

Chapter 173-186 WAC

OIL SPILL CONTINGENCY PLAN - RAILROAD

WAC

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PART I: PURPOSE, AUTHORITY, APPLICABILITY AND DEFINITIONS

NEW SECTION

WAC 173-186-010 Purpose. The purpose of this chapter is to establish railroad oil spill contingency plan requirements (Part II), drill and equipment verification requirements (Part III), and recordkeeping and compliance information (Part IV).

(1) The provisions of this chapter, when followed, should be implemented and construed so that they will:

(a) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;

(b) Ensure continual readiness, maintenance of equipment and training of personnel;

(c) Support coordination with state, federal, and other contingency planning efforts;

(d) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(e) Provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection (BAP) as informed by the BAP five year review cycle (WAC 173-186-520) and as determined by ecology.

(2) The planning standards described in this chapter do not constitute clean-up standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this chapter does not constitute failure to comply with a contingency plan, for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law. In a spill or drill, deployment of equipment and personnel shall be guided by safety considerations. The responsible party must take all actions necessary and appropriate to immediately collect and remove, contain, treat, burn and disperse oil entering waters of the state and address the entire volume of an actual spill regardless of the planning standards.

NEW SECTION

WAC 173-186-020 Applicability. (1) This chapter applies to:

(a) Owners and operators of railroads required to submit oil spill contingency plans under chapter 90.56 RCW except for railroads and facilities as described in (2) below.

(b) Any person submitting a contingency plan on behalf of a railroad regulated under this chapter.

(c) Primary response contractors under contract to rail plan holders.

(2) This chapter does not apply to:

(a) Railroads owned by the state of Washington.

(b) Pipelines or facilities other than railroads. Contingency planning regulations for pipelines and facilities other than railroads are described in chapter 173-182 WAC.

NEW SECTION

WAC 173-186-030 Authority. RCW 88.46.160, 90.48.080, 90.56.005, 90.56.050, 90.56.060, 90.56.210, 90.56.240, 90.56.260, 90.56.270, 90.56.280, 90.56.300, 90.56.310, 90.56.320, 90.56.340, and

90.56.570 provide statutory authority for the contingency plan preparation and review requirements and drill standards established by this chapter for railroads.

NEW SECTION

WAC 173-186-040 Definitions.

"**Best achievable protection (BAP)**" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

- (a) The additional protection provided by the measures;
- (b) The technological achievability of the measures; and
- (c) The cost of the measures.

"**Best achievable technology**" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;

(b) Processes that are currently in use; and

(c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.

"**Boom**" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

"**Bulk**" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

"**Cargo**" means goods or services carried as freight for commerce.

"**Contract or letter summarizing contract terms**" means:

(a) A written contract between a plan holder and a primary response contractor or other provider, or proof of cooperative membership, that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.

"**Dedicated**" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that

equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

"**Director**" means the director of the state of Washington department of ecology.

"**Discharge**" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"**Dispersant**" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

"**Ecology**" means the state of Washington department of ecology.

"**Effective daily recovery capacity (EDRC)**" means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

"**Facility**" means:

(a) Any structure, group of structures, equipment, pipeline, railroad (not owned by the state) or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline;
and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk; or

(iii) Transports oil as bulk cargo over rail lines of the state.

(b) A facility does not include any:

(i) Motor vehicle, or other rolling stock while transporting oil over the highways of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

"Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

"Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its

user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

"In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

"Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

"Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

"Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

"Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

"Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

"Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

"Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats

and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

"Northwest Area Contingency Plan (NWACP)" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

"Oil" or **"oils"** means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

"Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

"**Operating environments**" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

"**Owner**" or "**operator**" means:

(a) Any person owning or operating the railroad.

(b) Owner or operator does not include any person who owns the land underlying a railroad if the person is not involved in the operations of the railroad.

"**Persistent oil**" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

"**Person**" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

"**Plan**" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210.

"**Planning standards**" means goals and criteria that ecology will use to assess whether a rail plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

"**Primary response contractor (PRC)**" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement. PRC requirements are described in chapter 173-182 WAC.

"**Rail plan holder**" means a person who submits and implements a railroad contingency plan consistent with RCW 90.56.210 on the person's own behalf or on behalf of one or more persons.

"Railroad" means:

(a) Every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith; and

(b) Every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith.

(c) A railroad does not include street railways operating within the limits of any incorporated city or town.

"Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

"Responsible party" means a person liable under RCW 90.56.370.

