

**WSR 07-18-048****EXPEDITED RULES****SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed August 30, 2007, 11:39 a.m.]

Title of Rule and Other Identifying Information: WAC 392-121-10601 Definition—Kindergarten and 392-121-10602 Definition—First grade.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504-7200, AND RECEIVED BY November 5, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the following WAC references in WAC 392-121-10601 and 392-121-10602, from a state board (chapter 180-39 WAC) to the appropriate OSPI WAC (chapter 392-335 WAC).

Reasons Supporting Proposal: Some state board WACs were given to OSPI and they were recodified. This is to change the reference to the OSPI WAC.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.150.290.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Mitch Thompson, 600 South Washington Street, Olympia, (360) 725-6306; Implementation: Calvin W. Brodie, 600 South Washington Street, Olympia, (360) 725-6301; and Enforcement: Jennifer Priddy, 600 South Washington Street, Olympia, (360) 725-6292.

August 7, 2007

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

**WAC 392-121-10601 Definition—Kindergarten.** As used in this chapter, "kindergarten" means an instructional program conducted pursuant to RCW 28A.150.220 for students who meet the entry age requirements pursuant to chapter ((480-39)) 392-335 WAC.

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

**WAC 392-121-10602 Definition—First grade.** As used in this chapter, "first grade" means an instructional program conducted pursuant to RCW 28A.150.220 for students who meet the entry age requirements pursuant to chapter ((480-39)) 392-335 WAC.

**WSR 07-18-061****EXPEDITED RULES****DEPARTMENT OF ECOLOGY**

[Order 07-13—Filed August 31, 2007, 3:53 p.m.]

Title of Rule and Other Identifying Information: Repealing rules, Facility oil handling operations and design standards, chapter 173-180A WAC; Facility oil handling operations manual standards, chapter 173-180B WAC; Facility personnel oil handling training and certification, chapter 173-180C WAC; and Facility oil spill prevention plan standards, chapter 173-180D WAC. These have been replaced by, Facility oil handling standards, chapter 173-180 WAC.

Repealing rules, Facility contingency plan and response contractor standards, chapter 173-181 WAC and Vessel contingency plan and response contractor standards, chapter 317-10 WAC. These chapters have been replaced by, Oil spill contingency planning, chapter 173-182 WAC.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jerry Thielen, Washington State Department of Ecology, 300 Desmond Drive S.E., Lacey, P.O. Box 47600, Olympia, WA 98504-7600, AND RECEIVED BY November 5, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to repeal chapters 173-180A, 173-180B, 173-180C, and 173-180D WAC. These rules have been replaced with new chapter 173-180 WAC, Facility oil handling standards and therefore are no longer necessary.

Also repealing chapters 317-10 and 173-181 WAC. These rules have been replaced with new rules, chapter 173-182 WAC, Oil spill contingency planning, and therefore are no longer necessary.

Reasons Supporting Proposal: These rules have been replaced with new rules. Repealing these rules will eliminate the potential for confusion.

Statutory Authority for Adoption: Chapters 90.56, 88.46, 90.48 RCW.

Statute Being Implemented: Chapters 90.56, 88.46, 90.48 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Nhi Hoang, Department of Ecology, Headquarters, (360) 407-7514; Implementation and Enforcement: Linda Pilkey-Jarvis, (360) 407-7447 and Chip Boothe, (360) 407-7465, Department of Ecology, Headquarters.

