

Focus on Enforcement

Spill Prevention, Preparedness, and Response Program July 2008

How Does Enforcement Work?

Questions commonly asked about enforcement by the Spills Program are: What are the laws and rules enforced? How are they enforced? How are penalties determined? What do I do now?

Below are quick answers to those questions and directions to more information.

What are the laws and rules enforced by the Spills Program?

There are four broad categories of laws enforced by the Spills Program:

- **Spills of oil or hazardous substances to state waters**
- **Threats of spills to state waters**
- **Prevention and response planning**
- **Illegal operation of a covered vessel or a facility**

Spills of oil or hazardous substances:

- To state waters – RCW 90.48.080 and 90.56.320
- Liability for negligent, reckless or intentional oil spill – RCW 90.56.330
- Immediate notification is required – RCW 90.56.280
- Duty to contain and cleanup oil spills – RCW 90.56.340
- Liability for state response expenses – RCW 90.56.360

Threats of spills to state waters:

- A covered vessel that poses a substantial risk of harm to the environment or public health and safety – RCW 88.46.050 and chapter 317-31 WAC
- Liability for state expenses – RCW 90.56.360
- Vessels or facilities that transfer oil to vessels must either boom the transfer or provide alternative measures – RCW 88.46.160 and chapter 173-180 WAC

KEY TERMS

Covered vessel - Cargo, fishing or passenger vessel 300 gross tons or more, or a tank vessel.

Class 1 facility - a facility that transfers oil to or from a pipeline or tank vessel.

Class 2 facility - a mobile facility, such as truck or railcar, that transfers oil to non-recreational vessels

Class 3 facility - a facility that transfers oil to vessels with an oil capacity of 10,500 gallons.

Class 4 facility - a facility that transfers oil to vessels with an oil capacity less than 10,500 gallons.

RCW - Revised Code of Washington.

WAC - Washington Administrative Code.

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Special accommodations:

If you need this publication in an alternative format, call the Spills Program at 360-407-7455. Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Prevention and response planning requirements:

- Covered vessels must have an approved oil spill contingency plan – RCW 88.46.060 and chapter 173-182 WAC
- Class 1 facilities must have an approved oil spill contingency plan – RCW 90.56.210 and chapter 173-182 WAC – and an approved operations manual, training and certification program, and a oil spill prevention plan – RCW 90.56.200, 90.56.220 and 90.56.230 and chapter 173-180 WAC
- Class 2 facilities must have an approved oil spill contingency plan and operations manual – RCW 88.46.160 and chapter 173-180 WAC

Planning violations are:

- Operating without an approved plan – RCW 88.46.080 and 90.56.310
- Failure to meet planning standards – RCW 88.46.060 and RCW 90.56.210, and chapters 173-180 and 173-182 WAC
- Failure to comply with an approved plan – RCW 90.56.270, chapter 173-180 and 173-182 WAC

Illegal operation of a covered vessel or an onshore facility:

- Operation of a covered vessel or a Class 1 or 2 facility without required plans or financial responsibility – RCW 88.46.080 and 90.56.310, and chapters 173-180 and 173-182 WAC
- Transfer of oil by a covered vessel to or from a Class 1 facility that does not have required contingency or prevention plans, or financial responsibility – RCW 88.46.090
- Transfer of cargo or passengers by a facility to or from a covered vessel that does not have required contingency or prevention plans, or financial responsibility – RCW 90.56.310
- Failure of a Class 1 facility to meet established equipment and design standards – RCW 90.56.220 and chapter 173-180 WAC

Financial Responsibility -

Covered vessels, and barges carrying hazardous substances are required to be insured for pollution clean-up and damages to specific amounts. As of July 27, 2003, cargo and passenger vessels must have at least \$300 million worth of coverage. As of January 1, 2004, tank vessels must have at least \$1 billion worth of coverage

- Operating a vessel while under the influence of intoxicating drugs or alcohol – RCW 90.56.540
- Reckless operation of a tank vessel – RCW 90.56.530

How are these laws and rules enforced?

Violations are determined either by inspection or incident investigation. If evidence indicates a violation has occurred, or a violation is likely to occur, the Spills Program is authorized by statute to enforce compliance. Statutory authority for enforcement depends on the violation.

