



# Financial Responsibility Rulemaking Chapter 173-187 WAC

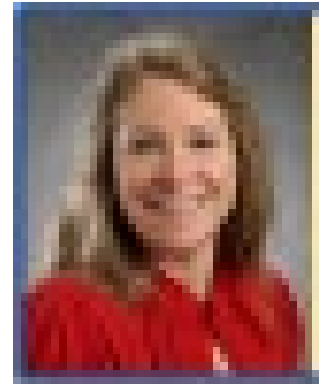
Diana Davis, Financial Responsibility Unit Supervisor

Workshop #6: Financial Responsibility – October 5, 2023

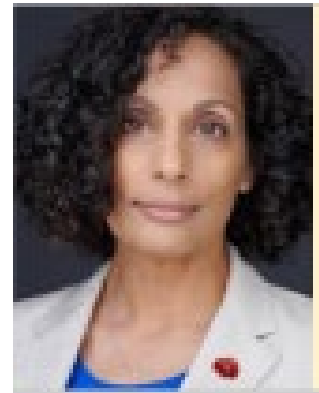


# Ecology's Financial Responsibility Team

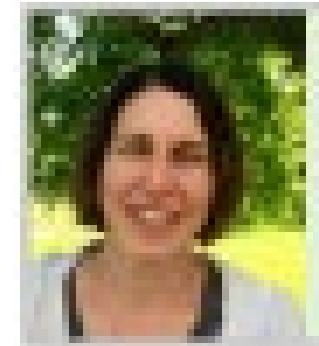
Diana Davis  
Financial Responsibility  
Unit Supervisor and  
Rulemaking Lead



Karen Denny  
Area Planning Specialist



Kim Morley  
Rule Coordinator



Sean Orr  
Lead Planner  
Oil Movement



# Agenda

## Welcome - introductions

- Overview
- Timeline
- Scope
- Preliminary rule language
- Examples of financial responsibility calculations
  
- Next steps



# 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Responsibility for Small Tank Barges and Oil Spill Response Barges, will be incorporated into the new rule and then repealed.



# 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 – Preliminary Rule Overview

- Financial responsibility for vessels
- Financial responsibility for facilities
- Requesting an alternative worst-cast spill volume
- Submitting a request for certificate of financial responsibility
- Submitting a request for verification through P&I coverage
- Submittal timelines





# Financial Responsibility – Vessels

Category	Financial Requirements
Barge 300 gross tons or greater	\$5,000,000 or \$300 per gross ton Whichever is greater
Tank Vessel 300 gross tons or greater	\$1,000,000,000
Tank vessels or barges less than 300 gross tons	<u>\$5,000,000 or</u> <u>\$300 per gross ton</u> <u>Whichever is greater</u>  <i>May submit a request for an alternative financial responsibility amount following the process described in WAC 173-187-120</i>
Cargo Vessel Passenger Vessel	\$300,000,000
Passenger vessels that transport passengers and vehicles between Washington and a foreign Country	\$500,000 or \$600 per gross ton Whichever is greater
Fishing Vessel of 300-or-greater gross tons	
Predominately nonpersistent product	\$1,334,000 or \$133.40 per each barrel of total oil storage capacity Whichever is <u>greater</u>
Predominately persistent product	\$6,670,000 or \$400.20 per each barrel of total oil storage capacity Whichever is greater



# Financial Responsibility – Facilities

Category	Financial Requirements Per barrel rate times worst-case spill (WCS) volume	Maximum Amount
Large Oil Handling Facilities (Refineries, Marine Terminals) (Class 1)	\$27,200 per barrel times the worst-case spill volume as defined in the approved oil spill contingency plan	\$600,000,000
Offshore Facilities (Class 1)	\$27,200 per barrel times the worst-case spill volume as defined in the approved oil spill contingency plan	\$600,000,000
Pipelines (Class 1)	\$27,200 per barrel times the worst-case spill volume as defined in the approved oil spill contingency plan	\$600,000,000
Mobile Tank Units (Tank Trucks) (Class 2)	\$27,200 per barrel times 30% of the entire contents of the container(s) in which the oil is stored or transported	No Maximum
Small Oil Handling Facilities (Small Marine Terminals) (Class 3)	\$27,200 per barrel times the volume of the largest facility tank	No Maximum



# Financial Responsibility – Basis for Proposal

The previous per barrel rate of \$12,500 and maximum requirement of \$300,000,000 are based on California's current requirements.

These values were established in the early 1990's. Since then, prices as reflected in the Consumer Price Index (CPI), have risen by a multiplier of approximately 2.176

When the 2.176 CPI inflation factor is applied to \$12,500, the result is \$27,200

When the 2.176 CPI inflation factor is applied to \$300,000,000, the result is \$652,800,000



# Financial Responsibility – Requesting an Alternative Worst-Case Spill Volume

A tank vessel or barge under 300 GT or facility may request an alternative worst-case spill volume (WCSV), which in turn could reduce the required amount of financial responsibility. The proposal needs to include:

- A description of the alternate WCSV, and
- Justification of how this amount offers equal protection against an oil spill. It can include descriptions of:
  - Tank locations and secondary containment systems
  - Spill prevention practices and procedures
  - 3rd party and ecology inspections
  - Spill preparedness and response capabilities
  - Other factors that reduce the amount and likelihood of spilling oil into the water
- For more details, see WAC 173-187-120