"Shorelines of statewide significance" means those shorelines defined in the Shoreline Management Act (SMA) RCW 90.58.030.

"**Spill**" means an unauthorized discharge of oil or hazardous substances into waters of the state.

"**Spill assessment**" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

"**Tank car**" means a rail car, the body of which consists of a tank for transporting liquids.

"**Waters of the state**" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"**Western regional response list (WRRL)**" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

"**Worst case spill**" means a spill that includes the entire cargo capacity and fuel capacity of the largest number of cargo rail cars carried by the railroad complicated by adverse weather conditions.

PART II: OIL SPILL CONTINGENCY PLANS

Section A—General Planning, Information and Timing

NEW SECTION

WAC 173-186-100 Authority to submit contingency plan. (1) A plan may be submitted by any of the following:

- (a) The owner or operator of the railroad; or
- (b) A person who has contracted with the railroad to provide containment and clean-up services and who has been approved by ecology.

NEW SECTION

WAC 173-186-110 Submitting a contingency plan. (1) Plan holders for railroads currently operating in Washington shall submit plans to ecology no more than 90 days after the effective date of this chapter.

(2) Plan holders for new railroad operations shall submit plans to ecology no less than sixty-five days prior to their planned date for beginning of operations in Washington.

(3) The rail plan holder shall submit two copies of the plan and all appendices. Electronic submission of plans is encouraged, provided it is in an electronic format acceptable to ecology.

(4) Once approved, rail plan holders shall resubmit their plans to ecology every five years for review and approval.

(5) The plans and all subsequent updates shall be delivered to:

Department of Ecology

Spill Prevention, Preparedness, and Response Program

Preparedness Section, Contingency Plan Review

Mailing address:

P.O. Box 47600

Olympia, WA 98504-7600

Physical Address:

300 Desmond Drive SE

Lacey, WA 98503

Electronic submissions: Instructions for submitting plans electronically will be maintained on ecology's website.

NEW SECTION

WAC 173-186-120 Plan maintenance. At least once annually, rail plan holders shall review the entire plan for accuracy and either:

(1) Update and distribute the amended page(s) of the plan to ecology for review and approval; or

(2) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

NEW SECTION

WAC 173-186-130 Significant changes to approved plans. (1) At any point during the five year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the rail plan holder shall:

(a) Notify ecology in writing within twenty-four hours of the change; and

(b) Provide both a schedule for the prompt return of the plan to full operational status and a proposal for any backfill to compensate for the temporary significant change. This proposal shall be reviewed by ecology.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard;

(b) Movement of greater than ten percent of available boom, storage, recovery, in situ burn or shoreline clean-up equipment out of the homebase as depicted on the WRRL;

(c) Transfers of equipment to support spill response for out-of-region spills;

(d) Permanent loss of initial response personnel listed in command and general staff ICS positions provided in the plan;

(e) Permanent loss of personnel designated as the binding agreement signer;

(f) Changes in the oil types handled; permanent changes in storage capacity; changes in handling or transporting of any product;

(g) Changes in equipment ownership if used to satisfy a rail plan holder planning standard; or

(h) Modification or discontinuation of any mutual aid, letter of intent or contract or letter of agreement.

(3) Notification by facsimile or e-mail will be considered written notice.

(4) Failure to report significant changes in the plan could result in the loss of plan approval.

(5) If the proposed change to the plan is to be made permanent, the rail plan holder then shall have thirty calendar days from notification to ecology to distribute the amended page(s) of the contingency plan to ecology for review and approval.

(6) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or disapprove the plan.

NEW SECTION

WAC 173-186-140 Plan implementation procedures. Every rail plan holder is required to implement the ecology approved plan in any response to a spill and drill. A decision to use a different plan must first be approved by the state and federal on-scene coordinators.

NEW SECTION

WAC 173-186-150 Post-spill review and documentation procedures.

Rail plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if unified command has been established during a spill, and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

Section B—Contingency Plan Format and Content

NEW SECTION

WAC 173-186-200 Contingency plan format requirements. (1) Rail plan holders shall format and maintain plans to maximize their usefulness during a spill. Information shall be readily accessible and plans will contain job aids, diagrams and checklists for maximum utility.

(2) Plans shall be divided into a system of numbered, tabbed chapters, sections and annexes/appendices. Each plan shall include a detailed table of contents based on chapter, section, and annex/appendix numbers and titles, as well as tables and figures.

(3) Plans shall be formatted to allow replacement of pages with revisions without requiring replacement of the entire plan.

