



DEPARTMENT OF
ECOLOGY
State of Washington

**Concise Explanatory Statement
Chapter 173-185 WAC, Oil movement by rail and
pipeline notification**

*Summary of rulemaking and
response to comments*

February 2021

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Publication and Contact Information

This document is available on the Department of Ecology's website at:
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Concise Explanatory Statement

Chapter 173-185 WAC

Oil movement by rail and pipeline notification

Spill Prevention, Preparedness, and Response Program

Washington State Department of Ecology

Olympia, Washington

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.
- This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title: Oil movement by rail and pipeline notification
WAC Chapter(s): 173-185
Adopted date: February 2, 2021
Effective date: March 5, 2021, 31 days after Ecology files the rule with the Code Reviser.

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: <https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>.

Reasons for Adopting the Rule

Ecology is adopting an amendment to Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification. This chapter establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. The rule also describes reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

Ecology is amending the rule to incorporate statutory changes made in the 2019 legislative session. Through Engrossed Substitute House Bill (ESHB) 1578 and Engrossed Substitute Senate Bill (ESSB) 5579, codified in RCW 90.56.565, the Legislature expanded reporting requirements for regulated facilities, pipelines, and Ecology.

Expanded reporting requirements will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures.

This rulemaking:

- Expands advance notice reporting requirements for facilities that receive crude oil by rail to include type and vapor pressure of crude oil.
- Expands biannual notice requirements for pipelines that transport crude oil through the state to include gravity and type of crude oil.
- Describes how required information will be provided to the Utilities and Transportation Commission (UTC).
- Makes other changes to clarify language and makes any corrections needed.

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) 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.

There are some differences between the proposed rule filed on September 2, 2020, and the adopted rule filed on February 2, 2021. 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 following content describes the changes between the rule proposal language and the adopted language and provides Ecology's reasons for making them.

WAC 173-185-050 Definitions:

- The definition of facility was updated in the rule to align with the definition in Chapter 90.56 RCW. The statutory definition was recently amended to update a reference to a recodified statute.
- The definition of person was updated in the rule to align with the statutory definition in Chapter 90.56 RCW.

WAC 173-185-070 Advance notice – Facility requirements:

- Clarified the description of type of crude oil reported to Ecology by updating (2)(f)(i) of this section to refer to the “gravity as reported under (e) of this subsection” rather than “expected gravity as reported under (e) of this subsection”. This is consistent with the (2)(e) of this section, which requires gravity to be reported but allows expected gravity to be reported if actual gravity is unknown. This clarification does not change any regulatory requirements.
- The version of the American Society for Testing and Materials (ASTM) Standard D6377 was updated to reflect the most recent update to the standard for vapor pressure testing, published in 2020. The previous version was published in 2016.

List of Commenters and Response to Comments

Ecology accepted comments from September 2, 2020, to November 1, 2020. Comments were accepted by mail, through our online public comment tool, and verbally at three public hearings that were held via webinar. We received 23 unique comments during the sixty day formal public comment period. All comments were received through our online public comment tool or by letter. No verbal comments were received at our public hearings.

Below is a table depicting the commenter name, affiliation, and associated comment number. The comments are included verbatim below the table in order of comment number. Each comment is addressed separately, and the individual response to the comment is included below the comment. To review the original comments received by each of the commenters, the comments can be accessed from our [online public comment tool](#).

