

Three state costs you may pay if you spill oil or a hazardous substance to state waters

If you are responsible for a spill of oil or hazardous substances to state waters, you or your company may be required to pay money in addition to paying for cleanup costs. A party found responsible for a spill may be required to pay:

1. A natural resource damage assessment;
2. A penalty for violation of state law or rule; and
3. The state's expenses to respond, assess, and investigate the incident.

A party responsible for a threat of a spill may still be required to reimburse the state's expenses.

A responsible party's full and rapid response to contain and clean up a spill, and cooperation in investigation of the spill, are considered by Ecology in determining the amount of a damage assessment and penalty.

If you receive a notice to pay one or all of the three costs, you must either pay or contest the notice by the deadlines explained in the notice.

Natural Resource Damage Assessment (NRDA)

Natural resources refer to fish, wildlife, habitat, etc. Compensation for injuries to natural resources is based on the type of oil, how much is spilled to water, and the sensitivity of the environment the oil entered. Most often compensation is determined by a formula established in rule. Except for very small spills, Ecology will seek compensation for damages to natural resources.

Determination of a damage assessment begins when Ecology sends you an invitation to a meeting of the Resource Damage Assessment Committee. At this meeting, the Committee will conduct a "Pre-assessment Screening" to determine how compensation will be assessed – either through use of the compensation table or by studying and evaluating the specific resources harmed. Damage assessments are set by the

MORE INFORMATION

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Natural Resource Damage Assessment (NRDA)

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Penalty of Violation of Law or Rule

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State Costs Incurred to Respond, Assess, and Investigate the Incident

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Spills Web Page:

<http://www.ecy.wa.gov/programs/spills/spills.html/>

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.

Committee but are issued by the Washington State Attorney General's Office.

Reference: RCW 90.48.364 to 90.48.368; and Chapter 173-183 WAC

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Penalty of Violation of Law or Rule

A spill is a violation of state law that may result in enforcement. Enforcement actions often come in the form of a monetary penalty but may also be an *Order, Notice of Correction, or Notice of Violation*.

A penalty may be issued for a:

1. Spill to water.
2. Violation of a law or rule.
3. Negligent, reckless, or intentional oil spill.

The amount of a penalty depends on the number of violations of a law or rule found. Each additional day of a violation is a separate violation. If negligence, recklessness, or intent to spill is involved, the penalty amount is based on the number of days oil threatens the environment.

RCW 90.48.142 Violations — Liability in damages for injury or death of fish, animals, vegetation — Action to recover.

(1) Any person who:

- (a)(i) Violates any of the provisions of this chapter or chapter 90.56 RCW;
- (ii) Fails to perform any duty imposed by this chapter or chapter 90.56 RCW;
- (iii) Violates an order or other determination of the department or the director made pursuant to the provisions of this chapter or chapter 90.56 RCW;
- (iv) Violates the conditions of a waste discharge permit issued pursuant to RCW 90.48.160; or

(v) Otherwise causes a reduction in the quality of the state's waters below the standards set by the department or, if no standards have been set, causes significant degradation of water quality, thereby damaging the same; and

(b) Causes the death of, or injury to, fish, animals, vegetation, or other resources of the state;

shall be liable to pay the state and affected counties and cities damages in an amount determined pursuant to RCW 90.48.367.

RCW 90.48.144 Violations — Civil penalty — Procedure.

Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who:

Reference: RCW 88.46.090, 90.48.140 and 90.56.330

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State Costs Incurred to Respond, Assess, and Investigate the Incident

A party found responsible for a spill, or threat of a spill, must reimburse the state for its expenses in responding. Expenses can include:

1. Response management costs of Ecology and other state personnel.
2. Investigation costs.
3. Costs related to determining the impact to natural resources.
4. Costs associated with the capture and rehabilitation of oiled wildlife.
5. Additional costs incurred by other state agencies.

The order requesting reimbursement of these costs is called an *Order for Reimbursement of Expenses*.

Reference: RCW 90.56.350 and 90.56.400

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(3) Violates the provisions of RCW 90.48.080 or other sections of this chapter or chapter 90.56 RCW or rules or orders adopted or issued pursuant to either of those chapters, shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for. The penalty amount shall be set in consideration of the previous history of the violator and the severity of the violation's impact on public health and/or the environment in addition to other relevant factors. The penalty herein provided for shall be imposed pursuant to the procedures set forth in RCW 43.21B.300.

90.56.360 Liability for expenses.

Any person who unlawfully discharges oil or hazardous substances into the waters of the state or who poses a substantial threat of discharging oil or hazardous substances into the waters of the state shall be responsible for the necessary expenses incurred by the state in carrying out a project or activity authorized under RCW 90.56.350.