



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

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DATE: January 24, 2018

TIME: 8:25 AM

WSR 18-03-178

Agency: Department of Ecology AO #16-02

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 16-07-157 ; 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); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The Department of Ecology (Ecology) proposes to repeal existing Chapter 173-360 WAC and adopt new Chapter 173-360A WAC, Underground Storage Tank (UST) Regulations. The new chapter would replace the repealed chapter. Ecology proposes changes to the regulations.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
<p>Wednesday, February 28, 2018</p>	<p>1:00 pm</p>	<p>Webinar and in person at: Hampton Inn and Suites 4301 Martin Way E Olympia, WA 98516</p>	<p>Presentation, question and answer session, followed by the formal public hearing.</p> <p>We are also holding this hearing via webinar. This is an online meeting forum that you can attend from any computer using internet access.</p> <p>To join the webinar, click on the following link for more information and instructions: https://watech.webex.com/watech/j.php?MTID=m340722cfb126efcee19fdb77e001afc4</p> <p>For audio only, call US toll number +1-240-454-0887 and enter access code 803 394 380. Or to receive a free call back, provide your phone number when you join the event.</p>
<p>Friday, March 2, 2018</p>	<p>1:00 pm</p>	<p>This will be a video conference. Participants can attend at the following locations:</p> <p>Department of Ecology Eastern Regional Office 4601 N Monroe Street Spokane, WA 99205</p> <p>Department of Ecology Northwest Regional Office 3190 160th Ave. SE Bellevue, WA 98008</p> <p>Department of Ecology Central Regional Office 1250 West Alder Street</p>	<p>Presentation, question and answer session, followed by the formal public hearing.</p> <p>We will accept comments at all locations.</p>

Date of intended adoption: On or after June 30, 2018 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Kristopher Grinnell

Address: Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Email: Please submit comments online or by mail.

Fax: N/A

Other: Submit comments online at: <http://cs.ecology.commentinput.com/?id=usNx2>

By (date) March 16, 2018

Assistance for persons with disabilities:

Contact Hanna Waterstrat

Phone: 360-407-7668 (voice)

Fax: N/A

TTY: 877-833-6341

Email: hanna.waterstrat@ecy.wa.gov

Other: 711 relay service

By (date) February 21, 2018

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

The Department of Ecology (Ecology) proposes to repeal existing Chapter 173-360 WAC and adopt new Chapter 173-360A WAC, Underground Storage Tank (UST) Regulations. The new chapter would replace the repealed chapter. As part the rulemaking, Ecology proposes to:

1. Incorporate federal rule changes needed to maintain state program approval, as specified in 40 C.F.R. Parts 280 and 281 and adopted in June 2015.
2. Incorporate changes to the state's UST program specified in the authorizing state statute, Chapter 90.76 RCW.
3. Make other selective changes to the requirements governing the state's UST program (such as updating UST service provider requirements).
4. Streamline rule requirements, improve rule clarity, and improve consistency within the rule and with other state and federal laws and rules.

Ecology is conducting the rulemaking to:

1. Maintain federal approval of the state's UST program, as required by the authorizing state statute, Chapter 90.76 RCW.
2. Implement changes to state's UST program specified in the authorizing state statute, Chapter 90.76 RCW.
3. Reduce the number and severity of releases of petroleum and other hazardous substances from UST systems, which pose a serious threat to human health and the environment, including drinking water.
4. Make the rule easier to use and understand by the regulated community.

The rulemaking is intended to accomplish the following:

1. Federal approval of the state's UST program.
2. Compliance with the authorizing state statute, Chapter 90.76 RCW.
3. Reduction in the number and severity of releases of petroleum and other hazardous substances from UST systems, and the threat posed by those releases to human health and the environment, including drinking water.
4. Rule that is easier to use and understand by the regulated community.

For more information about the rulemaking, see: <https://www.ecology.wa.gov/Regulations-Permits/Laws-rules/Rulemaking/WAC-173-360-Mar16>.

Reasons supporting proposal: See answer to "Purpose of the proposal and its anticipated effects, including any changes in existing rules."

