



DEPARTMENT OF
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State of Washington

Small Business Economic Impact Statement

Chapter 173-182 WAC

Oil Spill Contingency Plan

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Small Business Economic Impact Statement

Chapter 173-182 WAC Oil Spill Contingency Plan

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Executive Summary

The Washington State Department of Ecology (Ecology) is amending Washington Administrative Code (WAC) regulatory chapter 173-182 (Oil Spill Contingency Plans) to implement Chapter 122, 2011 Laws (E2SHB 1186). The rule amendments include changes to:

- Update state oil spill preparedness planning standards to incorporate best achievable protection and best available technology.
- Enhance the state’s current vessels of opportunity system.
- Establish a volunteer coordination system.
- Require joint large-scale equipment deployment drills from tank vessels.
- Enhance the state-required notification process to include potential spill threats as well as actual spills.
- Change contingency plan requirements for nonprofit “umbrella” organizations to allow for a planning structure that supports approval of plans with a tiered approach.
- Update definitions.
- Make other changes related to Ecology’s contingency plan review and approval process.

Ecology last updated the oil spill contingency planning rule in 2007. Since the last update to the rule, two large oil spills – a spill in San Francisco, CA (the Cosco Bursan oil spill) and a spill along the Gulf Coast (the Deepwater Horizon oil spill) – have impacted waters in the United States. These spills provided valuable lessons learned about our preparedness framework, and influenced a change in the law. The rule amendments are intended to incorporate lessons learned to influence changes to specific spill planning standards and drill standards.

Ecology calculated cost-to-employment ratios to examine the relative impacts of the proposed rule amendments on small versus large businesses. Ecology also considered the impacts of the proposed amendments on local governments and other small public entities, to meet the requirements in the Governor’s Executive Order 10-06.¹ Ecology was not able to get sufficient data for other measures (sales, hours of labor) often used to identify all businesses’ ability to cope with compliance costs.

When comparing the per-employee costs of compliance with the proposed rule amendments, for overall program costs, Ecology found that small businesses (with 50 or fewer employees) impacted by the rule incur \$268 to \$8.5 thousand per employee, while the largest ten percent of businesses incur a cost of \$5 to \$7 per employee.

Ecology’s scope in reducing the impacts specifically to small businesses was limited by the scope of this rulemaking. The above disproportionate impacts, however, are mitigated – if not eliminated – by basic business behaviors and characteristics. The smaller PRCs perform limited or specialized tasks, and may not incur the costs of many of the new

¹ http://www.governor.wa.gov/news/Executive_Order_10-06.pdf

requirements under the proposed rule amendment – simply because that PRC does not perform those contracted tasks. The large PRCs, on the other hand, perform a broader range of contracted tasks, and are likely to incur more of the new requirements under the proposed rule amendments than small PRCs are. Ultimately, one can argue that no PRC is required to take on any of the prospective new costs under the proposed rule amendments, since none of them are required to be a PRC, and can instead focus on other contracted response tasks.

Based on the Washington State Office of Financial Management’s Input-Output model of the state economy, Ecology calculated likely jobs outcomes. As compliance costs reduce direct employment in complying industries, they become transfers of income to other industries that manufacture and support equipment (on-water, aerial), as well as those submitting for VOO training. Overall, the proposed rule amendments could result in net short-term gains in employment of 20 to 47 jobs. These prospective changes in overall employment in the state are actually the sum of multiple small increases and decreases across industries in the state, in addition to larger losses in water transportation, and to the large gains in the aircraft and ship manufacturing industries.

Section 1: Introduction and Background

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

This document presents the:

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

This document is intended to be read with the associated Cost-Benefit Analysis (Ecology publication #12-08-005), which contains more in-depth discussion of the analyses, as well as references and appendices.

A small business is defined as having 50 or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment—the way oil spill contingency planning would be regulated in the absence of the proposed rule amendments.

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

Description of the proposed rule amendments

The proposed rule amendments:

- Update state oil spill preparedness planning standards to incorporate best achievable protection and best available technology.
- Enhance the state’s current vessels of opportunity system.
- Establish a volunteer coordination system.
- Require joint large-scale equipment deployment drills from tank vessels.
- Enhance the state-required notification process to include potential spill threats as well as actual spills.
- Change contingency plan requirements for nonprofit “umbrella” organizations to allow for a planning structure that supports approval of plans with a tiered approach.
- Update definitions.
- Make other changes related to Ecology’s contingency plan review and approval process.

