4.2 Applicable Regulations

Laws and regulations relevant to determining potential impacts on environmental health and safety are summarized in Table 4.2-1. More information about the applicable laws and regulations is provided in Appendix B, *Laws and Regulations*.

Table 4.2-1. Laws and Regulations for Environmental Health and Safety

Laws and Regulations	Description
Federal	
Anchorages under Ports and Waterways Safety Act (33 CFR 109)	Authorizes USCG to specify times of movement, restrict operations, and direct anchoring of vessels under hazardous conditions.
Financial Responsibility for Water Pollution (Vessels) and Oil Pollution Act, Limits of Liability (Vessels and Deepwater Ports) (33 CFR 138)	Establishes requirements for responsible parties to demonstrate financial ability to meet potential liability for costs and damages.
Facilities Transferring Oil or Hazardous Materials in Bulk (33 CFR 154)	Requires facilities transferring oil or other hazardous materials in bulk to submit an operations manual to USCG for approval.
Vessel Contingency and Response Plans (33 CFR 155)	Requires development, implementation, and annual review of a vessel response plan approved by USCG.
Oil and Hazardous Material Transfer Operations (33 CFR 156)	Specifies procedures and requirements for transferring oil and other hazardous materials to/from vessels.
Oil Pollution Prevention (40 CFR 112)	Requires facilities to prepare and implement a spill prevention control and countermeasure plan in accordance with good engineering practices.
Pipeline and Hazardous Materials Safety Administration (49 CFR 105–110, 130, and 171–180)	Regulates the movement of hazardous materials. 49 CFR 130 requires that a basic oil spill response plan is developed for rail cars carrying liquid petroleum or nonpetroleum oil with a capacity of 3,500 gallons or more.
Oil Pollution Act of 1990 (33 U.S.C. 40)	Expands the federal government's ability to prevent and respond to oil spills and preserves state authority to establish laws governing oil spill prevention and response.
Clean Water Act (33 U.S.C. 1251 et seq.)	Establishes the basic structure for regulating discharges of pollutants into navigable waters of the United States by regulating point pollution sources, such as stormwater discharges, and contains specific provisions related to the incidental release of oil and other hazardous substances into U.S. waters.
Limits on Liability (33 U.S.C. 2704)	Establishes limits on liability of a responsible party to incur costs from an incident.
Hazardous Materials Transportation Act (49 U.S.C. 51)	Regulates all aspects of hazardous materials packaging, handling, and transportation for vessel, truck, and rail.
Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (80 FR 26643)	The final rule, passed May 8, 2015, defines and regulates the operations of high-hazard flammable trains.

Laws and Regulations	Description
State	
Transportation Regulations (RCW 81)	Regulates transportation in Washington State and administers railroad safety provisions allowed under 49 U.S.C. 20106 and state law (RCW 81.04.540), rules for the equipment used by common carriers (RCW 81.44), and railroad crossings (RCW 81.53).
Pilotage Act (RCW 88.16)	Establishes requirements for compulsory pilotage provisions in certain waters of the state, including Grays Harbor.
Transport of Petroleum Products – Financial Responsibility (RCW 88.40)	Defines and prescribes financial responsibility requirements for vessels that transport petroleum products across state waters and facilities that store, handle, or transfer oil or hazardous substances near navigable waters of the state.
Vessel Oil Spill Prevention and Response (RCW 88.46)	Establishes rules and regulations for tank vessels that carry oil and enter navigable waters of the state.
Oil and Hazardous Substance Spill Prevention and Response (Oil Spill Act) (RCW 90.56)	Establishes programs to reduce the risk and develop an approach to respond to oil and hazardous substance spills; provides a simplified process to calculate damages from an oil spill; holds responsible parties liable for damages resulting from injuries to public resources.
Hazardous Chemical Emergency Response Planning and Community Right-to-Know Act of 1986 (WAC 118-40)	Establishes requirements for federal, state, and local governments, and industry to improve hazardous chemical preparedness and response through coordination and planning; provisions include public notification about chemicals used at facilities.
Facility Oil Handling Standards (WAC 173-180)	Establishes minimum standards for safe oil transfer operations to meet a zero spill goal established by the legislature.
Oil Spill Contingency Plan Requirements (WAC 173-182)	Requires larger oil handling facilities and commercial vessels to have state-approved oil spill contingency plans that describe their ability to respond to oil spills. Identifies specific standards for Grays Harbor.
Oil Spill Natural Resources Damage Assessment (WAC 173-183)	Establishes procedures for convening a resource damage assessment committee, pre-assessment screening of damages, and selecting the damage assessment method.
Vessel Oil Transfer Advance Notice and Containment Requirements (WAC 173-184)	Requires facility operators who transfer oil to provide Ecology with a 24-hour advance notice of transfer.
Local	
No local regulations apply to environmental health and safety.	