Statutory authority for adoption: Chapter 90.76 RCW, Underground Storage Tanks

Statute being implemented: Chapter 90.76 RCW, Underground Storage Tanks

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No

If yes, CITATION: 40 C.F.R. Parts 280 and 281

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 Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Michael Feldcamp	Ecology Headquarters: Lacey, WA	(360) 407-7531
Implementation:	Kristopher Grinnell	Ecology Headquarters: Lacey, WA	(360) 407-7382
Enforcement:	Kristopher Grinnell	Ecology Headquarters, Lacey, WA	(360) 407-7382

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
 Name: Kristopher Grinnell
 Address: Department of Ecology
 PO Box 47600
 Olympia, WA 98504-7600
 Phone: (360) 407-7382
 Fax: N/A
 TTY: N/A
 Email: USTrule@ecy.wa.gov
 Other: N/A

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: Portions of the proposal incorporate federal rule changes, as specified in 40 CFR Parts 280 and 281 and adopted in June 2015. Those changes are necessary to maintain federal approval of the state's UST program, as required by the authorizing state statute, Chapter 90.76 RCW.

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

**WA Department of Ecology
Small Business Economic Impact Statement:
Relevant Information for State Register Publication**

Proposed amendments to WAC 173-360A Underground Storage Tank Regulations

This Small Business Economic Impact Statement (SBEIS) presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by Ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. 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 or government agencies.

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

This information is excerpted from Ecology's complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the Regulatory Analyses (Ecology publication no. 18-09-056, January 2018)

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments. Without the proposed rule amendments, the existing rule would remain in place and the federal rule would be applied to the state by the Environmental Protection Agency (EPA) to serve as a minimum set of requirements. We are therefore analyzing the impacts of the proposed rule amendments as the difference between the proposed rule amendments and the existing state and federal rules.

For this proposed rulemaking, the baseline includes:

- The existing rule, chapter 173-360 WAC Underground Storage Tank Regulations.
- The authorizing statute, chapter 90.76 RCW, Underground Storage Tanks.
- Related laws and rules, including but not limited to:
 - 40 CFR Part 280
 - 40 CFR Part 281

The proposed rule amendments that differ from the baseline and are not *specifically* dictated in the authorizing statute or elsewhere in law or rule include:

- Part 1 – Scope and definitions:
- Part 2 – Administration and enforcement
- Part 3 – Installation and performance standards
- Part 4 – Operation and maintenance
- Part 5 – Operator training
- Part 6 – Release detection
- Part 7 – Release reporting, confirmation, and cleanup
- Part 8 – Closure
- Part 9 – Service providers
- Part 10 – Financial responsibility
- Creating a new chapter, Chapter 360A WAC

2.3.1 Part 1 – Scope and definitions

Baseline

The existing rule allows exemptions and exclusions for various types of UST systems to not be required to be licensed. It also sets requirements for maintaining these exceptions.

Proposed

Exempt UST systems - changes the heating oil exemption by removing the requirement for tanks over 1,100 gallons to report releases.

Partially exempt UST systems - adds requirement that installation records must be maintained until the partially excluded UST system is permanently closed or undergoes a change-in-service. Eliminated requirement that a site assessment must occur upon closure.

Expected impact

Systems storing more than 1,100 gallons of heating oil were previously subject to the release reporting requirements in the rule. However, this duplicates requirements under chapter 173-340 WAC MTCA. The likely impact is a benefit to owners of such systems in the form of eliminating duplicate reporting.

For partially exempt systems, the impact is the cost of maintaining installation records and the benefit of foregoing a site assessment upon closure and keeping records.

2.3.2 Part 2 – Administration and enforcement

Baseline

Under the baseline rule, administrative requirements for system owners are detailed.

