



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **Rule Implementation Plan**

### **Oil Spill Natural Resource Damage Assessment**

#### **Chapter 173-183 WAC**

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## Publication and Contact Information

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Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

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# Purpose

Ecology provides the information in this implementation plan to meet agency and Administrative Procedure Act (RCW 34.05.328) requirements related to rule adoptions.

# Introduction

The purpose of this rule implementation plan is to inform those who must comply with Chapter 173-183 WAC - Oil Spill Natural Resource Damage Assessment rules about how the Department of Ecology (Ecology) intends to:

- Implement and enforce the rule.
- Inform and educate persons affected by the rule.
- Promote and assist voluntary compliance for the rule.
- Evaluate the rule.
- Train and inform Ecology staff about the new or amended rule.

Also included in this plan is information about:

- Supporting documents that may need to be written or revised because of the new rule or amended rule.
- Other resources where more information about the rule is available.
- Contact information for Ecology employees who can answer questions about the rule implementation.

# Implementation and Enforcement

This rule amends and updates the existing rule. Much of the infrastructure, procedures, and policy for implementing this rule are already in place. This rule is applied to all oil spills into waters of the state. Ecology has a policy of enforcing this rule for spills with a volume of 25 gallons or more, or smaller volume spills to highly sensitive resources like freshwater streams or wetlands. If a spill incident meets these criteria, the responsible party is issued a Letter of Intent to Conduct a Preassessment Screening. Along with the letter, the responsible party receives a Focus Sheet on Assessing Oil Spill Damages, Pub # 02-08-004 (revised 6/10). This focus sheet explains the Natural Resource Damage Assessment process used in Washington and how the monetary assessments are turned into restoration. This focus sheet will get updated so the responsible party will have current information regarding their obligations.

The state Resource Damage Assessment Committee identified in WAC 173-183-230 already meets on a regularly scheduled monthly basis. This is the committee that decides if the spill incident meets the criteria for using the Compensation Schedule. This is a public meeting and all responsible parties are informed of the meeting in their Letter to Conduct Preassessment Screening. The information flow from spill incidents, through the Preassessment Screening process, on to Ecology's communication with the Attorney General's office, and ending with the Attorney General's office issuing the Demand Letter of the assessment amount owed, will not change.

Historically, Ecology has hosted a workshop on how recovery credit is determined. Following the adoption of the new requirements, another workshop will be scheduled. The target audience is response contractors, responders, and Environmental Unit staff of the Spills Program Incident Management Team.

## **Informing and Educating Persons Affected by the Rule**

Ecology will make all efforts to send notice of the rule adoption to all affected businesses and regulated entities. This list of businesses will include all represented entities from the Rule Advisory Committee, marinas, ports, fishing industries, highways and rail transportation businesses, and other entities that handle oil in bulk quantities.

Additionally when Ecology responders arrive on the scene of a spill of 25 gallons or more, or a smaller spill to a highly sensitive resource, the responders engage the responsible party or their representative and explain the state natural resource damage assessment process and the recovery credit process. At that time they issue the responsible party a Recovery Credit Form Pub # ECY 050-49.

Ecology will then continue to provide technical assistance to responsible parties or their representatives on how the process works and what data are needed for the forms. This is not a change from the current process.

Ecology will also schedule a workshop focused on recovery credit. Intended audience will be response contractors, Ecology responders, and Environmental Unit staff.

Ecology has already conducted outreach to other state and federal trustee partners as well as industry partners through a presentation of the West Coast Joint assessment Team meeting held November 29, 2012.

## **Promoting and Assisting Voluntary Compliance**

This rule has been in place since the early 1990's. Many spillers do not realize that this process exists until they have a spill incident that meets the criteria of 25 gallons or more to state waters, or a smaller volume spilled to a highly sensitive resource. The spiller is only engaged if the spill meets those criteria.

Ecology does some outreach and education on this process. Many stakeholders are aware of the process through past drills, actual spills, and from the Rule Advisory Committee process. Assistance will continue to be provided to help bridge any gaps between the existing rule and policies and the newly adopted rule requirements.

Other activities that have proven to be useful in the past at helping to promote voluntary compliance are:

- Having the regulations and supporting documents available on Ecology Spill's web site.
- Routine training of Ecology staff on new regulations.

- Building on existing relationships with regulated communities by conducting training during drill and site inspections.
- Conducting a workshop for response contractors and Ecology staff focused on recovery credit.

## **Evaluating the Rule**

The purpose of the rule is to increase damages for restoration of impacted resources from larger spills. Recovery credit acts as an incentive for spillers to work quickly to remove oil from the water's surface before it impacts more sensitive resources. For all spills incidents that are processed for a natural resource damage assessment, Ecology keep data on several parameters. These include spill size, dollar per gallon assessed, oil type, oil recovered, and location of the spill. All of these data fields can be compared pre and post rule adoption.

## **Training and Informing Ecology Staff**

There are two audiences within the Spills Program that will need training on the new rule. First, the regional responders who make the first contact with responsible parties will need to know enough about the new rule to educate the spiller and their contractor on the new requirements, especially relating to recovery credit. Ecology has already conducted training at the regional offices to inform regional responders of the new requirements. Ecology will also include a training session at the annual Response Training Workshop. This training will include the new requirements for 48 hour recovery credit for persistence oil as well as the new recovery credit form ECY-050-49.

The second audience is Ecology staff that are members of the Environmental Unit (EU) during spills that are large enough for activation of the Ecology Incident Management Team (IMT). The Environmental Unit is responsible for producing waste disposal plans. Segregation of recovered oil within 24 or 48 hours is imperative for recovery credit and the EU must be on top of this in order for the process to be as accurate as possible. This training will be conducted during regularly scheduled staff meetings and specific EU meetings.

## **List of Supporting Documents that May Need to be Written or Revised**

The following supporting documents will be revised and posted on the program webpage where appropriate:

- Recovered Oil Data Form ECY -050-49 and associated instructions
- Focus on Assessing Oil Spill Damages Pub No. 02-08-004 (Rev. 6/10)
- Notice to Conduct Preassessment Screening Letter template (internal document)
- Letter to Responsible Party following the Preassessment Screening template (internal document)

## **More Information**

Please see our rule specific webpage at <http://www.ecy.wa.gov/programs/spills/rules/1105.html>

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