) This seems to say that the operator need not stop transferring oil unless there is actually a spill. This is not a sufficiently strict burden on the operator. I would suggest changing the word “and” in this requirement to “or”. Operators should be required to be proactive and stop operations when conditions exist that pose a foreseeable risk of a spill. The actual existence of a spill should be evidence of lack of diligence. - 211 Mike Doherty

Response

Due to concerns raised by other commenters and due to our decision to focus the new rules on pretransfer containment and advance notice, Ecology has eliminated this language from the new rules. However, Ecology does have authority to regulate to mitigate impacts once a spill has occurred and the requirements addressed by your comments may be dealt within a future rulemaking effort.

Section 317-40-055 Noncompliance

Included in 173-184-040 Noncompliance

25. To the extent that this proposed WAC section would authorize Ecology to enforce regulations that are preempted by federal regulations, this section is preempted.

To the extent that this proposed WAC section would authorize the state DOE to enforce regulations that are preempted by federal regulations, this section infringes on an important federal interest. The important federal interest is the federal authority (the Coast Guard)

interpreting, implementing and enforcing federal regulations on the subject, thus avoiding inevitable conflicts in interpretation and application as between the State and Federal authority. Accordingly, we believe it is preempted. - 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology does not perceive this regulation as authorizing Ecology to enforce regulations that Ecology does not have authority to enforce. Rather, the section allows Ecology to enforce its own regulations which will be promulgated in new Chapter 173-184.

Section 317-40-060 Alternative compliance

Section 173-184-105 Equivalent Compliance Plan

26. Ecology should not offer an alternative compliance program.

PSA does not support the alternative compliance proposal option for deliverers. WAC 317-40-110 already provides a process for exemptions to prebooming. PSA recommends that the Department of Ecology (Ecology) delete this section of the WAC. – 217 Sue Joerger

“alternative compliance.” This approach is both unnecessary and bad public policy. We have spent years in advisory committees and other processes developing the draft rule. It is hardly so prescriptive (as evidenced by comments above) that a variance procedure is warranted. While this draft contains a bit more detail on what analysis is required and provides minimal opportunity for public comment, it still makes the rules “optional” almost like a guidance document. We are extremely disappointed in the failure of the Department to provide clear and firm standards to protect our waters, and no where is this more evident than in provisions allowing for alternative compliance. - 207 Bruce Wishart

Response

(In chapter 173-184 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 173-184-105, Equivalent Compliance Plan.)

Ecology wrote the alternative measures to address times and circumstances when prebooming would be deemed to be either unsafe or ineffective. These alternative measures were developed from the California model with changes made for the Washington environment. However, Ecology realized that a “one-size-fits-all” approach was not going to work due to the scope of the rule and the many types of environments, vessels and facilities it covers.

Ecology determined that flexibility is needed to address this diversity and, on the advice of stakeholders, developed an Equivalent Compliance Plan program. This program is meant to give delivering vessel owners and operators, who are in the best position to make the initial determinations due to their intimate knowledge of the environments within which they work, the flexibility to use innovative and thoughtful methods for reaching the prevention level of the alternative measures in a way that makes sense in the environment where transfers occur.

Ecology will review the Equivalent Compliance Plan for results and methodology and will approve the plan if it provides equivalent or greater protection for the transfer environment as the alternative measures.

27. The alternative compliance program is written in such a way that many plans will be unable to meet the standard.

The “alternative compliance” section of the regulation is written in such a way that it is unlikely that many plans will meet the alternative compliance standard. – 233 Stephen Wilson

The “alternative compliance” section of the regulation is written in such a way that it is unlikely that many plans will meet the alternative compliance standard. - 208 Jason Lewis

Response

(In chapter 173-184 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 173-184-105, Equivalent Compliance Plan.)

Ecology’s intent is to allow owners and operators of delivering vessel to use innovative approaches to meet the alternative measures required in this chapter. It is important that the proposed measures in the equivalent compliance plan give equivalent or greater protection to the oil transfer location as the alternative measures.

The regulation was drafted so that companies that meet the criteria of WAC 173-184-105 will be able to fashion a plan appropriate to their transfer locations. We disagree that the regulation will be too difficult for companies to meet.

Ecology encourages companies who feel the alternative measures in 173-184 are not appropriate to their transfer location, or who feel they have come up with innovative ways to provide even greater protection to the environment at their transfer location, to make use of the Equivalent Compliance Plan program and work with Ecology to implement the measures best suited for their oil transfer location.

28. The alternative compliance plan should not be open to public review.

Crowley objects to the department opening any alternative compliance plan to public review. The general public will not understand the nuances of an alternative compliance plan and public review of the alternative compliance plan therefore serves no useful purpose. - 233 Stephen Wilson

AWO objects to the department opening any alternative compliance plan to public review. The general public will not understand the nuances of an alternative compliance plan and public review of the alternative compliance plan therefore serves no useful purpose. 208 Jason Lewis

Once completed, the proposal would be subject to public review then unilateral, subjective approval or denial from the department. We object to the public review process and the excessive standards of analysis for alternative compliance proposals. - 201 Heather Moats

Ecology should be better prepared to make the decisions in matters for which it has been entrusted rather than to always punt to limited public review. The general public is not sufficiently knowledgeable to make informed input in the decision making process. - 203 Michael Moore

the provisions in subparagraph (4), stipulate a thirty-day public review and comment period for any alternative measure proposed. Public review of an alternative measure is inappropriate. The general public is not sufficiently knowledgeable to make informed input to influence the decision making process. Ecology is the State agency charged with regulating the industry, is equipped with knowledgeable staff, and is responsible for considering the merits of the proposal and making an appropriate risk-based decision. - 232 Michael Anderson

Response

(In chapter 173-184 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 173-184. The plan requirements are spelled out in 173-184-105, Equivalent Compliance Plan.)

Ecology’s experience is that public review and comment is an important component of effective regulatory programs. Although not all members of the public have the technical expertise necessary to comment on details of an equivalent compliance plan, the public often expresses legitimate concerns about resource protection, economic concerns, and other aspects of public concern that should be considered in the decision-making process. Therefore, we have included a public review and comment period in the regulation.

29. The alternative compliance program does not go far enough in setting performance standards and there is no public review process.

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

Response

(In chapter 173-184 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 173-184. The plan requirements are in 173-184-105, 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 vessels that deliver oils on Washington waters.

30. Alternative compliance should be approved for a minimum of five years not two. It should also apply to the entire rule not just to section 317-40-110.

It is also very important to have the alternative compliance plan valid for a minimum of five years instead of two, and be applicable to the entire regulation, not just section 317-40-110. The department should be in charge of accepting or rejecting an alternative compliance plan. - 208 Jason Lewis

It is also very important to have the alternative compliance plan valid for a minimum of five years instead of two, and be applicable to the entire regulation, not just section 317-40-110. - 233 Stephen Wilson

this alternative approach exists only for the transfer containment and recovery standards found in 110(6) and (8) for differing transfer rates. The concept of allowing an alternative that “provides an equivalent or greater level of environmental protection in terms of spill prevention, preparedness, and response when compared with conventional compliance” should be generally applicable to all the standards. If this alternative compliance provision is maintained, it should be expanded and applicable to any provision. 232 Michael Anderson

This section forces another bureaucratic process upon vessel operators which serves no useful purpose. As stated in the wording of the proposed rule, any alternative compliance would remain approved only as long as Ecology wanted to, not to exceed the 2-year time limit. And then a company is forced to jump through all of these hoops again. Any alternative compliance proposals should be approved for at least 5 years. - 220 Robert Dorn

The concept of an alternative should be generally applicable to all the standards. Thus, we suggest that provision be expanded and made available for all standards. - 203 Michael Moore

We recommend that paragraph (7) be reworded as follows: “(7) ... valid for no more than five years from the date of the letter.” - 203 Michael Moore

Third, subparagraph (7) would require the resubmission, and re-approval, of the alternative every two years. In addition to the added workload associated with the provision, this would place the owner/operator in the tenuous, and largely unacceptable, position of not being certain of the standards they must comply with over the long term. Specifically, what Ecology considers acceptable today might be considered unacceptable tomorrow, without any change in the regulations. If an alternative measure is approved, it should stand as approved, until the regulations change. - 232 Michael Anderson

Response

(In chapter 173-184 the “alternative compliance program” has been renamed the “equivalent compliance plan” in an attempt to clarify the difference between this elective program and the alternative measures required in 173-184. The plan requirements are in 173-184-105 Equivalent Compliance Plan.)

Ecology has changed the requirements for 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. See strike out summary for language changes.

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.

31. Paragraph 3 and 6 use the term owner or operator. This should be changed to deliverer.

The term “owner or operator” is used in subparagraphs (3) and (6). We recommend that the rules stipulate that this reference is to the deliverer (whether vessel or facility). Conversely, this could be deliverer or receiving vessel or facility at mutual agreement. - 232 Michael Anderson

Response

(In chapter 173-184 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 173-184. The plan requirements are in 173-184-105, Equivalent Compliance Plan.)

Ecology has noted your comment. We think the correct term for this section is owner/operator. The chapter itself applies to the delivering vessel – for this section the owner or operator of the delivering vessel is responsible for developing an Equivalent Compliance Plan and submitting it to Ecology.

32. The environmental realities of the Columbia River will make it rarely if ever safe and effective to boom. The requirements for alternative compliance are costly and impose standards which will be difficult for deliverers to meet.

Based on the above information it will rarely if ever be safe and effective to pre-boom vessel to vessel transfers on the Columbia River. Although Section WAC 317-40-060 allows for submission of proposals for alternative compliance, the requirements for a proposal will be costly and impose standards that will be difficult for delivering companies to meet. - 201 Heather Moats

Response

(In chapter 173-184 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 173-184 WAC. The plan requirements are in 173-184-105, Equivalent Compliance Plan.)

Ecology is aware of the uniqueness of transfers in the Columbia River. Ecology created the Equivalent Compliance Plan program to address such concerns. Ecology will take Columbia River’s unique characteristics into consideration when reviewing equivalent compliance plans. However, the legislature did not exempt

Columbia River transfers from its mandate to require pre-booming or alternative measures to eliminate or decrease effects of an oil spill, nor does our own research indicate that compliance with the rule requirements is unduly burdensome for Columbia River transfers.

Furthermore, spill history on the Columbia demonstrates that there is a real danger of environment impacts from oil spills on this water body as well as other Washington State water bodies, and that more can be done to eliminate or mitigate the impacts of spills in this environment. Therefore, the rules do not provide a blanket exemption for transfers on the Columbia.

33. The Washington State Ferries have developed a method of fuel transfer which is inherently safer than the available alternatives. An unintended consequence of the rule may be to force the ferry system to choose between spending money on preparedness which would be better spent on prevention.

WSF would weigh heavily the decision to take advantage of any alternative compliance measure. If we felt that the risk of using this provision was too great, WSF would be required to either (1) devote considerable time, money, and resources to comply with the pre-booming or alternative provisions for our mobile (Rate B) facility transfers, or (2) be forced to move fueling operations to a more risk prone, more expensive, and operationally more impactful transfer at a fixed facility. In the first case, WSF would expend considerable effort on "post spill in the water" measures, rather than on the preferred measures to keep the oil from entering the water. In the second case, WSF actions would be inconsistent with our desire and our charge, to be both environmentally and fiscally responsible. Additional detail is provided in subsequent comments. As mentioned earlier, we understand the challenge of writing rules that apply to a very diverse industry. However, if Ecology believes that some existing/known fuel transfer operations are of sufficiently low risk to not warrant the additional measures stipulated in the new rules, then the rules should be adjusted to allow this type of operation. For example, if mobile facility transfers such as those currently being conducted by WSF are viewed as relatively low risk, then this risk and the associated mitigating measures should be acknowledged in the rules. - 232 Michael Anderson

Response

The Washington State Ferries do not deliver fuel, are not delivering vessels, and are not required to comply with chapter 173-184 WAC. The Class 2 mobile facilities delivering fuel to the ferries must either preboom or use the alternative measures in WAC 173-180-222 Rate B Pre-booming and Alternative Measures Requirements. The Class 2 facilities may submit an Equivalent Compliance Plan under WAC 173-180-070 to Ecology which would detail equivalent measures for Rate B transfers at the ferry locations which have equivalent or greater protection for the environment at the transfer location.

34. Paragraph 3 of this section should give plan holders 180 days for consistency across all the regulations.

this should be made 180 days - consistency across all the reg's would be achieved. - 209 David Sawicki

Response

(In chapter 173-184 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 173-184. The plan requirements are in 173-184-105, Equivalent Compliance Plan.)

The submittal schedule for the Equivalent Compliance Plan is 120 days after the chapter takes effect. This has not changed from the proposed rule. Delivering vessels must comply with the alternative measures found in Chapter 173-184 WAC until the Equivalent Compliance Plan is approved by Ecology.

We determined that companies should be able to meet the 120 day timeframe and that the additional 60 days was not needed.

35. Ecology should be able to reconsider an alternative compliance approval at any time based on cause.

In paragraph (8), ecology may reconsider the approval sooner based on cause. - 203 Michael Moore

Response

Thank you for your comment. The language in chapter 173-184-105(4)(c) has been changed to: “Ecology may reconsider an approval, or conditional approval, at any time after a response to a significant oil spill by the company.” See language changes in the strike out summary.

Section 317-40-065 Owner and operator responsibilities

Included in 173-184-045

36. This section is preempted to the extent it applies to state regulations that are also preempted.

This broad regulation states that owners conducting oil transfer operations must comply with the requirements of this chapter. Similar to the above analysis for inspections and noncompliance, this proposed regulation is preempted to the extent it applies to state regulations that are also preempted. - 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-100 Advance notice of transfer

Included in 173-184-100

37. The Coast Guard has advanced notice of transfers. Also the requirement for 24 hour notice imposes a requirement affecting the operations of vessels prior to their arrival in state waters. This section is therefore preempted.

The Coast Guard already has advance notice of transfer regulations at 33 CFR 156.118 and 33 CFR 156.215 (PWSA Title I). Moreover, the proposed requirement for 24-hour notice prior to an oil transfer may impose a requirement affecting the operation of vessels prior to their arrival in Washington State waters. Therefore, the proposed section is preempted. - 234 W.D. Baumgartner

Response

Ecology does not necessarily agree that it lacks authority to enact more stringent advance notice requirements than the Coast Guard. However, Ecology is aware of the potential difficulty for regulated vessel to comply with different state and federal standards. Therefore, we've responded to this concern by removing sections of the proposed rule and matching the local Coast Guard requirements for advanced notice.

Ecology is 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. See strike out summary for language changes.

38. Ecology should partner with the U.S. Coast Guard to minimize duplications on the advanced notice of transfer requirements

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

is there a way to reference the stated intent to coordinate USCG and DOE notification as a "one stop shop" notification? - 209 David Sawicki

Since there are federal standards covering advance notice of transfers, we recommend that the State standards be consistent with the existing federal standards. 232 – Michael Anderson

In this section, WDOE requires 24 hours of advance notice. However, it is also stated that "If the delivering vessel cannot meet the notification requirements of this subsection, notice must be provided as soon as possible". It is imperative that WDOE coordinate with the Coast Guard, to minimize the duplication of effort by the agencies and burden on the industry. Per Federal regulation, the COTP may required advance notice of transfer. By this regulation, WDOE is proposing a separate notification system with WDOE form. There should be one form and ability to submit once to cover both the COTP needs and WDOE needs. – 226 Frank Holmes

Also, there should not be a duplication of paperwork being filed for advanced notice. The Coast Guard currently requires notice and the state should align its regulation with the existing Coast Guard guidelines. – 233 Stephen Wilson

Response

Ecology is 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.

39. Ecology should drop the requirement for 24 hour Advance Notice of Transfer

AWO objects to the state requiring twenty-four hour notice of all transfers. Most transfers are not known twenty-four hours in advance. Even when transfers are known in advance, in many cases the transfer times will change. Also, there should not be a duplication of paperwork being filed for advance notice. The Coast Guard currently requires notice and the state should align its regulation with the existing Coast Guard guidelines. 208 – Jason Lewis

Crowley objects to the state requiring twenty-four hour notice of all transfers. This is totally impractical as most transfers are not known twenty-four hours in advance. Even when transfers are known in advance, in many cases the transfer times will change. 233 – Stephen Wilson

If DOE can accept that when “the deliverer cannot meet the notification requirements in this section, notice must be provided as soon as possible” then we recommend that DOE set the standard at 4 hours and ask for up to 24 hours notice when it is available. You should find that the COTP is doing something similar. – 203 Michael Moore

Response

To address concerns that the 24 hour requirement is impossible to meet in some instances and is inconsistent with Coast Guard requirements, Ecology matched the Advance Notice time requirements in chapter 173-184 WAC to the local Coast Guard requirements for delivering vessels. In addition, Ecology excludes delivering vessels making transfers less than 100 gallons from advance notice requirements.