August 31, 2007

Polly Zehm  
Deputy Director

WAC 173-180B-090	Manual review.
WAC 173-180B-100	Manual maintenance and use.
WAC 173-180B-110	Inspections.
WAC 173-180B-120	Manual update timeline.
WAC 173-180B-130	Noncompliance with manual requirements.
WAC 173-180B-140	Severability.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180A-010	Purpose.
WAC 173-180A-020	Authority.
WAC 173-180A-030	Definitions.
WAC 173-180A-040	Applicability.
WAC 173-180A-050	Compliance schedule.
WAC 173-180A-060	Vessel transfer requirements.
WAC 173-180A-070	Transmission pipeline transfer requirements.
WAC 173-180A-080	Secondary containment requirements for aboveground storage tanks.
WAC 173-180A-090	Storage tank requirements.
WAC 173-180A-100	Transfer pipeline requirements.
WAC 173-180A-110	Inspections.
WAC 173-180A-120	Recordkeeping.
WAC 173-180A-130	Noncompliance.
WAC 173-180A-140	Rule review.
WAC 173-180A-150	Severability.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180B-010	Purpose.
WAC 173-180B-020	Authority.
WAC 173-180B-030	Definitions.
WAC 173-180B-040	Applicability.
WAC 173-180B-050	Manual preparation.
WAC 173-180B-060	Manual format requirements.
WAC 173-180B-070	Manual content requirements.
WAC 173-180B-080	Manual submittal.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180C-010	Purpose.
WAC 173-180C-020	Authority.
WAC 173-180C-030	Definitions.
WAC 173-180C-040	Applicability.
WAC 173-180C-050	Training requirements.
WAC 173-180C-060	Certification program.
WAC 173-180C-070	Minimum criteria for certification programs.
WAC 173-180C-080	Program approval.
WAC 173-180C-090	Inspections.
WAC 173-180C-095	Noncompliance with requirements.
WAC 173-180C-098	Severability.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180D-010	Purpose.
WAC 173-180D-020	Authority.
WAC 173-180D-030	Definitions.
WAC 173-180D-040	Applicability.
WAC 173-180D-050	Plan preparation.
WAC 173-180D-055	Plan format requirements.
WAC 173-180D-060	Plan content requirements.
WAC 173-180D-065	Plan submittal.
WAC 173-180D-070	Plan review.
WAC 173-180D-075	Inspections.
WAC 173-180D-080	Plan maintenance and use.
WAC 173-180D-085	Plan update timeline.
WAC 173-180D-090	Noncompliance with plan requirements.
WAC 173-180D-098	Severability.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-181-010	Purpose.
WAC 173-181-020	Authority.
WAC 173-181-030	Definitions.
WAC 173-181-035	Applicability.
WAC 173-181-040	Plan preparation.
WAC 173-181-045	Plan format requirements.
WAC 173-181-050	Plan content requirements.
WAC 173-181-060	Plan submittal.
WAC 173-181-065	Plan review.
WAC 173-181-070	Drills and inspections.
WAC 173-181-075	Plan maintenance and use.
WAC 173-181-080	Plan update timeline.
WAC 173-181-085	Noncompliance with plan requirements.
WAC 173-181-090	Contractor standards.
WAC 173-181-092	Contractor approval information required.
WAC 173-181-094	Submittal of contractor approval applications.
WAC 173-181-096	Contractor application review.
WAC 173-181-098	Severability.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 317-10-010	Purpose.
WAC 317-10-020	Authority.
WAC 317-10-030	Definitions.
WAC 317-10-035	Applicability.
WAC 317-10-040	Plan preparation.
WAC 317-10-045	Plan format requirements.
WAC 317-10-050	Plan content requirements.
WAC 317-10-060	Plan submittal.
WAC 317-10-065	Plan review.
WAC 317-10-070	Drills and inspections.
WAC 317-10-075	Plan maintenance and use.
WAC 317-10-080	Plan update timeline.

WAC 317-10-085	Noncompliance with plan requirements.
WAC 317-10-090	Contractor standards.
WAC 317-10-092	Contractor approval information required.
WAC 317-10-094	Submittal of contractor approval applications.
WAC 317-10-096	Contractor application review.
WAC 317-10-098	Severability.

**WSR 07-18-062**

**EXPEDITED RULES**

**DEPARTMENT OF ECOLOGY**

[Order 07-14—Filed August 31, 2007, 3:53 p.m.]

