



# PREPROPOSAL STATEMENT OF INQUIRY

**CR-101 (October 2017)**  
**(Implements RCW 34.05.310)**  
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: August 03, 2021

TIME: 8:14 AM

WSR 21-16-091

**Agency:** Department of Ecology AO #21-03

**Subject of possible rule making:** Ecology is starting a rulemaking to amend Chapter 173-180 WAC, Facility oil handling standards and Chapter 173-184 WAC, Vessel oil transfer advance notice and containment requirements. Chapter 173-180 WAC establishes oil spill prevention and oil transfer requirements for regulated oil handling facilities. Chapter 173-184 WAC establishes oil transfer requirements for vessels delivering oil in bulk on or over waters of the state.

This rulemaking will amend both chapters to implement updates to RCW 88.46.165. The rulemaking will also include necessary administrative updates, and will expand on existing requirements and establish new requirements as described below.

In Chapters 173-180 and 173-184 WAC:

- Make changes to address inconsistent or unclear direction in the rule(s), and make any corrections needed.
- Evaluate and update codes and standards throughout the rule(s).
- Update and clarify enforcement provisions for expired plans, manuals, reports, and programs requiring re-approval for Class 1 and 2 facilities and delivering vessels.
- Update submittal requirements, recordkeeping requirements, and compliance schedules throughout the rule(s).
- For Rate A deliverers:
  - Clarify safe and effective determination and Boom Reporting Form submission requirements for Rate A deliveries.
  - Expand Safe and Effective Determination Report content requirements and align report and review requirements.
  - Update and clarify pre-booming and safe and effective threshold determination requirements for lightering operations, and for short-term transfer location approval requests.
- Expand advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and delivering vessels.

In Chapter 173-180 WAC:

- Clarify and expand plan content and drill requirements for Class 2 facility Oil Transfer Response Plans.
- For Class 1 facilities:
  - Establish facility shut down, lay up, and decommission requirements.
  - Establish seismic protection requirements for transfer pipelines and storage tanks.
  - Clarify and expand plan preparation and plan content requirements for Prevention Plans, including secondary containment permeability and facility spill risk analysis criteria.
  - Clarify training and certification requirements.

In Chapter 173-184 WAC:

- Update advance notice reporting timeframe requirements for delivering vessels.

**Statutes authorizing the agency to adopt rules on this subject:**

RCW 88.46.160, 88.46.165, Chapter 90.56 RCW, RCW 90.56.005, 90.56.050, 90.56.200, 90.56.220, and 90.56.230.

**Reasons why rules on this subject may be needed and what they might accomplish:** Rule amendments are needed to align both rules with statutory changes made in the 2019 legislative session. Through Engrossed Substitute House Bill (ESHB) 1578, codified in RCW 88.46.165, the Legislature expanded advance notice of oil transfer reporting requirements for Class 1, 2, and 3 facilities and for vessels delivering oil in bulk on or over waters of the state. Expanding advance notice reporting requirements allows Ecology to better prepare for and respond to spills that may impact waters of the state.

Additionally, these chapters have not been updated since 2007. Administrative updates are needed to provide clear direction to the regulated community. Consistent standards provide ease of compliance with Ecology's rules and ensure our rules are not overly burdensome. Updates are also needed to streamline process requirements with advances in technology.

Broader policy changes are also needed. As oil spill risk continues to change and new risks emerge, Ecology's rules must adapt to address these risks and ensure we are requiring the necessary safeguards to prevent, prepare for, and respond to spills. Ecology has worked closely with the regulated community over the years to implement and enforce the requirements of these two rules. Rule amendments are essential to address gaps identified and provide stronger oil spill protection to the waters of the state.

Expanding requirements for Class 1 facilities is necessary to address gaps identified in oil spill prevention standards. Considering secondary containment permeability standards and facility spill risk analysis criteria provides additional direction for Prevention Plan requirements. Addressing requirements for seismic protection of storage tanks and transfer pipelines will ensure safeguards are in place to help prevent spills during seismic events. Establishing decommission requirements provides oil spill prevention measures during the entirety of a facility's life cycle.

Expanding Oil Transfer Response Plan requirements for Class 2 facilities provides an additional layer of oil spill preparedness, as oil transfers for these facilities occur broadly throughout the state. Routine exercise of response equipment and notification procedures strengthens the state's readiness when a spill occurs.

Facilities and delivering vessels must ensure safeguards are maintained before and during oil transfer operations. Ecology's requirements take into consideration each aspect of the transfer, minimizing the risk and impact of a spill. This includes ensuring containment measures are in place, effective communication is being practiced, and recovery equipment is readily available in case of an incident. Rule updates are necessary for oil transfer operations to implement lessons learned through years of implementation and provide oil spill prevention improvements in areas where gaps have been identified.

Updating the advance notice reporting timeframe requirements for oil transfer information to Ecology will allow inspectors time to prepare for and conduct oil transfer inspections. Oil transfer inspections provide enhanced protection to the waters of the state.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** Federal and state agencies that regulate oil handling facilities and vessels delivering bulk oil include: United States Coast Guard, Environmental Protection Agency, Washington State Department of Natural Resources, Washington State Department of Fish and Wildlife, Oregon Department of Environmental Quality, California Department of Fish and Wildlife Office of Spill Prevention and Response, and Alaska Department of Environmental Conservation Spill Prevention and Response. Ecology will notify and solicit input from these federal and state agencies, and other stakeholders throughout this rulemaking process.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe) Ecology will follow the standard process for the adoption of rules under the Administrative Procedure Act (Chapter 34.05 RCW).

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

	(If necessary)
Name: Brittany Flittner	Name:
Address: Department of Ecology Spill Prevention, Preparedness, and Response Program PO Box 47600 Olympia, WA 98504	Address:
Phone: (360) 584-4490	Phone:
Fax: N/A	Fax:
TTY: For Washington Relay Service or TTY call 711 or 877-833-6341.	TTY:
Email: brittany.flittner@ecy.wa.gov	Email:
Web site: <a href="https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-180-173-184">https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-180-173-184</a>	Web site:

Other: For updates about this rulemaking, join our listserv: [SPILLS-PROGRAM@LISTSERV.ECOLOGY.WA.GOV](mailto:SPILLS-PROGRAM@LISTSERV.ECOLOGY.WA.GOV) Other:

Additional comments: Interested parties can stay informed about the rulemaking and public involvement opportunities as described above. Ecology will extend an offer for government-to-government consultation with tribal governments during each phase of rule development.

**Date:** 08/02/2021

**Signature:**

**Name:** Dale Jensen

A handwritten signature in black ink that reads "Dale Jensen". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

**Title:** Spill Prevention, Preparedness, and Response Program Manager