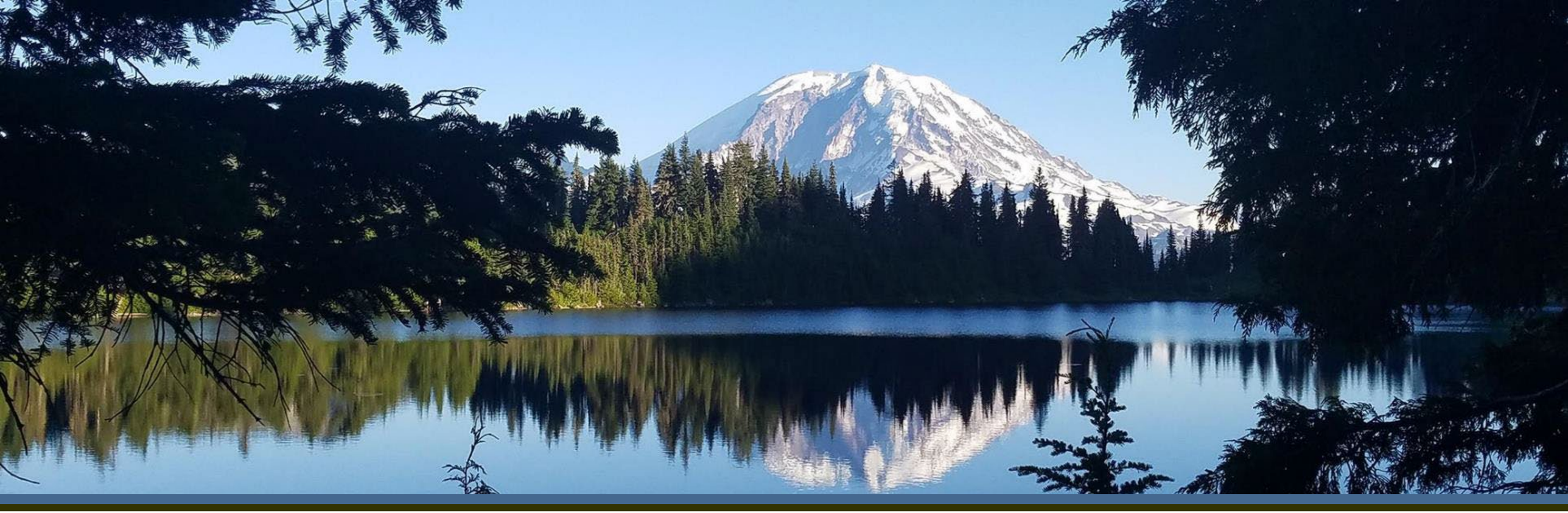


Financial Responsibility Rulemaking
Chapter 173-187 WAC

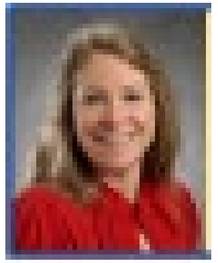
Diana Davis, Financial Responsibility Unit Supervisor

Workshop #4: Financial Responsibility for Small Oil Handling Facilities – August 15, 2023

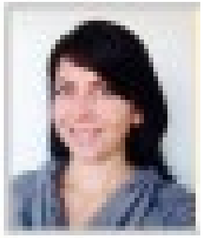
DEPARTMENT OF ECOLOGY
State of Washington

Ecology's Financial Responsibility Team

Diana Davis
Financial Responsibility Unit Supervisor and Rulemaking Lead



Sonja Larson
Response Technology Specialist



Kim Morley
Rule Coordinator

Sean Orr
Lead Planner
Oil Movement

Agenda

Welcome - Introductions

Rule Introduction

- Overview
- Timeline
- Scope
- Where are we with rule making
- Financial Responsibility for Small Oil Handling Facilities
- Certificate process overview