Proposed

- Eliminates requirement that owners must pay tank fees after an UST system has undergone permanent closure or a change-in-service until any releases have been cleaned up.
- Changes reporting requirements for sellers:
 - Eliminates requirement that persons who sell property containing UST systems must notify buyer of licensing requirements. Persons who sell tanks, whether new or installed, must still notify buyer.
 - Adds requirement that persons who lease tanks must notify lessee.
- Recordkeeping
 - Eliminates specific requirement about where records must be maintained. Clarified that records only need to be made available for inspection upon request.
 - Eliminates requirement that decommissioning records must be maintained since such records must already be submitted to Ecology upon permanent closure or change-in-service.
 - Added requirement that records must be transferred upon changes in ownership or operation.

Expected impact

We expect these proposed changes to benefit system owners in the form of decreased requirements and improve the rate at which records are transferred at the point of sale. They will also impose costs in the form of notification and record transfer and help align record-keeping requirements with current practices.

2.3.3 Part 3 – Installation and performance standards

Baseline

The current rule lists the installation requirements and performance standards for UST systems.

Proposed

Installation of UST systems and components

- Adds requirement that owners and operators must confirm planned start date at least three business days before starting installation.
- Adds prohibition that, after effective date of the rule, used tanks may not be installed as part of an UST system.
- Adds requirement that installation records must be maintained until the UST system is permanently closed or undergoes a change-in-service, consistent with existing requirement for repairs to UST systems.

Performance standards for new UST systems and components

- Unlike under the federal rule, specifies that corrosion assessments if used to avoid installing cathodic protection, must also be performed every five years after installation and that reports documenting the determination and its basis must be submitted to the department.
- For secondary containment, eliminates secondary barriers as an option for hazardous substance UST systems installed on or before October 1, 2012, since all such systems are double-walled and secondary barriers have yet be used in Washington.
- For under-dispenser containment, adds requirement that they must be factory-built or machine-tooled, unless otherwise approved by the department. The requirement only applies to UDC installed or replaced after effective date of rule.

Upgrade to record-keeping requirements for existing and previously deferred UST systems

- Adds requirement that upgrade records must be maintained until the UST system is permanently closed or undergoes a change-in-service.
- Adds requirement that upgrade records must be maintained until the UST system is permanently closed or undergoes a change-in-service. The federal rule does not require records of upgrades to be maintained, except for repairs.

Performance standards for partially exempt UST systems

- Unlike under the federal rule, corrosion assessments used to avoid installing cathodic protection must also be performed every five years after installation. Reports documenting the determination and its basis is submitted to the department.

Compatibility requirements for UST systems

- Specifies that compatibility demonstrations are also required for UST systems storing hazardous substances. The federal rule does not require this.
- Specifies that records of compatibility demonstrations must be maintained “until the system is permanently closed or undergoes a change-in-service.”

Expected impact

The proposed rule amendments would potentially result in increased costs for system owners. These costs arise from record retention, demonstration of compatibility, corrosion assessment and reporting, and the need to use new, as opposed to used tanks.

Benefits will also accrue due to improved communication and aligning requirements. Also, ensuring that Ecology is present at installation will discourage poor practices that may have been used in installation previously.

2.3.4 Part 4 – Operation and maintenance

Baseline

The existing rule addresses the operation and maintenance of UST systems.

Proposed

Transfer of regulated substances

- Adds requirement that product deliverers must comply with spill and overfill control requirements.
- Adds requirement that product deliverers and waste oil collectors must report any spill or overfill of regulated substances immediately to the owner or operator.

Operation and maintenance walkthrough inspections

- Specifies that records of walkthrough inspections must be maintained for three years. The federal rule specifies one year.
- Specifies that walkthrough inspections must begin upon installation (for systems installed after effective date) or one year after effective date (for systems installed on or before effective date). The federal rule specifies three years after effective date for all systems.

Operation and maintenance of corrosion protection

- Adds requirement that corrosion expert must be notified within 24 hours if cathodic protection system is not operating properly.
- Changes record retention for cathodic protection tests from last two tests, which is the same as the federal rule, to six years (two compliance inspections). Tests are performed every 3 years.
- Changes record retention for rectifier inspections from last three inspections, which is the same as the federal rule, to three years (one compliance inspection).

