



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

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

Permanent Rule Only

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:

Chapter 173-186 WAC establishes oil spill contingency plan, drill and equipment verification requirements, and provisions for inspection of records for owners and operators of railroads 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 requires 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 rule also requires regularly scheduled oil spill drills to test and strengthen the plans through implementation.

Citation of existing rules affected by this order:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 90.56.210

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-08-117 on April 6, 2016.

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

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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Date adopted: 8/31/16

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TITLE

Director, Department of Ecology

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 31, 2016

TIME: 11:51 AM

WSR 16-18-052

**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>36</u>	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	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	_____

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

Other than minor edits for clarity, the following changes were made:

- A definition for the term “planning standards” has been added to the definition section, WAC 173-186-040. The paragraph describing the context of a planning standard has been moved to WAC 173-186-300 for greater clarity.
- The word “local” was added to the paragraph describing coordination of spills responses to more fully reflect the state’s emergency response planning structure.
- The definition of “Rail Classification” was deleted after changes were made to WAC 173-186-120 which eliminated the need to use this term in the rules.
- Minor clarifying changes were made to WAC 173-186-100 to better reflect that a single integrated railroad plan may be submitted on behalf of a group of rail operators, and that the plan could be submitted by either an owner, an operator, or a primary response contractor.
- No change was made to the definition of worst case spill volume involving the entire number of railcars; however, a change was made to the portion of the definition that allows a railroad to submit an alternative calculation for consideration, which is permitted by statute.
- Several changes were made to the phase-in section, WAC 173-186-120.
 - In the interim while a full plan is being developed, rail operators will provide either a federal oil spill plan or a letter containing key information to demonstrate the ability to respond to spills;
 - A process is defined for managing a plan submittal if there is a rail operating area where Geographic Response Plans (GRPs) do not yet exist;
 - The phase-in time for purchasing equipment if that is necessary after initial plan review by Ecology was shortened; and
 - A paragraph relating to rail operators that may move oil in the future (not currently subject to regulation) was moved to WAC 173-186-420 where it is more appropriately located because it is not a phase-in for the current rules.
- A minor clarification change was made to WAC 173-186-140 to indicate that the reference is to oil products and not “any” products, which could be interpreted broadly.
- A change was made to WAC 173-186-200 to indicate that all rail operators, not limited to those transporting biological oils, may use the boilerplate plan that will be posted on the ecology website.
- Several changes were made to WAC 173-186-220, primarily clarifying edits. This section was clarified to describe the process for protecting the environment in areas where GRPs do not yet exist.
- The equipment planning standards in WAC 173-186-310 were adjusted to be aligned, and in proportion with, the planning standards for facilities, pipelines and vessels.
- It was clarified in WAC 173-186-320 that the equipment maintenance procedures apply to oil spill response equipment and not to other types of railroad equipment.
- The requirement to have access to equipment capable of responding to oils that sink or submerge was expanded to all crude oils since many types of crude oils will sink under certain conditions, whether they are classified as Group 5 oils or not.
- An addition to WAC 173-186-430 was made to require a public comment period for permanent significant changes to approved plans.
- The drill core components listed in WAC 173-186-520 were modified to reflect recent changes in the federal National Preparedness for Response Exercise Program guidelines, published in 2016.