

Focus on: State Costs for Spills



Oil on water from fishing vessel Kathleen K sinking and spill, Seattle, 2013.

Contact information

Resource Damage Assessment
(RDA) team
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Coordinator
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Enforcement FAQs
<https://fortress.wa.gov/ecy/publications/SummaryPages/0408003.html>

Spills Program website
ecology.wa.gov/SpillsProgram

Special accommodations

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7211 or visit ecology.wa.gov/accessibility. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Oil spills to water are costly to clean up and can cause long-term damage to the environment and other public resources. Oil spills to state waters are also a violation of law. Although the risk of a catastrophic spill is slight, cumulatively spills of all sizes degrade the quality of state waters.

Three state costs you may pay if you spill oil or other hazardous substances to state waters

If you are responsible for a spill of oil or hazardous substances to state waters, in addition to paying for cleanup costs and claims from third parties, Washington State may require you or your company to pay:

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

A party responsible for a threat of a spill may still be required to reimburse the state for the cost of responding to the threat. The responsible party's full and rapid response to contain and clean up a spill, and cooperation in investigation of the spill, can reduce the amount of a resource damage assessment, a penalty, or both.

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

Resource Damage Assessment (RDA)

Public resources refer to fish, wildlife, habitat, and other natural and cultural resources of the state. *Assessment* is compensation for injuries to resources. It is based on the type of oil, how much is spilled to water, the time of year, and the sensitivity of the environment the oil entered.

Most often, compensation is determined by a formula called the *compensation schedule*. The schedule will set compensation within a range of \$1 to \$100 per gallon for spills less than 1,000 gallons, and \$3 to \$300 per gallon for spills larger than 1,000 gallons. Except for very small spills, Ecology will issue an RDA for damages to natural resources.

Determination of a damage assessment begins when Ecology sends you a letter inviting you to a meeting of the Resource Damage Assessment Committee. At this meeting, the Committee will conduct a “pre-assessment screening” to determine whether compensation will be assessed, either through use of the compensation table or by studying and evaluating the specific resources harmed. After the spill, if recovered volumes are tracked and documented, the committee may also apply credit for oil recovered within the first 24 hours for non-persistent oil, or 48 hours for persistent oil.

Damage assessments are set by the committee but are issued by the Washington State Attorney General’s Office. Payments for oil spill damages go into the state’s Coastal Protection Fund, which can only be used for environmental restoration projects, oil spill studies, and habitat mapping systems. In fact, the spiller is always welcome to propose restoration projects instead of paying monetary damages. (Reference: RCW 90.48.364 to 90.48.368, and Chapter 173-183 WAC.)

Order for Reimbursement of State Expenses (ORE)

A party found responsible for a spill, or threat of a spill, must reimburse the state for its expenses in responding. Spills often require the services of cleanup contractors. If you act promptly by hiring a contractor yourself or use your own spill response equipment, outside response costs are usually minimal. However, if the state on-scene coordinator believes the cleanup is being delayed or mishandled, or there is an environmental threat that is not controlled, Washington State may hire a contractor or use state equipment.

You are liable for reimbursing the state for the costs of contractors hired and any cleanup supplies they use. You may also be responsible for:

1. Response costs of the Department of Ecology and other state agencies.
2. Investigation costs.
3. Costs related to determining the impact to resources.
4. Costs associated with the capture and rehabilitation of oiled wildlife.

If you are determined responsible for the spill, Ecology will invoice you for the state’s costs in the form of an order called an *order for reimbursement of expenses*. (Reference: RCW 90.56.350 and 90.56.400.)

Penalty for Violation of Law or Rule

Ecology may issue a penalty for violation of a state law or rule. Penalties are issued for spills to waters of the state, failure to notify the Washington State Emergency Management Division of a spill, failure to clean up a spill, failure to comply with an approved oil spill contingency plan, and other laws and rules. Whether we issue a penalty and how large the penalty is depends on a number of factors. Those factors include the spill size, type of material, impact to the environment, impact to public health and safety, effectiveness of cleanup, and history of past violations. Other types of enforcement Ecology may use include an order, notice of correction, or notice of violation.

Ecology may issue a penalty for each day of a violation. For example, if there is a discharge that continues over multiple days, each day of discharge is a violation. For oil spills, if Ecology determines that negligence, recklessness, or intent to spill is involved, an additional penalty may be assessed for each day oil threatens the environment. (Reference: RCW 88.46.090, 90.48.140 and 90.56.330.)