Ecology believes that the Advanced Notice of Transfer requirement is integral to the oil transfer rules and the legislative zero spills mandate. Advanced Notice of Oil Transfers allows Ecology and Coast Guard inspectors to plan and attend oil transfers in state waters. Statistics show that fewer spills occur from oil transfers when a prevention inspection program is in place. Therefore Ecology is not dropping this requirement, but in order to be consistent with federal requirements, we amended this rule to match existing Coast Guard requirements. We believe that, in the vast majority of instances, this will give Ecology sufficient notice of oil transfers before they occur and will enable inspectors to attend and observe transfers. See strike out summary for language changes.

Ecology is 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.

40. Advanced Notice of Transfer should not include transfers of waste oil by vacuum truck

The proposed rule requires notification to Ecology 24 hours prior to any offload transfers of oil, including oil sludge and oily bilge waste. ICCL believes that this requirement as a general rule is excessive. We note that the USCG only requires 4 hours in certain (somewhat extreme) circumstances and not all COTPs elect to require advanced notice of transfers (33 CFR 156.118). In addition, this requirement should only be placed on the sludge handlers or fuel suppliers as they are in the business of handling oil, must be registered with the USCG as fixed or mobile facilities, and as local entities, are more familiar with the area authorities/regulations. We believe this would be problematic for a ship making one call in the Spring and Fall in/outbound to Alaska. 202 – J. Michael Crye

Response

WAC 173-184-010 Applicability exempts transfers to vacuum trucks used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels, intended for shoreside disposal from complying with chapter 173-184. Therefore, no advance notice is required in these instances.

41. We support the 24 hour Advanced Notice of Transfer. We are concerned about the ability of the deliverer to provide shorter notice if “they cannot meet the 24 hour rule”.

The notification requirement proposed in WAC 317-40-100 seems very loose. Operators are required to provide 24-hour notice unless they decide they can't. They are not asked to explain failures to provide notification, nor are there any standards regarding what might constitute a reasonable excuse for a failure to provide notification; 24- hour notice of a shipper's intent to transfer oil is not an unreasonable or difficult burden to meet. Failure to provide notification unacceptably denies the agency the opportunity to monitor operations. The regulations should require that any failure to meet this notification requirement be explained, and that frequent or routine failures to notify are subject to penalty - 211 Mike Doherty

We support advance notice of at least 24 hours prior to a transfer. We are, however, concerned that companies might consistently opt for the "as soon as possible" option in the proposed rule rather than giving Ecology the full 24-hour notice. We feel that the Department of Ecology may not have the ability to respond adequately without at least 24-hour advance notice. We therefore recommend a minimum of 24-hour notice. - 216 Brad Ack

Response

Several other commenters raised concerns that the 24 hour requirement was impossible to meet in some instances and is inconsistent with Coast Guard requirements. In order to be consistent with federal requirements, we amended this rule to match existing Coast Guard requirements. We believe that, in the vast majority of instances, this will give Ecology sufficient notice of oil transfers before they occur and will enable inspectors to attend and observe transfer. See strike out summary for language changes.

42. The legislature granted Ecology the authority to require a prior notice of transfer only in situations where the transfer poses a higher risk.

Another example of how the Department has failed to comply with the Legislative mandate is in the amended section WAC 31 7-40-100, which requires an Advance Notice of Transfer for ALL oil

transfer operations; whereas the Legislature granted the Department the authority to require a prior notice of transfer only in situations where the transfer poses a higher risk. – 220 Robert Dorn

Facilities conducting oil transfers and vessels involved in lightering operations are already required to make advance notices to the USCG in accordance with 33 and 46 CFR. In ESSB 6244, the Legislature granted authority to the Department to require prior notice of a transfer in situations defined as "higher risk". The Department has not defined what situations are higher risk, but has instead required advance notice of transfers. This is a redundant and unnecessary requirement that will not provide an increased level of protection to people or the environment. It is simply an administrative burden being placed on vessel operators for no worthwhile reason. The 24 hour requirement is inconsistent with the nature of cargo operations, and must be reduced to preclude the submission of multiple reports to update the time of transfer. If the Department chooses to properly define "Higher Risk Transfer" as described above, then the suggested wording is: (1) The delivering vessel in a "Higher Risk Transfer" as defined in section 317-40-025 must notify Ecology at least 4 hours prior to a transfer – 220 Robert Dorn

Response

Ecology believes that the Advanced Notice of Transfer requirement is integral to the Oil Spill Transfer rules. Advanced Notice of Oil Transfers allows Ecology inspectors to attend oil transfers in state waters. Statistics show fewer spills from oil transfers when an inspection program is in place.

Ecology agrees with comments by stakeholders that some transfers are more important for Ecology inspectors to attend, based on "risk" and Ecology does not want to place undue regulatory burden on the lower risk deliverers. An amendment to this section was made to exempt transfers of less than 100 gallons from making advance notice to Ecology.

Ecology sees these lower-volume transfers as posing a lower risk while the higher risk transfers would be those that have a threat of a larger volume of material spilled. Therefore, larger volume oil transfers 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-based approach. See strike out summary for language changes.

43. A notice given 24 hours in advance will only be what is planned as weather and other issues will cause that time to change.

if the notice is given 24 hours in advance, the deliverer can only comment as to what may be planned, given that weather can change. – 209 David Sawicki

Response

Ecology has eliminated the 24 hour requirement and matched the Coast Guard requirements for advanced notice. See strike out summary for language changes. Changes or updates to an advance notice of transfer are not required by Ecology. We will assume the responsibility of verifying that the transfer will go forward as planned when we attend the transfer in the field.

Section 317-40-110 Transfer containment and recovery standards

Included in Section 173-184-115, 120 and 130

44. It is suggested that a “safety clause” be added to the first paragraph of this section.

It is also suggested that a “safety clause” added to the first paragraph of this section: “Nothing in this section suggests that containment procedures should be undertaken when it may be unsafe to do so.” – 226 Frank Holmes

There should be a safety clause added upfront to this section such as: “Nothing in this section suggests that containment procedures should be undertaken when it is unsafe to do so.” – 203 Michael Moore

Response

Thank you for your comment. Ecology agrees that safety is everyone’s number one priority. That is why Ecology has asked delivering vessels to develop safe and effective threshold values for deciding whether to preboom or meet the alternative measures requirements. For delivering vessels transferring to a Class 1 facility, chapter 173-184 requires the transfer use the facility’s safe and effective threshold values.

The Safe and Effective Threshold Value should encompass personnel safety when setting thresholds for severe weather conditions, when extra precautionary measures must be taken, as well as when transfers should stop.

Ecology feels that safety is intrinsic to the rule and does not need a “safety clause” to be spelled out. It is the responsibility of the personnel involved in the operations of the facility or vessel to determine the safety of the situation.

45. We support the proposed pre-booming measures.

We support proposed measures to require pre-booming. We know it may present challenges but we trust that there are people creative enough to work it out. – 231 Rachael Pecore

Response

Thank you for your comment and support in this rule.

46. We recommend only allowing the alternative measures when unsafe conditions would not prevent an effective spill clean up. If a spill cannot be captured and contained due to inclement weather or unsafe conditions then the transfer should not occur.

We recommend only allowing the alternative measures when unsafe conditions would not prevent an effective spill clean up. If a spill cannot be captured and contained due to inclement weather or unsafe conditions then the transfer should not occur. We understand that there are safety concerns during certain weather conditions for setting and managing the pre-booming activities

and that these same weather conditions would not necessarily affect the larger vessels conducting the transfer. However, if the conditions are not safe to pre-boom then the conditions would presumably be unsafe in setting the boom in the event of a spill or employing other clean up measures. We recommend that if safety concerns prevent pre-booming activities then the transfer should be postponed until weather conditions or other safety concerns subside and the pre-booming activity can commence or that alternative options only be allowed when the weather conditions would not prevent an effective and rapid response in the event of a spill. 216 Brad Ack

PSA appreciates the many additions to Chapter 317-40 WAC regarding inspections, record keeping, notice of transfer, suspension of transfer, training, etc. However, PSA is troubled by the undefined "safe and effective" standard for prebooming. If it is unsafe to preboom in certain conditions, it will also be unsafe to carry out an oil spill response operation in the same conditions. – 217 Sue Joerger

I recommend that pre-booming be the standard for all oil transfers involving 100 barrels or more. The regulatory philosophy should be: if pre-booming is not "safe and effective" then oil transfer operations are also not safe. – 211 Mike Doherty

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 minimizes environmental harm when oil transfers do occur. The alternative measures portions of these rules implement this statutory directive.

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.

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 during 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.

47. The alternative measures to pre-booming require boom to be deployed within one hour of a spill being detected. The operation was not pre-boomed because it was *not* safe and effective, now booming is required even if it is still determined to *not* be safe and effective. Please clarify Ecology's intent.

When using the alternative to pre-booming for Rate A, subparagraph (6)(c) requires that boom must be able to be deployed within one hour of a spill being detected. However, subparagraph (6)(a) states that Rate A deliverers may only use these alternative measures when it is not safe and effective to meet the pre-booming requirement. Thus, booming that was determined to be unsafe and ineffective now appears to be required regardless of safety. – 203 Michael Moore

When using the alternative to pre-booming for Rate A, (6)(c) requires that boom must be able to be deployed within one hour of a spill being detected. However, (6)(a) states that Rate A deliverers may only use these alternative measures when it is not safe and effective to meeting the pre-booming requirement. Thus, booming that was determined to be unsafe and ineffective now appears to be required regardless of safety. It is requested that WDOE provide clarification of this conflict. – 226 Frank Holmes

Response

*Chapter 173-184 WAC requires the delivering vessel be **able** to deploy boom within one hour of a spill being detected. This boom may be used for containment, protection, or recovery. This is a compliance standard – the deliverer must have the boom and personnel and other equipment available and ready to deploy. 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.*

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 believes that 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. However, Ecology acknowledges that everyone's number one goal must be the safety of the personnel who are working on the spill recovery.

48. Rules should provide more guidance on “safe and effective”.

If pre-booming is not required when not “safe or effective” then I suggest that the thresholds used to allow alternative measures be included in these standards rather than through the case by case negotiation with each operator that the proposed standards seem to invite. This would save time and provide regulatory clarity, particularly since the conditions during which the deployment of booms is effective are relatively well known. I also think that the standards should address the conditions under which transfer operations are simply unsafe. Certainly if conditions are unsafe to deploy booms then oil transfer is also environmentally unsafe. 211 Mike Doherty

In addition, there is no definition of “threshold values” when a delivering vessel will not preboom. PSA recommends that Ecology define these terms in the final rule or a vessel oil transfer operations will not ever achieve the zero spills strategy set out by the Legislature. – 217 Sue Joerger

In addition, boom effectiveness is not defined. Is a boom effective if it contains 10% or 95% of a spill? – 217 Sue Joerger

There needs to be some clear guidance, however, for these facilities to make site-specific determinations. What is considered “effective” prebooming, 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

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

You need to provide far more guidance as to what is safe and effective for prebooming and not rely on your previous assertions of currents being less than one knot that makes a mockery of the legislative intent. – 205 Fred Felleman

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 vessel owners 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.

49. Why should facilities transferring in excess of 500 gallons a minute only be required to have sorbent materials and storage capacity to respond to a 7 barrel spill?

There is no justification why there should only be sorbent materials and storage capacity to respond to a 7 barrel spill at facilities that are transferring in excess of 500 gallons a minute. – 205 Fred Felleman

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

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

Response

The spill clean-up materials required in sections 173-184-115 and 120 are meant to be available to clean-up small discharges and spills. This equipment is also 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 were initially developed from the California prebooming standards during the rule language development. During stakeholder meetings we had agreement that the California prebooming model was a good working example of state regulations and workable in Washington state.

Ecology believes 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.

50. Ecology should use California’s language “technically unfeasible” to clarify questions of safe and effective.

California requires under 18 AAC 75.025(b) that oil tankers and barges preboom 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 prebooming either unsafe or ineffective. Addition of this language would constitute a reasonable clarification of the requirement. – 207 Bruce Wishart

Response

The legislature required a “safe and effective” standard and the rules implement that standard rather than a “technically infeasible” standard. The rules incorporate the standard set by the legislature. However, existing technology is a key factor that Ecology plans to consider in reviewing threshold reports.

51. Ecology should set pre-booming as the “norm”. Without better guidance on how Ecology will decide whether to accept or reject the proposed thresholds, Ecology will spend a lot of time defending their decisions.

The emphasis in these standards on pre-booming is good. It seems that there is a significant loophole that should be eliminated. Oil transfer operators are allowed under these proposed regulations to implement alternatives to pre-booming when they determine it is not “safe and effective.” Operators must convince DOE that certain threshold values of weather and sea conditions render booming either unsafe or ineffective. The proposed regulations contain very little if any guidance regarding how the agency will decide whether to accept or reject these thresholds. The result, I suspect, will be that most operators will propose thresholds that are so low that pre-booming will be the exception rather than the rule. The agency will find itself consuming a significant amount of time reviewing, debating, and defending their decisions on pre-booming threshold proposals. The norm should be pre-booming, the standard should be no release of oil to the environment. - 211 Mike Doherty

Response

Ecology understands your concern and desire to protect the environment. Ecology has set prebooming as the norm in a rate A transfer. The deliverer must preboom if it is safe and effective to do so and must submit a report indicating the threshold values they have determined it will not be safe and effective to transfer for each transfer location.

Ecology will work with the delivering vessel owner or operator in the review process of the Safe and Effective Threshold Determination Report. Ecology will be using equipment specification, industry design standards and the data submitted by reports to Ecology when evaluating proposed threshold values.

As this rule is implemented a more complete understanding of each transfer location's peculiarities will be developed and Ecology may be able to use this data in future rule writing efforts.

52. There is a loophole in the concept of "safe and effective" booming. The operators can get around pre-booming by just waiting for the weather to change and meet the threshold value limits.

It also seems to me that this "safe and effective" loophole may encourage transfer operations when conditions do not favor pre-booming rather than when they do. During periods of rapidly changing weather (not uncommon on Puget Sound) operators can avoid the expense of pre-booming by simply waiting for whatever thresholds have been approved to materialize. This is the opposite of the intent of these standards. – 211 Mike Doherty

Response

Your comment is noted. The deliverer must still meet the alternative measures should prebooming be determined to be unsafe or ineffective, which still presents an expense to the deliverer. An oil transfer is an expensive operation and demurrage, tug stand-by time and labor costs add up quickly. Ecology does not expect deliverers to hold up deliveries in anticipation of environmental conditions exceeding threshold values to save on prebooming costs. However, Ecology inspectors will try to be on scene to verify transfers are taking place in accordance with the threshold values approved in the Safe and Effective Threshold Determination Report.