Rulemaking Overview

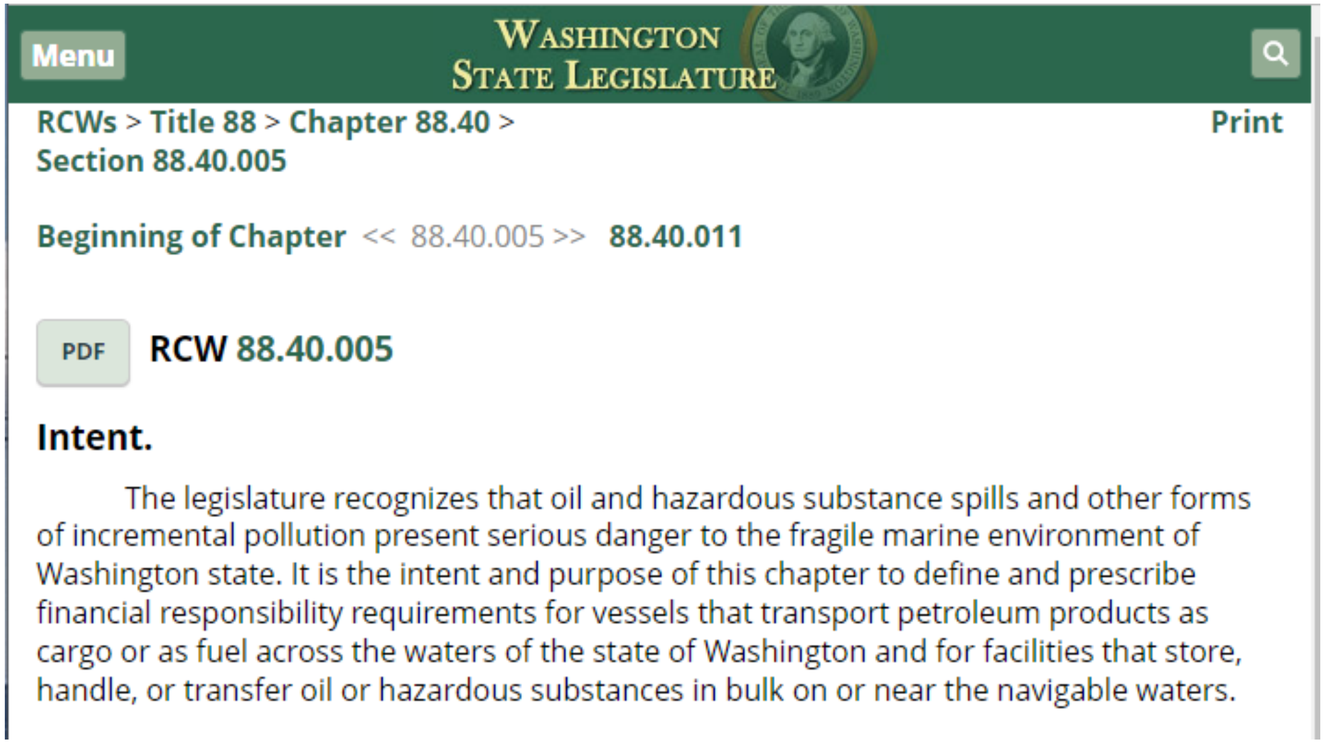
Ecology is initiating a rulemaking to create a new rule, Chapter 173-187 WAC - Financial Responsibility.

Financial Responsibility is used to ensure that vessel and facility owners and operators have adequate financial resources to pay cleanup costs and damages resulting from oil spills.

Additionally, an existing Chapter 317-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges, will be incorporated into the new rule and then repealed.

Why are we conducting rulemaking at this time?

Through Engrossed Second Substitute House Bill (E2SHB) 1691, codified in RCW 88.40, the Legislature directed Ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels.



Menu

WASHINGTON STATE LEGISLATURE

RCWs > Title 88 > Chapter 88.40 > Section 88.40.005

Print

Beginning of Chapter << 88.40.005 >> 88.40.011

PDF

RCW 88.40.005

Intent.