NEW SECTION

WAC 173-186-210 Binding agreement. (1) Each plan shall contain a written statement binding the rail plan holder to its use. Form number ECY XXX-XXX may be used. The binding agreement shall be signed by each of the following: (a) The plan holder, (b) the owner or operator, or a designee with authority to bind the owners and operators of the railroad covered by the plan. The agreement is submitted with the plan either by mail or electronically and will include the name, address, phone number, and if appropriate the e-mail address, and web site of the submitting party.

(2) In the statement, the signator will:

(a) Verify acceptance of the plan and commit to a safe and immediate response to spills and to substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural and economic resources;

(b) Commit to having an incident commander in the state within six hours after notification of a spill;

(c) Commit to the implementation and use of the plan during a spill and substantial threat of a spill, and to the training of personnel to implement the plan;

(d) Verify authority and capability to make necessary and appropriate expenditures in order to implement plan provisions;
and

(e) Commit to working in unified command within the incident command system to ensure that all personnel and equipment resources necessary to the response will be called out to cleanup the spill safely and to the maximum extent practicable.

NEW SECTION

WAC 173-186-220 Contingency plan general content. (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060. Rail plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the name, location, type and address of the facility and the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case planning volume. If oil handling operations vary on different rail routes, more than one worst case spill volume may be submitted to ecology for consideration.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that

ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by ecology.

(iii) For mutual aid agreements that a rail plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a rail plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(g) Each plan shall provide a list of expected routes in Washington and a description of the operations covered by the plan including locations where fueling occurs and an inventory all tanks and the tank capacities.

(h) Each plan shall state the starting date of operations.

(i) Each plan shall list all oil(s) transported by name and include: density, gravity, API, oil group number, and sulfur content (sweet/sour).

(j) Each plan shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

NEW SECTION

WAC 173-186-230 Field document. (1) Each plan shall contain a field document which lists time-critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the railroad shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations for use during an initial response. The locations where field documents are kept must be listed in the plan.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-186-250 as applicable; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

WAC 173-186-240 Initial response actions. (1) Rail plan holders and responsible parties are required to document their initial spill actions and the plan shall include the forms that will be used for such documentation.

(2) The plan shall describe what equipment will be used to conduct initial spill assessment, including equipment effective during darkness and low visibility conditions, such as visual methods, tracking buoys, trajectory modeling, aerial overflights, thermal or infrared imagery.

(3) The plan must state a how safety assessment, including initial air monitoring, will be conducted for all types of spills.

(4) The plan must list procedures that will be used to confirm the occurrence, and estimate the quantity and nature of the spill. An updated report is required if the initially reported estimated quantity or the area extent of the contamination changes significantly.

NEW SECTION

WAC 173-186-250 Notification and call-out procedures. (1) Each plan shall include procedures which will be taken to immediately notify appropriate parties that a spill has occurred and a form to document those notifications. The plan shall identify the central reporting office or individuals responsible for implementing the notification process.

(2) Each plan shall include a list of the names and phone numbers of required notifications to government agencies, response contractors and spill management team members, except that the portion of the list containing internal call down information need not be included in the plan, but shall be available for review by ecology upon request and verified during spills and drills.

(3) The procedure shall establish a clear order of priority for immediate notification.

NEW SECTION

WAC 173-186-260 Maintenance records for response equipment.

Rail plan holders that own equipment shall develop schedules, methods, and procedures for equipment maintenance. Maintenance records shall be kept for at least five years and made available if requested by ecology. Equipment shall be listed on the Regional Response List.

NEW SECTION

WAC 173-186-270 Spill management teams. (1) Each plan shall contain information on the personnel (including contract personnel) who will be available to manage an oil spill response. To meet the requirement, the plan shall include:

(a) An organizational diagram depicting the chain of command for the spill management team for a worst case spill.

(b) For the purpose of ensuring depth of the spill management team, an organization list of one primary and one alternate person to lead each ICS spill management position down to the section chief and command staff level as depicted in the NWACP standard ICS

organizational chart. In lieu of being placed in the plan, this list may be maintained at the rail plan holder's office and be made available to ecology upon request. If a response contractor is used to fill positions, they must agree in writing to staff the positions. The capacity and depth of spill management teams will be evaluated in drills and spills.

(c) A job description for each spill management position; except if the rail plan holder follows without deviation the job descriptions contained in the NWACP. If the job descriptions are consistent with those contained in the the NWACP, then the rail plan holder may reference the NWACP rather than repeat the information.