Reasons for the proposed rule amendments

Following the direction of the legislature in ESHB 1186, the proposed rule amendments would require response system improvements through a combination of best available technology and best available protection. The equipment, training, and planning elements required through these rule amendments strive to pair the right equipment with well-trained

personnel. These elements are essential in delivering a rapid, aggressive, and well-coordinated response to large spills.

The proposed rule amendments are a step toward building a response system that utilizes best achievable protection to strengthen our ability to operate safely and continuously at night and during inclement weather conditions including rain, fog, waves, and high currents that are often experienced in Washington State waters.

To this end, the rule requires investment in:

- New aerial surveillance capability.
- Recovery equipment capable in waves and a higher encounter rates.
- Training of oil-spill response personnel.
- Vessels of opportunity and crew.
- Technical manuals as a way to communicate how the plan holder's response capability represents best achievable protection, and can be verified over time using the five-year best achievable protection review cycle.

Ecology last updated the oil spill contingency planning rule in 2007. Since the last update to the rule, two large oil spills – a spill in San Francisco, CA (the Cosco Bursan oil spill) and a spill along the Gulf Coast (the Deepwater Horizon oil spill) – have impacted waters in the United States. These spills provided valuable lessons learned about our preparedness framework, and influenced a change in the law. The rule amendments are intended to incorporate lessons learned to influence changes to specific spill planning standards and drill standards.

Through the proposed rule amendments, Ecology is enhancing the current vessel of opportunity requirements and strengthening our ability to respond to oil spills. The extensive use of commercial fishing and other vessels during the Deepwater Horizon Spill response demonstrated the value of partnering with local marine professionals ahead of a large spill to ensure vessels of opportunity are well-trained and can operate safely as an effective part of spill response.

Regulatory baseline

In most cases, the regulatory baseline for CBAs is the existing rule. Where there is no existing rule, federal and local regulations are the baseline. In the case of the proposed amendments to the Oil Spill Contingency Plans rule, the existing rule and existing federal requirements comprise the baseline. See the associated Cost-Benefit Analysis (Ecology publication no. 12-08-005) for extensive discussion of the baseline.

Section 2: Compliance Costs

Different types of covered vessels, facilities, and entities are affected differently by the proposed rule. Most covered vessels use umbrella plans (two approved non-profit organizations that hold plans for 1,500 vessels in the Columbia River, and 1353 vessels along the outer coast, in the Strait of Juan de Fuca, and in Puget Sound). There are 28 additional independent approved plans (for individual firms or subsidiaries).

Plan holders in any of these cases (whether they are vessels, facilities, or umbrella plans) may contract with 12 state-approved primary response contractors (PRCs) to plan, prepare for, and execute required actions.

Ecology multiplied unit costs as calculated in the next section by the expected quantities of compliance behavior with the proposed rules, as based on:

- 1,500 vessels in Columbia River umbrella plan
- 1,353 vessels in outer coast, Strait of Juan de Fuca, and Puget Sound
- 28 independent approved contingency plans
- 12 PRCs

Ecology estimated present value compliance costs over 20 years.

Ecology estimated costs as follows. For a full discussion of cost calculation methodologies and sources, see the Cost-Benefit Analysis (Ecology publication #12-08-005). Note that all costs are estimated conservatively high when dealing with uncertainty.

Table 1: Present-Value Costs of the Proposed Rule Amendments

Present-Value Costs of the Proposed Rule Amendments		
Cost	Low Present Value	High Present Value
FLIR plus additional BAT capability ²	\$300,000	\$700,000
Additional spotting resources	\$691	\$1,280
Four-hour planning standard	\$350,000	\$1,750,000
Dedicated on-water storage	\$250,000	\$1,000,000
Dedicated on-water storage maintenance	\$205,327	\$821,308
Describe storage and recovery as systems	\$1,727	\$3,200
Identification of 100 shore cleanup workers and supervisors	\$867	\$1,600
9 miles passive cleanup equipment	\$55,000	\$55,000
Plan update with process to obtain additional resources	\$691	\$1,280
Vessels of Opportunity (VOO) database (Ecology cost)	\$27,000	\$27,000
VOO database ongoing costs (Ecology cost)	\$303,884	\$303,884
Vetting VOO	\$52,703	\$64,447
VOO training	\$3,864,223	\$4,330,595
VOO deployment drill	\$1,210,728	\$1,356,850
Identify worst-case discharge volume	\$22	\$40

² Best Available Technology

Identify spill management team for all enrolled members	\$22	\$40
Describe process for activating supplemental resources	\$1,727	\$3,200
Identify and list staff to be deployed	\$1,036	\$1,920
Train staff to be deployed	\$158,510	\$504,350
List response equipment on WRRL (or equivalent)	\$1,036	\$1,920
List all staff, training, VOO, communications assets, remedial substances in contracts	\$2,073	\$3,840
TOTAL 20-YEAR PRESENT VALUE COST	\$6,787,267	\$10,931,754

Many of these costs are assumed to be shared across multiple entities, as allowed by the proposed rule amendments, to minimize compliance costs.