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

Rulemaking Timeline

Dates	Activity
April 17, 2023	CR-101, rule announcement
June – October 2023	Conduct outreach with tribes, stakeholders, and interested parties to develop the rule language
January 2024	Propose the rule (file the CR-102 form)
June 2024	Adopt Rule (file the CR-103 form)
July 2024	Rule effective

Rulemaking Scope

The new rule will:

- **Define the entities subject to financial responsibility requirements.**
- **Establish required levels of financial responsibility for oil handling facilities and pipelines.**
- Specify the procedures and timelines for obtaining or renewing a certificate of financial responsibility.
- Establish requirements for acceptable evidence of financial responsibility, including self-insurance.

Scope Continued

- Outline the process for ensuring timely updates to changes in regulated industry financial status.
- Define the processes governing the suspension, revocation, and re-issuance of certificates of financial responsibility considering potential liabilities incurred by a covered entity after an oil spill or other incident.
- Incorporate and update financial responsibility requirements currently included in WAC Chapter 317-50 – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges, and repeal that chapter.
- Make other changes to clarify language and make any corrections needed.

Financial Responsibility for Small Oil Handling Facilities

This workshop will focus on financial responsibility for small oil handling facilities, Class 2 and Class 3 facilities.

A Class 2 facility is defined as a motor vehicle, portable device or other rolling stock, while not transporting oil over the highways of the state, used to transfer oil to a nonrecreational vessel.

Financial Responsibility for Small Oil Handling Facilities

A Class 3 facility is defined as a facility that transfers oil to a **nonrecreational vessel with a capacity of 10,500 or more gallons of oil** whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils.

It does not transfer oil in bulk to or from a tank vessel or pipeline; and does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 70A.355 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

Establishing Financial Responsibility Requirements for Facilities

The legislature directed Ecology to determine required levels of financial responsibility for oil handling facilities.

Ecology was directed to adopt a rule that considers:

- facility's worst-case spill volume
- cost of cleaning up spilled oil
- frequency of operations at the facility
- availability and affordability of acquiring financial responsibility

Facility Worst-Case Spill Definition

Worst-case spill

- Class 2 facilities (WAC 173-180) – For a Class 2 facility, the entire contents of the container(s) in which the oil is stored or transported. Class 2 facilities define their worst-case spill volume in their oil transfer response plan

- Class 3 facilities - At this time, we don't have worst-case spill volume for Class 3 facilities. We will be working closely with these facilities to define worst-case spill volume or other method for determining financial responsibility

