

Below are quick answers to commonly asked questions and directions to more information.

I thought I already paid a penalty?

If you spill oil or other hazardous substance to Washington waters, Ecology may require you to pay the following:

- A natural resources damage assessment (NRDA).
- Reimbursement of state expenses to respond, assess, and investigate the spill.
- A penalty for violation of state law or rule.

You may receive a NRDA before you receive an invoice for state expenses and a penalty. Each cost is a separate obligation. You can find more information about these costs in “Focus on State Costs for Spills.”

What law did I violate?

There are four broad categories of laws enforced by Ecology’s Spills Prevention, Preparedness, and Response Program:

Spills of oil or hazardous substances to waters of the state

- Spills to state waters – RCW 90.48.080 and 90.56.320.
- Additional penalty for a 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.
- Ecology will respond to threats and account for costs – RCW 90.56.350.
- Liability for state response expenses – RCW 90.56.360.

Prevention and response planning

- 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, prevention and response planning requirements.
- Covered vessels must have an approved oil spill contingency plan – RCW 88.46.060 and chapter 173-182 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. It 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.

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

Illegal operation of a covered vessel or an onshore facility

- Failure to meet planning standards – RCW 88.46.060 and RCW 90.56.210, and chapters 173-180 and 173-182 WAC
- 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 plan or financial responsibility – RCW 90.56.310.
- Failure to follow an approved plan or directions of the state on scene coordinator – RCW 90.56.270, chapter 173-180 and 173-182 WAC.
- Failure of a Class 1 facility to meet established equipment and design standards – RCW 90.56.220 and chapter 173-180 WAC.
- 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 by investigation. Authority to issue 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 grant enforcement authority in specific circumstances. For example, RCW 90.56.270 grants authority to require approved oil spill contingency plans to be followed, and RCW 90.56.330 provides authority to issue an additional penalty for a negligent, reckless or intentional oil spill. 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 Ecology involves only the administrative authority granted by the authorizing statutes.

Does Ecology only issue penalties?

Ecology uses a variety of enforcement tools that range from a letter to a penalty:

- **Compliance letter** – Most enforcement work is conducted through correspondence indicating areas of concern and/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 that have minor impacts to the environmental or public health and safety. (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.

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

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 a penalty within the statutory range.

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 have received an enforcement action. What do I do now?

1. Read the document carefully. Most enforcement actions have specific deadlines for responding. Failure to meet the deadline reduces the opportunity to contest the enforcement action or negotiate a settlement.
2. Explore the options. An administrative order or a notice of penalty may be contested by filing an appeal with the Pollution Control Hearings Board within 30 days after receiving the administrative order or notice of penalty.

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

3. 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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