



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 18, 2019

TIME: 10:17 AM

WSR 20-01-165

**Agency:** Department of Ecology AO #18-10

**Effective date of rule:**

**Permanent Rules**

31 days after filing.

Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:** Ecology is adopting amendments to the Oil Spill Contingency Plan Rule (Chapter 173-182 WAC) to implement Engrossed Second Substitute Senate Bill (E2SSB) 6269 passed in 2018 and codified as RCW 88.46.0601, RCW 88.46.060, RCW 88.46.220, RCW 90.56.2101, RCW 90.56.210, RCW 90.56.240, and RCW 90.56.569.

Rule revisions are needed to address legislative direction that came out of the 2018 session that requires a rule update by December 31, 2019. E2SSB 6269 directed an update to our contingency planning rule to enhance preparedness for spills of non-floating oils, require facilities to participate in large scale multi-plan holder drills, and require spill management teams to apply to and be approved by Ecology in order to be cited in contingency plans.

**This rule amendment will:**

- Establish requirements for review and approval of spill management teams including entities providing wildlife rehabilitation and recovery services.
- Enhance requirements for readiness for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.
- Update drill requirements to reflect legislative direction.
- Update planning standards to align vessel and facility requirements and ensure best achievable protection is maintained in contingency plans.
- Enhance planning standards for oiled wildlife response.
- Make other edits to address inconsistent or unclear direction in the rule, or other administrative edits.

**Citation of rules affected by this order:**

New:

Repealed:

Amended: Chapter 173-182 WAC

Suspended:

**Statutory authority for adoption:** RCW 88.46.0601, RCW 88.46.060, RCW 88.46.120, RCW 88.46.068, RCW 90.56.2101, RCW 90.56.210, RCW 90.56.240, RCW 90.56.569, RCW 90.56.050, and RCW 90.56.005

**Other authority:** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-17-095 on August 21, 2019 (date).

Describe any changes other than editing from proposed to adopted version:

The following content summarizes the changes between the rule proposal language and the adopted language and provides Ecology's reasons for making them.

**WAC 173-182-030 Definitions** – In response to comments received, a definition of non-floating oils was included in the rule as adopted.

**WAC 173-182-130 Phase in language for vessel and facility plan holders** - In response to comments received, the phase in timeline for the wildlife planning standard (WAC 173-182-540) was shortened and the language was updated to clarify when contracting and personnel requirements for the wildlife planning standard are required. This change ensures that significant contracting and rehabilitation facility enhancements in wildlife response capability phase in within 12 months of the rule effective date. Additionally, in response to comments received, the phase in requirements for including benthic and seafloor resources at risk from non-floating oils in contingency plans was updated to reflect that plan holders have thirty days from the date the Geographic Response Plan is published to update their plans.

**WAC 173-182-240 Field Document** – In response to comments received, the standard was amended to clarify that in addition to the requirement to list procedures to detect, assess, and document the size of the spill, the equipment required to conduct the assessment must also be detailed. This equipment may be air monitoring equipment, personal protective equipment, or other equipment and technologies that support assessment.

**WAC 173-182-323 Planning standards for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink** – in response to comments received this section was amended to clarify the requirement to have both personnel and equipment within the specified timeframes. The standard was also strengthened through the identification of additional resources necessary for a rapid, aggressive, and well-coordinated response to potentially non-floating oils.

**WAC 173-182-330 Planning standards for in situ burning** – In response to comments received, the standard specifically requires plan holders to identify the locations of personal protective equipment necessary to protect worker safety during in situ burning operations.

**WAC 173-182-540 Planning standards for wildlife response** – In response to comments received, a statement was added to clarify that all wildlife response actions shall be conducted in accordance with applicable federal and state regulations and the Northwest Area Contingency Plan. Commenters identified concerns with planning for wildlife response actions, including deterrents, which cannot be conducted without federal and state permits, authorities, and approvals. The planning standard establishes requirements for enhanced wildlife response capacity in the region through contracts, and investments in equipment and training of key personnel. The process for vetting and equipping vessels to conduct hazing of whales, including southern resident killer whales, will be further detailed in the rule implementation plan. The language was also updated to reflect comments that all whales at risk during an oil spill would be deterred to the maximum extent practicable, not just southern resident killer whales.

**WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle** – Updates were made to clarify that the Best Achievable Protection (BAP) cycle will be used to evaluate the processes for improving equipment, training, and techniques associated with oiled wildlife response.

**WAC 173-182-710 Type and frequency of drills** – In response to comments received, the new requirement to test equipment and personnel to conduct monitoring and deterrence operations is no longer limited to southern resident killer whales. The requirement has been updated to reflect the deployment drill will be used to demonstrate readiness for deterrence operations for whales that may be at risk from oil spills.

**WAC 173-182-850 Significant changes in spill management team (SMT) or wildlife response service provider (WRSP) applications require notification** – In response to comments received, the requirement to notify ecology about the modification or discontinuing of any mutual aid, letter of intent, or contract agreement was updated to also include permits. The change was made to ensure that state approved wildlife response service providers (WRSPs) maintain all necessary permits and make ecology aware of any change in their permit status within 24 hours of awareness.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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TTY: People with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington Relay Service at 711

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Web site: <https://fortress.wa.gov/ecy/publications/SummaryPages/1908026.html>

Other: N/A

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>3</u>	Amended	<u>11</u>	Repealed	<u>1</u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	<u>5</u>	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	<u>9</u>	Repealed	<u>5</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	<u>6</u>	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

**Date Adopted:** 12/18/2019

**Name:** Maia D. Bellon

**Title:** Director

**Signature:**