- For violations of chapter 88.40 and 88.46 RCW and associated rules, enforcement authority is provided by RCW 88.46.070 through 88.46.090.
- For violations of chapters 90.48 and 90.56 RCW and associated rules, enforcement authority is provided by RCW 90.48.120, 90.48.140, and 90.48.144.

Other statutes that grant enforcement authority in specific circumstances are:

- Enforcement of onshore facility response and prevention plans – RCW 90.56.270
- Penalty authority for a negligent, reckless or intentional oil spill – RCW 90.56.330

Some statutes provide for both administrative and criminal enforcement. If a crime is suspected, the case is referred to criminal investigators and prosecutors. Enforcement taken by the Spills Program involves only the administrative authority granted by the authorizing statutes.

The following is a summary of the enforcement actions used by the Spills Program:

- **Compliance letter** – Much of the enforcement work is conducted through correspondence indicating areas of concern or requesting additional information.
- **Notice of Violation** – A formal notice of violation or potential violation that requests a written report within 30 days of receipt stating how compliance will be achieved. (See RCW 88.46.070 and 90.48.120.)
- **Notice of Correction** – A formal notice of violation that describes what must be done to be in compliance within a reasonable amount time. This is issued in lieu of a penalty for violations with minor environmental or public impact. (See chapter 43.05 RCW.)
- **Administrative Order** – A determination of a violation that requires something to be done, or to cease being done, to be in compliance. (See RCW 88.46.070 and 90.48.120.)
- **Notice of Penalty** – A determination of a violation that requires money to be paid as a penalty. (See RCW 90.48.144 and 90.56.330.)

A **Notice of Correction** and a **Notice of Penalty** (called citations) may be issued in the field for minor violations. **Administrative Orders** may also be issued in the field if immediate action is necessary to prevent further violations or a spill.

Enforcement is tailored to the severity of the violation, compliance history of the violator, impact on the environment, and other relevant factors (for example, effectiveness of a response to a spill).

How are penalties determined?

Statutory authority to issue penalties establishes a monetary range per violation.

Penalty ranges include:

- Up to \$10,000 per violation – RCW 88.46.090(6) and RCW 90.48.144
- For a negligent oil spill, up to \$100,000 each day oil poses a risk to the environment – RCW 90.56.330
- For a reckless or intentional oil spill, up to \$500,000 each day oil poses a risk to the environment – RCW 90.56.330
- Up to \$100,000 per day of operation for illegal operation of a covered vessel or onshore facility – RCW 88.46.090 and 90.56.310

For information on other costs assessed under state law see Ecology's "Am I Liable for Other State Costs?" Publication #03-08-004.

Once the investigation is complete, a written recommendation for enforcement is drafted that reviews the facts determined by the investigation, the violations based on the facts, and the factors used to determine where in a particular range a penalty should fall.

Factors evaluated include:

- Environmental impact – Was there actual damage and what was the environmental sensitivity of the area impacted?
- Public health impact – Were members of the public injured or threatened?
- Compliance history of the violator – Have there been prior or similar violations in the past? Are there outstanding enforcement actions?
- Volume – How much was spilled?
- Mitigation factors – Were there actions taken by the violator or other exigent circumstances that should be to the violator's credit?
- Other factors – For example, an identifiable economic benefit to the violator?

I've received an enforcement action. What do I do now?

First, read the document carefully. Formal actions have specific deadlines for responding. Failure to meet the deadline reduces the opportunity to contest the enforcement action or negotiate a settlement.

Second, explore the options.

- A **Notice of Penalty** may be contested by submitting an **Application for Relief** which must be in writing and submitted within 15 days of receiving the order or penalty; and/or

- An **Administrative Order** and a **Notice of Penalty** may be contested by filing an appeal with the Pollution Control Hearings Board either within 30 days of receiving the **Administrative Order** or **Notice of Penalty** or within 30 days of receiving the formal reply to the **Application for Relief** called a **Notice of Determination**.

Natural Resource Damage Assessments are NOT penalties but compensation for damages to state natural resources.

Third, keep in contact. Although enforcement is not a pleasant experience, this is an opportunity to learn from mistakes and make the necessary changes to operate within the law. For more information see RCW 43.21B.300 through RCW 43.21B.320.

Enforcement Information via the Web

Text of the laws and rules are available on-line at: <http://www.ecy.wa.gov/laws-rules/index.html>.

For more information contact:

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