(d) A detailed description of the planning process which will be used to manage a spill. If the process is consistent with the NWACP then the rail plan holder may reference the NWACP rather than repeat the information.

(2) The plan shall address the type and frequency of training that each individual listed in subsection (1)(b) of this section receives. The training program at a minimum shall include as applicable ICS, NWACP policies, use and location of GRPs, the

contents of the plan and worker health and safety. The training program shall include participation in periodic announced and unannounced exercises and participation should approximate the actual roles and responsibilities of the individual specified in the plan. New employees shall complete the training program prior to being assigned job responsibilities which require participation in emergency response situations.

(3) The plan shall identify a primary and alternate incident commander's representative that can form unified command at the initial command post, and if located out-of-state, a primary and alternate incident commander that could arrive at the initial command post within six hours.

(4) The plan shall list a process for orderly transitions of initial response staff to incoming local, regional or away team personnel.

Section C—Planning Standards

NEW SECTION

WAC 173-186-300 Planning standards. (1) Ecology shall apply a planning standard when determining the ability of a rail plan holder to meet the purposes of these regulations. Each planning standard is subject to being verified at scheduled or unannounced drills. In an actual spill event, initial deployment shall be guided by safety considerations. The responsible party must address the entire volume of an actual spill regardless of the planning standards.

(2) The planning standards described in this chapter do not constitute cleanup standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this section does not constitute failure to comply with a contingency plan for purposes of this section or for the purpose of imposing administrative, civil, or criminal penalties under any other law.

NEW SECTION

WAC 173-186-310 Planning standards for Group 5 Oils. (1) Rail plan holders carrying, handling, storing, or transporting Group 5 Oils must have a contract with a PRC that maintains the resources and/or capabilities necessary to respond to a spill of Group 5 Oils. Such equipment shall include, but is not limited to, the following:

(a) Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;

(b) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(c) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(d) Equipment necessary to assess the impact of such discharges;
and

(e) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

(2) The equipment must be capable of being on scene within twelve hours of spill notification.

NEW SECTION

WAC 173-186-320 Planning standards for in situ burning. (1) Based on the NWACP, plan holders operating in areas where in situ burning could be approved must identify equipment for the use of in situ burning.

(2) The plan holder must identify the locations of fire booms, air monitoring equipment, firefighting foam, igniters and aircraft or vessels to be used to deploy the igniters.

(3) These resources must be capable of being on-scene within twelve hours of spill notification.

NEW SECTION

WAC 173-186-330 Determining effectiveness of recovery systems.

Rail plan holders and PRCs on behalf of the rail plan holders shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. To avoid duplication, rail plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by

ecology. Ecology will use the criteria in ASTM International F 1780-97 (Reapproved 2002).

(1) For all skimmers, describe how the device is intended to be transported and deployed. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

NEW SECTION

WAC 173-186-340 Determining effective daily recovery capacity. (1)

Rail plan holders and PRCs that own recovery equipment shall request an EDRC using the following procedures and the criteria in Title 33 C.F.R. 155, Appendix B, Section 6, "Determining Effective Daily Recovery Capacity for Oil Recovery Devices."

(2) When calculating the EDRC, the formula $R = T \times 24 \text{ hours} \times E$ will be used.

R = Effective daily recovery capacity

T = Throughput rate in barrels per hour (nameplate capacity)

E = 20 percent (efficiency factor).

(3) Equipment owners may request an alternative EDRC by providing all of the following information:

- (a) A description of the recovery system which includes skimmer, boom, pump, work boats, and storage associated with the device;
- (b) Description of deployment methods that will be used to enhance the recovery system to maximize oil encounter rate during spills;
- (c) Documented performance during verified spill incidents; and
- (d) Documentation of laboratory testing using ASTM standard methods (ASTM F 631-80) or equivalent test approved by the U.S. Coast Guard.

(4) The following formula will be used to calculate the effective daily recovery capacity for this alternative approach:

$$R = D \times U$$

R = Effective daily recovery capacity

D = Average oil recovery throughput rate in barrels per hour

U = 10 (hours of operation). 10 hours is used for potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material.

EDRC is limited to the storage capacity of the proposed recovery system.

For each skimming system identify the oil storage associated with each recovery system. State the storage capacity integral to the

oil recovery system, if applicable. Describe how recovered oil is to be transported to/from interim storage.