CFR = Code of Federal Regulations; USCG = U.S. Coast Guard; U.S.C. = United States Code; FR = Federal Register; RCW = Revised Code of Washington; WAC = Washington Administrative Code; Ecology = Washington State Department of Ecology

Regulations developed pursuant to these laws establish the basis for prevention, preparedness, and response to potential spills. The Washington State Department of Ecology (Ecology) has responsibility in Washington State for preventing and planning for oil spills in state waters and organizing a rapid and coordinated response to oil and hazardous substance spills wherever they occur in the state.

Table 4.2-2 summarizes the federal and state agencies that provide oversight of prevention, preparedness, and response activities.

Table 4.2-2. Agency Oversight of Prevention, Preparedness, and Response Activities

Source of Oil Discharge or Other Hazardous Materials Release	Federal Agency Responsible for Prevention/ Preparedness	Lead Federal Agency for Response Actions	State Agency Responsible for Prevention/ Preparedness	Lead State Agency for Response Action
Terminal (Onsite)				
Facility (vessel loading facilities)	USCG	USCG	Ecology	Ecology
Facility (rail unloading facilities and storage tanks)	EPA	EPA	Ecology	Ecology
Offsite Transport				
PS&P	USDOT, PHMSA, FRA	EPA	Ecology	Ecology
Vessels	USCG	USCG	Ecology	Ecology

Source: Adapted from Ramseur 2012:22
USCG = U.S. Coast Guard; Ecology = Washington State Department of Ecology; EPA = U.S. Environmental Protection Agency; PS&P = Puget Sound & Pacific Railroad; USDOT = U.S. Department of Transportation; PHMSA = Pipeline and Hazardous Materials Safety Administration; FRA = Federal Railroad Administration

4.2.1 What framework prevents incidents from happening?

Preventing a spill is the best strategy for avoiding damage to human health and the environment. Federal and state agencies share responsibility for establishing prevention guidelines. The U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (EPA) are responsible for implementing federal prevention plans for vessels and facilities (33 Code of Federal Regulations [CFR] 154, Operations Manual; 33 CFR 156, Oil and Hazardous Material Transfer Operations, 40 CFR 112, Spill Prevention, Control and Countermeasure Plans). USCG also regulates vessels and oil transfer operations over water. Ecology's Spill Prevention, Preparedness and Response Program regulates facilities that handle oil, tank vessels (tankers and tank barges) operating in Washington State waters, and oil transfer operations over water (Washington Administrative Code [WAC] 173-180 Facility Oil Handling Standards; WAC 173-184 Vessel Oil Transfer Advance Notice and Containment Requirements). Ecology inspectors may conduct vessel and facility inspections to ensure compliance with state pollution prevention requirements. Federal and state laws also require specific facility, vessel, and rail car design elements to prevent and contain spills and operational measures to reduce the risk of a spill and to contain it immediately. Detailed information on the regulatory requirements for spill prevention is provided in Appendix B, *Laws and Regulations*.

4.2.1.1 Terminal (Onsite)

Facilities that store and handle oil and hazardous substances must meet federal and state design standards, equipment, and training requirements to prevent pollutants from reaching the environment. Facilities must submit operation, oil transfer, spill prevention, and training plans to federal and state agencies prior to beginning operations. Facility operators must adhere to specific standards for facility operations, including oil transfers, and ensure that all personnel are appropriately trained.

4.2.1.2 Rail

The U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) adopted a final rule in 2015 that defines and regulates high-hazard flammable trains. The final rule implements new safety standards for trains that would be used to transport oil (80 *Federal Register* [FR] 26643). The final rule revises the Hazardous Materials Regulations (49 CFR 171–180) to define a high-hazard flammable train as a single train that contains 20 or more loaded tank cars of Class 3 (flammable liquid) materials in a continuous block, or 35 or more loaded tank cars distributed throughout a train. This rule affects crude oil primarily as it is the only Class 3 material transported in trains consisting of 20 cars or more. The primary intent of the revision is to update and clarify the regulations to prevent and mitigate the consequences of a train incident involving flammable liquids, should one occur.

Additionally, new tank cars constructed after October 1, 2015, are required to meet enhanced design or performance criteria for thicker walls. Existing tank cars must be retrofitted on a prescriptive retrofit schedule.

