



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Washington State Department of Ecology AO #15-14

- Preproposal Statement of Inquiry was filed as WSR 15-23-103; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

**Title of rule and other identifying information:** (Describe Subject)

The Washington State Department of Ecology (Ecology) proposes a new rule, Chapter 173-186 Washington Administrative Code, Oil Spill Contingency Plan – Railroad. The rule will:

- Describe the purpose and use of the contingency plans for rail.
- Describe the applicability and authorities of the rule, and timing for compliance.
- Include definitions for terms used in the rule.
- Define authority and process for contingency plan submittal and review.
- Establish a process for plan updates and notification of significant changes.
- Develop a signature authority for binding plan holders to the use of their plans.
- Establish contingency plan content requirements.
- Describe the required elements of the contingency plan field document.
- Establish notification requirements and call out procedures.
- Define training and personnel resources to fill roles in oil spill management teams.
- Identify resources at risk from rail spills.
- Establish equipment planning standards for responding to railroad oil spills.
- Establish Best Achievable Protection planning requirements for railroads.
- Establish a drill program and drill evaluation criteria for railroad plan holders.
- Establish recordkeeping, noncompliance, and compliance information.
- Address other issues to ensure consistency and clarity is maintained throughout the rule.

**Hearing location(s):**

See Attachment A

**Submit written comments to:**

Name: Linda Pilkey-Jarvis  
 Address: Department of Ecology, Spills Program  
 P.O. Box 47600, Olympia, WA 98504-7600  
 e-mail [Linda.Pilkey-Jarvis@ecy.wa.gov](mailto:Linda.Pilkey-Jarvis@ecy.wa.gov)  
 fax ((360) 407-7288 by (date) June 10, 2016

**Date of intended adoption:** August 31, 2016

(Note: This is NOT the effective date)

**Assistance for persons with disabilities:** Contact

Spills Program Reception at (360) 407-7455 by May 10, 2016  
 TTY (877) 833-6341 or (711) Relay Service

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

See Attachment B

**Reasons supporting proposal:**

See Attachment C

**Statutory authority for adoption:** RCW 90.56.210

**Statute being implemented:** Chapter 90.56 RCW

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**DATE** 4/4/16

**NAME** (type or print)

Polly Zehm

**SIGNATURE**

**TITLE**

Deputy Director, Department of Ecology

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
 STATE OF WASHINGTON  
 FILED

**DATE:** April 06, 2016

**TIME:** 8:19 AM

**WSR 16-08-117**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

N/A

**Name of proponent:** (person or organization) Department of Ecology, Spill Prevention, Preparedness and Response Program (Spills Program)

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

| Name                                      | Office Location | Phone          |
|---|-----------------|----------------|
| Drafting..... Linda Pilkey-Jarvis         | Lacey, WA       | (360) 407-7447 |
| Implementation.... Ecology Spills Program | Lacey, WA       | (360) 407-7447 |
| Enforcement..... Ecology Spills Program   | Lacey, WA       | (360) 407-7447 |

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

- Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Kasia Patora  
Address: Economics and Regulatory Research  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
phone (360) 407-6184  
fax (360) 407-6989  
e-mail Kasia.Patora@ecy.wa.gov

- No. Explain why no statement was prepared.

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Kasia Patora  
Address: Economics and Regulatory Research  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
phone (360) 407-6184  
fax (360) 407-6989  
e-mail Kasia.Patora@ecy.wa.gov

- No: Please explain:

Attachment A:

**Hearing location(s):**

Ecology is holding four public hearings on this rule proposal, one each in Spokane, Everett, and Vancouver, and one via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access.