Table 1: List of commenters

Commenter name	Affiliation	Comment number
Elyette Weinstein	Individual	I-1-1
Denis Fitzgerald	Individual	I-1-2
Janet Alderton	Individual	I-1-3
Jennifer Franklin	Individual	I-1-4
Bonnie Bledsoe	Individual	I-1-5
Bob Burr	Individual	I-1-6
Dennis Hamilton	Individual	I-1-7
Marie Erbstoesz	Individual	I-1-8
Terri Wilde	Individual	I-1-9
Kimberly Sims	Individual	I-1-10
Helen Zenon	Individual	I-1-11
Dr. Nancy Street	Individual	I-1-12
David Hunt	Individual	I-1-13
Jeff Lambert	Individual	I-1-14
David Brookbank	Individual	I-1-15
John Taves	Individual	I-1-16
Kirsten Angell	Individual	I-1-17
Debbie Stempf	Individual	I-1-18
Mary and Brian Jokela	Individual	I-1-19

Lynn Noel	Individual	I-1-20
Tammy Cronrath	Individual	I-1-21
Laura Ackerman	Individual	I-1-22
Brendan Keenan, Jr.	Tribal Government/Agency	T-1-1

I-1: Elyette Weinstein

Comment I-1-1

I support the proposed rule.

Knowing when, where and what kind of oil is transported across Washington state is critically important to first responders when a spill happens. This key information allows responders to better prepare for and respond to oil spills and other incidents.

Response to I-1-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

The rule provides information about oil movement in Washington through aggregated quarterly reports and makes information about crude oil by rail movement available to emergency response agencies in advance of shipments entering the state. This is a valuable tool for communities looking for information to help with the assessment of risks associated with crude oil movement that specifically threaten their health, safety, and welfare and the quality of the state’s environmental resources. This information can help communities plan for resources needed to respond to an incident efficiently and effectively so that potential impacts to communities, environmental resources, and the local and regional economies are reduced.

The expanded reporting requirements included in the rule amendment will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures. This includes training, equipment, and staffing needs.

For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-2: Denis Fitzgerald

Comment I-2-1

Last time I checked interstate commerce of oil and gas products is regulated by the Federal Energy Regulatory Commission so once again we have WA state attempting to control things which are outside of its control. Stick to state matters and leave this to the Federal government where it belongs/

Response to I-2-1

Ecology has broad authority under Chapter 90.56 RCW to adopt rules for oil spill prevention and preparedness. During the 2019 legislative session, new provisions were added to Chapter 90.56 RCW that expanded reporting requirements for regulated facilities, pipelines, and Ecology. The rule amendments align with legislative direction to expand reporting requirements for facilities that receive crude oil by rail in the state and pipelines that transport crude oil in or through the state.

This rule does not regulate interstate commerce because it does not regulate the sale or movement of crude oil by either rail or pipeline. It imposes notification requirements on Washington State facilities that receive crude oil by rail, and on pipelines that transport crude oil in or through the state. The information reported by regulated entities provides valuable information on crude oil movement by these modes.

The expanded reporting requirements included in the rule amendment will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures. This includes training, equipment, and staffing needs.

I-3: Janet Alderton

Comment I-3-1

I approve of the proposed changes that will allow a more effective response to hydrocarbon spills.

Response to I-3-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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Ecology and emergency response agencies determine the need for additional prevention and preparedness measures. This includes training, equipment, and staffing needs.

For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-4: Jennifer Franklin

Comment I-4-1

The proposed changes are essential to public safety. Oil spills are inevitable so being prepared to respond is essential

Response to I-4-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-5: Bonnie Bledsoe

Comment I-5-1

I support the Dept of Ecology's effort to make it transparent whenever and wherever oil is transported across Washington state. This will help first responders and the Dept of Ecology to be aware and assess any potential dangers.

Response to I-5-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-6: Bob Burr

Comment I-6-1

Thank you for the proposed changes. They are a step in the right direction. Oil transit has the potential of stealing Thousands of lives if things go bad. The least we can do is make those responsible for protecting us fully aware of thr when and where of fossil fuel transport. It is not hyperbole to state that this can be the difference between life and death.