To be able to apply appropriate compliance costs to individual plan holders, Ecology separated costs into the following groups.

- Approved vessel plan holder costs
- Umbrella plan holder costs
- PRC costs
- Shared asset costs (shared by the above, as well as facility plan holders)

Table 2: Costs by Group

Approved plan holder costs	low	high	# of entities
Additional spotting resources	\$691	\$1,280	30
Technical manual systems descriptions	\$1,727	\$3,200	8
Contracting time for shoreline cleanup and supervisors	\$867	\$1,600	8
Updating plans for additional resource procedures	\$691	\$1,280	8
Umbrella plan holder costs	low	high	# of entities
Additional spotting resources	\$691	\$1,280	8
Technical manual systems descriptions	\$1,727	\$3,200	8
Contracting time for shoreline cleanup and supervisors	\$867	\$1,600	8
Updating plans for additional resource procedures	\$691	\$1,280	30
Identify worst case discharge volume	\$22	\$40	2
Identify spill management team	\$22	\$40	2
Require direct contract for all resource to meet the worst case discharge	\$1,727	\$3,200	2
PRC costs	low	high	# of entities
Identify staff expected to be deployed for oil spills or to meet planning standards	\$1,036	\$1,920	12
Train staff expected to be deployed for oil spills or to meet planning standards	\$158,510	\$504,350	12
List response equipment on WRRL or equivalent	\$1,036	\$1,920	12
Shared asset costs	low	high	# of entities

Mounted FLIR plus additional BAT capability	\$300,000	\$700,000	8
Four Hour Planning standard	\$350,000	\$1,750,000	8
Dedicated on-water storage	\$250,000	\$1,000,000	30
Dedicated on-water storage maintenance	\$205,327	\$821,308	30
9 miles of passive cleanup equipment	\$55,000	\$55,000	8
VOO Vessel Database	\$27,000	\$27,000	Ecology
VOO Vessel database maintenance	\$303,884	\$303,884	Ecology
Vetting VOO	\$52,703	\$64,447	8
VOO Training Specified	\$3,864,223	\$4,330,595	8
VOO Deployment	\$1,210,728	\$1,356,850	8

Section 3: Quantification of Cost Ratios

Ecology calculated the estimated per-entity costs to comply with the proposed rule amendments. Cost estimates and ranges are for the average or typical plan holder. This causes inherent estimation of disproportionate costs across differently-sized businesses. Similarly, different compliance costs for different types of entity also inherently generate non-uniform costs.

In this section, Ecology summarizes compliance cost per employee at plan holders of different sizes. As expected, costs per employee are larger for smaller businesses, since compliance costs are calculated per plan holder, by type only. The table below summarizes total cost per entity, assuming uniform sharing of the costs of shared assets.

Table 3: Costs per Entity, by Type

	Low Cost per Entity	Low Shared Asset Cost	High Cost per Entity	High Shared Asset cost	Low Total Cost per Entity	High Total Cost per Entity
Vessel Plan Holder	\$434	\$744,259	\$803	\$1,092,822	\$744,693	\$1,093,624
Umbrella Plan Holder	\$1,319	\$744,259	\$2,443	\$1,092,822	\$745,578	\$1,095,264
PRC	\$13,382		\$42,349		\$13,382	\$42,349
Facility Plan Holder	\$46	\$15,178	\$85	\$60,710	\$15,224	\$60,796

The SBEIS only considers costs to “businesses in an industry” in Washington State. This means that impacts, for this document, are not evaluated for non-profit agencies, or for government agencies. Within this definition, there are no small approved plan or umbrella plan holders. Smaller local offices of larger parent companies are considered based on the size of their parent, as this is a better reflection of ability to cope with compliance costs, relative to independent small businesses.

In the PRC group, two are out-of-state, and one is a non-profit. These PRCs are excluded from this analysis as well.³ Of the remaining nine PRCs, six are small businesses as defined in the statute governing this analysis (they have 50 or fewer employees). These PRCs would incur per-employee costs between \$268 and \$8.5 thousand. This range is higher than the comparable range for the largest ten percent of these businesses (one business), of \$5 to \$17 per employee.