Title of Rule and Other Identifying Information: Amending rules, Facility handling standards, WAC 173-180-025; Vessel oil transfer advance notice and containment requirements, WAC 173-184-025; Oil spill contingency planning, WAC 173-182-030; Preassessment screening and oil spill compensation schedule regulations, WAC 173-183-100 and 173-183-320; and Definitions, WAC 317-05-020.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jerry Thielen, Washington State Department of Ecology, 300 Desmond Drive S.E., Lacey, P.O. Box 47600, Olympia, WA 98504-7600, AND RECEIVED BY November 5, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 347, Laws of 2007 (SB 5552), made changes to the natural resource damage assessment (NRDA) assessment penalty from \$50 to \$100 per gallon of oil spilled.

- WAC 173-183-320 will be amended to reflect the change.

The same law also provided a change in definition of oil to include "oils of any kind." This includes biological fuels, such as biodiesel. This change will affect all current rules that reference to the definition.

- Change to the definition of "oil" to match the statute will be made to WAC 173-180-025, 173-184-025, 173-182-030, 173-183-100, and 317-05-020.

Reasons Supporting Proposal: Amendment will make rules consistent with law.

Statutory Authority for Adoption: Chapters 90.56, 88.46, 90.48 RCW.

Statute Being Implemented: Chapters 90.56, 88.46, 90.48 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Nhi Hoang, Department of Ecology, Headquarters, (360) 407-7514; Implementation and Enforcement: Linda Pilkey-Jarvis, (360) 407-7447, Dave Byers, (360) 407-6974, Department of Ecology, Headquarters.

August 31, 2007

Polly Zehm  
Deputy Director

AMENDATORY SECTION (Amending Order 06-02, filed 9/25/06, effective 10/26/06)

**WAC 173-184-025 Definitions.** Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Boatyard" means a class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(2) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Bunkering" means a bulk oil transfer operation to replenish a self-propelled vessel with fuel or lubricating oil.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(6) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(7) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting

oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(8) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(9) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet and other fueling installations that transfers to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(10) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(12) "Ecology" means the department of ecology.

(13) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(14) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(15) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(16) "Oil" or "oils" means oil of any ((naturally occurring)) kind that is liquid ((hydrocarbons)) at atmospheric temperature and pressure ((coming from the earth, including condensate and natural gasoline;)) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR Part 302 adopted August 14, 1989, under section 101(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(17) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel, onshore, or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, ship, or any other entity whatsoever.

(20) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

(21) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(22) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(23) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved and if leased, rented, or chartered to another for recreational use is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(24) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(25) "Spill" means an unauthorized discharge of oil into the waters of the state.

(26) "State" means the state of Washington.

(27) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(28) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**AMENDATORY SECTION** (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-320 Compensation schedule.** (1) The compensation schedule determines adequate compensation for unquantifiable damages or for damages not quantifiable at a reasonable cost for persons liable under RCW 90.48.142.

(2) Adequate compensation as determined from the compensation schedule is derived from preexisting information of resource vulnerability to a class of oil spilled in a particular subregion of the state during a particular season, plus any additional information collected at the reconnaissance stage of the spill response.

(3) Under RCW 90.48.366, the amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than ~~((fifty))~~ one hundred dollars per gallon of oil spilled.

**AMENDATORY SECTION** (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

**WAC 173-183-100 Definitions.** (1) "Columbia River estuary environment" means the habitat and all other public resources associated with or dependent on the estuarine waters of the Columbia River.

(2) "Compensation schedule" means the set of procedures enumerated in WAC 173-183-300 through 173-183-870 to determine the public resource damages resulting from an oil spill for cases in which damages are not quantifiable at a reasonable cost.

