



DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapters 173-360 and 173-360A WAC Underground Storage Tank Regulations

Summary of Rulemaking and Response to Comments

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*Chapters 173-360 and 173-360A WAC
Underground Storage Tank Regulations*

Toxics Cleanup Program
Washington State Department of Ecology
Olympia, Washington

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Acronyms and Abbreviations

APA	Administrative Procedure Act
CHMM	Certified Hazardous Materials Managers
Ecology	Washington State Department of Ecology
EPA	U.S. Environmental Protection Agency
ICC	International Code Council
IFC	International Fire Code
RCW	Revised Code of Washington
UST	Underground Storage Tank
WAC	Washington Administrative Code

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Chapter 1: Introduction

The purpose of a Concise Explanatory Statement is to:

- Provide reasons for adopting a rule.
- Describe any differences between the proposed and adopted rule.
- Provide Ecology's response to public comments on the proposed rule.

The documentation is required by the Administrative Procedure Act ([RCW 34.05.325](#)).

This Concise Explanatory Statement is for the Washington State Department of Ecology's (Ecology's) repeal and adoption of the following rules:

Title: Underground Storage Tank Regulations

WAC Chapters: Repeal of [Chapter 173-360 WAC](#) and adoption of Chapter 173-360A WAC

Adopted date: July 18, 2018

Effective date: October 1, 2018

To learn more about this rulemaking, visit: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-360-Mar16>.

For information about other Ecology rulemakings, visit: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

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Chapter 2: Reasons for Adopting the Rule Amendments

The Department of Ecology (Ecology) is repealing existing Chapter 173-360 WAC and adopting new Chapter 173-360A WAC, Underground Storage Tank (UST) Regulations. The new chapter modifies and replaces the repealed chapter. The rule amendments implement the general goals and specific objectives of Chapter 90.76 RCW.

2.1 Statutory Authority

In [Chapter 90.76 RCW](#),¹ the Legislature directed Ecology to establish a state-wide UST program and adopt rules that:

- Meet the federal requirements for state program approval, as specified in [40 C.F.R. Part 281](#);
- Are consistent with and no less stringent than the federal regulations, as specified in [40 C.F.R. Part 280](#);
- Reduce the number and severity of releases of petroleum and other hazardous substances from UST systems, which pose a serious threat to human health and the environment (RCW 90.76.005 and 90.76.020).

The Legislature also specified what the rules adopted by Ecology must address at a minimum (RCW 90.76.020).

2.2 Regulatory History

In 1990, Ecology adopted the following rules to achieve the statutory goals and objectives:

- [Chapter 173-360 WAC](#), which establishes requirements for UST systems to prevent releases of petroleum and other hazardous substances.²
- [Section 450](#) of the Model Toxics Control Act (MTCA) Cleanup Regulations, Chapter 173-340 WAC, which establishes requirements for responding to and cleaning up releases from UST systems.

¹ The authorizing state statute, Chapter 90.76 RCW, was enacted by the Legislature on May 12, 1989, and became effective on July 1, 1990 ([Laws of 1989, Chapter 346](#)). The statute was subsequently amended by the Legislature in:

- 1991 ([Laws of 1991, Chapter 83](#));
- 1995 ([Laws of 1995, Chapter 403, Section 639](#));
- 1998 ([Laws of 1998, Chapter 155](#));
- 2007 ([Laws of 2007, Chapter 147](#));
- 2011 ([Laws of 2011, Chapter 298, Sections 39 and 40](#)); and
- 2013 ([Laws of 2013, Chapter 144, Sections 53 and 54](#)).

² The state rule, Chapter 173-360 WAC, was originally adopted by Ecology on November 28, 1990, and became effective on December 29, 1990 (WSR 90-24-017). The rule was subsequently amended by Ecology in:

- 1991 (WSR 91-22-020);
- 1995 (WSR 95-04-102);
- 1998 ([WSR 98-15-069](#)); and
- 2012 ([WSR 12-17-041](#)).