53. The rule should be risk based. "Non persistent" oils should not be included in this section.

AWO strongly objects to light diesel being included in this section. The rule should be risk based and resources should be utilized where actual benefits will accrue. The enormous additional costs and safety hazards associated with pre-booming light diesel far outweigh any environmental benefit. 208- Jason Lewis

Once again, the rules proposed in section 317-40-110 have not been scaled to the risk posed to the people and the environment as required by the Legislature. The transfer rate used as the break point between a Rate A and Rate B transfer, 500 gpm (714 bbl/hr), is so low as to capture virtually all transfers of cargo and oil fuel (bunkers) made by barge. It is noted that for most vessel refueling docks, 500 gpm is the maximum rate of delivery that can be provided. – 220 Robert Dorn

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

Adios (v2) models show that as much as 60% of jet fuel evaporated w/i 2 hours (60 deg F; 15 mph winds) and an additional 25% is dissipated in the water column - why would this material be considered to be "recoverable"? - 209 David Sawicki

Prior versions of this section applied only to persistent oils. It is WSPA's understanding that WDOE has indicated in stakeholder meetings that pre-booming requirements of this section would apply to persistent oils. WSPA requests that the definition of "persistent oils" be included in these regulations consistent with the C-Plan rules. - 226 Frank Holmes

Prior versions of this section applied only to persistent oils. Furthermore, we believe DOE told several industry groups with whom they met that the pre-booming requirements of section 110 would apply only to persistent oils. This is an unexpected change and is not risk-based. 203 – Michael Moore

Crowley strongly objects to light diesel being included in this section. The rule should be risk based and resources should be utilized where actual benefits will accrue. The enormous additional costs and safety hazards associated with pre-booming light diesel far outweigh any environmental benefit. - 233 Stephen Wilson

We believe that the Department of Ecology, in developing these rules, has not followed the mandate of the Legislature requiring that the rules be scaled to the risk posed to people and the environment. The only risk factor that has been "scaled by the department would appear to be the transfer rate, as demonstrated by the amended section WAC 31 7-40-1 10. This same section attempts to scale the approach by the type of oil transferred, by exempting transfers of gasoline and gasoline-like products from the requirements of this section, but does not distinguish the difference between non-persistent oil such as diesel fuel, and persistent oils such as bunker and crude oil. - 220 Robert Dorn

given the oil spill risk associated with Rate B transfers and the cost to benefit relationship for fueling operations such as those performed by WSF, we recommend that Ecology use the definition of persistent oils, contained in federal regulations and in Ecology's proposed contingency plan rules, to add an additional threshold for when pre-booming is required. Specifically, we recommend that Rate B transfers of non-persistent oils be excluded from these pre-booming requirements. The cost to benefit ratio simply does not warrant the expense. – 232 Michael Anderson

Pre-booming requirements should be limited to "high-risk" transfers of persistent oil products only. – 220 Robert Dorn

Response

In following the legislative mandate to require pre-booming of oil transfers, Ecology decided to include nonpersistent as well as persistent oil. 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, although the law does authorize Ecology to consider the safety of the transfer personnel. Other factors include the legislature's goal of zero spills and reduction of pollution within state waters.

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 more effective the response needs to be for effective cleanup. Conversely, the less persistent the oil is, the more likely the oil spill will require a lesser response or even no response efforts. .

However, research shows that prebooming or quick response with fast spill containment and recovery operations will greatly increase the probability of catching and recovering 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.

For instance in an Adios (v2) model using Alaska jet fuel spilled into containment with water temperature of 60° F and 15 mph winds, we find that recoverable amount of fuel would be available for over 18 hours after the spill.

This does not take into account that a vessel within the containment would help shield the oil from the winds 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.

We understand that the response to a jet or diesel spill will not be a prolonged effort over weeks as may occur with a 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.

54. The risk should not be based on the flow rate, but instead on reaction time to the spill.

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

Response

We do not classify facilities on flow (transfer) rate, but we do classify the requirements for prebooming by transfer rate. We scale the facility requirements by the type of facility or the capacity of the vessels transferring at the facility.

For instance, if you transfer at a rate of less than 500 gallons per minute you would be classified as a rate B deliverer. If you transfer to nonrecreational vessels with a capacity of 10,500 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) you would be classified as a Class 3 facility.

The flow rate (or transfer rate) is used to determine risk and set the prebooming and transfer containment standards. Your comment that “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.” is interesting. It is actually a combination of the flow rate and the reaction time which defines these requirements. A spill from a transfer occurring at 500 gallons per minute will mean potentially 5000 gallons of oil in the water in 10 minutes. The quicker the reaction time to the spill the less the spill amount, but this is exponential to the transfer rate.

So, essentially, Ecology took these two things into account when looking at risk: the time required to stop the oil pumping and the amount of oil flowing through the hoses or piping.

The amount was set at 500 gallons per minute based on Ecology's determination that this is an approximate cut off limit for higher volume oil deliverers. Based on the transfer amounts, times and rates reported to Ecology by deliverers and facilities during the rule writing process, Ecology calculated that 500 gallons per minute would fulfill the legislative mandate to require prebooming at the majority of oil transfers conducted in the state while providing a economic relief from these requirements for smaller businesses.

55. Ecology could set prebooming goals for facilities to meet – ie. Preboom 95 percent of all oil transfers.

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

Response

Thank you for your comment. We have set the requirements to preboom based on the type of oil and rate at which the vessel or facility delivers or transfers oil. Ecology would welcome additional discussions about performance goal setting at future stakeholder meetings.

56. Please clarify whether ALL delivering vessels must submit a threshold value report when they determine pre-booming is not safe and effective.

We understand ALL delivering vessels must submit threshold values reports where they determine when pre-booming is not safe & effective and these are to be approved by Ecology. This needs to be confirmed and clarified. – 202 J. Michael Crye

Response

Thank you for your comment. We have set the requirements to preboom based on the type of oil and rate at which the vessel or facility delivers or transfers oil. The statute expresses a preference for prebooming when it is safe and effective to do so, and it is not possible to attach a percent figure to the circumstances when prebooming will be safe and effective. However, Ecology welcomes additional discussions about performance goal setting at future stakeholder meetings.

57. Ecology needs to clarify whether a report needs to be sent to Ecology when conditions require removal of the boom.

We understand another report (via email or fax) is required before the oil transfer ops if again the deliverer determines it is not safe & effective to pre-boom. This needs to be clarified as to whether this report is that based on the initially developed threshold values that have been sent and approved by Ecology or when conditions require removal of the boom (as above). – 202 J. Michael Crye

Response

For delivering vessels performing Rate A transfers the Ecology Boom Reporting Form must be used prior to the transfer to report when the deliverer determines it is not safe and effective to preboom. The delivering vessel must then meet the alternative measures in section 173-184-115(7).

If conditions develop during a preboomed transfer that require removal of the boom, the Ecology Boom Reporting Form must be sent immediately informing Ecology of the boom removal. The delivering vessel must then meet the alternative measures in section 173-184-115(7).

Delivering vessels transferring at Rate B do not need to submit this form.

The rule language in section 173-184-115(3) has been amended to clarify the above. Please see the strike out section for language changes.

58. What is the difference between the report required to be filed in 110(2)(a) and the report required to be filed in 110(2)(b)?

What is the difference between this and 2(a)? - 209 David Sawicki

Response

In chapter 173-184 WAC Ecology has highlighted the requirements for determining a transfer location's safe and effective values. These requirements are now found in section 173-184-130, Safe and Effective Threshold Determination Report. This change was made to clarify that these two reports are indeed the same report. Please see the strike out section for language changes.

59. Boom handling can be very dangerous – especially on cold nights on the river. – 201 Heather Moats

Handling boom over the side of a response boat on a cold winter's night can be down right dangerous and should only be done when a significant threat exists. In addition, during spring freshets and large tidal run outs currents can be significantly faster. – 201 Heather Moats

Response

Boom should not be placed when it is not safe for the people handling the boom to do so.

Ecology takes personnel safety into account when reviewing the Safe and Effective Threshold Determination report which must be submitted by Rate A delivering vessels (delivering vessels transferring over 500 gallons per minute).

Rate B delivering vessels may choose to use alternative methods and should do so if they determine it is unsafe to preboom.

60. Pre-booming on the Columbia or Snake Rivers is always going to be ineffective and unsafe.

Containment booming of refined products in a riverine environment is generally neither effective nor safe. The Minerals Management Service (MMS) is the United State's principal federal agency that through the Oil Spill Response Research (OSRR) Program finds oil spill response research. MMS has been testing oil spill response methods since 1974 and the OHMSETT facility is the premier spill testing facility in the world. The following quote, taken from the MMS website, states succinctly the fundamental problem we have in complying with these proposed rules: "Most booms are not capable of containing oil in currents greater than 0.7 knot (0.35 meter/second) that flow at right angles to the boom, irrespective of boom size or skirt depth. This factor limits the speed at which booms can be towed to less than 0.5 knots (0.26 mls). The success of containment booming is dependent on currents, wind, and waves. Even minor currents can draw oil under the booms; waves may cause splashover, and wind and currents may cause the boom to sink or plane." Whether the boom is deployed, or available to be deployed, is immaterial, the laws of physics render it ineffective for containment booming where we operate. The greater the current velocity the less effective boom becomes and the more dangerous it is to those tasked with trying to set the boom. The Columbia and Snake Rivers, in the areas where we transfer refined products, are always 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 are

large quantities of driftwood, logs, and other debris in the form of entire trees and other subsurface dangers which threaten those in small boats and can damage, destroy, or render ineffective, deployed boom. The publication "Oil Spill Response in Fast Currents, A Field Guide" published by the US Coast Guard Research and Development Center clearly warns of the safety hazards inherent in fast water booming when it states "Under no conditions should response personnel be subjected to unnecessary risks for purely environmental reasons. Fast water response is more complex and inherently more dangerous than response in slower waters. Fast water response should only be accomplished when the human health risk assessment and net environmental benefit indicate that responding in fast waters is a better alternative overall to recovery on shore or in calmer waters" (italics theirs). Where we transfer refined products on the Columbia or Snake Rivers pre-booming is unsafe because the currents are always above 0.7 knots and, because containment booming is not effective, there is no "net environmental benefit" to weigh against the risk. The primary thrust and expense of these proposed regulation, booming transfers, is neither safe nor effective where we operate. – 222 Paul Jewell

Repeatedly during the rulemaking process, Tidewater's and other Columbia River entities' concerns were marginalized by encouraging us to apply for permission to use alternative compliance measures. We appreciate that this door is left open to us to devise some kind of workable prevention strategy but independent research has already demonstrated that pre-booming transfers is neither safe nor effective in current above 0.7 knots. Knowing that the rules proposed by Ecology will not work where we operate, Tidewater is left in the untenable position of having to apply for permission to use some, as yet, undefined "alternative compliance" measures that will then be subject to review by Ecology and the general public. – 222 Paul Jewell

Entrainment of oil under a boom begins to occur at 0.7 knots when boom is perpendicular to the current; such as is found on the down river side of an encircled ship. NOAA's Northwest River Forecast Center calculated the following Columbia River velocity averages and ranges based on observations from March of 2005 to March of 2006 for Longview and Vancouver, the two most common transfer areas in Washington waters on the Columbia River. Average velocities in feet per second / knots

Months	Longview	Vancouver
January	3.0 ft/s / 1.8 kts	1.7 / 1.0
February	2.0 / 1.2	1.7 / 1.0
March	2.0 / 1.2	1.7 / 1.0
April	2.0 / 1.2	2.1 / 1.3
May	2.0 / 1.2	2.1 / 1.3
June	2.0 / 1.2	2.1 / 1.3
July	1.7 / 1.0	1.7 / 1.0
August	1.5 / 0.9	1.5 / 0.9
September	1.0 / 0.6	1.0 / 0.6
October	1.0 / 0.6	1.0 / 0.6
November	1.3 / 0.8	1.3 / 0.8
December	1.3 / 0.8	1.3 / 0.8

Only in September and October do conditions begin to allow for effective booming of ships. – 201 Heather Moats

Manufacturers are reluctant to specify what boom works in what conditions because much of a boom's effectiveness depends on how it is deployed. For example: In order for a boom designed for "fast water" to be effective it must be deployed properly by the responder. Fast water boom is most effective when it is used to deflect oil to a collection point, not encircle a ship. The greater the current, the steeper the angle of deflection has to be for the boom to be effective. - 201 Heather Moats

As stated earlier, rivers are fundamentally different from other bodies of water. Current, wind and often large pieces of flotsam gives a river operationally unique features that must be taken into consideration. We disagree that pre-booming, as a rule, is either safe or effective at traditional transfer locations in Washington State waters on the Columbia River. – 201 Heather Moats

The standard practice in the case of a spill at anchor would be to boom from near the bow around the barge and stern of the ship to its quarter on the opposite side of the barge. Below are estimated costs for Vancouver Lower Anchorage to boom or standby an average or the largest vessel that calls in the Columbia River. 600 ft 950 ft Deployed \$5500 \$6775 Standby \$3000 \$3700 This doubles the delivery cost. Add approximately two hours of ship cost noted above to deploy the boom prior to the job and the cost nearly triples. Again this doubling or tripling of costs would be a significant additional cost for no appreciable benefit in this system that is currently at

almost zero spill status. The Columbia River system can not withstand such cost increases and have any hope of remaining competitive. – 201 Heather Moats

Response

Ecology acknowledges that booming in a river environment may be ineffective at times. When prebooming a Rate A transfer is determined to be unsafe or ineffective, delivering vessels are required to use the alternative measures in section 173-184-115(7). Rate B delivering vessels are required to choose between prebooming and the alternative measures in section 173-184-120(2).

All delivering vessel owners and operators covered under this rule are encouraged to submit Equivalent Compliance Plan proposals if they feel that the alternative measures in chapter 173-184 WAC will not be effective at their transfer locations. Ecology encourages operators on the river to consider their unique environments and come up with innovative ways to ensure oil transfers on the river are as safe as possible. Ecology will work closely with delivering vessel owners and operators on Equivalent Compliance proposals.

61. Ecology should exempt off loads of ships oily waste from the containment and recovery standards.

Requiring containment for all oil transfers is not consistent with federal or international law. If booming was necessary the Captain of the Port would require booming. The histories of spills in Washington State from bilge water transfers do not support this arduous booming requirement especially for transfer of sludge oils from the ship to a shoreside truck. These transfers normally involve only small amounts (max 25m³ versus 1000m³) relative to a bunker operation, the slower rates. Additionally, these wastes involve a high concentration of water (typically on the order of 90-95%) in oily bilge water and sludge. The amount of pollutants (engine exhausts) that will be generated to set and maintain boom during a transfer operation will not offset the recovery gain that the boom may provide. The regulations incorporated by reference don't make it clear that if the vessel planning on pumping oily wastes ashore has a tank capacity of less than 250 bbls that the transfer and containment standards would not apply. Ecology should exempt off loads of ships oily waste from the containment and recovery standards. – 202 J. Michael Crye

Response

Section 173-184-010 Applicability removes transfers to vacuum trucks used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels, intended for shoreside disposal from complying with the requirements in chapter 173-184 WAC.

62. The requirement for all persons delivering oil to non-recreational vessels to comply with the transfer containment and recovery standards will mean that the section will apply to only one half of the transfer. It is confusing how the rest of the Chapter will apply to such an operation.

(1) states that "all persons delivering oil to nonrecreational vessels over the water ... 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 engaged in a regulated oil transfer. Thus, it would appear that only this section would apply and it applies to the deliverer, but not the receiver. 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. 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 ensuring the definition section and applicability section no longer conflict. Please see strike out section for language changes.

63. Ecology should not have a requirement for a minimum boom stand-off of five feet. Especially during the bunkering operations when the boom is not anchored.

AWO also objects to the language directing industry to maintain a minimum stand-off with the boom of five feet. The risks associated with having a crewmember perform this task are too high. There would need to be a significant manning increase in order to achieve this section of the rule, since it would take additional crew to maintain the boom. The safety concerns don't end with the crew however, since it would be disastrous to have the boom accidentally wrap up in the vessel's propellers. During bunkering operations, the boom would not be anchored and would pose a risk to the vessel, the crew and the environment. – 208 Jason Lewis

Crowley also objects to the language directing industry to maintain a minimum stand-off with the boom of five feet. The risks associated with having a crewmember perform this task are too high. There would need to be a significant manning increase in order to achieve this section of the rule, since it would take additional crew to maintain the boom. – 233 Stephen Wilson

Boom "stand off" requirement- This requirement will be nearly impossible to meet at any terminal except those in protected areas, such as Sound Refining or U.S. Oil in Tacoma, where pre-booming has been done for years, and has been effective without a stand-off requirement. – 220 Robert Dorn

Response

Ecology feels that the boom standoff is an important aspect of prebooming, as it will allow a much better opportunity to capture spilled oil that is splashed or spilled over the side of the vessel or dock.

Based on comments from stakeholders during the rule language development Ecology changed the standoff requirements from a 15 foot minimum to a 5 foot minimum. This was done in recognition that different transfer locations may have operational issues with 15 feet. Ecology recommends that vessels and facilities maintain a standoff which will allow for maximum containment of any oil spilled and is practical for the transfer location, as the 5 foot requirement is a minimum standard.