NEW SECTION

WAC 173-186-350 Documenting compliance with the planning standards. The rail plan holder shall describe how the planning standards found in this chapter are met.

(1) Each plan shall provide a spreadsheet on the resources intended to meet the planning standards as described in this chapter. This spreadsheet shall account for boom, recovery systems, storage, and personnel by type, quantity, home base and provider.

(2) Ecology will analyze the planning standard spreadsheet provided to determine whether the rail plan holder has access to equipment and personnel necessary to meet the planning standards.

(3) For purposes of determining plan adequacy, rail plan holders will include time for notification and mobilization of equipment and personnel. The time needed for a resource to move to the spill site is the sum of the notification, mobilization, and travel times. For dedicated resources owned by the rail plan holder, the

mobilization planning factor to be used by the rail plan holder is thirty minutes. For all other dedicated response equipment the mobilization planning factor is one hour. Nondedicated resources shall have a mobilization planning factor of three hours or the time specified in the letter of intent, mutual aid agreement or contract.

(4) Equipment travel speeds shall be computed using a speed of thirty-five miles per hour for land. Ecology may use geographic information systems (GIS), standard nautical charts, street maps and available online mapping programs to determine the length of time it will take equipment to cover a given distance.

(5) Rail plan holders may request approval for alternative notification, mobilization, and travel time by providing documentation to justify the request, such as actual performance during spills or unannounced drills.

(a) The request shall include date and time of performance or test, under average or typical weather conditions and transportation information.

(b) If ecology accepts these alternative response times, then these response times may be tested in unannounced drills or spills to verify alternative calculations.

(c) If ecology grants rail plan holder or PRC owned response equipment an alternative mobilization, transit speed, recovery or storage volume, through the plan review process, and the alternative is not demonstrated to the satisfaction of ecology during a drill or spill, it may result in disapproving the alternative.

NEW SECTION

WAC 173-186-360 Railroads which may impact shorelines of statewide significance. For plan approval for railroads which may impact shorelines of statewide significance, the rail plan holder must demonstrate access to the equipment identified in the table below within the timeframes identified below.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	2,000 feet of boom available at the spill source or downstream of the source could have arrived Alternatively, resources identified to deploy a site specific strategy to keep oil from entering surface waters or penetrating into the ground could have arrived.		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 8,000 barrels within 24-hour period could have arrived	1 times the EDRC appropriate to operating environment
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 20,000 barrels within 24-hour period could have arrived	1.5 times the EDRC appropriate to operating environment
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 24,000 barrels within 24-hour period could have arrived	2 times the EDRC appropriate to operating environment
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 30,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-186-370 Railroads which may impact inland areas, wetlands, or areas that do not meet the definition of "shorelines of statewide significance". For plan approval for railroads which may impact inland areas, wetlands, or areas that do not meet the definition of "shorelines of statewide significance", the rail

plan holder must demonstrate access to the equipment identified in the table below within the timeframes identified below.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	2,000 feet of boom available at the spill source or downstream of the source could have arrived Alternatively, resources identified as a site specific strategy to keep oil from entering surface waters or penetrating into the ground could have arrived.		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived Alternatively, additional resources identified as a site specific strategy to keep oil from entering surface waters or penetrating into the ground could have arrived.	Capacity to recover the lesser of 5% of worst case spill volume or 4,000 barrels within 24-hour period could have arrived	1 times the EDRC appropriate to operating environment
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 8,000 barrels within 24-hour period could have arrived	1 times the EDRC appropriate to operating environment
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 15% of worst case spill volume or 20,000 barrels within 24-hour period could have arrived	2 times the EDRC appropriate to operating environment
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 24,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

Section D—Response and Protection Strategies for Sensitive Areas

NEW SECTION

WAC 173-186-400 Requirements for response and protection

strategies. (1) Rail plan holders shall have methods to track and contain spilled oil and enhance the recovery and removal operations that are described in the plan.

(2) Each plan shall include a description of how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and island habitat by diverting or blocking oil movement;

(b) The plan shall include a description of the sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics;

(c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;

(d) Identification of shellfish resources and methods to protect those resources;

(e) Identification of significant economic resources to be protected in the geographic area covered by the plan; and

(3) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, rail plan holders will work with ecology to determine alternative sensitive areas to protect.

(4) Each plan shall identify potential initial command post locations.

NEW SECTION

WAC 173-186-410 Planning standards for shoreline cleanup. Each rail plan holder shall identify and ensure the availability of response resources necessary to perform shoreline cleanup operations.