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In 1993, the U.S. Environmental Protection Agency (EPA) approved Washington's UST program. Our state was one of the first states in the nation to be granted state program approval.

In 2018, the Legislature reauthorized the UST program for another ten years, until July 1, 2029. See Senate Bill [6159](#). The program is subject to sunset review and reauthorization under the Sunset Act, [Chapter 43.131 RCW](#).

2.3 Updates Needed

Ecology adopted the rule amendments to:

- **Maintain federal approval of our state's UST program and consistency with the federal regulations, as required by the state statute, Chapter 90.76 RCW.**

In October 2015, EPA adopted changes to the federal UST rule (40 C.F.R. Part 280). This is the first major revision to the federal rule since 1988. The changes add new operation and maintenance requirements for UST systems and establish requirements for certain types of UST systems deferred in the original federal rules. The changes also implement the requirements in the federal [UST Compliance Act of 2005](#), which the state had already done.³

EPA also adopted changes to the state program approval requirements (40 C.F.R. Part 281) to reflect the changes in the federal UST rule. States with approved programs, including Washington's, must incorporate the new federal requirements within three years (by October 2018) to maintain federal approval. For more information about the federal rule changes, see: <https://www.epa.gov/ust/revising-underground-storage-tank-regulations-revisions-existing-requirements-and-new>.

- **Integrate changes to the state statute that authorizes the UST program, Chapter 90.76 RCW.**

The Legislature has made several changes to the authorizing state statute, Chapter 90.76 RCW, since Ecology originally adopted the rules implementing that statute. For example, UST systems now operate under a license issued by the Department of Revenue instead of a permit issued by the Department of Ecology. The rules need to be amended to incorporate these statutory changes.

- **Reduce the number and severity of releases of petroleum and other hazardous substances from UST systems, which pose a serious threat to human health and the environment, including drinking water.**

³ In 2007, the Legislature amended Chapter 90.76 RCW to implement the new federal requirements in the UST Compliance Act of 2005. The Legislature directed Ecology to adopt rules that are consistent with and no less stringent than those requirements. See [Laws of 2007, Chapter 147](#). In 2012, Ecology adopted changes to Chapter 173-360 WAC to implement the federal requirements in the UST Compliance Act of 2005. See [WSR 12-17-041](#).

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As specified by the Legislature, the goal of the UST program is to address the serious threat to human health and the environment posed by releases from UST systems containing petroleum and other hazardous substances. In addition to incorporating changes to the federal rules and the authorizing state statute, Ecology is updating other requirements governing the program (such as UST service provider requirements and under-dispenser containment performance standards). These updates are intended to reduce the number and severity of releases.

- **Make the rule easier to use and understand.**

The rule amendments are intended to streamline requirements, improve clarity, and improve consistency within the rule and with other state and federal laws and rules. The replacement of existing Chapter 173-360 WAC with new Chapter 173-360A WAC is necessary to streamline and clarify the rule.

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Chapter 3: Differences between the Proposed and Adopted Rule Amendments

The Administrative Procedure Act requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences ([RCW 34.05.325\(6\)\(a\)\(ii\)](#)).

There are some differences between the proposed rule filed on January 24, 2018, and the adopted rule filed on July 18, 2018. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The changes Ecology made to the text of the proposed rule, including all deletions and additions, are identified in a document available at: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-360-Mar16>. The changes and Ecology's reasons for making them are summarized below.

- 1. Throughout rule:** Replaced placeholder dates based on the effective date with actual dates. For example, replaced "effective date of rule" with "October 1, 2018," and "two years after effective date of rule" with "October 1, 2020."

Reason: To clarify dates that are based on the effective date of the rule. When the proposed rule was filed, Ecology stated that it anticipated the rule would be effective on October 1, 2018. That date has been confirmed.

- 2. Throughout rule:** Replaced "shall" with "must" in provisions that impose an obligation to act.