³ Impacts to all entities, public and private, in-state and out-of-state are considered in the Cost-Benefit Analysis, Ecology publication 12-08-005.

Section 4: Action Taken to Reduce Small Business Impacts

The above disproportionate impacts are mitigated – if not eliminated – by basic business behaviors and characteristics. The smaller PRCs perform limited or specialized tasks, and may not incur the costs of many of the new requirements under the proposed rule amendment – simply because that PRC does not perform those contracted tasks. The large PRCs, on the other hand, perform a broader range of contracted tasks, and are likely to incur more of the new requirements under the proposed rule amendments than small PRCs are. Ultimately, one can argue that no PRC is required to take on any of the prospective new costs under the proposed rule amendments, since none of them are required to be a PRC, and can instead focus on other contracted response tasks.

Section 5: Small Business and Government Involvement

During the CR-101(informal rulemaking phase) starting in January 2012, the department convened a special Rule Advisory Committee to provide informal comment on the draft regulation and advise Ecology about how environmental, economic and other issues might be addressed. The committee met regularly from January through June 2012. Committee members included invited representatives and observers from:

- Oil handling facilities and oil shipping companies
- Umbrella oil spill contingency plan holders
- Spill response contractors
- Tug and towing companies
- Commercial fishing vessels
- Cargo and other shipping companies
- Commercial shellfish growers
- Commercial fisheries
- Washington ports
- Tribal governments
- Counties and cities
- Environmental organizations
- Recreational interests
- State and federal agencies

Many of these committee members represented or were small businesses or local governments.

All the committee meetings were open to the public and available through webinar.

Ecology met with the Rule Advisory Committee six times between January 2012 and June 2012. Each meeting focused on a specific topical area of the rule. Following the meeting, meeting notes and redrafted versions of the rule were developed to be revisited at future meetings. The

iterative process helped to ensure sustained participation in the committee and more than one opportunity to comment on the draft language. Ecology prepared press releases, focus sheets and other explanatory materials for distribution to mailing and email lists for each of the committee meetings. In addition, information was posted on the spills program rule website which details the process and other opportunities for involvement.

Ecology also established special websites for the proposed rule at www.ecy.wa.gov/programs/spills/rules/1106.html and the Rule Advisory Committee at www.ecy.wa.gov/programs/spills/rules/1106advisorycommittee.html. The initial draft rule, also available for public comment, was constantly updated and improved through this six-month iterative process. Ecology incorporated more than 300 comments, all of which served to improve the final updated draft rule language.

The department also distributed news releases to media across the state prior to each meeting (see www.ecy.wa.gov/news/2012/022.html, www.ecy.wa.gov/news/2012/061.html, www.ecy.wa.gov/news/2012/092.html, www.ecy.wa.gov/news/2012/121.html, and www.ecy.wa.gov/news/2012/153.html).

Section 6: NAICS Codes of Impacted Industries

The table below lists NAICS codes for industries Ecology expects could be impacted by the proposed rule amendments.⁴

Table 4: NAICS Codes that Include Businesses Possibly Needing to Comply with the Proposed Rule Amendments

541711	237120	237310
237110	483113	483211
488330	493190	424710
562910	424720	486110
561990	322110	541614
336611	324110	

⁴ North American Industry Classification System (NAICS) codes have largely taken the place of Standard Industry Classification (SIC) codes in the categorization of industries.

Section 7: Impact on Jobs

Ecology used the Washington State Office of Financial Management's 2002 Washington Input-Output Model⁵ to estimate the impact of the proposed rule on jobs in the state. The model accounts for inter-industry impacts and spending multipliers of earned income and changes in output.

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

Under the low-cost estimates, the Washington State economy could experience a net gain of 24 jobs in the short run (under the proposed rule amendments), as compliance costs transfer funds from complying entities to those manufacturing physical aerial and sea assets, and to training VOO. Similarly, under the high-cost estimates, the Washington State economy could gain 46 cumulative jobs in the short run, as expenditures on equipment and training support jobs in manufacturing and VOO. These prospective changes in overall employment in the state are actually the sum of multiple small increases and decreases across industries in the state, in addition to the large gains in the aircraft and ship manufacturing industries.

⁵ See the Washington State Office of Financial Management's site for more information on the Input-Output model. <http://www.ofm.wa.gov/economy/io/2002/default.asp>