4.2.1.3 Vessel

Vessel operators must submit oil or hazardous material transfer plans and spill response plans. Ecology, EPA, and USCG conduct inspections of facilities, vessels, and transfer operations to ensure the plans are being followed. Vessels transporting oil have required construction design features (double bottoms and sides), mechanical measures (oil discharge monitoring systems and emergency shutdown devices), and navigational equipment (depth sounders and electronic position fixing devices to verify position and prevent collisions or groundings) that contribute to the prevention of oil spills to water. If oil is spilled from a tank vessel during loading or offloading, each loading manifold and each transfer connection point has a containment area. The containment is designed according to the size of the transfer hose to capture small spills and prevent the spill from reaching the water.

4.2.2 What framework prepares for an incident?

Federal and state regulations identify steps to prepare for an incident. Similarly, vessel and rail operators as well as facility operators are required to develop contingency plans to describe their ability to respond to spills (33 CFR 155, Vessel Contingency and Response Plans; 49 CFR 130, Rail Oil Spill Response Plans; WAC 173-182, Oil Spill Contingency Plan Requirements). The applicant must demonstrate that they have access to oil spill response equipment (e.g., boom) and storage necessary to contain and clean up the oil. Vessel, rail, and facility operators who have a contingency plan often use contractors to provide response equipment and response support teams. The adequacy of contingency plans is tested through scheduled and unannounced drills.

The National Contingency Plan, the Northwest Area Contingency Plan, local response plans, facility plans, and transportation regulations provide coordinated preparation for an oil spill or hazardous substance release. These contingency plans establish roles and responsibilities, identify resources, and identify response procedures to protect life and to reduce and mitigate the effects of the discharge of a pollutant on the environment and property. Contingency plans typically have four major elements.

- Hazard identification

- Vulnerability analysis
- Risk assessment
- Response actions

The following sections summarize the contingency plans that prepare for an incident. Detailed information on the regulatory requirements for spill contingency planning is provided in Appendix B, *Laws and Regulations*.

4.2.2.1 National Contingency Plan

The National Contingency Plan is a multiagency plan for governmental responses to oil spills. The National Contingency Plan establishes national response capability and overall coordination among the responders and contingency plans for oil spills through the National Response System (Section 4.2.3.1, *National Response System*). The National Response System consists of three organizational levels: national, regional, and local at the facility. If an oil spill or a hazardous material response incident escalates beyond the limits of state resources, additional federal assets are available and can be requested for an incident.

Under the National Contingency Plan, the federal on-scene-coordinator is designated as either USCG or EPA, depending on the location of the spill. Ecology is the designated state on- scene coordinator for spill response (RCW 90.56.020). The Washington Emergency Management Department is the designated state on-scene coordinator for natural disasters. The Washington State Patrol or state fire marshal is the designated state on- scene coordinator for fires.

4.2.2.2 Northwest Area Contingency Plan

The Northwest Area Contingency Plan is the planning framework for oil and hazardous substance spill response in Washington, Idaho, and Oregon. This plan is developed and implemented by federal, state, and local agencies. The plan includes but is not limited to the following elements.

- A description of the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a spill.
- Roles and responsibilities of an owner or operator and of federal, state, and local agencies in spill response and in mitigating or preventing a substantial threat of a discharge.
- A list of equipment (including firefighting equipment) and personnel available to respond to oil spills.
- Site-specific geographic response plans (GRPs).

GRPs are part of Northwest Area Contingency Plan. Each plan is written for a specific area (e.g., the Chehalis River or Grays Harbor) and includes tactical response strategies tailored to a particular shore or waterway at risk of injury from oil. GRPs have two main objectives: to identify sensitive

resources at risk of injury from oil spills and to direct response actions related to sensitive resource protection during the initial hours of a response.[1]

These plans help coordinate response efforts by the responsible party and federal and state agencies. Strategies in the plan are deployed by responders after the immediate concern of controlling and containing the source of a spill has been addressed. GRPs contain maps and descriptions of natural, cultural, and economic resources and identify strategies to reduce harm to those resources. They also prioritize which response strategies should be implemented based on the location of the spill.

- **Grays Harbor Geographic Response Plan.** This GRP defines information specific to the entire Grays Harbor estuary (the mouth of the Chehalis River to the east, the North Bay, and the South Bay) and the major islands within the estuary (Goose, Sand, Whitcomb, Grass, Laidlaw, and Rennie Islands) plus everything encompassed by these features.
- **Chehalis River Geographic Response Plan.** This GRP was completed in June 2015. The plan includes waters upstream of the eastern boundary of the Grays Harbor GRP near Cosmopolis and covers 120 miles of the river as it winds east/southeast to Centralia and Chehalis, then west to the South and West Forks of the Chehalis River.