NEW SECTION

WAC 173-186-420 Planning standards for groundwater spills. (1)

Each rail plan shall include a description of the methods to be used to immediately assess groundwater spills.

(2) Rail plan holders shall include contact information in the plan for resources typically used to investigate, contain and remediate/recover spills to groundwater.

NEW SECTION

WAC 173-186-430 Planning standards for air monitoring to protect oil spill responders and the public. This may include but is not limited to:

- (1) A description of how work area air monitoring will occur;
- (2) A description of how community air monitoring (area wide monitoring) will occur;
- (3) A description of how site characterization will occur;

(4) A description of air monitoring instruments and detection limits that will be used by responders when monitoring for public safety;

(5) A description of action levels for various oil constituents of concern based on products handled by the railroad (benzene, H₂S, etc.);

(6) A description of data management protocols and reporting timeframes to the unified command;

(7) A description of communication methods to at-risk populations;

(8) A description of how evacuation zones are established; and

(9) A description of how shelter-in-place criteria is established.

NEW SECTION

WAC 173-186-440 Planning standards for wildlife rescue and rehabilitation. The plan shall identify applicable federal, state and NWACP requirements for wildlife rescue and rehabilitation, and describe the equipment, personnel, resource and strategies for compliance with the requirements. These resources shall have the

capability to arrive on-scene within twenty-four hours of spill notification.

Section E—Plan Evaluation

NEW SECTION

WAC 173-186-500 Plan evaluation criteria. Rail plan holders shall prepare a plan that demonstrates capability, to the maximum extent practicable, of promptly and properly removing oil and minimizing environmental damage from a variety of spill sizes, up to and including worst case spills. Ecology will evaluate plans based on these conditions:

(1) Only ecology approved PRC resources, rail plan holder owned resources and resources guaranteed through written mutual aid agreements or letters of intent or agreement shall be counted when calculating the planning standards. In the case of nondedicated storage devices, these will be derated by fifty percent of maximum storage volume (counted at a one to two ratio) and acquisition of these resources will be tested in unannounced drills.

(2) If a rail plan holder operates in an area where more than one planning standard designation applies, ecology will determine the more stringent of planning standards.

(3) Ecology will count equipment if it is appropriate for the operating environment within the geographic area defined in the plan. Ecology will use criteria from sources such as the ASTM International documents, World Catalogue, manufacturer's recommendations, the Regional Response list, the federal Oil Spill Removal Organization guidelines, the *Field Operations Guide* resource typing guidelines and drills and spills to make approval and verification determinations on operating environments.

(4) Ecology will count boom if it is appropriate to the operating environment and support equipment is identified. Support equipment for boom means transportation devices, cranes, anchors, boom tackle, connectors, work boats and operators.

(5) Ecology will only count dedicated response resources towards the two hour standards.

NEW SECTION

WAC 173-186-510 Alternative method of evaluating planning standards. (1) A rail plan holder may request that ecology review and approve a plan based on alternative planning standards. Such requests should be submitted with the plan and shall be subject to a thirty day public review period and comment period which includes, but is not limited to, interested local and tribal governments and other stakeholders.

(2) The proposal must include, at a minimum:

(a) A reference to which planning standard(s) in this chapter the proposal will be substituted for;

(b) A detailed description of the alternative proposal including equipment, personnel, response procedures, and maintenance systems that are being proposed; and

(c) An analysis of how the proposal offers equal or greater protection or prevention measures as compared to the requirement in this chapter.

(3) Ecology may approve the alternative compliance proposal if, based upon the documents submitted and other information available to the agency, it finds that:

(a) The alternative compliance proposal is complete and accurate;
and

(b) The alternative compliance proposal provides an equivalent or higher level of protection in terms of spill preparedness and response when compared with the planning standards found in this chapter.

(4) Ecology may reconsider an approval at any time, in response to lessons learned from spills, drills, and significant plan changes which indicated that the requirements of this section for approval are not met.

NEW SECTION

WAC 173-186-520 Oil spill contingency plan best achievable protection five-year review cycle. (1) Ecology will review the planning standards at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst

case spill and provide for continuous operation of oil spill response activities to the maximum extent practicable and without jeopardizing crew safety.

(2) Ecology will adopt a five-year review cycle to ensure that the planning standards are updated to include proven new response technologies and response processes. In addition, rail plan holders and other interested parties will be provided an opportunity to present information and proposals regarding spill prevention credits to support an alternative worst case discharge volume for the contingency plan. The review cycle is designed to evaluate BAP by assessing contributing elements including:

- (a) Best achievable technology;
- (b) Staffing levels;
- (c) Training procedures; and
- (d) Operational methods.