Reason: To clarify that the provisions impose an obligation and to use consistent terminology throughout the rule. The proposed rule used both "shall" and "must" to impose an obligation. The word "shall" may be confused with prediction of future action. The change is based on more recent federal drafting guidelines and recommendations of the state Office of the Code Reviser.

- 3. WAC 173-360A-0110(2)(a)(iii):** Corrected citation to 40 C.F.R. Part 50.

Reason: To correct mistake. The correction is based on public comment.

- 4. WAC 173-360A-0150(46)(c):** Corrected grammar in definition of "owner."

Reason: To clarify definition by making (c) of the subsection grammatically consistent with parallel statements in (a) and (b) of the subsection.

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5. **WAC 173-360A-0200(7):** Clarified where licenses must be displayed by deleting the ambiguous language “where the tanks are located.”

Reason: To clarify where licenses must be displayed and to avoid confusion. The deleted language was intended to specify at which facility the license must be displayed, not where at the facility it must be displayed. The deleted language is unnecessary.

6. **WAC 173-360A-0300(2)(b):** Removed the following two codes of practice for installing UST systems added in the proposed rule:

- Petroleum Equipment Institute, Recommended Practice 1000, "Recommended Practices for the Installation of Marina Fueling Systems;" and
- Petroleum Equipment Institute, Recommended Practice 1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems."

Reason: To meet the intent of the authorizing statute. These codes were not included in the federal rule, and neither the U.S. Environmental Protection Agency nor Ecology were involved in their development. Ecology has not determined whether the codes in question may be used to meet regulatory requirements.

7. **WAC 173-360A-0300(4):** Eliminated prohibition on installing used tanks added in the proposed rule. As under the existing rule, the adopted rule allows used tanks to be installed if they meet applicable performance standards and are recertified by the manufacturer. Ecology must also be notified at least thirty days before used tanks are installed.

Reason: To meet the intent of the authorizing statute. Ecology believes that used tanks that meet applicable performance standards and are recertified by the manufacturer are protective of human health and the environment. Ecology understands that manufacturers will still recertify used tanks.

8. **WAC 173-360A-0300(5):** Edited language governing installation documentation (changed from “included with the application” to “included as part of the application”). No changes were made to documentation requirements.

Reason: To clarify that installation documentation may need to be included in or attached to the application.

9. **WAC 173-360A-0430(2)(b):** Eliminated the requirement added in the proposed rule for owners and operators to contact a corrosion expert within 24 hours when a cathodic protection system fails a cathodic protection test.

Reason: The requirement is not necessary to meet the intent of the authorizing statute. In these cases, the service provider who conducted the test is aware the system is not operating properly and can advise owners and operators on next steps.

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Further, since test results must be reported to Ecology within thirty days, Ecology can follow-up with owners and operators to ensure the system is repaired.

- 10. WAC 173-360A-0430(3)(b)(i):** Changed the requirement added in the proposed rule to allow owners and operators to contact a cathodic protection tester instead of a corrosion expert when a rectifier inspection indicates that the system is not operating properly.

Reason: The notification of a service provider is necessary to meet the intent of the authorizing statute. Unlike following a cathodic protection test, the person conducting the rectifier inspection is not a service provider and inspection results do not need to be reported to Ecology. However, it is sufficient to notify a cathodic protection tester. Testers can help owners and operators determine what type of repairs may be needed and who to contact to design those repairs (corrosion expert).

- 11. WAC 173-360A-0450(5)(b), -0460(5)(b), -0470(5)(b), -0480(6)(b):** Edited language specifying compliance dates for testing of containment sumps used for interstitial monitoring, testing of spill prevention equipment, inspections of overfill prevention equipment, and testing of release detection equipment. No changes were made to the compliance dates.

Reason: To clarify and make easier to read.

- 12. WAC 173-360A-0470(1):** Specified purpose of the inspections of overfill prevention equipment.

Reason: To clarify purpose and help differentiate inspections of overfill prevention equipment and walkthrough inspections. The former must be performed by a service provider while the latter may be performed by anyone.