For transfer locations where standoff may be difficult to maintain due to the locations peculiarities, Ecology recommends that the deliverer look into devices which would hold the boom out from the hull of the vessel. For instance, triangular devices with 7 foot sides may be built or purchased, and when placed between the boom and the side of the vessel these devices have been used successfully in oil transfers to keep the boom at a greater than five foot stand off.

Ecology recognizes the safety issues with the boom and vessel(s) propellers. The stand-off may also be modified for short durations needed to meet a facility or vessel's operational needs.

64. Please clarify what is meant by stand-off of five feet. Is this measured from the side of the vessel or from the portion of the vessel which over hangs the vessel the furthest – such as the flare?

These sections stipulate that boom deployed must have a minimum stand-off of five feet from the sides of a vessel. For vessels that are wall-sided this standard is perhaps clear. However, WSF ferries possess a considerable amount of hull flare and clarification of what is meant by “from the sides of the vessel” is necessary. To give an example, the Jumbo Mark II class ferries have hull flare with a distance from the hull at the waterline to the hull at the deck edge exceeding twenty feet at the ends and approximately nine feet at amidships. To maintain boom stand-off of five feet from the vessel side at the deck edge would represent a very real challenge even in calm water and may actually require multiple tending vessels to accomplish. – 232 Michael Anderson

Response

Ecology has clarified this requirement in section chapter 173-184-115(6)(a)(i) and 173-184-120(1)(a)(i) WAC. “Deploy the boom with a minimum stand-off of five feet away from the sides of a vessel, measured at the waterline.”

65. The information requested by Ecology to determine “safe and effective” is onerous, has safety considerations, and is an administrative nightmare.

Also, the information requested by the department in the determination of “safe and effective” is onerous and an administrative nightmare. – 233 Stephen Wilson

The regulation is creating a situation where crew members’ lives will be at risk because of the burden of proof on “safe and effective.” – 233 Stephen Wilson

Determination of safe and effective- the onerous report required by these proposed rules does not serve anyone but the bureaucracy in the Department. This requirement will have an adverse effect on the safety of any pre-booming requirement by forcing an operator to pre-boom if he does not have some "threshold values report" filed with the Department. – 220 Robert Dorn

One of the items we have discussed numerous times with Department staff is the fact pre-booming in any weather condition involves risk to the safety of equipment and personnel. The staff has indicated that a provision would be made in the rules for an operator to determine when it is safe to pre-boom, and also when it is not safe. The resulting process proposed in these regulations is once again a bureaucratic, onerous exercise requiring the determination of "threshold values" and submission of the information in the form of a "report" to the Department. It is clear that the Department has not conducted these discussions with the operators in good faith, but has developed a requirement that will make it virtually impossible for an operator to comply with. – 220 Robert Dorn

The information requested by the department in the determination of “safe and effective” is onerous and an administrative nightmare. The regulation is creating a situation where crew members’ lives will be at risk because of the burden of proof on “safe and effective. – 208 Jason Lewis

Response

Ecology has placed the requirements for the “Safe and Effective Threshold Determination Report” in a separate section, 173-184-130. This report is required for all delivering vessel transferring at Rate A (over 500 gallons per minute). It is required for all locations the deliverer will be conducting Rate A transfers, except Class 1 facilities. The Class 1 facilities threshold values will be used when oil transfers occur at these facilities.

Delivering vessels transferring at Rate B, 500 gallons per minute or less, do not need to submit a Safe and Effective Threshold Determination Report.

The Safe and Effective Threshold Determination Report requires the owner or operator of a Rate A delivering vessel to ascertain the environment at the transfer location. From environmental monitoring and gathered data regarding wind, weather, current and wave patterns the deliverer determines threshold values when it will be safe and effective to preboom a transfer. The delivering vessel’s PIC will then use these values to determine when to preboom and when to use the alternative measures in chapter 173-184-115(7). This report detailing the environmental findings, the concluding values and the methodology used to derive the values is submitted to Ecology for approval. Ecology does not feel that the requirements for this report are onerous. However, Ecology will work closely with report submitters to identify issues and correct problems.

Personnel safety is every ones number one priority. When it is not safe to preboom, the alternative measures should be used.

66. Ecology is requiring too much boom to be available at the transfer site. Ecology should require 1,200 feet or meet federal requirements.

Subparagraph (6)(d) requires additional boom four times the length of the largest vessel within two hours of a spill. Once a spill has occurred, not sure what the length of the vessel has to do with containment and recovery. Why not just establish some fixed amount at this point, e.g., an additional 1200 feet of boom. – 203 Michael Moore

The length of boom is problematic for the industry. Four times the length of the largest vessel will make it extremely expensive to conduct a transfer in the state of Washington. The language should state that 1,200 feet of boom is available at the transfer point. This would help clear up the confusion surrounding this section and allows for enough boom to adequately contain a spill. This is just the boom at the transfer, in the event of a spill. More boom would be brought in at the outlined times, according to the contingency plan regulations. Federal requirements only dictate two times the length of boom and there has not been any evidence that mandating more boom at the transfer site will guarantee better results. – 233 Stephen Wilson

The length of boom is problematic for the industry. Four times the length of the largest vessel, as outlined by this regulation, will make it extremely expensive to conduct a transfer in the state of Washington. The language should state that 1,200 feet of boom is available at the transfer point. This would help clear up the confusion surrounding this section and allows for enough boom to adequately contain a spill. This is just the boom at the transfer, in the event of a spill. More boom

would be brought in at the outlined times, according to the state contingency plan regulations. Federal requirements only dictate two times the length of the vessel in boom and there has not been any evidence that mandating more boom at the transfer site will guarantee better results. The department is required to prove that there is a need for more boom. – 208 Jason Lewis

Length of boom requirement- the proposed rule requires boom 4 times the length of the vessel, which is double the Federal requirement for the Average Most Probable Discharge readiness requirements. Length of boom should be changed to match the Federal requirement. – 220 Robert Dorn

Subparagraph (5)(a)(i) requires boom four times the length of the largest vessel. First, this requirement is ambiguous. Based on what we believe Ecology wants, subparagraph (5)(a)(i) should be reworded to read as follows: “(5)(a)(i) Have access to boom where it can meet deployment requirements and that is four times the length of the largest vessel engaged in the transfer operations.” However, Ecology has not yet adequately explained the rationale for four times the length of the largest vessel, nor justified that which is in excess of the Federal requirement (2 times). Considering that the majority of vessels are around 600 feet or less, 1200 feet of boom would satisfy the Federal requirement, and 2400 feet would satisfy the proposed state requirement. Until the state provides rationale and justification for four times the length of the largest vessel, we recommend a fixed amount of 1200 feet of boom which will cover the majority of vessels. – 203 Michael Moore

Skimming system requirement- The proposed rule once again is pre-empted by the USCG AMPD requirements, and the performance requirement stipulated in the rule does not even make sense. – 220 Robert Dorn

Additional boom requirement- 6(d) requires that additional boom equal to 4 times the length of the largest vessel involved in the transfer must be available within two hours of a spill. The USCG requirement for AMPD already adequately addresses this requirement. - 220 Robert Dorn

Section (6)(d)(i) also requires additional boom four times the length of largest vessel at the transfer location available for containment, protection, or recovery”. The federal standard is two times. As previously stated, WSPA believes that the WDOE must provide reasonable justification for exceeding the federal standard. – 226 Frank Holmes

Section (5)(a)(i) state that a vessel “Have access to boom four times the length of the largest vessel at the transfer location.” Thus the requirement could equal 4,000 ft. of boom. The federal standard is two times. WSPA believes that the WDOE must provide reasonable justification for exceeding the federal standard, per the Administrative Procedures Act (APA) found in RCW 35.04.328 – 226 Frank Holmes

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). Our requirements are also designed to be consistent with our contingency planning requirements proposed under WSR #06-12-120, published June 21, 2006.

If we assume the average length of a vessel is 600 feet, and the vessel is a three dimensional object 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 conclusion that 1200 feet is not an adequate amount of boom to meet this requirement. Ecology has determined that the minimum requirement for the average two vessel transfer is 2000 feet of boom.

Some commenters suggest that, under federal regulations, 1200 feet of boom is the most boom likely to be required based on average vessel length. We disagree to the extent that some vessels may be as long as 1000 feet, so that boom double the length of the vessel (as required by federal law) could be up to 2000 feet. These commenters suggested we change the state requirement to 1200 feet to be consistent with federal regulations. For the reasons described above, we have determined that 1200 feet is insufficient to contain spilled oil in some circumstances and, therefore, if was not possible to implement the statutory “zero spills” goal without requiring up to 2000 feet of boom for transfers involving larger vessels.

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 two vessel transfer 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.

Please see strike out section for language changes.

67. The requirement to have access to boom sufficient to completely surround the vessel(s) and facility would be enormous for the ferries. Does this mean the equipment to deploy the boom must be onsite? How quickly must this boom be deployed?

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. - 232 Michael Anderson

WSF anticipates that the only way the deliverer can comply with this requirement to have additional equipment available on-site is for WSF to provide this equipment. Most of this equipment is already located on the vessel. – 232 Michael Anderson

Response

The WSF are right in determining that the Rate B deliverer would need to deploy boom so that it completely surrounds the vessel(s) and facility/terminal dock area directly involved in the oil transfer operation prior to starting the oil transfer operation if they choose to preboom.

If the Rate B deliverer chooses to use the alternative methods in 173-184-120(2) they would need to have access to the same amount of boom (as the perbooming standard requires) and be able to complete deployment of it within one hour of discovery of a spill. Rate B deliverers may choose to use equipment caches or arrangements with response contractors to satisfy this requirement.

The Rate B deliverer may also choose to submit an Equivalent Compliance Plan with Ecology. Ecology will take into account the prevention measures WSF and the deliverer already have in place, as well as any other measures the deliverer puts forth which will ensure equivalent or greater oil spill prevention and protection at the transfer locations.

68. Ecology needs to clarify how the deliverer is to have boom 4 times the length of the largest vessel when vessels range in size.

Section (6)(b)(i) also requires the deliverer to have access to boom four times the length of the largest vessel at the transfer location. This requirement is problematic due to the wide range in vessel size. WDOE needs to provide stakeholders with information as how this requirement can be practically accomplished by deliverers. – 226 Frank Holmes

Response

Chapter 173-184-115 WAC has been clarified with the following language: “ the deliverer must have access to boom four times the length of the largest vessel involved in the transfer or 2000 feet, whichever is less.”

Deliverers will need to research average vessel sizes and have some flexibility perhaps by pooling resources, having caches, or contracts with response companies to ensure they are meeting the rule requirements. Ecology will continue to work with all stakeholders during the implementation phase of this rule to ensure these types of issues are addressed.

69. Pre-booming should provide for true containment of the oil – around the ship and the dock. Large refineries should not be able to only pre-boom around the transfer area.

Pre-booming should not include exemptions for large refineries like BP who only want to pre-boom around the transfer area for that is not the only place where oil may spill and it does not

provide for true containment if oil did spill in the area because it is not attached to the ship. – 205 Fred Felleman

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 them 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, as was 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 matches protection provided by the prebooming requirements for a delivering vessel which is transferring at a location with variable currents.

Ecology has also determined that this requirement will provide meaningful protection against impacts from oil spills that occur during transfers.

70. There is no such thing as quick disconnecting boom. If it is more important to be able to disconnect in an emergency – the operation should not be pre-boomed to begin with.

Section l(e)- There is no such thing as quick disconnecting boom in an emergency. It is either connected or it is not. The disconnecting and removal of boom requires a boat and crew on the water in good weather and in bad. If a vessel is pre-boomed, and an emergency such as a fire on the dock occurs and the vessel must depart immediately, the vessel will have to depart through the boom causing a risk of fouling propellers on all vessels involved in the evolution. The proposed rule infers that it is more important to be able to disconnect the boom in an emergency, than it is to have the boom in place in the first place, SO WHY PRE-BOOM? - 220 Robert Dorn

Response

The legislature has directed Ecology to require deliverers to preboom all oil transfers when it is safe and effective to do so. Chapter 173-184 was written to

require prebooming for all high risk transfers, transfers over 500 gallons per minute, when it is safe and effective to do so.

To comply with the safety aspect of prebooming Ecology requires that the boom be able to be disconnected quickly in an emergency. Ecology does not specify how the responsible party will comply with this requirement. If the industry does not sell “quick release” boom, the requirement can be met by other means such as a pelican hook release.

71. If the deliverer is a vessel and they contract out to a third party, how can they be held responsible for disconnecting the boom in the event of an emergency?

re: transfer containment and recovery: if deliverer is vessel and they contract out to third party, how can deliverer be required to "must be able to disconnect all boom in the event of an emergency" – 209 David Sawicki

Response

Ecology would expect the deliverer to write this into the contract they have with the third party.

72. The rule should require the ability to track the spill in low visibility conditions as well as low light conditions.

In addition to requiring having the ability to safely track the spill in the dark or low light conditions, we recommend requiring the ability to track the spill in low visibility situations such as foggy conditions and other inclement weather conditions. If these rules allow transfers in inclement weather or foggy conditions then we need to be assured that the equipment deployed recovery efforts in the event of a spill will be effective under these conditions. – 216 Brad Ack

Response

Thank you for your comment. Section 173-184-115(7)(c) has been amended. The language is now: “The ability to safely track an oil spill in low visibility conditions. The tracking system must be on scene within thirty minutes of being made aware of the spill.”

73. The requirement to have the ability to track spills in low light conditions will effectively eliminate the ability to conduct nighttime transfers.

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.

74. The night time spill tracking requirement is not necessary. Between the public assets, the Coast Guard assets, and the response contractor's assets this requirement is covered.

Spill "tracking" requirement- Because the Department has recently used taxpayer funds to secure the services of the King Co. Sheriff's Guardian One helicopter for oil spill tracking, it would appear that the spill tracking requirement is not necessary. The U.S. Coast Guard also maintains some spill tracking capability. Our spill response contractors, namely MSRC, also provide infrared spill tracking capability which can arrive on scene within 12 hours - 220 Robert Dorn

Response

It is ultimately the responsibility of the spilling party, not the public, to effectively respond to an oil spill. Although various public agencies have made resources available to respond to oil spills, this does not excuse responsible parties from being able to provide an effective response.

Ecology feels that 12 hours is too long an interval between the spill and the ability to ascertain which direction the oil is moving. Ecology recommends the use of a device such as a lighted buoy with a transponder which could be thrown over into the water and would move with the same wind, current and/or waves that are moving the spilled oil. The infrared spill tracking could then be used later to develop a better picture of the oil's movement.

75. Ecology needs to provide reasonable justification for requiring the delivering vessel to provide access to boom when precedent has been established that if the facility has the response resources, that the facility be readily available to response to a discharge, not the vessel.