4.2.2.3 Local Response Plans

Emergency response planning is managed through the local emergency planning committees, which consist of representatives from local government, emergency response officials, environmental and citizen groups, industry and other interested parties. Grays Harbor, Lewis, and Thurston Counties each have a local emergency planning committee.

4.2.2.4 Westway Terminal Company LLC Operations Manual

Under existing conditions, the applicant is required to take spill prevention and response precautions in accordance with its USCG-approved operations manual for the storage, handling, and transfer of methanol. These procedures are currently in place because methanol is considered a hazardous substance designated under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act and the potential for contamination of U.S. waters regulated by USCG consistent with the National Contingency Plan and 33 CFR 154. This plan would identify sensitive environments for fish and wildlife, training and exercise procedures, notification procedures, and facility response activities for different spill sizes. The applicant currently operates without Ecology oil spill plans because methanol does not fall under the definition of oil for Washington State. Additional information on Westway Terminal Company's current procedures is described in Chapter 3, Section 3.14, *Hazardous Materials*. The federal and state requirements would apply to the proposed action.

[1] Geographic Response Plans are available on the Department of Ecology's website at http://www.ecy.wa.gov/programs/spills/preparedness/GRP/index.html

4.2.2.5 Rail and Vessel Oil Spill Plans

PS&P does not currently transport oil in bulk and, therefore, does not have an oil spill response plan. Prior to transport of oil in bulk, PS&P would be required to submit an oil spill response plan to the Federal Railroad Administration for approval. PS&P would not be required to submit a comprehensive oil spill response plan because the tank cars are below the capacity limit;[2] however, PS&P would be required to submit a contingency plan to Ecology once regulations are developed by the State following new legislative direction from the 2015 Washington Legislature (ESHB 1449).

The final rule issued by PHSMA (80 FR 26643; 2015) establishes notification procedures for railroads. Specifically, the revised rule requires railroads to notify Washington State and state, local, and tribal officials with appropriate contact information. These entities may request information related to the routing of hazardous materials through their jurisdictions. This rule replaces the earlier order to notify state emergency response commissions or other appropriate state-delegated entities about the operation of oil trains through their states. The rule became effective July 7, 2015, when the information-sharing portion of the routing requirements went into full effect. Facilities will be required to report crude oil delivery by rail to Washington State once rules are adopted (ESHB 1449, 2015). State officials will then provide the information to local first responders and to the public quarterly in an aggregated form on the state website.

Although it is not known which vessel operators would be transporting oil related to the proposed action, vessels operating in the study area would be required to have USCG-approved operations manuals and federal and state contingency and response plans consistent with the regulations listed in Table 4.2-1.

4.2.2.6 Drills and Exercises

State oil spill contingency plan holders must meet federal and state requirements to plan and carry out drills and exercises in accordance with 33 CFR 154 and 155 (Section 154.1955 for facilities and Section 155.1060 for vessels) and WAC 173-182 so that all components of the contingency plan are exercised at least once every 3 years. USCG and EPA are responsible for implementing the federal preparedness drill program. Ecology's Spills Program reviews and approves contingency plans and conducts drills and exercises. Washington State follows a modified triennial cycle for drills, as found in the federal National Preparedness for Response Drill Program to test each component of the plan. The following drills are included in each 3-year cycle (WAC 173-182-710 Type and Frequency of Drills).

- Tabletop[3] drill every year.

[2] The Federal Railroad Administration, Pipeline and Hazardous Materials Safety Administration, and U.S. Department of Transportation are proposing to revise the requirements for federal oil spill response plans from railroads. Federal regulations only require comprehensive response plans for spills from carriers of individual rail tank cars with individual capacities of more than 42,000 gallons. Under the proposed change, PS&P would be required to develop comprehensive, rather than the currently required basic response plans (79 FR 45080).

[3] Tabletop drills involve bringing key personnel together to discuss how to implement a contingency plan using different scenarios.

- Equipment deployment drills, two per year. These include deployments for the GRPs and equipment used for the response. Response to land based spills, emergency shut offs and initial safety assessment are also tested in deployment drills.
- Unannounced drills as initiated by Ecology.
- Wildlife deployment drill once every 3 years for wildlife equipment and handlers.
- Tank vessel "umbrella plans," including Washington State Maritime Cooperative, once every 3 years.