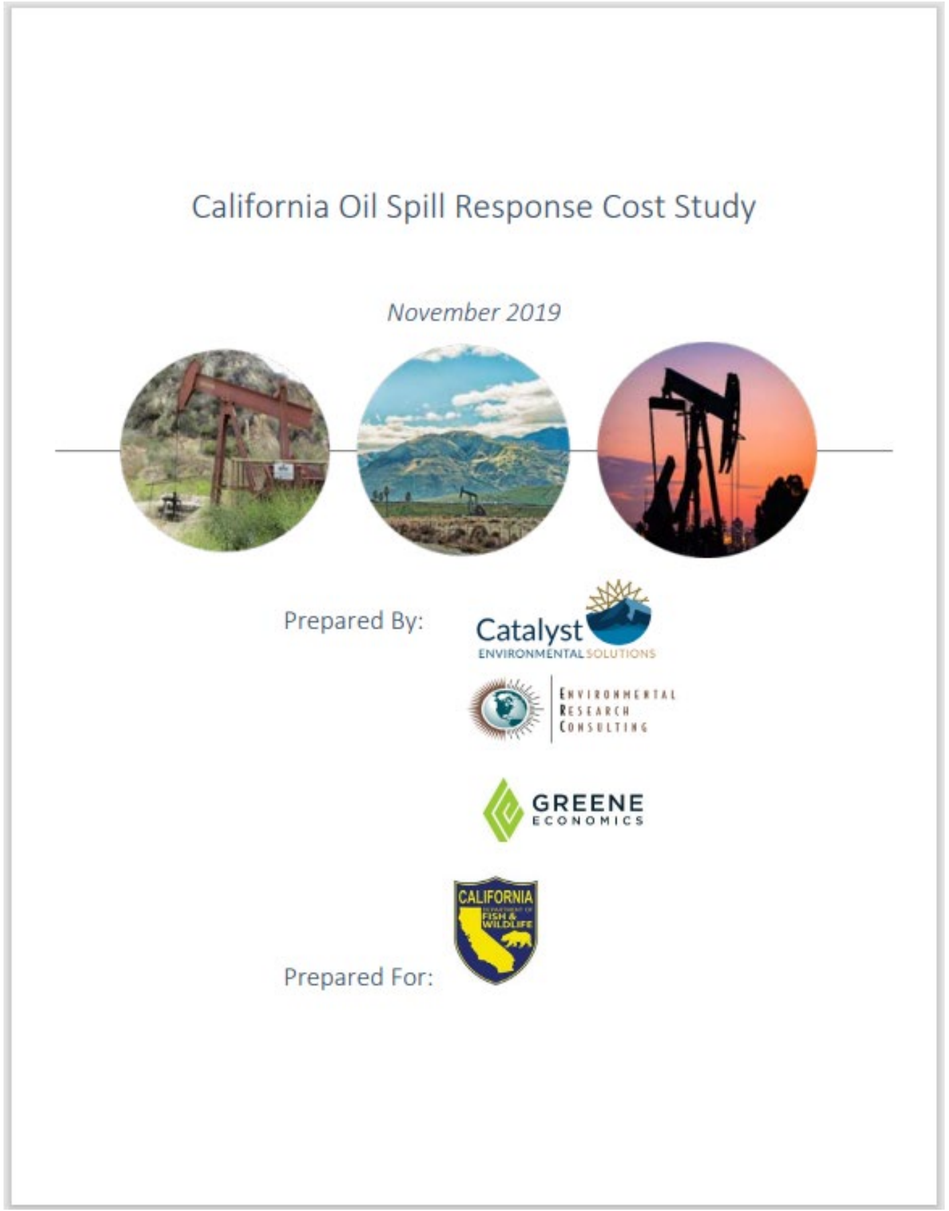
Oil Spill Clean-Up Cost Studies

Cost of cleaning up spilled oil

In preparation of establishing financial responsibility amounts for facilities we performed research on existing studies including:

- 2019 Catalyst Response Costs Report

Catalyst 2019 California Oil Spill Response Cost Study



Catalyst.pdf (wa.gov)

Catalyst 2019 California Oil Spill Response Cost Study

Table ES-2: Per-Bbl Response Cost Percentiles for Inland Production Facilities based on Responses to the California Operator Survey

Percentile	Response Cost/Bbl (2019 US$)
10th	$35
25th	$101
50th (Median)	$343
75th	$1,547
90th	$6,600
95th	$10,000
99th	$14,500
Maximum	$29,341
Average (Mean)	$1,954

Table ES-3 provides the results of per barrel spill costs for larger spills into water based on oil type. These results apply to spills greater than 100 bbl which occurred either offshore or in coastal areas and entered marine or large river system environments.

Table ES-3: CDFW-OSC Model Results – Range of Per Barrel Spill Costs by Oil Type for Offshore or Coastal Spills Greater than 100 bbl[1]

Oil Category	Per-Bbl Spill Cost			
	Highest Cost	High Cost	Medium Cost	Low Cost
Non-Persistent	$17,144	$13,055	$6,747	$4,615
Light Persistent	$31,764	$24,183	$12,498	$8,547
Medium Persistent	$38,805	$29,539	$15,268	$10,445
Heavy Persistent	$70,386	$53,582	$27,700	$18,943