Operation and maintenance of containment sumps used for interstitial monitoring and spill prevention equipment

- Specifies that tightness tests must be performed by certified service provider. The federal rule does not specify who may perform tests.
- Specifies that tightness tests must be reported. The federal rule does not require reporting.
- Specifies that records of periodic monitoring must be retained for three years (one inspection cycle). The federal rule requires such records to be maintained for as long as the equipment is periodically monitored.
- Specifies that records of tightness tests must be retained for six years (two inspection cycles). The federal rule requires such records to be maintained for three years.
- Specifies that compliance dates for previously installed UST systems depends on whether the identification number on the facility compliance tag is even (two years after effective date) or odd (three years after effective date). The federal rule requires compliance within three years. This is intended to avoid having the deadline for testing and inspections by service providers of all previously installed UST systems (more than 9,000) be at the same time, which has been an implementation problem in other states.

Operation and maintenance of overfill prevention equipment

- Specifies that inspections must be performed by a certified service provider. The federal rule does not specify who may perform the inspections.
- Specifies that inspections must be reported. The federal rule does not require reporting.
- Specifies that flow restrictors in vent lines needing repairs must be replaced with another type of overfill prevention equipment.
- Specifies that records of inspections must be retained for six years (two inspection cycles). The federal rule requires such records to be maintained for three years.
- Specifies that compliance dates for previously installed UST systems depends on whether the identification number on the facility compliance tag is even (two years after effective date) or odd (three years after effective date). The federal rule requires compliance within three years. This is intended to avoid having the deadline for testing and inspections by service providers of all previously installed UST systems (more than 9,000) be at the same time, which has been an implementation problem in other states.

Operation and maintenance of release detection equipment

- Specifies that tests must be performed by a certified service provider. The federal rule does not specify who may perform the tests.
- Specifies that tests must be reported. The federal rule does not require reporting.
- Specifies that schedules of required calibration and maintenance must be maintained for as long as the equipment is used. The federal rule requires such records to be maintained for five years.

- Specifies that testing of release detection equipment must begin upon installation (for systems installed after effective date) or either two or three years after effective date (for systems installed on or before effective date) based on whether the facility compliance tag number is even or odd. The federal rule requires compliance within three years for all UST systems.

Repairs of UST system components

- Specifies that tests must be performed by a certified service provider. The federal rule does not specify who may perform such tests.
- Specifies that tests must be reported. The federal rule does not require reporting.
- Specifies that records of tests must be retained for three years (one inspection cycle). The federal rule does not clearly specify record retention for such tests.
- Adds requirement that electronic or mechanical repaired release detection equipment must be tested within thirty days of the repair. The federal rule does not require such testing upon repair.

Expected impact

The proposed rule could result in costs for product deliverers, however, it is expected that they are already complying with spill and overfill control requirements. Expected additional costs for owners are associated with walkthrough inspections, record retention duration, and notification of corrosion expert requirements. Also, costs may accrue for utilization of certified service providers for tightness tests, overflow prevention equipment inspections, release detection equipment inspections, and repairs to system components; as well as reporting of these inspections and retention of these records.

Potential benefits could result from greater ability for Ecology to identify trends in reporting data and decreasing the probability of a release.

2.3.5 Part 5 – Operator training

Baseline

The existing rule includes the requirements for operator training.

Proposed

- Updates grandfather clause to clarify that retraining is not required merely because the training requirements are changed.
- Adds requirements that existing Class A and/or B training programs and examinations must be revised to reflect changes in training requirements and approved by the department. Updates must be submitted within six months of the effective date of the rule.
- Eliminates exemption from retraining requirements for Class A and Class B operators retrained annually.
- Adds operation and maintenance of containment sumps to the list of what must be included in operation and maintenance plans, consistent with new requirements.

Expected impact

The proposed changes result in likely costs in the form of updating training programs and benefits due to avoided retraining through the grandfather clause.

2.3.6 Part 6 – Release detection

Baseline

The existing rule includes requirements pertaining to release detection.