Response to I-6-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-7: Dennis Hamilton

Comment I-7-1

It is fundamentally clear to those of us that are awake to the world around us that we need fewer not more environmental risks. While I am certain that the rail company makes diligent efforts to reduce accidents, I know that they occur. Suppose for example a 110 car oil train is rolling down through the state when we an earthquake separates the track. At the very least, we need enhanced reporting. The oil companies and the oil transporters know for certain what is in each tank car. So, too, should we. I fully support enhancing the reporting requirements, along with any additional efforts that can be taken to reduce surface, ground water and air pollution caused by the extraction, transportation, storage, distillation and use of fossil fuels.

Response to I-7-1

Thank you for your support.

Pollution caused by the extraction, transportation, storage, distillation, and use of fossil fuels is outside the scope of this rulemaking. The rule amendment expands notification requirements for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

However, the rule is only one piece of a comprehensive statewide program that focuses on prevention, preparedness, and response to oil spills. Ecology's Spill Prevention, Preparedness, and Response Program focuses on preventing oil spills to Washington's waters and land, and planning for and delivering a rapid, aggressive, and well-coordinated response to oil and hazardous material spills wherever they occur. Core services include vessel and facility inspections, oil transfer monitoring, risk modeling, prevention and contingency plan review and

approvals, contingency plan drills, environmental restoration, and 24/7 response to oil and hazardous material spills. Through these services, the Spills Program minimizes the long-term release of toxics into the environment and protects the water, soil, air, and public health of the state. Details about the Spills Program can be accessed at <https://ecology.wa.gov/Spills-Cleanup/Spills>.

I-8: Marie Erbstoeszzer

Comment I-8-1

I live on the hill in Mount Vernon, WA. Like much of central Mount Vernon, we are within the sight and sound of the railroad tracks. Any accidents, spills, etc. with the contents of rail traffic will have an impact on our neighborhood.

Therefore, I support the new rules expanding the reporting requirements for companies in the state receiving crude oil by rail and pipeline. It is important for the Department of Ecology and emergency responders to better understand the oil and its characteristics that are moving through the State of Washington. With this expanded information they can be better prepared for potential spills.

Thank you for the opportunity to comment on this important issue.

Marie Erbstoeszzer

Response to I-8-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-9: Terri Wilde

Comment I-9-1

I support the strengthening of notification laws and regulations regarding the transport of oil through our county and state. I regard the proposed changes as a small step to understanding what passes through and protecting our county. Frankly, I find it alarming that this information is not currently required by law, as I feel it endangers us to not be able to protect and be prepared for any mishaps that may occur.

I also believe the extraction and export of fossil fuels in general should be reassessed in light of what we are learning about climate change. Thank you for your concern.

Terri

Response to I-9-1

Thank you for your support.

Facilities that receive crude oil by rail and pipelines that transport crude oil through the state have been providing information about crude oil movement to Ecology since the initial adoption of this rule in 2016.

Facilities that receive crude oil by rail must report to Ecology each week for all scheduled arrivals of crude oil by rail for the succeeding seven day period. The information currently reported includes:

- Facility location and contact information.
- Region of origin of crude oil.
- Railroad route taken to the facility.
- Scheduled delivery date of each crude oil shipment.
- Volume of the scheduled crude oil delivery.
- API gravity of the crude oil.

Pipelines that transport crude oil in or through the state must report to Ecology twice each year for the previous six month period. The information currently reported includes:

- Contact information for the pipeline.
- Volume of crude oil transported by state or province of origin of the crude oil.

After the effective date of this rule amendment, the following additional information will be reported to Ecology:

- Oil type based on API gravity and designation of the oil as sweet or sour for facilities and pipelines.
- Vapor pressure for facilities.
- API gravity for pipelines.

Ecology discloses the information collected under this rule through aggregated quarterly reports that are published on our website (<https://ecology.wa.gov/Spills-Cleanup/Spills>), as directed by RCW 90.56.565(3).

Each report provides information about oil movement by rail and pipeline in a summarized format for each quarter of the calendar year. For additional information about the quarterly reports, see comment response I-14-1.

To address your comment about fossil fuels, regulating the extraction and export of fossil fuels is outside the scope of this rulemaking.