Catalyst 2019 California Oil Spill Response Cost Study

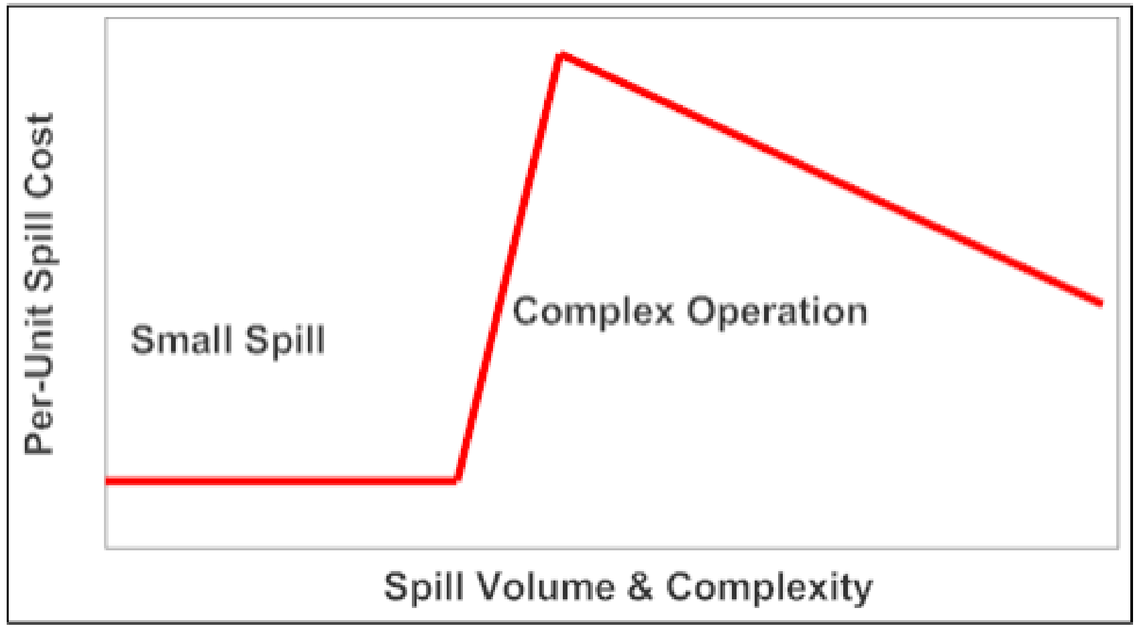


Figure 38: Hypothetical Per-Unit Volume Spill Cost Relationship with Volume and Complexity

Catalyst 2019 California Oil Spill Response Cost Study

Table A-23: Key Table: Highest Total Per-Bbl Costs for Regions by Oil Type/Volume

US Region	Non-Persistent		Low- Persistent		Medium-Persistent		Heavy-Persistent	
	Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC	
	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl
East	$46,115	$4,612	$73,784	$7,378	$92,229	$9,223	$184,458	$36,892
Gulf	$42,963	$4,296	$68,741	$6,874	$85,926	$8,592	$171,851	$34,371
West	$45,119	$4,512	$72,191	$7,219	$90,238	$9,024	$180,477	$36,096

Table A-24: Key Table: High Total Per-Bbl Costs for Regions by Oil Type/Volume

Region	Non-Persistent		Low- Persistent		Medium-Persistent		Heavy-Persistent	
	Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC	
	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl
East	$35,107	$3,511	$56,171	$5,617	$70,214	$7,021	$140,428	$14,043
Gulf	$32,708	$3,271	$52,331	$5,233	$65,415	$6,542	$130,830	$13,083
West	$34,349	$3,435	$54,958	$5,496	$68,698	$6,870	$137,395	$13,739

Table A-25: Key Table: Medium Total Per-Bbl Costs for Regions by Oil Type/Volume

Region	Non-Persistent		Low- Persistent		Medium-Persistent		Heavy-Persistent	
	Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC	
	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl
East	$18,147	$1,815	$29,035	$2,903	$36,294	$3,629	$72,589	$7,259
Gulf	$16,907	$1,691	$27,050	$2,705	$33,813	$3,382	$67,625	$6,762
West	$17,756	$1,776	$28,408	$2,840	$35,511	$3,551	$71,021	$7,103