Proposed

General requirements – recordkeeping

- Changes retention period for certification records from five years to as long as the equipment or method is used. The retention period in the federal rule is five years.
- Changes retention period for tank and line tightness test results from the last test to the last two tests, including when performed on previously deferred UST systems. The federal rule requires the last test result.
- Specifies that retention period for results from vapor monitoring using a tracer compound every two years is the last two test results. The federal rule requires the last test result.
- Changes retention period for results from all other release detection methods, including when performed on previously deferred UST systems, from five years to three years. The federal rule requires the last test result.

Weekly manual tank gauging

- Adds requirements that equipment must be able to measure water levels, and that water levels must be measured at least once each month.

Expected impact

Proposed changes to the rule will likely result in increased costs to the system owners in the form of increased record retention and updating tank gauging equipment to measure water levels. Potential benefits could result from better identification of potential problems.

2.3.7 Part 7 – Release reporting, confirmation, and cleanup

Baseline

The existing rule discusses requirements pertaining to release reporting, confirmation, and cleanup.

Proposed

Site assessment requirements

- Incorporates into the rule minimum requirements for site assessments from the guidance document referenced in the current rule. Except as follows, the requirements are the same:
 - For assessing single tanks in place, increased the number of samples from three to five for tanks between 9,000 and 20,000 gallons. For assessing multiple tanks in place, clarified the number of additional samples required for each additional tank.
 - For assessing connected dispensers (either removed or in place), clarifies that one sample must be collected for each connected dispenser rather than each dispenser island.
 - For assessing single tanks removed from the ground, increases the number of samples from three to five for tanks between 9,000 and 20,000 gallons. For assessing multiple tanks removed from the ground, increases the number of additional samples for each additional tank from one to two.
 - For assessing excavated soils, reduces the number of required samples when there is less than 51 cubic yards from three to two (for 26-50) and one (for 0-25).
 - For assessing UST system components in place, specified that samples must be collected as close as practicable to, but no more than ten feet from the applicable component. The current rule does not specify an outside limit.
 - Changes deadline for service providers to report confirmed releases to the department from 72 hours to 24 hours to be consistent with reporting requirements for owners and operators.

Expected impact

The proposed rule would create potential costs to system operators. This is due to having to conduct additional sampling when conducting a site assessment under some circumstances.

2.3.8 Part 8 – Closure

Baseline

The existing rule regulates closure of UST systems.

Proposed

Temporary closure of UST systems

- Adds requirement that UST systems temporarily closed for more than ninety days must either be emptied or the amount of regulated substance remaining in the system must be measured.
- Eliminates “0.3 percent by weight of the total capacity” as a criteria for determining whether an UST system is empty.
- Eliminates requirement that an UST system must be permanently closed after 12 months if the tanks and piping do not meet applicable performance standards or upgrade requirements. The provision is no longer necessary.
- Adds requirement that a preliminary evaluation of the structural integrity of a tank must be completed before Ecology will authorize deposit of regulated substances needed for a tightness test of an empty temporarily closed UST system.
- For UST systems temporarily closed more than ninety days, adds requirement that any operation and maintenance tests or inspections suspended during temporary closure must be performed before returning an UST system to operation.

Permanent closure and change-in-service of UST systems

- Adds requirement that Ecology must be notified of any change in the planned start date for permanent closure or change-in-service at least three business days before starting.
- Eliminates requirement that permanent closure or change-in-service must be completed within 90 days of Ecology’s receipt of the notice of intent.
- Eliminates requirement that decommissioning records must be maintained since such records must be submitted to Ecology.
- Eliminates exception to site assessment requirement in cases where vapor or groundwater monitoring is used as a release detection method and monitoring does not indicate a release.
- Specifies that Ecology must be notified of the permanent closure of partially excluded UST systems. Such systems no longer need to comply with any other closure requirements.

Expected impact

The proposed changes to the rule will likely result in costs to the system owner in the form of either measuring or removing any substances in the system for temporary closure. Other potential costs include a preliminary evaluation of structural integrity, and notification. Potential benefits accrue from less record retention and the elimination of redundant requirements.

