

**WAC 173-183-870 Reduction of damages based on actions taken by the potential liable party (PLP).** (1) Damages liability calculated under WAC 173-183-830 through 173-183-860 may be reduced by the RDA committee based on post-spill actions by the PLP. Post-spill actions by the PLP that the RDA committee will evaluate are:

(a) Actions that result in effective containment of spilled oil, as determined by the state on-scene coordinator (OSC).

(b) Actions that keep spilled oil from contacting the shoreline, as determined by the state on-scene coordinator (OSC).

(c) Actions that recover spilled nonpersistent oil from the water's surface within twenty-four hours of the oil first entering the water. Spilled oil that consists of a combination of spilled nonpersistent and spilled persistent oil will be considered a nonpersistent oil.

(d) Actions that recover spilled persistent oil from the surface of the water within forty-eight hours of the oil first entering the water.

(2) (a) The RDA committee may only reduce resource damages under this section based on documented recovery data submitted to ecology by the PLP. The RDA committee may request additional information to facilitate recovery credit calculations. The data may be submitted on form number ECY-050-49, or other means that are acceptable to ecology. The submission may be electronic or other means that are acceptable to ecology. Measurement and documentation of recovered oil must be accomplished by the methods described in subsection (8) of this section, or as approved by the state OSC.

(b) Along with the data submitted by the PLP, the PLP must also submit:

(i) A statement signed and dated by the PLP or their representative, which states: "The data submitted are correct and accurate to the best of my knowledge."

(ii) (A) A statement signed by the state OSC that containment was either effective or not effective; and

(B) That spilled oil did or did not contact the shoreline;

(iii) A statement signed and dated by the state OSC that states: "I accept the information provided by the PLP and attest to the recovery data provided."

(c) The PLP must allow the state on-scene coordinator or their representative the opportunity to observe recovery credit calculation operations (storage, weighing, squeezing, and sampling).

(3) (a) When the conditions specified under subsection (1) (a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_{ATj} * Oil_{AT} * \text{total gallons spilled}) + (SVS_{MIj} * Oil_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS_{PERj} * Oil_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-830(3).

(b) When the conditions specified under subsection (1) (a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the mechanical injury and persis-

tence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_j * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS_j * \text{Oil}_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS_j * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-840(2).

(c) When the conditions specified under subsection (1)(a), (b), and (c) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS * \text{Oil}_{MI} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\}) + (SVS * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2).

(4)(a) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_{ATj} * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS_{MIj} * \text{Oil}_{MI} * \text{total gallons spilled}) + (SVS_{PERj} * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-830(3).

(b) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(SVS_j * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS_j * \text{Oil}_{MI} * \text{total gallons spilled}) + (SVS_j * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$x$  = appropriate multiplier as determined in WAC 173-183-840(2).

(c) When only the conditions specified under subsection (1)(c) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2), is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of nonpersistent oil recovered from the water by spill responders within twenty-four hours, such that:

$$\text{Damages (\$)} = x * [(\text{SVS} * \text{Oil}_{\text{AT}} * \text{total gallons spilled}) + (\text{SVS} * \text{Oil}_{\text{MI}} * \text{total gallons spilled}) + (\text{SVS} * \text{Oil}_{\text{PER}} * \{\text{total gallons spilled} - \text{gallons recovered in 24 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2).}$$

(5) (a) When the conditions specified under subsection (1) (a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(\text{SVS}_{\text{ATj}} * \text{Oil}_{\text{AT}} * \text{total gallons spilled}) + (\text{SVS}_{\text{MIj}} * \text{Oil}_{\text{MI}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (\text{SVS}_{\text{PERj}} * \text{Oil}_{\text{PER}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-830(3).}$$

(b) When the conditions specified under subsection (1) (a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(\text{SVS}_j * \text{Oil}_{\text{AT}} * \text{total gallons spilled}) + (\text{SVS}_j * \text{Oil}_{\text{MI}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (\text{SVS}_j * \text{Oil}_{\text{PER}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-840(2).}$$

(c) When the conditions specified under subsection (1) (a), (b), and (d) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2) is modified by having the mechanical injury and persistence components multiplied by the difference between the total gallons spilled, as determined by WAC 173-183-810, and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(\text{SVS} * \text{Oil}_{\text{AT}} * \text{total gallons spilled}) + (\text{SVS} * \text{Oil}_{\text{MI}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\}) + (\text{SVS} * \text{Oil}_{\text{PER}} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2).}$$

(6) (a) When only the conditions specified under subsection (1) (d) of this section are met, calculation of damages under WAC 173-183-830(3) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(SVS_{ATj} * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS_{MIj} * \text{Oil}_{MI} * \text{total gallons spilled}) + (SVS_{PERj} * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-830(3).}$$