| <b>Date</b>               | <b>Time</b>       | <b>Format</b> | <b>Location</b>   |
|---------------------------|-------------------|---------------|---|
| Tuesday<br>May 17, 2016   | 1:00 – 5:00 pm    | In Person     | Ramada at Spokane International Airport<br>Lower Level Ballroom<br>8909 West Airport Drive<br>Spokane, WA 99224   |
| Monday<br>May 23, 2016    | 7:00 pm           | In Person     | Holiday Inn Downtown Everett<br>Ballroom 1<br>3105 Pine Street<br>Everett, WA 98201   |
| Wednesday<br>June 1, 2016 | 1:00 pm           | Webinar       | To join the webinar click on the following link for more information and instructions:<br><a href="http://www.ecy.wa.gov/programs/spills/rules/Webinar1514.pdf">http://www.ecy.wa.gov/programs/spills/rules/Webinar1514.pdf</a> |
| Friday<br>June 3, 2016    | 8:00 am – 12:00pm | In Person     | DoubleTree by Hilton - Vancouver<br>The Columbia Room<br>12712 SE 2nd Circle<br>Vancouver, WA 98684   |

For more information about the public hearings, visit the following website:

<http://www.ecy.wa.gov/programs/spills/rules/1514ov.html>.

Formal comments

Formal comments on this rulemaking will be accepted in the following ways:

- At the public hearings:
  - Verbally by those who attend in person or during the webinar via phone at (800) 704-9804, Participant Code: 81723592#
  - Written submitted by those who attend in person
  - Comments will not be accepted through the chat box by persons viewing the webinar
- Any time during the comment period:
  - By email to [Linda.Pilkey-Jarvis@ecy.wa.gov](mailto:Linda.Pilkey-Jarvis@ecy.wa.gov)
  - By mail to Linda Pilkey-Jarvis, Department of Ecology Spills Program, P.O. Box 47600, Olympia, WA 98504-7600
  - By fax to (360) 407-7288
  - Submitted through the online comment tool at <https://www.piersystem.com/go/doc/5779/2804978/>

Attachment B:

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

These proposed regulations establish oil spill contingency plan, drill and equipment verification requirements, and provisions for inspection of records for owners and operators of railroad required to submit oil spill contingency plans under chapter 90.56 RCW, and for the response contractors that support the implementation of the railroad plans. The adoption of this rule will require railroads to develop and maintain contingency plans approved by Ecology. Contingency plans for railroads will ensure that environmental and economic damages from oil spills are reduced and that public health and safety is protected through immediate notifications of spills and threats of spills, coordination with first responders, pre-staged oil response equipment, and personnel trained to respond to incidents in a rapid, aggressive, and well-coordinated manner. The regulations also require regularly scheduled oil spill drills to test and strengthen the plans through implementation.

**Reasons supporting proposal:**

Increased crude by rail transport has changed the risk picture for oil spills in Washington State. During the 2015 legislative session, RCW 88.46.010 and RCW 90.56.010 were amended to include railroads (not owned by the state) that transport bulk oil as cargo in the definition of “facility”, and RCW 90.56.210 was amended to expand Ecology’s authority to require state contingency plans for rail. Ecology was directed to develop rules establishing contingency planning requirements for railroads transporting oil in bulk. Contingency plans for railroads will ensure that first responders are aware of the locations of oil transport, oil response equipment, and are trained to respond in a rapid, aggressive, and well-coordinated manner.

Although we have had decades of oil spill planning in the marine areas where oil has historically been moved, we lack oil spill planning along the railroad corridors where spills could impact rivers, creeks, streams, wetlands and our marine waters such as Puget Sound, harbors and bays. These proposed regulations establish oil spill contingency plan, drill and equipment verification requirements, and provisions for inspection of records for owners and operators of railroad facilities required to submit oil spill contingency plans under chapter 90.56 RCW, and for the response contractors that are listed in the railroad plans. The adoption of this rule will require railroads regulated by the rule to develop and maintain contingency plans approved by Ecology. Contingency plans for railroads will ensure that environmental and economic damages from oil spills are reduced and that public health and safety is protected through immediate notifications of spills and threats of spills, coordination with first responders, pre-staged oil response equipment, and personnel trained to respond to incidents in a rapid, aggressive, and well-coordinated manner. The proposed regulations also require regularly scheduled oil spill drills to test and strengthen the plans through implementation.