2.3.9 Part 9 – Service providers

Baseline

The existing rule sets requirements for certifications for providers of specific services.

Proposed

Certifications required to perform services

- Specifies that assessments of corrosion potential, which are now allowed under the proposed rule, must be performed by a corrosion expert.
- Specifies that the following new required services must be performed by a service provider certified in tightness testing or installation/repair:
 - Testing of containment sumps used for interstitial monitoring.
 - Testing of spill prevention equipment.
 - Testing of release detection equipment.
 - Inspections of overfill prevention equipment.
 - Testing of secondary containment areas of tanks or piping used for interstitial monitoring.

Certification of service providers

- Adds certification by the Steel Tank Institute as a method of being certified as a cathodic protection tester.

Responsibilities of service providers

- Adds requirement that tanks and piping runs undergoing permanent closure may not be removed from the ground unless both the service provider decommissioning the tanks or piping runs and the site assessor performing the site assessment are present.
- Changes deadline for service providers to report confirmed releases to Ecology from within 72 hours to within 24 hours to make consistent with reporting requirements for owners and operators.

Expected impact

The proposed rule would likely result in additional costs to system owners as service providers would need certification and would likely charge more because of it.

Potential benefits include providing consistency in the methods used to conduct testing, ensuring proper sampling, and alignment of release reporting to eliminate confusion. The proposed rule creates additional benefits in the form of decreasing the chance of a release to occur due to the utilization of service providers with specific certifications, service providers being present when decommissioning and aligning of reporting requirements.

2.3.10 Part 10 – Financial responsibility

Baseline

The existing rule sets regulations for financial responsibility for system owners.

Proposed

Period of financial responsibility

- Unlike the federal rule, specifies that financial responsibility does not need to be maintained during temporary closure if the UST system is emptied and a site assessment is completed after the system is emptied. A site assessment is not needed if a release had previously been confirmed and further remedial action is needed to clean up the confirmed release.
- Unlike the federal rule, specifies that financial responsibility does not need to be maintained after permanent closure or change-in-service until any releases from the UST system are cleaned up.

State fund financial assurance option

- Eliminates requirements for state fund option since there is no such option in Washington State.

Recordkeeping by owners and operators

- Eliminates requirement that specifies where financial responsibility records must be maintained. Records must still be made available upon request by the department.

Reporting by owners and operators

- For insurance, to demonstrate financial responsibility, specifies that need to submit both certification of financial responsibility and certificate of insurance or endorsement.

Certificates of insurance and endorsement boilerplates

- Adds “policy retroactive date” to information that must be included on certificates of insurance and endorsements to insurance policies.
- Adds contact information for Business Licensing Service to help inform both the insurer and insured who holds the endorsement.

Expected impact

The proposed rule would likely create benefits for system owners by allowing periods where financial responsibility need not be maintained. Costs may accrue due to submission of certification of financial responsibility and certificate of insurance or endorsement.

2.3.11 Creating a new chapter, Chapter 360A WAC

Baseline

Chapter 173-360A WAC does not exist. Most of the information that is proposed for inclusion in Chapter 173-360A WAC is contained in Chapter 173-360 WAC.

Proposed

Creation of a new chapter, Chapter 173-360A WAC. Repeal of Chapter 173-360 WAC. Incorporate and update existing requirements into the new chapter.

Expected impact

The proposed changes will simplify and improve clarity.

COSTS OF COMPLIANCE: EQUIPMENT

Additional costs may accrue due to updating tank gauging equipment to measure water levels. All electronic systems already have this capability. If the owner does not have an electronic system, this requirement could be met using a tank stick, which costs roughly \$20 and a tube of water finding paste, which costs roughly \$10. Ecology does not have information on how many owner/operators this will impact.

Costs for requiring new tanks being used would be the difference between the cost of a new tank and the cost of a used one. This would vary considerably based on type, size and condition of used tank. If an owner/operator reused a tank they already possessed, the cost attributable to the rule would be the difference between the cost of a new tank (roughly \$25,000) and the cost of recertifying the old tank (roughly \$7,500¹). If they purchase the used tank, this would decrease the cost attributable to the rule by the amount spent on the used tank.