The federal standard in 33 CFR 155.1050 (c)(3) requires that vessels, conducting transfer operations at facilities with response plans submitted and approved under 33 CFR 154.1017, identify average most probable discharge response resources, but they are not required to ensure by contract or other means the availability of such resources. The preamble to the Final Rule for this regulation, 61 FR 1064, dated January 12, 1996 states: "The Coast Guard determined that it is not necessary to require both the facility and vessel owners or operators to ensure, by contract or other approved means, that resources are available to respond to an average most probable discharge. Requiring the facility to plan for and ensure the availability of these resources is consistent with 33 CFR 154.545, which already requires facility to have access to discharge containment equipment to control an oil discharge from operations from that facility. If the facility has identified these response resources, the Coast Guard has determined that they will be readily available to respond to an average most probable discharge from the vessel occurring during transfer operations." BP believes that the WDOE must provide reasonable justification for exceeding the federal standard, or changing them. WDOE needs to provide reasonable justification for requiring the delivering vessel to provide access to boom when

precedent has been established that if the facility has the response resources, that the facility be readily available to respond to a discharge, not the vessel. In the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules, page 36, third paragraph, it is stated, "However, it is the deliverer that is responsible for compliance." BP requests reasonable justification for placing the responsibility for compliance on the delivering vessel for both access to boom and boom deployment when delivering to a facility with a plan under 33 CFR 154.1017 when federal precedence has placed the responsibility on the facility for this equipment. – 209 David Sawicki

The federal standard in 33 CFR 155.1050 (c)(3) requires that vessels, conducting transfer operations at facilities with response plans submitted and approved under 33 CFR 154.1017, identify average most probable discharge response resources, but they are not required to ensure by contract or other means the availability of such resources. The preamble to the Final Rule for this regulation, 61 FR 1064, dated January 12, 1996 states: "The Coast Guard determined that it is not necessary to require both the facility and vessel owners or operators to ensure, by contract or other approved means, that resources are available to respond to an average most probable discharge. Requiring the facility to plan for and ensure the availability of these resources is consistent with 33 CFR 154.545, which already requires facility to have access to discharge containment equipment to control an oil discharge from operations from that facility. If the facility has identified these response resources, the Coast Guard has determined that they will be readily available to respond to an average most probable discharge from the vessel occurring during transfer operations." – 226 Frank Holmes

Note that in Sections (6)(b)(I) and (6)(b)(iii), 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 these sections. WSPA requests that WDOE provide clarifying language as to the applicability of the requirements to "deliverers". – 226 Frank Holmes

WSPA believes that the WDOE must provide reasonable justification for exceeding the federal standard, or changing them. WSPA recommends that WDOE provide reasonable justification for requiring the delivering vessel to provide access to boom when precedent has been established that if the facility has the response resources, that the facility be readily available to respond to a discharge, not the vessel. In the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules, page 36, third paragraph, it is stated, "However, it is the deliverer that is responsible for compliance." WSPA requests reasonable justification for placing the responsibility for compliance on the delivering vessel for both access to boom and boom deployment when delivering to a facility with a plan under 33 CFR 154.1017 when federal precedence has placed the responsibility on the facility for this equipment. - 226 Frank Holmes

Response

RCW 88.46.160 requires the provider of the oil during an oil transfer operation to provide containment and recovery equipment. Therefore, the rules reflect this statutory assignment of responsibility to the delivering vessel or facility. Ecology encourages delivering vessels and facilities to develop partnerships to ensure compliance with this chapter.

We disagree that this aspect of Ecology's rules "exceeds" federal standards. Instead, the state statute places emphasis on the delivering entity whereas the Coast Guard regulations referenced in the comments focus on facilities. Any difference between state and federal regulations reflect the state legislature's decision to place responsibility for compliance on the delivering entity.

76. The compliance dates for implementation and alternative compliance leave a thirty day gap between when the rule is in effect and when the alternative compliance would be approved or disapproved. Ecology should extend the deadline.

Anyone attempting to avail themselves of the alternative provisions found in 317-40-060 would be left in the lurch. According to subparagraph 060((3), the owner/operator would have to submit their proposal 120 days before planned operations. If compliance is necessary in 90 days from the effective date of rule, then the owner operator would either have to shut down operations until the alternative is approved and alternative measures are put into place, or comply with the standard as written. This places the operator in an unacceptably tenuous position. – 232 Michael Anderson

Paragraph (4) addresses compliance schedule requiring vessels conducting Rate A transfers meet all requirements of this section [110] except subsection (2) with 90 days of the effective date of the rule. However, anyone attempting to pursue an alternative under the provisions of 317-40-060 would be in a lurch. Furthermore paragraph (2) of section 110 allows an existing vessel up to 180 days to submit a report of threshold values at which pre-booming is safe and effective. Thus, an existing delivery vessel will have to be pre-booming even before having to submit a report of the safe and effective threshold values or submitting an alternative for consideration. This might require a transfer operation be pre-boomed in conditions that are unsafe and ineffective or be faced with shutting down pending submission and approval of an alternative. We recommend that all implementation days for existing delivery vessels be pushed out to at least 180 days for consistency. This only covers up to submission and does not account for the time DOE will spend reviewing these proposals, so really 240 days should be allowed. – 203 Michael Moore

The compliance schedule in Section (4)(a) is confusing. It requires that operators meet all the requirements for Rate A transfers within 90 days, with the exception of determinations of safe and effective (used for alternative compliance applications), when the later requires submission to WDOE within 180 days after the effective date of the chapter. It is likely that it would take up to 90 days just to get the application information collected and submitted (unless this step is bypassed). This entire application process (submission and updates or changes) could be avoided if the WDOE required pre-booming or simply comply with the alternative compliance standards. Alternatively, it is recommend that all implementation days for existing delivery vessels be pushed out to 180 days for consistency. 226 Frank Holmes

Response

(In chapter 173-184 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 WAC 173-184. The plan requirements are in chapter 173-184-105 WAC, Equivalent Compliance Plan.)

The delivering vessel must meet the appropriate alternative measures chapter 173-184-115(7) or 120(2) in 120 days. If the owner or operator of the delivering 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. Ecology has used the compliance schedule matrix to

determine that the 120 day period is reasonable, and consistent with the other compliance dates for report submittal in this chapter.

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.

77. The ninety day compliance deadline is too ambitious. Ecology should extend the compliance deadline to at least six months.

This section stipulates a ninety day compliance deadline from the date of rule publication. This timeline is overly aggressive and unrealistic. The purchase and installation of the required equipment on this timeline is unattainable by many members of the industry. This would be true whether a fixed or mobile facility, but would likely have a greater impact on the mobile facilities. Specifically for WSF, we would have to go through the legislative process to attain needed funding support. Even if funding existed, we would be extremely hard pressed to go through the required RFP process and have the needed equipment on hand to comply with this ninety day compliance expectation. We recommend that Ecology extend the compliance deadline to at least six months. – 232 Michael Anderson

Purchasing of equipment and permitting will make it nearly impossible to meet a 90 day timeframe - This should be 180 days. – 209 David Sawicki

Response

Ecology has made compliance schedule changes based on comments received in the rule comment process. Ecology developed a compliance schedule matrix and, in response to comments, Ecology tried to match equipment requirements with training and report submittal requirements. Ecology used the best determination of its 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 and in consultation with our engineering staff Ecology changed the compliance date for Rate A prebooming requirements from 180 days to 365 days from the date this rule goes into effect. This change was made because Ecology determined that the 365 day timeframe was a more realistic and achievable timeframe.

78. The skimming system required in 110(6)(d)(ii) must be capable of fifty barrels recovery. Is this EDRC?

Is the 50 barrels EDRC? – 209 David Sawicki

Response

Yes this is EDRC.

79. For Rate B alternative measures is paragraph 8(b) - when was boom first deployed such that now additional boom must be deployed?

Subparagraph (8)(b) requires that 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. Under these Rate B alternative measures, when was boom first deployed such that now additional boom is to be deployed? – 203 Michael Moore

Response

The standard in section 173-184-120(2)(c) requires that 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.

This is a performance standard. The deliverer must have the boom and equipment available to deploy. The first responder, responsible party or unified command will dictate where and/or how the boom will be deployed.

The 500 feet of boom required by subsection (2)(c) is in addition to the boom required by WAC 173-184-120(2)(a).

80. Do all person involved in the transfer need to be trained in the proper use and maintenance of boom and recovery equipment? Does the training need to include Hazwoper?

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. – 232 Michael Anderson

Response

All personnel involved in handling the boom must be trained in the proper use and maintenance of boom and recovery equipment. Ecology does not specify the training program for this requirement.

Section 317-40-120 Providing safe vessel access

81. Because federal regulations and international convention are in place, this section is preempted.

The proposed section of the WAC regulations attempts to apply standards that are already in place in federal regulations for pilot boarding equipment, at 46 CFR 90.10-30 (PWSA Title 11), for deck lighting, at 33 CFR 155.790 (PWSA Title I), and in the International Convention for the Safety of Life at Sea (SOLAS). Because there are already federal regulations and international conventions in place, we believe the proposed regulation is preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-130 Pretransfer conference

82. The proposed section duplicates federal regulations in most respects and are therefore preempted.

Federal regulations at 33 CFR Part 155, Subpart C (PWSA Title I), contain the Coast Guard requirements for fuel oil transfer procedures. The proposed WAC regulations would duplicate these federal regulations in most respects. Therefore, we believe the regulations in this section are preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

83. The requirement for the pretransfer conference to be logged in the deck log is redundant and should be eliminated.

AWO has concerns with the requirements in the draft regulation dealing with the record keeping for the pretransfer conference. “(5) The master/officer-in-charge or his designee must record in the vessel's deck log immediately upon completion, the date and time of the pretransfer conference.” This type of information is already contained in the Coast Guard required Declaration of Inspection. Also, tank vessels do not necessarily have deck logs. The department should look for ways to reduce redundancy in the regulation and this is one of the areas that should be eliminated. – 208 Jason Lewis

Crowley has concerns with the requirements in the draft regulation dealing with the record keeping of the pretransfer conference. “(5) The master/officer-in-charge or his designee must record in the vessel's deck log immediately upon completion, the date and time of the pretransfer conference.” This type of information is already contained in the Declaration of Inspection. Also, tank vessels don't necessarily have deck logs. The department should look for ways to reduce redundancy in the regulation and this is one of the areas that should be eliminated. – 233 Stephen Wilson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

84. PICs may be required to discuss issues, but as the PICs have little or no control over details, they should not be required to agree to the accuracy.

Paragraph (2) is requiring the PICs to agree to things over which they may have little or no control. There is no way for the delivering PIC to know if the details of the preloading plan, to which he/she is required to “agree,” are accurate. Discuss it, yes; agree to it, no. – 203 Michael Moore

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

85. Are point-of-transfer watch and deck-rover watch functional requirements or dedicated people?

In this section, as well as several other locations throughout the rules such as 317-40-150(2)(c), the identification of the point-of-transfer and deck-rover watch and their duties are addressed. WSF is assuming that these are functional requirements and not a dedicated person fulfilling only these assignments. Specifically, WSF routinely assigns the point of transfer duties to the Person-in-charge (PIC). If this is not acceptable under this rule, then Ecology needs to clarify and WSF will bear additional labor costs. The WSF vessel PIC and delivering facility PIC are often co-located at the point of transfer on the ferry car deck, thereby fulfilling the functional requirement. – 232 Michael Anderson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

86. Why should the signing of the DOI be recorded in the log?

Paragraph (5) requires recording the date and time of the pre-transfer conference in the deck log (or alternatively in the engine room log). Why is not the DOI sufficient for recording this conference? – 203 Michael Moore

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-140 Communications

87. The communications section deals with the same subject matter as the federal regulations and is therefore preempted.

Federal regulations for communications during vessel fuel oil transfers are found at 33 CFR 155.785 (PWSA Title I). The proposed WAC regulations for communications deal with the same subject matter as the federal regulations and are therefore preempted. – 234 W.D. Baumgartner

General comment; Dictating the functions of a vessel's crew seems open to legal action. – 209 David Sawicki

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-150 Oil Transfer procedures

88. This section of the rule deals with the same subject matter as the federal regulations and is therefore preempted.

Federal regulations include detailed requirements for transfer procedures. These federal regulations are found at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I).

Because the proposed WAC regulations in this section purport to regulate in the same area as the federal regulations, they are preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

89. The proposed rule requires all oil transfer operations be supervised by a PIC designated in writing by the owner/operator. Ecology should amend this to require listing by positions and/or titles only.

The proposed rule requires that all oil transfer operations must be supervised by a PIC designated in writing by the owner operator. This process is cumbersome for some operations. Ecology should clarify this rule to allow the owner operator to designate the Chief Engineer as the person responsible for the transfer operation through the SMS and in turn the Chief Engineer is in the best position to designate a PIC of a qualified bunker team aboard the ship. The Chief Engineer is in the best position to designate a qualified PIC because of his familiarity with the engineers in his crew. Ecology should amend the rule to require listing by positions and/or titles only. This is equally important due to the frequent crew turnover which would otherwise require constant revision of the written designation which would lead to error. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-160 Soundings

90. Federal regulations touch on the same general area as the proposed section and this section is therefore preempted.

Federal regulations at 33 CFR 8 155.750 provide that each vessel's transfer procedures include a requirement to monitor the level of cargo in tanks and ensure that cargo levels in each tank do not exceed the maximum amount permitted by 33 CFR 155.775(b) (PWSA Title I). The federal regulations touch on the same general area as the proposed WAC regulations in this section and are preempted. -234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

91. Ecology should clarify the proposed rule to state that remote gauging systems are an acceptable means of sounding a tank before, during, and after an oil transfer operation.

The proposed rule requires that the PIC sounds all tanks involved with the oil transfer operation before the transfer begins. It is not clearly defined what sound mean. Many fuel tanks aboard some ships are not physically equipped with sounding pipes and tank tables for manual sounding. The ships are highly automated and the fuel tanks are sounded with an approved remote gauging system. The gauging systems are tested on a periodic basis and are very reliable. The gauging

systems are part of the machinery space automation system, which is approved by the vessel's classification society and it's Flag State. Since the term "sounding" is not specifically defined as manual only we consider remote tank gauging as being an acceptable means. We believe Ecology should clarify the proposed rule to state that remote gauging systems are an acceptable means of sounding a tank before, during and after an oil transfer operation. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

92. Can the sounding requirements be outsourced to a third party gauging company?

can the requirement that the PIC conduct soundings be interpreted to mean a third party gauging company ? Requiring hourly soundings may work OK for tankers that have SAAB or other remote gauging systems, but most barges use manual equipment and probably would require another tankerman aboard to meet these requirements. – 209 David Sawicki

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

93. Please clarify whether the PIC must sound the tanks personally.

This section stipulates that "the receiving PIC must frequently sound the tanks during loading..." Perhaps a minor clarification, but as written the PIC would have to leave the point of transfer to sound the tanks. This is not considered necessary or prudent. There are other crewmembers dedicated to sounding tanks, and as long as this information is being communicated to the PIC, we don't see the need for the PIC to perform this function personally. Clarification of expectations would be appropriate. – 232 Michael Anderson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-200 Delivering vessel procedures

94. Any training requirements in this section are "field preempted" by Title II of the PWSA. The other provisions of this section are covered by federal rules and are therefore preempted.

Title II of the PWSA (46 USC3703(a)(4)) requires the Coast Guard to issue regulations for the training and qualifications of the officers and crews aboard tank vessels. In U.S. v. Locke, 529 U.S. 89 (2000), the U. S. Supreme Court held that state regulations imposing additional training and qualification requirements for the crews of tank vessels are "field preempted." Therefore, the training and qualification requirements of this proposed WAC section are preempted by Title II of the PWSA. The other provisions of this proposed section would regulate activities that are already the subject of the Coast Guard's transfer procedure regulations at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I), and are therefore preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-210 Receiving vessel pretransfer training

95. To the extent this section applies to tank vessels the training and qualification requirements are preempted by Title II of the PWSA. The other provisions of this section would regulate activities that are already subject to federal law and are therefore preempted.

Title II of the PWSA (46 USC 3703(a)(4)) requires the Coast Guard to issue regulations for the training and qualifications of the officers and crews aboard tank vessels. In *US. v. Locke*, 529 U.S. 89 (2000), the U. S. Supreme Court held that state regulations imposing additional training and qualification requirements for the crews of tank vessels are "field preempted." Therefore, to the extent this proposed section applies to tank vessels as that term is defined by federal regulations, the training and qualification requirements of this proposed WAC section are preempted by Title II of the PWSA. The other provisions of this proposed section would regulate activities that are already the subject of the Coast Guard's transfer procedures regulations at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I), and are therefore preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

96. The requirement to hold a training session within forty-eight hours before a scheduled oil transfer operation is excessive. Ecology should change the requirement to every 30 or 60 days.

Except for a receiving vessel subject to WAC 317-40-230 Intrastate operation, a receiving vessel's PIC must conduct a training session for all personnel with duties under the vessel's oil transfer procedures within forty-eight hours before a vessel's scheduled oil transfer operation. The requirement to conduct a training session within forty-eight hours of a transfer is excessive. Personnel handling transfers are currently licensed and trained to perform transfers. At a maximum, the department should ask for additional training sessions every 30 or 60 days. – 233 Stephen Wilson

this is unnecessary for experienced crews; - 209 David Sawicki

The requirement to conduct a training session within 48 hours of a transfer is excessive. Coast Guard regulations already require personnel in charge of transfers to be licensed and/or trained to perform transfers. At a maximum, the department should ask for training sessions every 30 or 60 days. - 208 Jason Lewis

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

97. Ecology should change “deck rover watch” to “deck watch stander”.

The proposed rule states that if the receiving vessel is not in service and does not have a deck-rover watch on duty, the PIC may alternatively enter the required information in the engine room log book. Ecology should change “deck rover watch” to “deck watch stander”. The rule as proposed allows the transfer to continue without a deck rover. The deck rover must be part of the transfer team. Section 130 follows the logic that for vessels that are not in service and do not have a deck watch stander the PIC may make the required log book entries. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

98. The language around “deck rover watch” needs to be standardized between sections 130 and 210.

The language in the final sentence of this section is slightly different wording than that contained in 317-40-130(5), and should be standardized. This language in 210(6) might indicate that a deck-rover is not required. It also suggests that the deck-rover has to be a deck crewmember. WSF’s position is that while the deck-rover functions must be performed, they may be performed by any member of the crew. Suggest using the language in 130(5) as the standard. – 232 Michael Anderson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-220 Preloading plan

99. The federal regulations have detailed requirements which subsume this section. No local peculiarities necessitate state regulation in this area. This section is preempted.