(3) The review cycle will be used to evaluate a variety of spill operations, tools, and technologies including, but not limited to, the following:

- (a) Advancing systems for the removal of oil from the surface of the water;

(b) Improving the performance of existing skimmer/boom and storage systems technology;

(c) Improving the performance of in situ burn and dispersants technology;

(d) Broadening the environmental conditions under which oil spill cleanup can take place;

(e) Ensuring that the technology is deployable and effective in a real world spill environment; and

(f) Considering tools or technology that are designed, produced, and manufactured in an energy-efficient process and products are reusable, recyclable, and reduce waste.

(4) Ecology may use the following processes to inform and update the use of BAP in the planning standards by:

(a) Convening an advisory committee(s) to assist ecology during the five-year review cycle and promote BAP.

(b) Conducting or reviewing studies, inquiries, surveys, or analyses appropriate to the consideration of new technologies, plan evaluation methods including EDRC, or best operational practices.

(5) Ecology may prepare reports following either of the actions described in subsection (4) of this section. These reports will identify the new technologies, processes, techniques or operational practices that ecology considers to represent BAP.

(6) Ecology will provide an opportunity for a thirty-day public review and comment period on the draft report.

(7) Ecology will use the developed reports to update the contingency planning rule as necessary every five years.

NEW SECTION

WAC 173-186-530 Process for plan approval. (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the rail plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.

(2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment. Ecology will accept comments on the plan no later than thirty days after

the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

(a) If the plan is approved, the rail plan holder receives a certificate of plan approval and plan expiration dates. Approved plans shall be valid for five years.

(b) If a plan is conditionally approved, ecology may require a rail plan holder to operate under specific restrictions until unacceptable components of the plan are revised, resubmitted and approved. In the conditional approval ecology will describe:

(i) Each specific restriction and the duration for which it applies;

(ii) Each required item to bring the plan into compliance; and

(iii) The schedule for rail plan holders to submit required updates, including a reference to the regulatory standard in question.

(iv) Restrictions may include, but are not limited to, additional information for the plan or additional requirements to ensure availability of response equipment.

(v) Conditional approval expires no later than eighteen months from date of issue before the rail plan holder must request an extension which is subject to public review.

(vi) Ecology shall revoke its conditional approval prior to the expiration date of a rail plan holder who fails to meet the terms of the conditional approval. The revocation will be in the form of an appealable order.

(c) If plan approval is disapproved, the rail plan holder shall receive an explanation of the factors.

(3) The owner or operator or rail plan holder shall not engage in oil transport without an approved or conditionally approved plan.

(4) Ecology may review a plan following an actual spill or drill of a plan and may require revisions as appropriate.

(5) Public notice will be given of any plan approval, conditional approval, or disapproval of a plan.

NEW SECTION

WAC 173-186-540 Process for public notice and opportunity for public review and comment period. (1) The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments must sign up on a listserv. Ecology's web site will also be used to post notice of public review and comment periods.

(3) Public comment periods must extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

(a) Plan submittals for railroads that have never submitted a plan in Washington;

(b) Plan updates required by WAC 173-186-120;

(c) The submittal of plans for five-year review as required by WAC 173-186-110;

(d) Requests for an alternative planning standard in accordance with WAC 173-186-510;

(e) Rail plan holder requests for drill requirement waivers in accordance with WAC 173-186-640; and

(f) PRC applications submitted under WAC 173-182-810.

(4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

PART III: DRILL AND EQUIPMENT VERIFICATION PROGRAM

NEW SECTION

WAC 173-186-600 Drill participation, scheduling and evaluation.

(1) Rail plan holders and PRCs shall participate in a drill and equipment verification program for the purpose of ensuring that

all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response Exercise Program (PREP), is relied on to test each component of the plan.

(2) Rail plan holders and PRCs shall ensure ecology is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the rail plan holder desires drill credit. To ensure this, rail plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table below.

(3) Ecology shall mail a written drill evaluation report for drills to the rail plan holder following each deployment and tabletop drill. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Where plan deficiencies have been identified in the written evaluation, rail plan holders may be required to make specific amendments to the plan or conduct additional trainings to address the deficiencies.

(6) A rail plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

NEW SECTION

WAC 173-186-610 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.