I-10: Kimberly Sims

Comment I-10-1

Re: Update of crude oil rail and pipeline transport rules

The proposed rule amendments for facilities that receive crude oil by rail and pipelines are desperately needed. I strongly support their adoption.

Thank you for your efforts in getting them adopted.

Response to I-10-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-11: Helen Zenon

Comment I-11-1

I have been worried about these oil trains ever since the Skagit Valley Herald wrote about them transporting oil through downtown Mt. Vernon and detailed some of the possible hazards. For some time the Mt. Vernon school district debated whether to build the new school on the same land as the old Madison Elementary School because of its proximity to that location and the railroad. They eventually built the new one on the same land and I hope they don't rue that decision.

So these new requirements that are proposed sound good to me! I'm aware that profits are important, but the safety of citizens should come first.

Thank you for listening.

Response to I-11-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-12: Dr. Nancy Street

Comment I-12-1

I support the changes made in Chapter 173-185.

Response to I-12-1

Thank you for your support.

I-13: David Hunt

Comment I-13-1

I wish to express my support for the proposed Rule-making on Chapter 173-185 WAC Oil Movement by Rail and Pipeline Notification.

It is a good start to improving public safety.

While I believed that there is still much that needs to be done to improve notification, best practices, and ultimately public safety, I also wish to express my appreciation to those of you who are doing your best to do your job during this extremely difficult and chaotic time!

Response to I-13-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

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For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-14: Jeff Lambert

Comment I-14-1

I support the changes suggested for 173-185 for Oil Movement by Rail and Pipeline Notification. I am from Spokane and I see oil tankers on the elevated tracks in Spokane every day. It is time to expand reporting requirements and to have those reports available to the public quickly and in an understandable form.

Response to I-14-1

Thank you for your support.

Ecology discloses the information collected under this rule through aggregated quarterly reports that are published on our website (<https://ecology.wa.gov/Spills-Cleanup/Spills>), as directed by RCW 90.56.565(3).

Each report provides information about oil movement by rail and pipeline in a summarized format for each quarter of the calendar year.

Information reported by facilities is aggregated on a statewide basis by route, week, and type of crude oil, as required by RCW 90.56.565(3). For facilities receiving crude oil by rail, the reports summarize oil volumes for week of delivery by type of crude oil and the route segments used for shipping. This approach provides the public with weekly sums of each type of crude oil delivered to facilities by rail for each route segment while also fulfilling the directive from the Legislature to aggregate proprietary, commercial, and financial information in RCW 90.56.565(6). For pipelines transporting crude oil in or through the state, the reports include volume of crude oil transported by state or province of origin of the crude oil.

The quarterly reports also contain information about:

- Mode of transport (railroad car or pipeline).
- Place of origin by region for deliveries by railroad car to facilities or by state or province for crude oil transported by pipeline.
- Number and volume of reported spills during transport and delivery of crude oil by rail or pipeline.
- Estimated number of railroad cars delivering crude oil.

- Although not required in rule, a summary of crude oil movement by vessel by volume of crude oil in barrels (bbls).

After the effective date of this rule amendment, the quarterly reports will also contain information on:

- Oil type based on API gravity and designation of the oil as sweet or sour for facilities and pipelines.
- Vapor pressure for facilities.
- API gravity for pipelines.

Ecology sends an email notification through our Department of Ecology Spills Program listserv (<http://listserv.ecology.wa.gov/scripts/wa-ECOLOGY.exe?SUBED1=SPILLS-PROGRAM&A=1>) each time a new quarterly report is available on our website. Interested parties can subscribe to the Spills Program listserv to receive these email notifications as well as other Spills Program information. We aim to publish each quarterly report within 30 days following the end of the reporting quarter.

I-15: David Brookbank

Comment I-15-1

I support the changes made in WAC chapter 173-185.

Response to I-15-1

Thank you for your support.