- 13. WAC 173-360A-0480(6):** Edited language by making subsection header (compliance dates) plural instead of singular.

Reason: To reflect the fact that there are multiple compliance dates specified in the subsection.

- 14. WAC 173-360A-0480(6):** Specified that testing of automatic line leak detectors is an existing requirement that must continue to be complied with. All other testing of release detection equipment must begin by the specified compliance dates.

Reason: To clarify compliance dates for testing release detection equipment.

- 15. WAC 173-360A-0920:** In Table 920-1, edited the description of the UST system service “Installing UST systems or components” by deleting “except cathodic protection.”

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Reason: To clarify description of the service and make consistent with the description of other services. The deleted language is duplicative and confusing since the header for this portion of the table already excludes services involving corrosion protection. None of the other services under that header include the deleted language.

16. WAC 173-360A-0920: In Table 920-1, edited footnote (1). No changes were made to the requirement.

Reason: To clarify and make easier to read.

17. WAC 173-360A-1005(7) and (11): Edited language in definitions of “local government” and “property damage” by adding preposition “to” in the first sentence.

Reason: To clarify and make grammatically consistent with parallel statement in WAC 173-360A-1005(2).

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Chapter 4: Public Comment on the Proposed Rule Amendments

On January 24, 2018, Ecology filed the rule proposal. On February 7, 2018, the rule proposal was published in the *Washington State Register* (WSR 18-03-178). The comment period on the rule proposal ended on March 16, 2018.

4.1 Notice

Notice of the rule proposal and opportunity to comment was:

- Published in the *Washington State Register* (WSR 18-03-178) on February 7, 2018. The publication is available at:
<https://fortress.wa.gov/ecy/publications/SummaryPages/1809041E.html>.
- Published in the Toxics Cleanup Program's *Site Register*, which was emailed to about 537 subscribers on February 2, February 15, and March 2, 2018. The publications are available at:
 - <https://fortress.wa.gov/ecy/publications/SummaryPages/1809041C.html>.
 - <https://fortress.wa.gov/ecy/publications/SummaryPages/1809041D.html>.
 - <https://fortress.wa.gov/ecy/publications/SummaryPages/1809041E.html>.
- Sent by letter to tribal chairs with copies to the natural resource directors. The notice included an invitation for Government-to-Government consultations.
- Mailed to about 3,745 people affected by or otherwise interested in the rulemaking, including registered tank owners, service providers, operator training providers, insurers, business and local government associations, and environmental groups.
- Emailed to about 1,605 interested people, including:
 - 1,081 people who subscribe to the agency's WAC Track listserv, which provides updates on all agency rulemaking activities. Messages are available at:
<http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?A0=ECOLOGY-WAC-TRACK>;
 - 307 people who subscribe to the agency's UST Rule listserv, which provides updates on the UST program and this rulemaking. Messages are available at:
<http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?A0=ECOLOGY-UST-RULE>; and
 - Other state agencies, major tank owners, service providers, operator training providers, insurers, and business and local government associations.

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- Announced in a News Release issued by the agency on January 31, 2018. The news release is available at: <https://ecology.wa.gov/About-us/Get-to-know-us/News/2018/Jan-31-UST-rule-update>.
- Posted on the agency's rulemaking web page: <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-360-Mar16>.
- Posted on the agency's public events web page: <https://ecology.wa.gov/Events/Search/Listing>.

4.2 Hearings

Ecology held two public hearings on the rule proposal. The hearings began with a short presentation and question and answer session, followed by the opportunity to provide testimony.

1. Wednesday, February 28, 2018, at 1:00 pm

Participants could attend this hearing in person or by webinar.

Location: Hampton Inn and Suites
4301 Martin Way E
Olympia, WA 98516

Webinar: This is an online meeting forum that participants could attend from any computer using internet access.

Summary: Thirteen people attended in person and thirty-four people attended by webinar. No one provided oral comments.