The requirements of the proposed WAC preloading plan regulations are already contained within the more expansive federal regulations for oil transfer located at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I). These detailed federal requirements subsume the proposed WAC regulations. Furthermore, no local peculiarities necessitate state regulation in this area. Therefore this section of the proposed WAC regulations is preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

100. The rule should be clarified to indicate the final ullage or innage on the preload plan is an estimate. Ecology should also provide some guidance to the industry on what densities should be used when ship is preparing a preloading plan for a specific product to be taken in Washington waters.

The proposed rule requires the final ullage or innage, and percent of each tank to be entered on the preloading plan. Ecology must recognize that this language is confusing and should be changed to reflect reality. What can be written on the preloading plan is the planned estimated final ullage or innage. The ullage or innage will only be an estimate because the actual density of the product is unknown to the vessel at the time the preloading plan is prepared. The fuel is ordered and purchased by weight typically in metric tons. Soundings of the tanks give an indication of volume typically in cubic meters. To make the conversion from weight to volume requires knowledge of the product's density. Density is unknown to the ship until just before the transfer commences. It would be useful for ecology to provide some guidance to the industry on what densities should be used when a ship is preparing a preloading plan for a specific product to be taken in Washington waters. Irrespective, the rule should be clarified. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

101. Ecology should revise the rule to require only those tanks involved with the oil transfer to be included on the preload plan.

The proposed rule requires the level and type of liquid in all bunker tanks prior to the oil transfer to be on the preloading plan. Section 160 does not require all the bunker tanks to be sounded, only those involved with the transfer operation. Because the industry would not be required to sound all tank, all tanks should not be included on the preloading plan. Ecology should revise the preloading plan requirement so only those tanks involved with the oil transfer need to be included on the preloading plan. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-230 Intrastate operation

102. Vessels which bunker more than once a month in Washington State should only have to conduct training every 60 days.

Crowley recommends the following language to be inserted: "(1) A receiving vessel that bunkers more than once a month in Washington State may omit the training before each transfer operation, if the training prescribed in WAC 317-40-210 was conducted within the previous 60 days." The administrative burdens being imposed on the industry by this regulation are severe. The crews involved in these operations are licensed and have undergone extensive training. – 233 Stephen Wilson

AWO recommends the following language to be inserted: "(1) A receiving vessel that bunkers more than once a month in Washington State may omit the training before each transfer operation, if the training prescribed in WAC 317-40-210 was conducted within the previous 60 days." The administrative burdens being imposed on the industry by this regulation are severe.

The crew involved in these operations are licensed and have already undergone extensive training. - 208 Jason Lewis

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

103. Pre-identifying the bunkering schedule and tracking and sending change notification is burdensome. The section should be rewritten to state that a receiving vessel that bunkers more than once a month in Washington State may omit the training before each transfer operation as long as the training prescribed in section 210 was conducted within the previous 30 days.

Good concept, however, paragraph (1) provides for an appropriate deviation to what would otherwise be overly frequent training and (2) and (3) add burden. This requirement suggests that these intrastate operations are very well defined and regular. Actually, pre-identifying the schedule will be difficult, and tracking and change notification will be burdensome. The rule should simply read: "A receiving vessel that bunkers more than once a month in Washington State may omit the training before each transfer operation as long as the training prescribed in section 210 was conducted within the previous 30 days." - 203 Michael Moore

The proposed WDOE language (providing vessel information, routes served, number of bunkering operations performed in any 30 days, and the location and time of bunkering operations) and then having to notify WDOE "...as soon as possible when making a change in the vessel's typical operations". This requirement suggests that these intrastate operations are very well defined and regular. Pre-identifying the schedule will be difficult, and tracking and change notification will be burdensome. WSPA suggests the following language to simplify and provide clarity to Section 1: (1) A receiving vessel that bunkers more than once a month in Washington State may omit the training before each transfer operation, if the training prescribed in WAC 317-40-210 was conducted within the previous 30 days and provided Person In Charge and Officer in Charge of bunkering operation remain unchanged. -226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

104. While many vessels will bunker in Washington more than three times per month very few operate on the waters of the state more than fifty percent of the time. As a result the training sessions have to be conducted weekly. Vessels that bunker more than two times a month should be able to conduct a single meaningful monthly training session. Ecology should change the word "and" to "or" and the word "three" to "two".

The proposed rule states that a receiving vessel operating on waters of the state more than fifty percent of the time in a calendar year and that bunkers three or more times in a month must conduct the training session described in WAC 317-40-210 at least once every month. The proposed rule and the current rule both set unreasonable levels to qualify for the interstate operations waiver of the training requirements. While many vessels will bunker in Washington more than three times per month very few operate on the waters of the state more than fifty percent of the time. As a result the training sessions have to be conducted weekly and

experience has shown that the training becomes perfunctory. When it is the same people involved with the same training session week after week it creates a situation where the training is a waste of time, people don't pay attention and this breeds complacency. Vessels that bunker more than two times a month should be able to conduct a single meaningful monthly training session. Ecology should change the word and to or and the word three to two. - 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

105. Requiring WSF to provide the bunkering schedule would seem to add little value and be somewhat redundant, given the advance notification requirements otherwise imposed on the deliverer.

As one of the main "intrastate operations", it is not clear whether these sections are intended to be an exception or an addition for these operations. First, as written these sections are not tied to subparagraph (1), so their application is not clear. Further, they would require that the receiving vessel's owner/operator (of any intrastate operation) must submit a written schedule of the vessel's typical operations to Ecology, with vessel identification, routes served, number and locations of bunkering operations, as well as make notification any time this schedule changes. It isn't clear what value this schedule would add and would seem somewhat redundant, given the advance notification requirements otherwise imposed on the deliverer. WSF is certainly happy to share the schedule of our vessels, but they change with some regularity, and we would question their usefulness to Ecology. - 232 Michael Anderson

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-240 Watchstander duties

106. To the extent this section imposes additional training and qualification requirements for the crews of tank vessels, it is field preempted. The other provisions of this section would regulate activities that are already the subject of federal law are therefore preempted.

Title II of the PWSA (46 USC 3703(a)(4)) requires the Coast Guard to issue regulations for the training and qualifications of the officers and crews aboard tank vessels. In *US. v. Locke*, 529 U.S. 89 (2000), the U. S. Supreme Court held that state regulations imposing additional training and qualification requirements for the crews of tank vessels are "field preempted." Therefore, to the extent this proposed WAC section applies to tank vessels as that term is defined by federal regulations, the training and qualification requirements of this section are preempted by Title 11 of the PWSA. The other provisions of this proposed section would regulate activities that are already the subject of the Coast Guard's transfer procedures regulations at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I), and are therefore preempted. -234 W.D. Baumgartner

Vessel operations including watchstander duties are under the authority of the U.S. Coast Guard and are beyond the purview of the State of Washington. WSPA requests that this section be deleted from the regulation. The posting of a point-of-transfer watch at the point of connection for cargo transfers is not possible without increasing the staffing of the ship. Cargo transfers can last for days at a time. The posting of an extra man on watch in port is an unreasonable requirement given that the connection is already being monitored visually 100% of the time. These

connections are already monitored by 2 able-bodied seamen (ABs). These ABs have the responsibility of also inspecting the mooring lines. On ocean-going ships, adjustment of the mooring lines requires the presence of both ABs, not just one. During the time both ABs are adjusting mooring lines, the Mate on watch is monitoring the point of transfer from his/her station at the point of cargo control, in the Cargo Control Room. The point of transfer is monitored either visually or with the use of a video camera. To require that a third AB be posted at the point of transfer is unreasonable and will pose an economic burden on the marine transportation industry. This cost was not addressed nor mentioned in the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules. – 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

107. Ecology should not require a point of transfer watch be assigned for long cargo operations. The point of transfer is monitored either visually or with the use of a video camera at all times.

The posting of a point-of-transfer watch at the point of connection for cargo transfers is not possible without increasing the staffing of the ship. Cargo transfers can last for days at a time. The posting of an extra man on watch in port is an unreasonable requirement given that the connection is already being monitored visually 100% of the time. These connections are already monitored by 2 able-bodied seamen (ABs). These ABs have the responsibility of also inspecting the mooring lines. On ocean-going ships, adjustment of the mooring lines requires the presence of both ABs, not just one. During the time both ABs are adjusting mooring lines, the Mate on watch is monitoring the point of transfer from his/her station at the point of cargo control, in the Cargo Control Room. The point of transfer is monitored either visually or with the use of a video camera. To require that a third AB be posted at the point of transfer is unreasonable and will pose an economic burden on the marine transportation industry. This cost was not addressed nor mentioned in the Preliminary Evaluation of Probable Coasts and Benefits of Proposed Oil Transfer Rules. – 209 David Sawicki

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

108. Ecology should mandate that a transfer must be pre-boomed if the tank barge does not provide additional watch members.

PSA is concerned that under “Watchstander duties” tank barges are exempt from designating point-of-transfer watch and deck-rover watch positions. PSA recommends that if these additional watchstanders are not available, for whatever reason, then Ecology should require tank barges to preboom at all times. – 217 Sue Joerger

At a minimum, the state should mandate that the facility preboom all transfers in which the tank barge owner refuses to provide additional watch. This additional safeguard is certainly within the state’s authority and would be a very reasonable restriction given the risk posed by these transfers. – 207 Bruce Wishart

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

109. Tank barges must have additional personnel during all transfers.

Lessons learned taught us that spills can be prevented or limited by having adequate watches aboard vessels during transfer. However section 317-40-240 of the proposed rule exempts tank barges from this requirement. Intimidation by threatened legal action as a result of the Intertanko decision should not prevent the State from issuing rules regarding a vessel that is docked for oil transfer and thus unlikely to be subject to Federal pre-emption. Tank barges must have additional personnel during all transfers. – 200 Gerald Joyce

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

110. Does Ecology have authority to regulate vessels when they are in port and no longer in transit?

There has been some question as to whether this approach would conflict with Coast Guard authority as defined under the Intertanko decision. It is our view that when a vessel is no longer in transit, but in port, it is no longer exclusively under the Coast Guard's jurisdiction and the state is free to regulate. – 207 Bruce Wishart

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

111. Are these duties functional and not positional? In other words might one individual be assigned to more than one duty?

In this section, as well as in several other requirements, e.g. 317-40-130(3) or 317-40-150(2)(c), we believe these duties to be functional and not positional such that, where appropriate, one individual might be able to fill two duties, e.g., the PIC could be so positioned that he/she could also be the point-of-transfer watch. – 203 Michael Moore

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-250 Bunkering by a facility

112. To the extent this section requires personnel aboard a vessel to comply with preempted state regulations, it is preempted.

To the extent this proposed section of the WAC regulations would require personnel aboard a vessel to comply with preempted state regulations, this section is also preempted. – 234 W. D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

113. The requirement that vessel personnel know and comply with the facilities oil transfer procedures is unnecessary. The DOI serves as the interface.

These sections require that the vessel personnel know and comply with the facilities oil transfer procedures in the facilities operation manual. WSPA believes that this requirement is unnecessary. Each component engaged in a transfer, whether vessel to vessel or vessel to facility or facility to vessel, has its own oil transfer procedures. The DOI serves as the interface between those procedures and should be sufficient, without either component having to know the detail of the other's procedures. – 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

114. These standards are redundant. The coordination between the facility and vessel is covered through other provisions.

These standards are redundant, since bunkering is a form of oil transfer. Also, WSF is concerned that it is unrealistic to require the covered vessel personnel be fully aware of and comply with the facility's oil transfer procedures in the facilities operations manual. It seems inappropriate to require vessel personnel to comply with something they don't have access to and had no part in developing. The coordination between the facility and the vessel is already covered through other provisions, such as the pre-loading plan and pre-transfer conference. - 232 Michael Anderson

These sections are redundant in that they both address oil transfers already covered by the preceding rules. – 203 Michael Moore

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-260 Bunkering transfer restrictions

115. This section focuses on the same issues already addressed by federal regulation, the section is preempted.

Federal regulations at 33 CFR 156.120 (PWSA Title I) already establish the conditions under which a vessel may conduct oil transfer operations, including such matters as the strength of the moorings, surge, current, weather, changes in draft, drift, and tide. Because this section of the proposed WAC regulations focuses on the same issues already addressed by federal regulations, this section is preempted. – 234 W.D. Baumgartner

Vessel operations including bunkering transfer restrictions are under the authority of the U.S. Coast Guard and are beyond the purview of the State of Washington. WSPA requests that this section be deleted from the regulation. – 226 Frank Holmes

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

116. Ecology needs to clarify whether the transfer restrictions mentioned here can be addressed in the threshold values report.

WAC 317-40-260 additionally determines weather transfer restrictions when extra requirements are necessary to be put in place (logging, extra mooring, ground tackle) or operations are to be suspended. However if threshold values are developed and submitted for approval as to when it is not safe & effective to pre-boom, could this also be incorporated at that time? This needs to be clarified. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

117. Ecology should not be asking the tankerman to divide his attention and monitor the weather. If it is too severe to conduct the transfer, then they will cease operations.

The department is asking that the tug industry install weather monitoring equipment and be in a position to accurately track the wind speed. This is a dangerous and often impossible requirement. To monitor and log wind speed every thirty minutes would increase the risk of an incident occurring during a transfer. A tug may not be in a position in which its crew can accurately gather this information, as the tug is often alongside a larger vessel, thus inhibiting any reading the weather monitoring equipment might provide, or is prohibited from being alongside the barge. The tankerman and the crew need to be focused on the job at hand and if the determination is made that the weather is too severe to conduct the transfer, then they will cease operations. Unless that determination is made, it is the responsibility of the crew to ensure the product is transferred in a safe manner and that their attention is not diverted from the transfer at hand. - 233 Stephen Wilson

The department is asking that the tug industry install weather monitoring equipment and be in a position to accurately track the wind speed. This is a dangerous and often impossible requirement. To monitor and log wind speed every 30 minutes would increase the risk of an incident occurring during a transfer. Most of the time, a tug will not be in a position in which its crew can accurately gather this information, as the tug is often alongside a larger vessel, thus inhibiting any reading the weather monitoring equipment might provide. The tankerman and the crew need to be focused on the job at hand. If the company's policy determines that the weather is too severe to conduct the transfer, then the crew will cease operations. Unless that determination is made, it is the responsibility of the crew to ensure the product is transferred in a safe manner and that their attention is not diverted from the transfer at hand. – 208 Jason Lewis

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

118. Ecology should clarify this section of the proposed rule to exempt situations where the wind is holding a vessel onto the dock so as not to cause unnecessary and costly delays.

The proposed rule requires the Delivery vessel to shut down the transfer if 40 knots of wind or more than 3 knots of current. In some weather conditions this section of the proposed rule might make sense to prevent breakaways but in others it seems like an unnecessary delay. If the wind

or current is pushing the vessel against a dock shutting down the oil transfer operation should not be required because the risk of the vessel coming away from the dock is reduced. Shutting down the transfer operation when the wind is holding a vessel on the dock is an unnecessary delay. Ecology should clarify this section of the proposed rule to exempt situations where the wind is holding a vessel onto the dock so as not to cause unnecessary and costly delays. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

119. The rule does not address vessels with high levels of technology. Strict adherence to the proposed rule as written could make a spill more likely because we couldn't rely on the technology we have installed.