(1) Tabletop drills: Tabletop drills are intended to demonstrate a rail plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills rail plan holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles.

(2) Once during each three year cycle, the rail plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) Equipment deployment drills: Rail plan holders shall use deployment drills to demonstrate the actions they would take in a

spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of rail plan holder owned assets, contracted PRC assets, and nondedicated assets.

(b) Rail plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Rail plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the rail plan holder could impact from spills.

(c) At least twice during a triennial cycle, rail plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area, rail plan holders will consult with ecology to determine alternative sensitive areas to protect.

(4) Rail plan holders may receive credit for deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The rail plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(5) Additional deployment requirement for all rail plan holders:

Once every three years rail plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(6) For all rail plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be called when specific problems are noted with individual rail plan holders, or randomly, to

strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, rail plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Rail plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the rail plan holder is excused, ecology will conduct an unannounced drill at a future time.

NEW SECTION

WAC 173-186-620 Evaluation criteria. The ecology drill evaluation process is based on the PREP guidance document. The NPREP guidance document lists fifteen core components that shall be demonstrated by the rail plan holder during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate rail

plan holder tabletop and deployment drills. The core components are as follows:

(1) Notifications: Test the notifications procedures identified in the plan.

(2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) Ability to operate within the response management system described in the plan. This includes demonstration of the ICS staffing and process identified in the plan.

(4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.

(5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge and provide continuing assessments of the effectiveness of the tactical operations.

(6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) Recovery: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged

product. Includes mitigation and removal activities, e.g., dispersant use, in situ burn use, and bioremediation use.

(8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimodal transportation both for execution of the discharge and support functions.

(12) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(14) Procurement: Demonstrate the ability to establish an effective procurement system.

(15) Documentation: Demonstrate the ability of the rail plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

NEW SECTION

WAC 173-186-630 Other ways to get drill credit. (1) Rail plan holders may request drill credit for a response to an actual spill, provided that ecology has an opportunity to participate and evaluate the spill response. Credit from spills shall not entirely alleviate the rail plan holder's responsibility to drill. To obtain credit, a written request to ecology shall be made within sixty days of completion of the cleanup operations.

(a) The request shall include documentation supporting the components of WAC 173-186-620.

(b) Rail plan holders shall have up to ninety days to submit a lessons learned summary supporting the request for drill credit.

(2) Rail plan holders may request drill credit for out-of-state tabletop drills if:

(a) Ecology has been invited to attend the drill;

(b) Ecology has an opportunity to participate in the planning process for the drill. There shall be a meeting to discuss the scope and scale of the exercise, the drill objectives and the types of criteria for which Washington credit may be applicable;

(c) Documentation of the drill and self certification documentation shall be provided to ecology within thirty days of the drill; and

(d) Rail plan holders seeking credit for a scheduled out-of-state drill shall notify ecology in writing ninety days in advance, to provide ecology an opportunity to participate.

NEW SECTION

WAC 173-186-640 Drill requirement waivers. (1) Rail plan holders may request a waiver for deployment or tabletop drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the rail plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Rail plan holder's requests for a drill waiver will be made available for public review and comment, including interested local and tribal governments and other stakeholders, for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the letter.

PART IV: RECORDKEEPING AND COMPLIANCE INFORMATION

NEW SECTION

WAC 173-186-700 Recordkeeping. Ecology may verify compliance with this chapter by examining training and equipment maintenance records, drill records, accuracy of call-out and notification lists, spill management team lists, ICS forms, waste disposal records, post-spill reviews and records on lessons learned.

NEW SECTION

WAC 173-186-710 Noncompliance. (1) If an owner or operator of a railroad, a person or rail plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(a) Place conditions on approval; and

(b) Require additional drills to demonstrate effectiveness of the plan; or

(c) Revoke the approval status.

(2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(3) Any violation of this chapter may be subject to the enforcement and penalty sanctions.

(4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a railroad is in violation of this section shall be considered a separate violation.

NEW SECTION

WAC 173-186-720 Operation without plan.

(1) The owner or operator of a railroad may not operate without an approved, or conditionally approved, contingency plan.

(2) Ecology may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. In the case of a continuing violation, each day's continuance shall be considered a separate violation.

(3) Any person found guilty of willfully violating any of the provisions of this section, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

NEW SECTION

WAC 173-186-730 Severability. If any provision of this chapter is held invalid, the remainder of the rule is not affected.