(b) When only the conditions specified under subsection (1)(d) of this section are met, calculation of damages under WAC 173-183-840(2) is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(SVS_j * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS_j * \text{Oil}_{MI} * \text{total gallons spilled}) + (SVS_j * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-840(2).}$$

(c) When only the conditions specified under subsection (1)(d) of this section are met, calculation of damages under WAC 173-183-850(2) and 173-183-860(2), is modified by having the persistence components multiplied by the difference between the total gallons spilled and the gallons of persistent oil recovered from the water by spill responders within forty-eight hours, such that:

$$\text{Damages (\$)} = x * [(SVS * \text{Oil}_{AT} * \text{total gallons spilled}) + (SVS * \text{Oil}_{MI} * \text{total gallons spilled}) + (SVS * \text{Oil}_{PER} * \{\text{total gallons spilled} - \text{gallons recovered in 48 hours}\})]$$

$$x = \text{appropriate multiplier as determined in WAC 173-183-850(2) or 173-183-860(2).}$$

(7) In no case shall the modifications to damages liability enumerated in subsections (3) through (6) of this section result in a reduction of damages to less than one dollar per gallon of oil spilled for those spills of less than one thousand gallons total, and three dollars per gallon of oil spilled for those spills of one thousand gallons or more in total.

(8)(a) To reduce resource damage liability, the PLP must provide oil recovery information to the OSC. The PLP may provide the information required in (b) of this subsection on form number ECY-050-49, or other means that are acceptable to ecology. The submission may be electronic or other means that are acceptable to ecology. Ecology may request additional information if it is needed to facilitate recovery credit calculations.

(b) The information provided must include:

- (i) Date and time of the initial spill.
- (ii) Date and time of when mechanical recovery operations ended, when oiled sorbents were removed from the water, and when oiled debris were removed from the water.
- (iii) Name and contact information for the PLP.
- (iv) Name of the contractors doing clean-up work, if different than the PLP.
- (v) Spill source and location.
- (vi) Oil type - Common name (gasoline, diesel, jet fuel, aviation fuel, kerosene, lube oil, hydraulic oil, transformer mineral oil,

bunker oil, intermediate fuel oil, crude oil, asphalt, vegetable oil, other).

(vii) Specific gravity of the spilled oil and a determination of whether it is nonpersistent or persistent by definition (see WAC 173-183-100 (25) and (30)).

(viii) For persistent oils (WAC 173-183-100(30)), laboratory data that specifies the specific gravity of the oil.

(ix)(A) For mechanical or hand recovery operations, a record signed by the PLP's on-scene supervisor of the amount, in gallons, of water-oil mix, water, and oil in the storage device before recovery operations start. This record must be created prior to using the storage device for recovery operations. The amount of oil in each storage device used must be physically measured by measuring the thickness of oil on the water surface.

(B) To receive credit for oil mixed with water, including dissolved fractions or emulsified oil, oil must be measured by the collection of at least two representative samples of the water fraction from each storage device. The samples must be analyzed for oil content by a laboratory agreed upon by the OSC and PLP, and the results shared with the OSC.

(x) Verification that all oleophilic sorbent materials recovered from the water were stored separate from other spill generated wastes, were stored in double plastic bags to reduce leakage and evaporation, and were kept out of the rain as much as practicable.

(xi) For volumetric calculations of spent oleophilic sorbent materials, the PLP must provide the total gallons of mixed water-oil squeezed from the sorbents, the total water recovered, and total oil recovered. Oil remaining in the pads must then be calculated following (b)(xii) of this subsection.

(xii)(A) For gravimetric calculations of spent oleophilic sorbent materials, the PLP must provide the total weight of oiled sorbents, total weight of preoiled sorbents, total weight of recovered oil, and make the conversion to total gallons of oil recovered.

(B) Unless demonstrated otherwise by the PLP, the water content of spent oleophilic sorbent material is assumed to be twenty-five percent by weight.

(xiii) Verification that oiled debris removed from the water was collected with minimal water and stored separately from other spill generated wastes.

(xiv)(A) For recovery credit for oil recovered from debris on the water's surface, the PLP must take two representative samples of oiled debris from each area where debris is collected and have it analyzed for oil content by weight at a laboratory agreed upon by the OSC and PLP. The laboratory results must be shared with the OSC.

(B) The PLP must provide the weight of all the oiled debris recovered from the water from each collection area, the total weight of the oil in the debris based on (b)(xiv)(A) of this subsection, and the total gallons of oil in the debris.

[Statutory Authority: RCW 90.48.366, 90.56.050, 90.48.035. WSR 13-01-055 (Order 11-05), § 173-183-870, filed 12/14/12, effective 1/14/13. Statutory Authority: Chapter 90.48 RCW. WSR 92-10-005 (Order 91-13), § 173-183-870, filed 4/23/92, effective 5/24/92.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.