4.2.3 What framework provides responses to an incident?

Oil spill and hazardous material spill response and contingency plans are formalized at the national, regional, state and facility level. Local and state first responders will likely be the first to respond to an incident (Table 4.2-2). The response framework includes a well-established and coordinated system for notification and evaluation of an incident, including having appropriate resources available and deployed. If an incident occurs, the best approach for containing and controlling a spill or fire is to respond rapidly, aggressively, and in a well-coordinated manner. A response will be more likely to meet these standards if response measures have been planned ahead of time.

4.2.3.1 National Response System

The federal National Response System is a scalable, flexible, and adaptable guide for responding to oil and other hazardous material spills. The system coordinates key roles and responsibilities across the nation. The National Response System provides a team of trained personnel for the federal on-scene coordinator. Team members have received specialized training for oil spill and hazardous materials releases.

Responses are managed using the National Incident Management System. This system establishes unified command structure, which includes federal, state, local on-scene-coordinators, and tribal and agency representatives with jurisdiction. Within the unified command structure, the representatives make decisions as a team, sharing resources and information to mitigate the situation. The unified command structure is used for emergency response, fire, disaster, wildfire, and law enforcement operations. It provides an effective framework for responding to various incidents.

4.2.3.2 State and Local First Responders

Ecology response teams are based in Bellingham, Bellevue, Olympia, Vancouver, Yakima, and Spokane. These teams are available year-round, 24 hours a day, to respond to incidences.

Local and state fire, police, or emergency personnel are likely to be the first responders to an incident, whether at the terminal, on the PS&P rail line, or in the harbor. While there are several fire departments in the study area, none of the fire departments has specifically designated hazardous material teams. A recent Washington Emergency Management Division survey of local fire departments and emergency managers showed that "35% of respondents (statewide) do not have access to a Type I Hazardous Response Team and 12% have no access to any type of hazardous response team at all" (Washington State Department of Ecology 2015). Fire departments would respond to emergencies and request additional assistance using their normal procedures.

4.2.3.1 State and County Comprehensive Emergency Management Plan

The Washington State Comprehensive Emergency Management Plan describes how state agencies work together to respond to emergencies. The Washington State Patrol investigates reports of fires and hazardous material incidents through the director of fire protection or the state fire marshal. The Washington State Emergency Management Department and Ecology are also notified of these incidents.

The Grays Harbor County Department of Emergency Management maintains the County's Comprehensive Emergency Management Plan (Grays Harbor County undated), which provides guidance for local fire departments and other agencies that would respond to an oil spill or hazardous material incident in the study area.

4.2.3.2 Spill Notification Requirements

Oil and hazardous substance spills must be reported under federal and state law. The spiller is always responsible for reporting a spill. Any spill that causes any of the following conditions must be reported to federal and state agencies and appropriate spill response actions must be taken.

- A violation of applicable water quality standards.
- A film, sheen, or discoloration on the surface of the water or adjoining shorelines.
- A sludge or emulsion deposited beneath the surface of the water or on the adjoining shoreline.

The entity responsible for the spill (often referred to as the responsible party) must make the notifications and take response actions.

- **Facilities**. Any person owning or operating the facility.
- **Rail.** The railroad owner or operator.
- **Vessels.** In the case of a vessel, any person owning, operating, or demise chartering the vessel.

Under federal law, spills must be reported to the National Response Center, a 24-hour operations center that gathers information and notifies appropriate agencies, including state agencies.

Under state law, Ecology must be notified when any amount of regulated waste or hazardous material that poses an imminent threat to life, health or the environment is released to the air, land, or water, or whenever oil is spilled on land or to waters of the state. Ecology responds to emergency incidents involving releases and spills of oil and hazardous materials that have the potential to harm the natural environment and affect public health. Under state regulations, facilities (WAC 118-40-300) and vessel (WAC 88.46.100; RCW 90.56.280) owners or operators must notify the state immediately of all hazardous material releases and oil spills. This notification requirement is in addition to the federal notification requirement.

The Washington State Oil Spill Contingency Plan (WAC 173-182) requires that the applicant's contingency plan include procedures to notify appropriate parties immediately when a spill has occurred. The plan must identify who is responsible for implementing the notification process. The plan will include a list of the names and phone numbers of required notifications to government

agencies, response contractors, local government, tribes and spill management team members and will have a clear order of priority for immediate notification.

4.2.3.3 Oil Spill Response Contractors

The applicant must maintain an oil spill response contractor for oil spill response. These contractors provide spill response equipment and trained personnel. The Western Response Resource List outlines various types of response equipment maintained by participating private and public response organizations in the Pacific Northwest. Additional resources from across the United States are available as needed.