The proposed rule doesn't address technology; it is written for a vessel that manually fills and sounds each tank independently. It doesn't recognize the additional safe guards that our systems have installed like; remote tank gauges, remote valve control, flow meters, level alarms, flow alarms, overflow tanks and cascade venting systems. Strict adherence to the proposed rule as written could actually make bunkering more likely to spill because we couldn't rely on the technology we have installed. – 202 J. Michael Crye

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-300 Cargo transfer plan

120. The detailed federal rules subsume this section, this section is therefore preempted.

The requirements of the proposed WAC preloading plan regulations are already contained within the more expansive federal regulations for oil transfer located at 33 CFR 156.120 and 33 CFR Part 155, Subpart C (PWSA Title I). These detailed federal requirements subsume the proposed WAC regulation. Therefore this section of the proposed WAC regulations is preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40-310 Oil transfer by a facility

121. To the extent this section would require personnel aboard a vessel to comply with preempted state regulations, this section is also preempted.

To the extent this proposed section of the WAC regulations would require personnel aboard a vessel to comply with preempted state regulations, this section is also preempted. – 234 W.D. Baumgartner

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

122. The requirement for the vessel personnel to know and comply with the facility's oil transfer procedures is unnecessary. The DOI serves as an interface to procedures and should be sufficient.

These sections require that the vessel personnel know and comply with the facilities oil transfer procedures in the facilities operation manual. WSPA believes that this requirement is unnecessary. Each component engaged in a transfer, whether vessel to vessel or vessel to facility or facility to vessel, has its own oil transfer procedures. The DOI serves as the interface between those procedures and should be sufficient, without either component having to know the detail of the other's procedures. – 226 Frank Holmes

As written in earlier drafts, this section required that the vessel personnel know and comply with the facilities operation manual. The requirement has been narrowed to knowing and complying with the facilities oil transfer procedures. However, this is still too broad and unnecessary. Each component engaged in a transfer, whether vessel to vessel or vessel to facility or facility to vessel, has its own required oil transfer procedures, preloading plan, and/or cargo transfer plan. The DOI serves as the interface between those transfer procedures and discussion of plans and should be sufficient, without either component having to know the detail of the other's procedures. Exactly what detail is it in the facilities procedures that DOE thinks the vessel transfer personnel need to know? - 203 Michael Moore

Response

Thank you for your comment. Ecology removed this section of the proposed rule.

Section 317-40 General comments

123. Many of the proposed rules dealing with the subjects of oil spill contingency plans, responding to discharges, and oil transfer procedures for facilities for example, are not preempted. However those rules which touch areas of regulation reserved to the Federal Government are preempted.

The rules propose new State regulation in several important areas, with the aim of preventing, preparing for, and response to discharges during oil transfers. Given the shared responsibility of the State and the Federal Government in this respect, it is imperative that we continue to work together to achieve our joint goals of protecting the waters of the State. Many of the proposed rules, dealing with the subjects of Oil Spill Contingency Plans, responding to discharges, and oil transfer procedures for facilities, for example, are not preempted. However, I am concerned that many of the proposed regulations touch areas of regulation reserved to the Federal Government, as described in the U.S. Supreme Court decision in *US. v. Locke*, 529 U.S. 89 (2000), *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

With the exception of those regulations dealing with Vessel Oil and Hazardous Material Response Plan requirements, promulgated under Section 311(j) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(j), Liability and Compensation requirements, promulgated under Subchapter One of the Oil Pollution Act of 1990, codified at 33 U.S.C. 2701-2720, and oil transfers within waterfront facilities under 33 U.S.C.1225, it is the Coast Guard's position that the

existence of a federal regulation on the subject, as well as the absence of any demonstration of a local peculiarity or unique condition justifying State regulation, serves to preempt State regulation of the subject of oil transfer to/from Coast Guard inspected vessels and/or to/from a vessel and a facility. – 234 W.D. Baumgartner

AWO hopes that the department will not follow the same misguided path as the state of Massachusetts did when regulating the industry. As the U.S. District Court in Massachusetts clearly stated, just two days ago, the state of Massachusetts overstepped its authority in seeking to regulate areas of maritime commerce that are under the exclusive province of the U.S. Coast Guard. The Court said in part: “The challenged provisions of the Oil Spill Prevention Act are preempted, invalid, and unconstitutional under the Supremacy Clause of the United States Constitution.” AWO and its members have repeatedly warned the department that it is writing a regulation that is unconstitutional. It is the hope of AWO that the department will carefully review the District Court ruling in *United States v. Commonwealth of Massachusetts and Intertanko v. Locke* and draft a regulation in only those areas where the courts allow state action. – 208 Jason Lewis

AWO's concerns with previous drafts of the oil transfer rule have, in large part, gone unaddressed, and we are now presented with a draft regulation that endangers crew safety, is impractical and needlessly onerous, and could prove financially devastating to an industry vital to our region. Along with these concerns, AWO is convinced that the regulation is unconstitutional in its current form. AWO therefore has no choice but to strongly oppose the proposed Washington State Department of Ecology draft rule on oil transfers. – 208 Jason Lewis

Response

During the comment period for the proposed rule changes to WAC 317-40, Ecology received comments from the United States Coast Guard (USCG). In their comments the USCG expressed concerns over portions of the proposed rule.

*Ecology does not necessarily agree with the USCG's legal interpretation of the scope of preemption. However, the concerns raised by the Coast Guard merit additional consideration in light of a recent Massachusetts federal court decision in which the court found that a Massachusetts oil spill prevention law was preempted. See *United States v. Commonwealth of Massachusetts*, -- F.Supp.2d-- (July 24, 2006).*

In light of the Coast Guard's comments and the Massachusetts' decision, we've opted to focus on the legislative mandate to develop oil transfer containment rules and to close WAC 317-40 and make no changes at this time. Instead, we have moved portions of the proposed rules which raise no preemption concerns to a new chapter, WAC 173-184, and named this chapter "Vessel Oil Transfer Advance Notice and Containment Requirements." We will continue to work with stakeholders to achieve our goals of aggressive and effective oil spill prevention.

124. Portions of this rule repeat federal regulations and exceed them in some places. Ecology needs to justify or change the parts which exceed federal requirements.

Crowley strongly urges you to substantially modify the most onerous and unconstitutional provisions of this rule and to work with the affected industries to craft a reasonable and responsible regulation. – 233 Stephen Wilson

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

Can you identify the areas in which these proposed rules exceed federal requirements and explain why those areas were selected? – 227 Jim Townley

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

Please show me where the following elements of Washington's Administrative Procedures Act [RCW 34.05.328] have been met. (1)(c) Determine that the probable benefits of the rule are greater than its probable costs.... (1)(g) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter, and, if so, determine that the difference is justified by the following.... (ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated.... (1)(h) Coordinate the rule, to the maximum extent practical, with other federal, state, and local laws applicable to the same activity or subject matter. (2) In making its determinations....the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified. – 218 Stuart Sanborn

Response

Title 33, section 2718 of the United States Code, preserves the rights of states to impose additional liability and requirements relating to the discharge or substantial threat of a discharge of oil. Ecology is required to be consistent with the Coast Guard to the greatest extent practicable under RCW 88.46.020.

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 chapter 88.46.160 RCW and directed Ecology to adopt oil transfer rules by the summer of 2006.

Ecology's rules are compatible with Coast Guard rules and in no instance is it impossible to comply with both the state and federal rules.

In developing the rules, 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. To the extent that the rules differ from federal standards, we determined that the differences were necessary to meet the legislature's zero-spill goal.

As part of the rule making process, Ecology has filled out The Significant Legislative Rules Criteria document and it is included in the 103 packet. This document is the way the state insures Ecology has met all the elements of Washington's Administrative Procedures Act. More information about compliance with RCW 34.05.328(1)(h) (related to federal consistency) can be found in this document.

125. What are Oregon DEQ and the Coast Guard's position on these new standards and proposed rules?

We would also like to know what Oregon DEQ and the U.S. Coast Guard's position is on these new standards and proposed rules. The existing rules and standards were developed in close cooperation with both of these agencies and their professional experience and expert opinions have been critically important to the success of our oil transfer and spill prevention programs on the Columbia River. – 201 Heather Moats

Has Oregon DEQ and the U.S. Coast Guard been consulted on these proposed rules? If so, what is their position? – 227 Jim Townley

Response

The Oregon DEQ did not comment on the proposed oil transfer rules. The Coast Guards comments are embedded in this document. The commenter's name is W.D. Baumgartner.

126. The scaled approach for safe oil transfer operations must be changed to add an appropriate level for small business with small risks to the environment.

WAC 317-40-015 Purpose. (a) describes using a scaled approach for safe oil transfer operations to protect the environment. This is a good approach that should be expanded beyond the limited scale listed in WAC 317-40-110(1)(a) Transfer rates. I believe having only two levels of flow rate, Rate A of over 500 gallons per minute (gpm) and Rate B of under 500 gpm, is far too restrictive. The potential for damage to the environment is far different at 500 gpm then it is at 50 gpm. A risk assessment should be preformed and further scale levels should be implemented with regulations appropriate to the lesser risk associated with lesser flow rate transfers. The costs associated with the changes to WAC 317-40 are extremely punitive to small companies such as ours. We have operated in a safe and environmentally caring manner for over 20 years. The proposed regulations must be changed to add an appropriate level for small business's with small risks to the environment. – 206 Drew Schmidt

Response

Ecology chose to set the rate at 500 gallons per minute to determine a scale for risk during oil transfers. You are correct when you say the risk is different

between 50 gallons per minute and 500. It is also different between 1 gallon per minute and 50. In setting the rate at 500 gallons, Ecology drew the line between large scale oil transfers and small scale. The Rate B prebooming and oil transfer containment requirements were scaled for a smaller transfers like yours. Additionally for added flexibility the rule allows deliverers to submit Equivalent Compliance Plans to Ecology if the deliverer can meet the standards of the alternative compliance measures in ways other than those prescribed in rule.

127. Columbia River should be allowed to continue with its existing program of success. What is the basis for the proposed changes?

Given the difference in operating conditions and performance on the Columbia River in comparison to other Washington waterways, why can't the Columbia River continue with its existing program of success, conforming to rules tailored to Columbia River operations and situations? – 227 Jim Townley

Given the Columbia River zero spill record of performance as reflected and reported in the DOE Cost Benefit Analysis, what is the basis for the proposed changes? – 227 Jim Townley

Response

The legislature did not differentiate between the Puget Sound, the Columbia River, or any other body of water within the state and the facility and vessel rules are written to comply with this Ecology's legislative mandate to require prebooming of oil transfers when it is safe and effective to do so.

Ecology has alternative measures which are required when prebooming is determined to be unsafe or ineffective. For further flexibility chapter 173-184 WAC allows companies to propose Equivalent Compliance Plans for a specific transfer locations.

Ecology encourages all companies who transfer oil to also continue existing programs which have shown success in oil spill prevention on the river.

128. The new rule has shifted from prevention to preparedness. How is this justified?

How was the policy decision to shift from a highly successful program of spill prevention (i.e. through training, drills, exercises, and safety awareness) to an untried program of spill mitigation (i.e. through pre-booming and increased spill response capability in the aftermath of a spill) rationalized, justified, and executed in the proposed rules? - 227 Jim Townley

Since the existing rules are a result of carefully thought-through negotiations and discussions with DEQ, DOE, the USCG, the ports, terminals, the MFSA, and the CRSOA, how does DOE explain what appears to be a unilateral modification to these rules and procedures? – 227 Jim Townley

Response

RCW 88.46.160 and 88.46.165 require Ecology to establish pre-booming standards, alternative measure, advance notice, and other requirements for oil transfers in the state. Ecology will continue implementing existing spill

prevention, preparedness, and response rules and policies concerning drills, training, safety awareness and other spill related issues. The new oil transfer rules will supplement and compliment these current rules.

Ecology has worked closely with many different stakeholders and other interested parties to develop the oil transfer rules. Ecology has gone through an extensive public comment process that has involved the affected regulated community, the USCG, local government, environmental groups, the tribes, and others. All public comments have been carefully reviewed and incorporated where appropriate into the final rules.

129. What has happened to the existing sections of 317-40 including 080, 085, and 090?

The disposition of these existing sections is unclear. It appears that section 080 is covered now by the new section 200 and section 090 is covered by the revised 040. We assume section 085 is eliminated - 203 Michael Moore

Response

WAC 317-40 is remaining intact and will not be opened in this rule making. The sections of the new rule which relate to pretransfer containment, alternatives, and advance notice have been moved to 173-184.

130. Ecology should develop a “feedback loop” in the rules in the form of a quarterly meeting with the maritime groups that implement this rule.

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

Response

Thank you for your comment. Ecology will work with the maritime community to set up quarterly meetings to discuss the implementation of this rule.

131. The rule should be consistent with Coast Guard regulations.

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

Ecology is required to be consistent with the Coast Guard to the greatest extent practicable under RCW 88.46.020. Ecology will continue to partner closely with the Coast Guard during the implementation of these rules to help reduce redundancy and ease burden of compliance with both state and federal requirements.

132. The Facility Oil Transfer Standard and the Vessel Oil Transfer Standard rules should 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

Thank you for your comment. Ecology considered combining the rules but received many comments during the rule-development phase asking for them to be separate. We believe that separating the two rules allows for greater readability and assists the regulated entities in easily accessing the rules applicable to the various types of transfers.

133. To the maximum extent possible, plan holders should be permitted to reference, or incorporate by reference, a Primary Response Contractor (PRC) application and required records, the Northwest Area Contingency Plan, or other approved plans

To the maximum extent possible, plan holders should be permitted to reference, or incorporate by reference, a Primary Response Contractor (PRC) application and required records, the Northwest Area Contingency Plan, or other approved plans. This would be in keeping with our mutually stated goal of keeping the rules as simple as possible, as well as easing the plan holder's administrative burden. – 230 Richard Wright

Response

Although chapter 173-184 WAC does not directly reference the Primary Response Contractor application or the Northwest Area Contingency Plan, Ecology will work with companies wishing to use these references in their Safe and Effective Threshold Determination Report or their Equivalent Compliance Plan proposal.

134. I support monitoring to check before and after spills.

I have to leave early so I need to say I also support Rule No. 2 and support monitoring to check before and after spills. – 231 Rachael Pecore

We support efforts to prevent these spills including increased oil transfer monitoring by the Coast Guard and reprioritization (rather than new FTE's) of Department of Ecology personnel for monitoring activities in coordination with the Coast Guard. – 203 Michael Moore

Response

Thank you for your comments.

135. We support the oil transfer rules.

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 Legislature's 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

CRK strongly supports both the proposed Oil Transfer and the proposed Oil Spill Contingency plan: both proposed rules are vital for the protection of Washington by preventing and minimizing the impacts of spills. 212 Lauren Goldberg

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

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 and recovered before any environmental damage occurs. – 211 Mike Doherty

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

Response

Thank you for your comments.

136. These rules do not go far enough in protecting Puget Sound from oil spills.

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

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 led to this rulemaking. – 205 Fred Felleman

Response

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 SB 6244 (codified in chapter 88.46 RCW). 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.

137. By scheduling the hearing in Port Angeles on the same day as the local Lavender Festival, Ecology ensured a low turnout.

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

Scheduling hearings on such a short timeline as this rule has been on was 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.

138. There should be a “rescue” tug stationed at Neah Bay year round.

It should be mandated that a "rescue" tug be stationed at Neah Bay year round. As a former commercial fisherman who trawled off the Washington coast I saw first hand the volume of tanker traffic coming in at Cape Flattery. The weather there can turn nasty very fast and if a tanker had mechanical failure it could be on the beach in a very short time. I was also fishing in Prince William Sound when the Exxon Valdez happened and saw the devastating effects of a spill there caused by human error. Herring fishing, one of the most lucrative fisheries in Alaska, was wipe out. The folks up there are still dealing with the effects today of a spill over a decade earlier. The permanent tug is the best, first lines of defense and urge you to mandate its presence, year round, in Neah Bay! – 219 Jess Brown

Response

Thank you for your comment. The subject of the current rulemaking was not intended to address whether a rescue tug should be posted year-round at Neah Bay, although we appreciate your commitment to seeing this happen.

139. Ecology must include Bio-diesels and other innovative alternatives to traditional fuels in the rule making.

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 (R.D.) Grunbaum

Response

Based on the statutory definition of “oil”, Ecology can only cover bio-diesel operations if the bio-diesel is blended with petroleum oil. Ecology is currently working with several other agencies on developing standards and rules for the proposed facility in Grays Harbor. Any petroleum oil moved across waters of the state at this facility will be covered by this rule.