Table A-26: Key Table: Low Total Per-Bbl Costs for Regions by Oil Type/Volume

Region	Non-Persistent		Low- Persistent		Medium-Persistent		Heavy-Persistent	
	Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC		Per-Bbl DPAC	
	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl	<1,000 bbl	>10,000 bbl
East	$12,411	$1,242	$19,858	$1,986	$24,822	$2,483	$49,645	$4,964
Gulf	$11,563	$1,157	$18,500	$1,850	$23,125	$2,313	$46,251	$4,625
West	$12,143	$1,215	$19,429	$1,942	$24,286	$2,429	$48,572	$4,857

Frequency and Operational Conditions

Class 2 and class 3 oil handling facilities' operations have unique frequency and operational parameters, so we have been thinking about those factors as we develop a proposal for financial responsibility for these facilities.

When calculating worst-case spill volume for these facilities, several operational factors come into play, including:

- handling of non-persistent products only
- low transfer rates
- low volume transfers
- proximity to shore
- shut down procedures for tank trucks
- line drain down calculations, and
- training

Availability and Affordability of Acquiring Financial Responsibility

Evidence of financial responsibility for Class 2 and Class 3 facilities can be provided with one or more sources and includes:

- Insurance coverage
- Guaranty
- Surety Bond
- Letter of credit
- Certificate of Financial Responsibility from another state
- Self-insurance

West Coast Financial Responsibility Requirements

In addition to researching oil spill cost studies, we performed analysis on Alaska's and California's existing financial responsibility requirements

Alaska Financial Responsibility Requirements

Alaska's proof of financial responsibility amounts are based on the type of oil handling facility, whether the oil is predominantly persistent or non-persistent, and the volume of daily production or storage capacity of the facility.

Alaska's financial responsibility will be $55.72 per barrel of total oil storage capacity as of Oct 1, 2023

Alaska's minimum financial responsibility will be $2,229,000.

Alaska Financial Responsibility Rate Schedule

Alaska FR Rate Schedule

STATE OF ALASKA FINANCIAL RESPONSIBILITY DOLLAR AMOUNTS for regulated oil facilities and vessels (18 AAC 75.235)

Anchorage CPI (Urban) 1st Half 1990:	116.9
Anchorage CPI (Urban) 2nd Half 2022:	260.6
Anchorage CPI Increase 1990 - 2019:	143.7
Percentage increase:	122.9%
Adjustment factor:	2.229

	Statutory Amount (AS 46.04.040 or 46.04.055)	Dollar Amount (effective October 1, 2023)	
Crude Oil Terminal Facility:	$50,000,000	$111,450,000	*per incident*
Non Crude Oil Terminal Facility:	$25.00	$55.72	*per incident, per barrel*
	$1,000,000	$2,229,000	*minimum*
	$50,000,000	$111,450,000	*maximum*
Pipeline:	$50,000,000	$111,450,000	*per incident*
Offshore Exploration or Production Facility:	$50,000,000	$111,450,000	*per incident*
Onshore Production Facility > 10,000 bpd:	$20,000,000	$44,580,000	*per incident*
Onshore Production Facility ≤ 10,000 bpd, > 5,000 bpd:	$10,000,000	$22,290,000	*per incident*
Onshore Production Facility ≤ 5,000 bpd, > 2,500 bpd:	$5,000,000	$11,145,000	*per incident*
Onshore Production Facility ≤ 2,500 bpd,	$1,000,000	$2,229,000	*per incident*
Onshore Exploration Facility:	$1,000,000	$2,229,000	*per incident*

California Financial Responsibility Requirements

California proof of financial responsibility amounts are based on the type of oil handling facility, the reasonable worst-case spill volume, and a clean-up and damage cost per barrel of $12,500.

California calculates financial responsibility for mobile transfer units (MTUs) by multiplying 30% of the unit's maximum cargo capacity, as measured in barrels, by $12,500

Financial responsibility for small marine fueling facilities is calculated by multiplying $12,500 times the facility's reasonable worst-case spill volume.