COSTS OF COMPLIANCE: SUPPLIES

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

COSTS OF COMPLIANCE: LABOR

Compliance with the proposed rule, compared to the baseline, result in likely costs for companies updating training programs to align with new rule. is estimated to cost \$120 to \$480 based 1 to 4 hours of a Training Development manager’s time, a \$50.88 hourly wage multiplied by a factor of 2.257 for overhead, and an inflation adjustment of 2.7 percent..

COSTS OF COMPLIANCE: PROFESSIONAL SERVICES

Metal tanks and piping do not need to be cathodically protected if a corrosion expert assesses the environment around the UST system and determines that it is not corrosive enough to cause the system to have a release due to corrosion during its operational life. Initial assessments are required under federal rule. The proposed rule adds additional assessments every five years.

While the initial corrosion assessment is estimated by the industry to cost \$8,000, the follow-up assessments are estimated to cost \$789.20 every five years, based on 8 hours of an environmental engineer’s time, a \$42.56 hourly wage² multiplied by a factor of 2.257 for overhead³, and an inflation adjustment of 2.7 percent⁴. This is a rarely used provision, currently only 5 sites, representing 10 tanks, have used this provision and moving forward we do not anticipate that number growing.

For a total cost of \$3,946 every five years, including reporting, which converts to a 20-year present value⁵ of approximately \$13,135 over the five sites.

Costs may accrue for utilization of certified service provider for tightness tests, overflow prevention equipment inspections, release detection equipment inspections, and repairs to system components; as well as reporting of these inspections and retention of these records. Costs will depend on the service provider and how many tanks are at the site. Costs are estimated to range from \$400 - \$900.

Additional testing resulting from the proposed rule includes⁶:

¹ Phone conversation with correspondence with David Luke of Frontier Sales (Containment Solutions) on January 10, 2018.

² United States Bureau of Labor Statistics 2016 https://www.bls.gov/oes/current/oes_nat.htm#17-0000 for wage type 17-2081.

³ WA Department of Ecology (2016). Ecology 2017 Standard Cost assumptions. December 2, 2016.

⁴ US Bureau of Labor Statistics (2017). Consumer Price Index 2016-2017.

⁵ United States Treasury Department (2017). Historic rates of returns on I-bonds, 1998 – 2017.

⁶ Note: Federal rule requires these tests begin three years after federal effective date. The proposed rule requires them to begin sooner, therefore, the costs associated with any required testing prior to the three-year federal start date is attributable to the proposed rule.

- 1) Spill bucket testing once every three years, this is for all spill buckets
 - a. This is conducted by a service provider and there is a spill bucket for each of the 9,000 regulated USTs in Washington.
 - b. Estimated to cost roughly \$100 per test.
 - c. Half of these will occur in two years, one year earlier than the federal rule requires.
 - d. Aggregate cost attributable to the proposed rule is the cost of one test per tank, or \$435,000.
- 2) Overfill devices once every three years.
 - a. This is conducted by a service provider and there is an overfill device for each of the 9,000 regulated USTs in Washington.
 - b. Estimated to cost roughly \$100 per test.
 - c. Half of these will occur in two years, one year earlier than the federal rule requires.
 - d. Aggregate cost attributable to the proposed rule is the cost of one test per tank, or \$435,000.
- 3) Testing of sumps used for interstitial monitoring once every three years.
 - a. This is conducted by a service provider and there are roughly 2,000 sumps used for interstitial monitoring at UST sites in Washington.
 - b. Estimated to cost roughly \$200 per test.
 - c. Half of these will occur in two years, one year earlier than the federal rule requires.
 - d. Aggregate cost attributable to the proposed rule is the cost of one test per tank, or \$193,000.

This results in an estimated a 20-year present value⁷ of approximately of \$1.06 million.

Other potential costs include a preliminary evaluation of structural integrity (such as a pressure decay test) when an UST system is temporarily closed for more than 90 days then returned to operation. These evaluations would be performed by service providers and are estimated to cost \$700. These are estimated to occur roughly 30 times per year, which converts to a 20-year present value⁸ of approximately \$360,000.