2. Friday, March 2, 2018, at 1:00 pm

This hearing was a video conference. Participants could attend the video conference in person at one of the following three locations:

Department of Ecology
Eastern Regional Office
4601 N Monroe Street
Spokane, WA 99205

Department of Ecology
Central Regional Office
1250 West Alder Street
Union Gap, WA 98903

Union Gap, WA 98903
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008

Summary: Eight people attended at the Eastern Regional Office, one at the Central Regional Office, and four at the Northwest Regional Office. No one provided oral comments.

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4.3 Comment

Ecology accepted public comment on the rule proposal for 45 days between January 24 and March 16, 2018. Comments could be submitted:

- At a public hearing (as described above)
- Online at: <http://cs.ecology.commentinput.com/?id=usNx2>
- By mail to: Kristopher Grinnell
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

The following three individuals or organizations submitted comments on the rule proposal. One individual submitted comments twice:

- Randy Dutton.
- Jessica Joyner, Manager, Environmental Protection, Washington River Protection Solutions (WRPS).
- Erik Berg, Chair, Government Affairs Committee, Pacific Northwest Chapter – Alliance of Hazardous Materials Professionals.

You can view the comments online at: <http://cs.ecology.commentinput.com/?id=usNx2>.

Ecology identified a total of six separate comments. You can view Ecology's responses to the comments in Chapter 5 of this document.

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Chapter 5: Response to Comments

This document responds to public comments in a question and answer format. Ecology reviewed the comments and grouped them into a series of questions (the “issues”). Each of the questions reflects a particular issue or set of issues raised by one or more individuals or organizations. Following each question, Ecology identifies the commenter who raised the issue and the rule sections to which the question applies. Ecology then provides a response. You can view the comments Ecology received at: <http://cs.ecology.commentinput.com/?id=usNx2>.

Issue 1: *Should the state require back-fill valves on UST systems to prevent water intrusion during a natural disaster?*

- Commenter: Randy Dutton
- Rule Sections: WAC 173-360A-0310

Response: No

Ecology considers this comment to be outside the scope of its statutory authority in Chapter 90.76 RCW and beyond the scope of this rulemaking. Ecology is only authorized to regulate UST system components that are below the ground. The local building code would be a more appropriate place to require back-flow preventers. The International Fire Code (IFC) requires shear valves under dispensers that are designed to close if the dispenser is knocked over or dislodged by a car or other impact event (International Code Council, 2015). The Washington State Building Code Council has adopted and amended the 2015 edition of the IFC in Chapter 51-54A WAC, pursuant to its authority under Chapter 19.27 RCW. Back-fill valves do not exist on fill ports or vent lines because they could result in pressures changes within the tank that may result in bulging or create a vacuum inside the tank.

Issue 2: *Should the state require UST systems to be constructed in a manner that will withstand debris impact during a natural disaster?*

- Commenter: Randy Dutton
- Rule Sections: WAC 173-360A-0310

Response: No

The commenter requested that “[a]ll vents, fuel lines and electrical systems to support fuel operation ... be protected with a method designed and constructed to meet the structural requirement of debris impact commensurate with a tsunami flood.” Ecology considers this comment to be outside the scope of its statutory authority in Chapter 90.76 RCW and beyond the scope of this rulemaking. This is something that could be required in local building codes. The state’s UST program does not address the construction of vent lines, electrical systems that support the UST system, or the structural make up of those portions of the UST system.

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Issue 3: *Should the state require alternate power for UST systems to ensure usefulness in the event of a power outage related to a natural disaster?*

- Commenter: Randy Dutton
- Rule Sections: N/A

Response: No

Ecology considers this comment to be outside the scope of its statutory authority in Chapter 90.76 RCW and beyond the scope of this rulemaking. This is something that would be better addressed through the local government emergency planning process. For example, the county could identify USTs within the county that would not be impacted by a natural disaster and work with the owners of those facilities to equip those systems with alternate power.