Washington Proposed Financial Responsibility Requirements

Class 1 Facility	Oil Type	Proposed WA (based on WCS volume)	CA COFR	AK COFR
Class 2 facilities (tank trucks)	Crude / Persistent Oil or Non-persistent	50% of the unit's maximum cargo capacity times $12,500 per barrel;	MTU: 30% of the unit's maximum cargo capacity times $12,500	Not Applicable
Class 3 facilities	Non crude	Volume of the largest facility tank times $12,500 per barrel;	Small marine facility: RWCS volume times $12,500	Total non crude oil storage capacity times $55.72 per barrel; Min $2,229,000

Rulemaking Status

Preliminary draft rule language has been created for:

- General Requirements
- Financial Responsibility Amounts for Vessels and Facilities
- Financial Responsibility – Applying for Certification and Verification
- Financial Responsibility – Notification Requirements

Certificate Process

Certification Process

- Owners / operators of small oil handling facilities that are covered in this rule will submit an application to request a certificate of financial responsibility

- We will develop a compliance schedule for small oil handling facilities

Workshop	Topic	Key Audience	Join online	Join by phone	Access code
Workshop #1 June 15, 2023 1:00pm - 3:30pm	Rule overview and introductions (why are we doing this now?)	All	https://waecy-wa-gov.zoom.us/meeting/register/tZYlcOquqz8rHNM2OKS6IsyXrP1E_fC70wCH	(253) 215 8782	828 7365 4167
Workshop #2 July 13, 2023 1:00pm - 3:30pm	Financial responsibility requirements for covered vessels, tank vessels and tank barges of any size. Non-tank vessels, such as cargo and large fish processing vessels over 300 gross tons and involved in commerce, that carry oil as fuel.	Vessels, P&I Club, Agents, umbrella plans	https://waecy-wa-gov.zoom.us/meeting/register/tZUqcu2rqTssEtSxMXhQAWEXf1lkAmwwZGnk	(253) 205 0468	817 5437 0680
Workshop #3 July 27, 2023 1:00pm - 3:30pm	Financial responsibility for large oil handling facilities, that transfer oil over waters of the state, to or from vessels and pipelines. This includes refineries, oil terminals and pipelines.	Facilities	https://waecy-wa-gov.zoom.us/meeting/register/tZIpcu-oqzIqGNZySz7WZ6FhJatzbVNvqD2n	(253) 205 0468	864 5605 9022
Workshop #4 August 15, 2023 1:00pm - 3:30pm	Financial responsibility for small facilities that transfer oil to commercial vessels with a fuel capacity greater than 10,500 gallons. These include tank trucks during transfers over waters of the state, not while transporting oil over the road, and marine terminals.	Tank trucks and small facilities	https://waecy-wa-gov.zoom.us/meeting/register/tZYlcuurrTgoHtGQC1kB3dsBjo7ifOd0zg6P	(253) 215 8782	828 5233 3245
Workshop #5 September 12, 2023 1:00pm - 3:30pm	Financial responsibility certification process, documentation, timelines, renewal, revocation, and updates	All	https://waecy-wa-gov.zoom.us/meeting/register/tZwtcuGrrz0pE9Ph9GKdW5Ig69VNAmay9Tfi	(253) 215 8782	880 5831 6397
Workshop #6 October 5, 2023 1:00pm - 3:30pm	Final rule workshop	All	https://waecy-wa-gov.zoom.us/meeting/register/tZIvduGhqjMiEtwjH1i08dF613SyuC7CFrq6	(253) 205 0468	862 1894 8888

Rulemaking Website

https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-187

Next Steps

The next Workshop will be held on September 12th from 1:00 to 3:30. It will focus on financial responsibility certification process, documentation, timelines, renewal, revocation, and updates. We will send out an invitation to that workshop, along with an agenda about 2 weeks before the workshop.

Preliminary draft rule language was emailed to stakeholders last Friday. If you have comments on the preliminary language, please respond via e-mail.

Please feel free to provide your thoughts and comments verbally here or in writing to Diana (Diana.Davis@ECY.WA.GOV) via email and we will take them into consideration as we work through the rulewriting process.

Questions?

Thank you

DEPARTMENT OF ECOLOGY
State of Washington