I-16: John Taves

Comment I-16-1

I support the changes made in Chapter 173-185.

Response to I-16-1

Thank you for your support.

I-17: Kirsten Angell

Comment I-17-1

Ecology is formally proposing amendments to Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification and opening the public comment period. This chapter establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. The rule also describes reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

I support the rulemaking that will implement sections of Engrossed Substitute House Bill (ESHB) 1578 and Engrossed Substitute Senate Bill (ESSB) 5579, both passed in 2019 and codified in RCW 90.56.565.

Why it matters to me:

Expanded reporting requirements will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures.

Thank you.

Response to I-17-1

Thank you for your support.

Chapter 173-185 WAC – Oil Movement by Rail and Pipeline Notification is an important rule for enhancing crude oil spill preparedness and response in Washington State. Its passage in 2016 established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state, and described reporting standards for Ecology to share information with tribes, emergency responders, local governments, and the public.

The rule provides information about oil movement in Washington through aggregated quarterly reports and makes information about crude oil by rail movement available to emergency response agencies in advance of shipments entering the state. This is a valuable tool for communities looking for information to help with the assessment of risks associated with crude oil movement that specifically threaten their health, safety, and welfare and the quality of the state's environmental resources. This information can help communities plan for resources needed to respond to an incident efficiently and effectively so that potential impacts to communities, environmental resources, and the local and regional economies are reduced.

The expanded reporting requirements included in the rule amendment will help Ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help Ecology and emergency response agencies determine the need for additional prevention and preparedness measures. This includes training, equipment, and staffing needs.

For more detail about the information reported by facilities and pipelines, see comment response I-9-1.

I-18: Debbie Stempf

Comment I-18-1

I support changes made in Chapter 173-185.

Response to I-18-1

Thank you for your support.

I-19: Mary and Brian Jokela

Comment I-19-1

We support changes made in Chapter 173-185.

Response to I-19-1

Thank you for your support.

I-20: Lynn Noel

Comment I-20-1

I support changes made in Chapter 173-185. Thank you.

Response to I-20-1

Thank you for your support.

I-21: Tammy Cronrath

Comment I-21-1

I support changes made in 173-185.

Response to I-21-1

Thank you for your support.

I-22: Laura Ackerman

Comment I-22-1

Dear Ms. Morley,

On behalf of the Stand Up TO Oil Executive Committee, please accept the following comments into the official record regarding Chapter 173-185 Oil Movements By Rail and Pipeline Notification.

The Stand Up To Oil Executive Committee is based in Seattle WA, and facilitated by Anna Doty of the Washington Environmental Council. You can reach Anna at anna@wecprotects.org if you would like more information.

We support all the changes made in the update. We thank the Department of Ecology for the efforts to reach out to LEPC in the state, and for the many notifications and the three webinars to educate, engage, and answer questions from the public.

Sincerely,

Laura Ackerman

Energy Program Director

The Lands Council

Spokane, WA 99201
509 209.2404

Response to I-22-1

Thank you for your support and for your engagement throughout the rulemaking process.

T-1: Brendan Keenan, Jr.

Comment T-1-1

The Confederated Tribes and Bands of the Yakama Nation submit the attached comments regarding the proposed amendments to Chapter 173-185 WAC.

Kim Morley
Spills Program Rule and Process Coordinator
Spill Prevention, Preparedness, and Response Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: AMENDMENTS TO CHAPTER 173-185 WAC, OIL MOVEMENT BY RAIL AND PIPELINE NOTIFICATION

Dear Ms. Morley:

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") in response to the Department of Ecology's ("Ecology") invitation for comments on proposed amendments to Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification. The Yakama Nation supports Ecology's proposal to expand reporting requirements for crude oil shipments, but recommends additional changes to further improve emergency preparedness.