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS

Where applicable, Ecology estimates administrative costs (“overhead”) as part of the cost of labor and professional services, above.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES

When determining the proportionality of impacts, Ecology typically compares small businesses (those with 50 or fewer employees) to the largest 10% of businesses in the industry. In the current analyses, small businesses represent more than 90% of all businesses in the affected industries (as identified by North American Industry Classification System (NAICS) code, see below). For this reason, Ecology is comparing the impacts on small businesses with large businesses (those with 50 or more employees).

Small businesses average 7.8 employees. Large businesses average 127 employees. Because large businesses have 16.3 times as many employees as small businesses in these industries, in order for the imposed costs to be proportional, they would need to be 16.3 times as large for large businesses than for small businesses. While it makes intuitive sense that larger businesses would have more tanks (and therefore face higher costs), this is not universally accurate. Further, it is highly unlikely that these costs would be 16 times higher.

Therefore, we conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses, and therefore Ecology must include elements in the proposed rule amendments to mitigate this disproportion, as far as is legal and feasible.

CONSIDERATION OF LOST SALES OR REVENUE

Businesses that would incur costs could experience reduced sales or revenues if the incurred costs would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business’s production and pricing model (whether additional lump-sum costs significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

MITIGATION OF DISPROPORTIONATE IMPACT

The RFA (19.85.030(2) RCW) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW [19.85.040](#), the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating record-keeping and reporting requirements;
- c) Reducing the frequency of inspections;
- d) Delaying compliance timetables;
- e) Reducing or modifying fine schedules for noncompliance; or

⁷ United States Treasury Department (2017). Historic rates of returns on I-bonds, 1998 – 2017.

⁸ United States Treasury Department (2017). Historic rates of returns on I-bonds, 1998 – 2017.

- f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule that reduce costs.

- Adding exclusions, exceptions, and clarifications to prevent overlapping regulatory requirements.
- Eliminating some requirements for partially exempt UST systems.
- Lessening requirements for when site assessments must occur.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

Ecology involved small businesses and local government (or representative organizations) in its development of the proposed rule amendments, as part of its outreach and rule-development process. This included:

- Email listserv “Ecology-UST-RULE LIST”, with 315 current members, including industry groups, cities, and counties.
- Stakeholder meetings – attendees and invitees:
 - SME Solutions
 - Albertsons
 - Automotive United Trades Organization (AUTO)
 - BP
 - Century Link
 - Costco
 - Fred Meyers
 - Jackson’s Food
 - Korean American Grocers Association of Washington (KAGRO)
 - Northwest Tank
 - NW Grocers Association
 - PSE
 - QFC
 - Safeway
 - Shell
 - Tesoro
 - UST Service Providers
 - Washington Oil Marketers Association (WOMA)
 - Western States Petroleum Association (WSPA)

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

The proposed rule is likely to impact the following NAICS codes.

Table 3: **NAICS Codes that Include Businesses Possibly Needing to Comply with the Proposed Rule Amendments**

2111	3241	4812	4854	4879	5321	7139
2121	3361	4821	4855	4881	5621	8111
2122	4231	4831	4859	4882	5622	9281
2123	4247	4841	4861	4883	6221	
2131	4411	4842	4862	4884	6222	
2211	4412	4851	4869	4889	6223	
2212	4471	4852	4871	4911	6231	
2213	4811	4853	4872	4921	7112	

IMPACT ON JOBS

Ecology used the Washington State Office of Financial Management’s 2007 Washington Input-Output Model⁹ 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 amendments will result in transfers of money within and between industries. Jobs impact calculations were based on cost increases and reductions over the 20 year period of study that could be quantified for the proposed rule amendments.

It is estimated that the state would experience a net increase in employment of two jobs as a result of the proposed rule over the twenty year period of study.

These prospective changes in overall employment in the state are the sum of multiple small increases and decreases across all industries in the state.

⁹ 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/2007/default.asp>

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

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