



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: June 30, 2023

TIME: 8:09 AM

WSR 23-14-086

Agency: Department of Ecology AO #22-16

Title of rule and other identifying information: (describe subject)

The Department of Ecology (Ecology) proposes to amend chapter [173-360A](#) WAC, Underground Storage Tank (UST) Regulations, to allow use of a state fund or other state assurance program to demonstrate financial responsibility for cleaning up UST releases and compensating third parties for bodily injury and property damage caused by the releases.

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

Leaking underground storage tanks (USTs) at gas stations across Washington state threaten the health and prosperity of our communities. The cost of cleaning up these sites is often beyond the financial means of many small gas station owners.

The legislature recently passed a law ([Chapter 170](#), Laws of 2023) directing the [Pollution Liability Insurance Agency](#) (PLIA) to establish and administer a new state financial assurance program for UST owners and operators to help ensure they have sufficient funds to clean up releases of petroleum from USTs. If you have any questions about the development of this new program, please [contact PLIA](#).

The law also directs Ecology to amend its UST Regulations to allow UST owners and operators to use PLIA's new state financial assurance program to demonstrate financial responsibility for UST releases. The law requires the amendments to be consistent with and no less stringent than the federal regulations in 40 C.F.R. Parts [280](#). This is necessary to maintain federal approval of the state's UST pollution prevention program under 40 C.F.R. Part [281](#). See section 11(2), [chapter 170](#), Laws of 2023.

Reasons supporting proposal: See answer to "Purpose of the proposal."

Statutory authority for adoption:

Chapter [70A.355](#) RCW, Underground Storage Tanks
[Chapter 170](#), Laws of 2023

Statute being implemented:

Chapter [70A.355](#) RCW, Underground Storage Tanks
[Chapter 170](#), Laws of 2023

Is rule necessary because of a:

- | | | |
|-------------------------|---|--|
| Federal Law? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION: The rulemaking is necessary in part to maintain federal approval of the state's underground storage tank regulatory program, which is required by chapter [70A.355](#) RCW. The federal requirements for state program approval are specified in 40 C.F.R. Parts [280](#) and [281](#).

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	Lacey, WA	360-791-9390


Implementation:	Steven Jarrett	Lacey, WA	564-669-3818
Enforcement:	Barry Rogowski	Lacey, WA	360-485-3738
Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A			
Expedited Adoption - Which of the following criteria was used by the agency to file this notice:			
<input type="checkbox"/> Relates only to internal governmental operations that are not subject to violation by a person; <input checked="" type="checkbox"/> Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; <input type="checkbox"/> Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect; <input checked="" type="checkbox"/> Content is explicitly and specifically dictated by statute; <input type="checkbox"/> Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or <input type="checkbox"/> Is being amended after a review under RCW 34.05.328.			
Expedited Repeal - Which of the following criteria was used by the agency to file notice:			
<input type="checkbox"/> The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule; <input type="checkbox"/> The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute; <input type="checkbox"/> The rule is no longer necessary because of changed circumstances; or <input type="checkbox"/> Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.			
Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Ecology believes the expedited rulemaking process is appropriate for this rulemaking under RCW 34.05.353 (1)(b) and (d). The proposed rule amendments are explicitly and specifically required by the legislature in section 11(2), chapter 170 , Laws of 2023, and adopt without material change the federal regulations in 40 C.F.R. Part 280, Subpart H pertaining to use of a state fund or other state assurance program as a mechanism for demonstrating financial responsibility for UST releases.			

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: Katie Wolt, Agency Rules Coordinator
Agency: Department of Ecology
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AND RECEIVED BY (date) September 5, 2023

Date: June 30, 2023	Signature: 
Name: Heather Bartlett	
Title: Deputy Director	