The Yakama Nation is a sovereign and original Native Nation federally-recognized under the Treaty with the Yakamas, U.S. – Yakama Nation, June 9, 1855 ("Treaty of 1855").¹ In Article III of the Treaty of 1855, the Yakama Nation expressly reserved the right to take fish "in all the streams, where running through or bordering [the Yakama Reservation]" and at "usual and accustomed places" outside of the Yakama Reservation.²

Rail lines run parallel to two rivers in which the Yakama Nation has Treaty-reserved fishing rights: the Yakima River, which passes through the Yakama Reservation, and the Columbia

¹ 12 Stat. 951 (June 9, 1855, ratified March 8, 1859, proclaimed April 18, 1859).

² *Id.* at 953.

River, where many of the Yakama Nation's most significant "usual and accustomed places" are located.³ Derailment of a train carrying crude oil on these lines would potentially be catastrophic for fish populations in the Yakama Nation's Treaty fishing areas. For example, "permanent structural and functional changes to the fish heart" occur when salmon embryos are exposed to even "very low, environmentally relevant levels of crude oil."⁴ However, different types of oil and petroleum products may affect fish uniquely.⁵ First responders, including those from the Yakama Nation, must therefore be appropriately informed regarding the nature of crude oil involved in a derailment to effectively prevent or mitigate harm to fish and habitat.

The transport of crude oil by rail also poses a threat to the safety of Yakama members and their property. Fires or explosions caused by a derailment within the boundaries of the Yakama Reservation or near a Treaty fishing access area could result in significant damage to homes, businesses, and other infrastructure. This is particularly true during late summer months where wildfire risks are high. Again, the Yakama Nation's emergency responders must be equipped with accurate and complete information to properly protect our communities in the event of a derailment or other accident.

The Yakama Nation supports Ecology's proposal to expand the advance notice requirements to include type and vapor pressure of crude oil. The Yakama Nation also appreciates the fact that the current text of WAC 173-185-090 allows Ecology to share advance notice information regarding oil by rail shipments with Native Nations. However, the current rule requires Native Nations to affirmatively request the information from Ecology. Furthermore, the current rule is unclear as to whether Ecology will share information with Native Nations on a shipment-by-shipment basis (responsive to individual requests about specific shipments) or for all shipments subsequent to a request.

The Yakama Nation recommends that Ecology correct these deficiencies by revising the text of WAC 173-185-090 as follows:⁶

WAC 173-185-090 Disclosures—Emergency management division, utilities and transportation commission, and county, city, tribal, port, and local government emergency response agencies.

(1) Ecology will share the advance notice information collected from facilities under WAC 173-185-070 with the state emergency management division and any county, city, ~~tribal~~, port, or local government emergency response agency upon request. Requests to access this information must be submitted to Ecology by email.

³ See *United States v. Washington*, 384 F. Supp. at 382 (finding that the Yakama Nation's "usual and accustomed" fishing areas include the "Columbia River area").

⁴ John P. Incardona, et al., *Very low embryonic crude oil exposures cause lasting cardiac defects in salmon and herring*, 5 SCI. REP. 13499, 7 (Sept. 8, 2015), <https://www.nature.com/articles/srep13499>.

⁵ NAT'L OCEANIC & ATMOSPHERIC ADMIN., *How OIL SPILLS AFFECT FISH AND WHALES* (last updated Feb. 13, 2020) <https://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-spills-affect-fish-and-whales.html>.

⁶ Consistent with Ecology's draft proposed rule language, text with underline represents recommended additions and text with strike through represents recommended deletions.

(2) Ecology will share the advance notice information collected from facilities under WAC 173-185-070 with the utilities and transportation commission.

(3) Ecology will share the advance notice information collected from facilities under WAC 173-185-070 with tribal government emergency response agencies.

The proposed change would remove the existing burden on Native Nations to affirmatively request the advance notice information. This change is reasonable given the fact that, pursuant to WAC 173-185-070, Ecology will have advanced knowledge of scheduled crude oil deliveries. Native Nations, on the other hand, will not, and therefore cannot know when to request the information from Ecology. An automatic sharing requirement also clarifies that Native Nations will receive information pertaining to all shipments, rather than on a shipment-by-shipment basis.