# Financial Responsibility – Submitting a Request for Verification of P&I Club Membership

All vessels that are covered by this rule will be required to have a certificate of financial responsibility or verification of P&I Club membership

Verification of P&I club membership may be obtained by:

- Submitting a request directly to Ecology based on guidance located on Ecology's website, or
- Submitting required documentation to a multi-vessel contingency plan holder, if agreeable to the plan holder



# Financial Responsibility – Multi-Vessel Plan Holder Option

A vessel that is enrolled in a multi-vessel contingency plan, if agreeable to the plan holder, may:

- Provide an attestation of P&I Club coverage to the plan holder along with the other contingency plan enrollment documentation, and
- Provide the plan holder with the P&I Club Certificate of Entry (CoE)
- The plan holder will post the attestation and CoE on their website for Ecology review
- Ecology will provide the plan holders with
  - the attestation to have the vessel owner / operator sign, and
  - a verification of financial responsibility certificate to provide to the vessel owner / operator



# Financial Responsibility – Submitting a Request for a Certificate

All facilities that are covered by this rule and vessels that are not members of P&I Clubs must submit a request for a certificate of financial responsibility based on guidance located on Ecology's website.

These are the financial instruments that may be used to prove financial responsibility:

- Evidence of insurance
- Surety bonds
- Guarantee
- Letter of credit
- Certificates of deposit
- Protection and indemnity club membership
- Certificate of financial responsibility from another state or from the federal government
- Self-Insurance
- **Mutual insurance association membership**



# Financial Responsibility – Mutual Insurance Association Option

Facilities may choose to create a mutual insurance association to satisfy the financial responsibility requirement

A mutual insurance association is an insurance company / vehicle this is owned by its policyholders. A mutual insurance company provides insurance coverage to its members and policyholders at or near cost. Any profits from premiums and investments are distributed to its members via dividends or a reduction in premiums.





# Financial Responsibility – Timeline Requirements

Phase-in for initial certificate / verification:

- Class 1 facilities: application submittal within 6 months of rule effective date
- Class 2 & 3 facilities: application submittal within 12 months of rule effective date
- Vessels: application submittal within 18 months of rule effective date

New certificate / verification requests after initial phase in period:

- class 1, 2 & 3 facilities: application submittal at least 10 days before beginning operations in the state
- Vessels: application submittal at least 10 days before entering waters of the state



# Financial Responsibility – Timeline Requirements

For certificate / verification renewals:

- A vessel or facility must submit an application to renew their certificate or verification at least 30 calendar days, but no more than 90 calendar days, before the expiration date of the existing certificate or the verification
- If the financial responsibility instrument is about to expire, prior to the expiration the applicant must provide updated documentation



## Calculation of Financial Responsibility

-

### Example

-

## Class 2 Facility (Tank Truck)



For many tank trucks the volume of the entire tank is around 10,000 gallons and there are 42 gallons in a barrel.

The calculation of financial responsibility would be:

$$10,000 \text{ gallons} / 42 = 238.1 \text{ barrels}$$

$$\begin{aligned} & \$27,200 \times 238.1 \text{ barrels} \times 30\% \text{ of the capacity} \\ & = \$1,942,857 \end{aligned}$$

*Notational information for example purposes only*

## Certificate Process

-

Example

-

Class 3 Facility  
(Marine Terminal)



The class 3 facilities are unique so each one needs to be assessed based on its specific characteristics.

It may be beneficial for a class 3 facility to take advantage of determining an alternative worst-case spill, which considers:

- Tank locations and secondary containment systems
- Condition and maintenance of tanks, pipelines and fueling nozzles
- Spill prevention and response procedures
- Third party or regulatory agency inspections

*Notational information for example  
purposes only*



Certificate  
Process  
-  
Example  
-  
Class 1 Facility

Class 1 facilities may have many options for proving financial responsibility. A facility may use 1 or more of these options.

- self-insurance
- guarantee from a parent company
- Insurance and / or other financial responsibility instruments

For either self-insurance or guarantee, self-insurance requirements must be satisfied. They include:

- Satisfactory credit rating (BBB- or better from S&P), or
- Liabilities to net worth less than 1.5, or
- Cash flow minus \$20M to liabilities greater than 0.1, and
- Owner's equity greater than / equal to \$1.220B, and
- US assets (not including petroleum inventory) greater than or equal to 90% or total assets or \$1.200B



## Class 1 facility – self-insurance

Certificate  
Process

Requirement: Credit rating BBB- or better from S&P

-

Facility credit rating is BBB **meets requirement**

Example

-

Class 1 Facility

Requirement: Tangible net worth (Owner's equity minus intangible assets) greater than \$1,220,000,000

Facility tangible net worth = \$25,000,000,000 **meets requirement**

Requirement: US assets (not including petroleum inventory) equal to 90% of assets or \$1,200,000,000

Facility US assets (less inventory) = \$81,000,000,000 **meets requirement**

**Notational information for example purposes only**



# Rulemaking Website

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



# Next Steps

- Comments and feedback on preliminary draft rule language due **October 11**

Dates	Activity
January 2024	Propose the rule, CR-102
February 2024	Public hearings
March 2024	End public comment period
June 2024	Adopt Rule, CR-103
July 2024	Rule effective

- Contact Diana with questions/comments ([Diana.Davis@ecy.wa.gov](mailto:Diana.Davis@ecy.wa.gov))





# Questions?

Thank you