To include bio-diesel in oil transfer or containment rules, the legislature would need to change the definition of “oil”.

140. These rules should be scrapped and Ecology should start over by listening to people who know the business.

There are a couple gnats loose in the glass factory and you are bringing a crane and wrecking ball in to kill the gnats. You have been given better ideas from professional mariners who live and work here and have chosen to ignore them. Please take these rules and start over by listening to the people who know the business. – 228 George Clark

It is time for the Department of Ecology to listen to professional mariners about how to conduct safe efficient oil transfers. Ideas that have been tried in the past (and failed) are being resurrected as political payoffs. A system that has created one of the safest oil transfer systems in the world is going to be dismantled for the sake of political agendas and failed government plans and actions. – 228 George Clark

Sirius Maritime believes that the new Oil Transfer Rules as written present a compliance nightmare for vessels and facilities transporting petroleum in the State of Washington. The process was born out of the Pt. Wells oil spill in December 2003, which by any measure of spills recorded over the past 15 years was an anomaly. The responsible company ultimately executed an effective spill response and cleaned up the oil, and then left the oil transportation business. Another spill in January 2004, dubbed the Pt. Dalco "mystery" spill also has given the oil spill prevention process traction, but the incident was unrelated to oil transfer operations and none of the new rules will have any bearing on the circumstances of that type of incident in the future. – 220 Robert Dorn

Response

Thank you for your comments. After a lengthy public engagement process and hearing comments from all interested parties, Ecology plans to move forward with the implementation of WAC 173-184.

141. Ecology needs to address spills from small fueling stations and recreational vessels.

While any spill is regrettable, the zero spills goal of the legislature should reflect efforts to control discharges from all sources. To date, the Department has done NOTHING to address spills from small fueling stations and recreational vessels, which we believe are a much bigger culprit in the oil spill issue than anyone is willing to believe. – 220 Robert Dorn

Response

The facility oil transfer rule covers small fueling stations which transfer to nonrecreational vessels of any size; these marine fueling stations are considered a Class 4 facility. The legislative mandate only gave Ecology authority to regulate nonrecreational vessels.

142. This rule will make oil transfers less safe and burden the mariners who are trying to perform their jobs.

The rules have been written in such a manner that the attention of mariners will be distracted from their primary job of safe oil transfers to administrative burdens such as monitoring wind-speed and making log entries. Containment boom will be deployed that will cause delays in shipping or create situations where it gets into the propeller(s) of the ship. Reports will be filed when there will be no one at the receiving end to read them or act upon them merely to meet a time line, not to provide useful information. – 228 George Clark

the combined experience of all AWO members, reviews of available literature, and the study the department itself commissioned and presented clearly show that the rules proposed are neither safe nor effective, particularly on the Columbia/Snake Rivers and certainly not when applied to non-persistent oils. In fact, these rules do exactly what no one wants: they divert money and effort from implementing proven oil spill prevention measures that AWO member companies are vigorously, and voluntarily, pursuing (double hulling the barge fleet far in advance of Federal mandates, re-engining tugs, training personnel) to ineffective, costly, and dangerous response capabilities that serve as little more than window dressing. – 208 Jason Lewis

Response

Ecology believes that the Oil Transfer Rules will fulfill the legislative mandate and make oil transfers safer in state waters. Ecology takes its mandate to achieve zero oil spills very seriously. The staff of trained mariners and engineers will be conducting oil transfer inspections and will work closely with companies to make sure these rules provide true positive gains in oil transfer safety and are not just “window dressing.” Ecology will continue to work with all stakeholders to implement and improve this important program.

143. The concerns expressed by the maritime shipping and bunkering community come from the very interests that must become supportive of these rules if they are to succeed over the long term.

The maritime shipping and bunkering community has commented extensively on these types of issues, however, and we urge the Department to review these carefully and to incorporate these comments into the final rules. Our region's spill record is very good, and most importantly, it is improving. The working waterfront has been a key partner in these improvements, and we have every reason to believe that they will continue to be. Maritime interests have raised a number of specific comments on a variety of operational issues, however. These concerns -- which are being articulated loudly -- are from the very interests that must become supportive of these rules if they are to succeed over the long term. – 225 Eric Johnson

Response

Thank you for your comment. Ecology will continue to work with all stakeholders to implement safe and effective rules.

144. These rules need to clearly spell out who is responsible for what. The owner v operator or vessel v facility.

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

Chapter 173-184 WAC has an applicability section which states the rules are applicable to vessels delivering oil on or over the waters of the state. All the requirements in this chapter apply to the delivering vessel or the owner/operator of the delivering vessel. When referring to the owner or operator of the delivering vessel, Ecology specifies “owner or operator”.

145. Ecology needs to implement this rule so that smaller ports do not become uncompetitive with other West Coast facilities.

Several of our state’s port districts are either geographically distinct, or serve a smaller niche market such as breakbulk (non-containerized) cargo. These types of ports have a smaller overall number of annual vessels calls per year, which results in a smaller “rate base” for apportioning contingency-planning costs. The busier shipping lanes of northern Puget Sound lend themselves to a larger fleet of vessels sharing costs of response equipment, etc. Some areas (Grays Harbor and Olympia are good examples) contain marine terminals that are very important to their region, but which already pay higher costs because of their geographic position. The Department needs to implement this rule, so that contingency-planning efforts do not make these ports uncompetitive with other West Coast facilities. – 225 Eric Johnson

Response

Ecology has worked closely with the ports in designing these rules. The alternative measures and the Equivalent Compliance Plan are meant to give flexibility to oil deliverers in meeting the zero spill goal set by the legislature.

Cost Benefit Analysis and Small Business Economic Impact Statement Comments

General Comments

1. 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.

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. The analysis fails to explore all the unintended consequences of the rule.

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. 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

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. The Cost Benefit Analysis fails to anticipate the added cost in several areas of the rule.

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 as 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. 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.

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. **A separate CBA should have been done for each rule.**

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 it shares a border 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. 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.

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. **Why are costs in California relevant to costs on the Columbia River?**

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. 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.

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. The CBA fails to show how the benefits of the new requirements justify the costs.

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. The costs of delays and demurrage for ships should not be omitted from the CBA.

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. **The problem this rule was written to address is not identified on the Columbia River.**

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. 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.

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. The CBA fails to take into consideration the full impact on the barge industry in the Columbia River.

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. 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.

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. The analysis compares the estimated costs of a small business to a large refinery. This is not a fair comparison.

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. The SBEIS is incorrect is assuming that "...additional record keeping/reporting rules are not expected to incur additional costs to facility or vessel business."

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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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 (i.e., FOCUS sheet, news releases)
 - *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

- I. Final Rule chapter 173-184 WAC as published**
- II. Copies of focus sheets**

Appendix I - Final Rule

Chapter 173-184 WAC

**VESSEL OIL TRANSFER ADVANCE NOTICE AND CONTAINMENT
REQUIREMENTS**

PART A: GENERAL REQUIREMENTS

NEW SECTION

WAC 173-184-010 Applicability of this chapter. (1) Except as provided in subsection (2) of this section, this chapter applies to all vessels delivering oil in bulk on or over the waters of the state to the following persons:

- (a) Tank vessels;
- (b) Cargo vessels;
- (c) Passenger vessels;
- (d) Any other nonrecreational vessels; or
- (e) Class 1, 2, and 3 facilities.

(2) This chapter does not apply to:

- (a) An oil spill recovery vessel that is engaged in spill response activities;
- (b) Emergency lightering of vessels to mitigate further damage;
- (c) A vessel's internal oil transfers;
- (d) Vacuum trucks used to remove waste oil, bilge slops, contaminated ballast or fuel, or excess fuels intended for shoreside disposal;
- (e) Public vessels; and
- (f) Fuel transfers from tug to barge for operation of installed machinery.

NEW SECTION

WAC 173-184-015 Purpose. (1) This chapter establishes minimum standards for safe oil transfers to meet a zero spill goal established by the legislature. This chapter emphasizes:

- (a) Using a scaled approach that sets standards for safe oil transfers to protect people and the environment;
- (b) That it is the obligation of vessel and facility owners and operators to adopt company policies that improve the safety of oil transfers;
- (c) Minimizing the size and impacts of those oil spills which do occur.

(2) A second purpose of this chapter is the further implementation of chapter 88.46 RCW to regulate the transfer of oil on or over waters of the state.

NEW SECTION

WAC 173-184-020 Authority. (1) The legislature granted ecology the authority to adopt and enforce these rules regulating the transfer of oil on or over waters of the state under RCW 88.46.160 and 88.46.165.

(2) The owner or operator of any vessel involved in an oil transfer over state waters must allow ecology access for the purposes of ensuring compliance with the requirements of this chapter.

NEW SECTION

WAC 173-184-025 Definitions. Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Boatyard" means a class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(2) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.

(3) "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.

(4) "Bunkering" means a bulk oil transfer operation to replenish a self-propelled vessel with fuel or lubricating oil.

(5) "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.

(6) "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 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.

(7) "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.

(8) "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.

(9) "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.

(10) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(12) "Ecology" means the department of ecology.

(13) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(14) "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.

(15) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(16) "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(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(17) "Owner" or "operator" means:

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

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

(c) In the case of an abandoned vessel, 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.

(18) "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.

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

(20) "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.

(21) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(22) "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.

(23) "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.

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

(25) "Spill" means an unauthorized discharge of oil into the waters of the state.

(26) "State" means the state of Washington.

(27) "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.

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

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

NEW SECTION

WAC 173-184-030 Inspections. (1) Ecology may verify compliance with this chapter by announced and unannounced inspections in accordance with chapter 88.46 RCW.

(2) To ensure compliance with this chapter, ecology may ask for documents required by this chapter.

(3) Ecology will provide an inspection report to the vessel at the conclusion of the inspection.

NEW SECTION

WAC 173-184-035 Drill credit. The owner or operator may request that performance under applicable sections of this chapter be credited for portions of the contingency plan drill requirements.

NEW SECTION

WAC 173-184-040 Noncompliance. Any violation of this chapter may be subject to enforcement and penalty sanctions of chapter 88.46 RCW.

NEW SECTION

WAC 173-184-045 Owner and operator responsibilities. Owners and operators of delivering vessels conducting oil transfer operations must ensure that the requirements in this chapter are implemented and followed.

NEW SECTION

WAC 173-184-050 Severability. If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

PART B: OIL TRANSFER REQUIREMENTS FOR ALL DELIVERING VESSELS

NEW SECTION

WAC 173-184-100 Advance notice of transfer. (1) The delivering vessel (or designee) involved in an oil transfer of more than one hundred gallons must provide prior notice of the oil transfer to ecology. The notice must be provided in the time frame set forth by the applicable Coast Guard captain of the port.

(2) The notice of transfer must be submitted to ecology on the Advanced Notice of Transfer form provided by ecology, a

facsimile, or an equivalent form that contains the following information:

(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 vessel and receiving vessel or class 1, 2, or 3 facility involved in the oil transfer, including Lloyd's Register/International Maritime Organization 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 delivering vessel's agent or other contracted representative.

(4) The notification form may be submitted via internet web site established by ecology, by e-mail, or by facsimile. The notification form and contact information are found on ecology's web site:

<http://www.ecy.wa.gov/programs/spills/spills.html>.

(5) Compliance schedule: All delivering vessels must begin submitting advance notice within thirty calendar days of the effective date of this chapter.

NEW SECTION

WAC 173-184-105 Equivalent compliance plan. (1) Any owner or operator may submit a proposal for equivalent compliance for the alternative measures required in WAC 173-184-115 and 173-184-120. Any owner or operator who submits a proposal must preboom or meet the alternative measures until the equivalent compliance plan is approved.

(a) Rate A (see WAC 173-184-110) deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-184-115(7).

(b) Rate B deliverers may only submit an equivalent compliance plan proposal for alternative measures found in WAC 173-184-120(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; and

(iii) Technical feasibility of proposal versus current requirements.

(3) Submission timeline of proposed equivalent compliance plan. The owner or operator must submit the equivalent compliance proposal to ecology at least one hundred twenty calendar days before planned operation under this 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 owner or operator within ninety calendar days of receipt of the proposal with a letter approving, conditionally approving, or disapproving the proposal; and

(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 173-184-115 and 173-184-120.

(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 173-184-110 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 vessels 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: Oil transfer operations at a rate over five hundred gallons per minute. Rate A requirements are found in WAC 173-184-115.

(b) Rate B: Oil transfer operations at a rate of five hundred gallons per minute or less. Rate B requirements are found in WAC 173-184-120.

(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 based on the manufacturer's specifications.

NEW SECTION

WAC 173-184-115 Rate A prebooming and Rate A alternative measures requirements. (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. This safe and effective determination must use the following threshold values:

(a) Transfers at a class 1 facility must use the class 1 facility's values found in the facility's operations manual - see WAC 173-180-420.

(b) Transfers that do not occur at class 1 facilities must use the values found in the vessel's approved report submitted in accordance with WAC 173-184-130, the Safe and effective threshold determination report.

(3) When it is not safe and effective or when conditions develop during a preboomed transfer which requires 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 meet 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 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 portion of the vessel and transfer area that provides for maximum containment of any oil spilled.

(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 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.

(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 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) The deliverer must have the ability to safely track an oil spill in low visibility conditions. The tracking system must be on-scene within thirty minutes of being made aware of the 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 portion of the vessel and transfer area that provides for maximum containment of any oil spilled.

(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 173-184-120 Rate B prebooming and alternative measures requirements. (1) Rate B prebooming requirements. The Rate B deliverer must choose to meet either the following prebooming requirements 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) The Rate B alternative measures requirements. If a Rate B deliverer 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 173-184-125 Compliance schedule for prebooming and alternative measures for Rate A and Rate B transfers. (1) Any delivering vessel conducting Rate A transfers must meet all the applicable requirements in WAC 173-184-110 and 173-184-115 except WAC 173-184-115(6) within one hundred twenty calendar days of the effective date of this chapter.

(2) All Rate A transfers must meet the requirements of WAC 173-184-115(6) within three hundred sixty-five calendar days from the effective date of the chapter.

(3) Any delivering vessel conducting Rate B transfers must meet all the applicable requirements in WAC 173-184-110 and 173-184-120 within one hundred twenty calendar days from the effective date of this chapter.

NEW SECTION

WAC 173-184-130 Safe and effective threshold determination report. This section applies to delivering vessels conducting Rate A transfers at locations other than class 1 facilities.

(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 information;

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

(c) Summary of safe and effective threshold values; and

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

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

(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;
and

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

(iii) The owner or operators 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; and

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

(2) **Submittal requirements.** Owners or operators of delivering vessels that conduct Rate A transfers must submit a 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 threshold determination report and appendices must be delivered to:

The Department of Ecology

Spill Prevention, Preparedness, and Response Program

Threshold Determination Report

P.O. Box 47600

Olympia, WA 98504-7600

(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 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 owner or operator within ninety calendar days of receipt of the threshold determination 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 vessel.

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

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

(b) Rate A deliverers that begin operating in Washington waters after the effective date of this chapter must submit the report at least one hundred twenty calendar days prior to the first oil transfer operation.



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

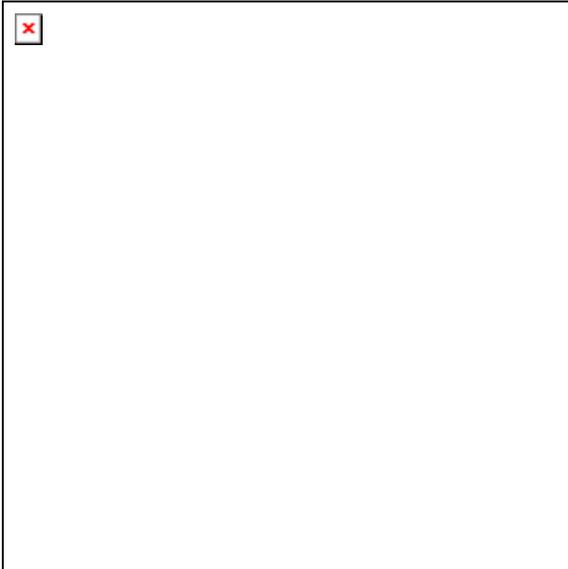
Q: *How long will I have to comply with these rules?*

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 **Focus on Marinas and Fuel Transfers to Non-Recreational Vessels** 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.