The Yakama Nation's proposed change is consistent with Ecology's justification for amending Chapter 173-185 WAC, which includes "help[ing] Ecology and other emergency response agencies determine the need for additional prevention and preparedness measures."⁷ The change would ensure that Native Nations are properly informed when responding to derailments and other emergencies involving trains.

Properly informed first responders, regardless of government affiliation, will make all communities safer and more effectively protect natural resources. For these reasons, the Yakama Nation encourages Ecology to adopt its recommended revision.

The Yakama Nation is grateful for the opportunity to participate in this rulemaking process. Chapter 173-185 WAC has the potential to affect Treaty-reserved resources and the safety of Yakama Nation communities. As such, this matter is of great importance to the Yakama Nation. If you have any questions or concerns regarding this comment, please contact Mr. Ethan Jones, Lead Attorney for the Yakama Nation Office of Legal Counsel, at (509) 865-7269, ext. 6014.⁸

Sincerely,

DELANO SALUSKIN, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

Response to T-1-1

Thank you for your support of our expanded reporting requirements for crude oil movement.

We agree that a spill of crude oil could impact fish populations in the Yakama Nation's Treaty fishing areas, as well as the health and safety of Yakama Nation members and their property. We also agree that it is important that emergency responders have accurate and complete information

⁷ Preproposal Statement of Inquiry, WSR 20-03-022, 2 (Jan. 6, 2020).

⁸ In submitting this comment, the Yakama Nation does not waive its sovereign immunity from suit, nor does it waive, alter, or otherwise diminish its sovereign rights, privileges, or remedies guaranteed by the Treaty of 1855. Furthermore, submission of this comment does not substitute for formal government-to-government consultation on this matter.

about crude oil movement through the state. This rule is a valuable tool for communities looking for information to help with the assessment of risks associated with crude oil movement that specifically threaten their health, safety, and welfare and the quality of the state's environmental resources. This information can help communities plan for resources needed to respond to an incident efficiently and effectively so that potential impacts to communities, environmental resources, and the local and regional economies are reduced.

The statutory language regarding sharing information provided by facilities through the Advance Notice of Oil Transfer System with the state emergency management division and any county, city, tribal, port, or other local government emergency response agency is specific, and Ecology is obligated to follow the direction for information sharing described in statute. RCW 90.56.565(2) directs Ecology to share information reported by facilities with emergency response agencies associated with tribes and each level of government in Washington State upon request. For this reason, we are unable to make the requested rule revision because the rule language would no longer align with the statutory requirement for sharing information.

However, our system for providing access to emergency response agencies through the Advance Notice of Oil Transfer System was designed to minimize the burden on these agencies and allow access to the most current information available, while protecting the information shared as required in RCW 90.56.565(6).

Government and tribal emergency response agencies described in RCW 90.56.565(2) only need to request access to the Advance Notice of Oil Transfer System once. This will take the form of requesting a SecureAccess Washington (SAW) login, which will allow access to advance notice information about crude oil by rail deliveries, as needed. Ecology designed the Advance Notice of Oil Transfer System so that emergency response agencies can access individual notice information submitted by facilities receiving crude oil by rail as often as they need. They will be able to review individual notice information as soon as it is submitted into the Advance Notice of Oil Transfer System by facilities. These entities can review advance notice information for the entire state in addition to viewing transfer information specific to the county or regions served by their emergency response agency.

This method of information sharing provides emergency response agencies with the most accurate and current information available to Ecology. If Ecology were to compile information from the Advance Notice of Oil Transfer System and provide it to emergency response agencies at specified intervals using another method, we could not ensure that the information provided would be the most current information available. This is because information is submitted on an ongoing basis by facilities, and the best way to provide accurate information is through our Advance Notice of Oil Transfer System.