Issue 4: *Can Ecology correct the reference to 10 C.F.R. Part 50 in the final rule?*

- Commenter: Washington River Protection Solutions (WRPS)
- Rule Sections: WAC 173-360A-0110(2)(a)(iii)

Response: Yes

Ecology corrected the reference to 10 C.F.R. Part 50 in the final rule language.

Issue 5: *Should inspections of overfill prevention equipment and tests of release detection equipment be performed by a certified service provider?*

- Commenter: Washington River Protection Solutions (WRPS)
- Rule Sections: WAC 173-360A-0470(1)(a), 173-360A-0480(2)(a)(i), 173-360A-0920, 173-360A-0930(1) and (2)

Response: No

Ecology believes that service providers who are certified to install and test UST systems possess the skills needed to inspect overfill prevention equipment and test release detection equipment. Ecology also believes that such inspections and testing need to be performed by certified professionals. Ecology has depended on a third-party testing system since the UST program was established in 1990. That system has improved the quality and consistency of services provided in the state, which has helped reduce the number and severity of releases.

The commenter notes that the International Code Council (ICC) exams for UST installers and testers do not specifically cover inspections of overfill prevention equipment and tests of release detection equipment. Ecology is working with the ICC to make sure that the exams are updated to cover such inspections and tests.

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Issue 6: *Should a Certified Hazardous Materials Manager be allowed to conduct UST site assessments without taking the state-specific International Code Council test or being licensed as professional engineer or hydrogeologist?*

- Commenter: Erik Berg, Pacific Northwest Chapter, Alliance of Hazardous Materials Professionals
- Rule Sections: WAC 173-360A-0930(3)

Response:

Under the proposed rule, anyone who is not licensed as a professional engineer or hydrogeologist in Washington must pass a state-specific exam administered by the International Code Council (ICC) to perform UST site assessments. Since the UST program was established, Ecology has primarily relied on the state-specific exam to ensure that site assessors are adequately trained. The certification consists of a 90-minute exam that is regularly updated to remain current. The certification costs \$80 and must be renewed every two years. More information about the ICC certification is available at <https://www.iccsafe.org/about-code-council-examinations>.

The Alliance of Hazardous Materials Professionals requested that Ecology also allow persons with a Certified Hazardous Materials Manager (CHMM) credential to perform UST site assessments without taking the state-specific ICC exam. In short, for this limited purpose, they would like for Ecology to consider the CHMM credential to be the equivalent of an engineer's or hydrogeologist's license. They provided substantial documentation in support of their request. More information about the CHMM credential is available at <https://www.ihmm.org/>.

While the materials provided make a case for accepting the CHMM credential, Ecology does not have sufficient confidence that persons with the credential are adequately trained in UST site assessment to approve the credential by rule. However, under the rule, Ecology retains the option of later approving the CHMM credential as "another nationally or internationally recognized association ... that provides a qualifying examination" (WAC 173-360A-0930(3)(b)). Ecology intends to work with the Alliance of Hazardous Materials Professionals to resolve outstanding concerns, including the extent to which the CHMM exam covers UST systems and sampling around UST systems.

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References

International Code Council, 2015. 2015 International Fire Code, ISBN: 9781609834746, 9781609834739.

Laws of 2018, Chapter 194 (Substitute Senate Bill 6159).

<http://apps2.leg.wa.gov/billsummary?BillNumber=6159&Chamber=Senate&Year=2017&BillNumber=6159&Chamber=Senate&Year=2017>

Revised Code of Washington (RCW), Chapter 19.27. State Building Code.

Revised Code of Washington (RCW), Chapter 34.05. Administrative Procedure Act.

Revised Code of Washington (RCW), Chapter 90.76. Underground Storage Tanks.

Washington Administrative Code (WAC), Chapter 51-54A. State Building Code Adoption and Amendment of the 2015 Edition of the International Fire Code.

Washington Administrative Code (WAC), Chapter 173-340. Model Toxics Control Act – Cleanup.

Washington Administrative Code (WAC), Chapter 173-360. Underground Storage Tank Regulations.

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