(3) "Damages" means the amount of monetary compensation necessary to:

(a) Restore any injured public resource to its condition before sustaining injury as a result of an oil discharge in violation of chapter 90.48 or 90.56 RCW, to the extent technically feasible, including any loss in value incurred during the period between injury and restoration in cases where damages are quantifiable at a reasonable cost; or

(b) Adequately compensate for the loss or diminution in value as determined through application of the compensation schedule provided in WAC 173-183-300 through 173-183-870 in cases where damages are not quantifiable at a reasonable cost.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology, or his or her designee.

(6) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(7) "Estuarine environment" means the habitat and all other public resources associated with or dependent on estuarine waters of the state.

(8) "Estuarine waters" or "estuarine waters of the state" means the waters within state jurisdiction that are semienclosed by land but have open, partly obstructed, or sporadic access to the ocean, and in which seawater is at least occasionally diluted by freshwater runoff from land. Estuarine waters of the state include adjacent tidal flats and beaches up to the limit of tidal inundation or wave splash. For purposes of this chapter, estuarine waters of the state include those designated on the map attached as Appendix 1 to this chapter, and the portion of the Columbia River estuary within state jurisdiction upstream to river mile 46 or the line drawn perpendicularly across the river which touches the upstream end of Puget Island.

(9) "Freshwater stream, river, and lake environment" means the habitat and all other public resources associated

with or dependent on the streams, rivers, and lakes under state jurisdiction.

(10) "Freshwater wetland" or "freshwater wetlands" means lands transitional between terrestrial and freshwater aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominately undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

(11) "Freshwater wetland environment" means the habitat and all other public resources associated with or dependent on the freshwater wetlands of the state.

(12) "Freshwaters" or "freshwaters of the state" means all waters of the state except those classified as marine and estuarine waters of the state as defined in this chapter, including lakes, rivers, streams, ponds, other surface waters and wetlands.

(13) "Habitat" means the substrate and complement of associated biota not otherwise included in the vulnerability rankings in the applicable compensation schedule(s) that is part of this chapter.

(14) "Immediate removal" or "immediately removes" means removal of the spilled oil, or portions thereof, from the receiving environment by the potentially liable party within six hours of spill initiation.

(15) "Initial department responder" means the department of ecology spill responder who first arrives at the scene of the spill.

(16) "Injury" or "injuries" means an adverse change, either long- or short-term, to a public resource resulting either directly or indirectly from exposure to a discharge of oil in violation of chapter 90.48 or 90.56 RCW.

(17) "Loss in services" means a temporary or permanent reduction in the ability of the resource to provide its use or benefit to the public or to other resources.

(18) "Loss in value or lost value" of a damaged resource means the amount equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues during the period between injury and restoration; indirect use values may include existence, bequest, option, and aesthetic values.

(19) "Marine and estuarine habitats" mean the habitats found in marine and estuarine waters of the state as defined in this chapter.

(20) "Marine birds" means all seabirds, shorebirds, waterfowl, raptors and other avifauna that are dependent on marine and estuarine environments of the state for some portion of their life requirements including feeding, breeding, and habitat.

(21) "Marine environment" means the habitat and all other public resources associated with or dependent on marine waters of the state.

(22) "Marine fish," in context of the compensation schedule, means the species listed in Appendix 2.

(23) "Marine mammals" means the cetaceans, pinnipeds, sea otters, and river otters associated with marine and estuarine waters of the state.

(24) "Marine waters" or "marine waters of the state" means all coastal waters not appreciably diluted by freshwater, including open coastal areas, straits, and euhaline inland waters extending from the seaward limit of state jurisdiction to:

(a) The landward limit of tidal inundation or wave splash; or

(b) The seaward limit of estuarine waters of the state.

(25) "Not quantifiable at a reasonable cost" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable time frame.

(26) "Oil" or "oils" means (~~naturally occurring~~) oil of any kind that is liquid (~~hydrocarbons~~) at atmospheric temperature and pressure (~~coming from the earth, including condensate and natural gasoline,~~) and any fractionation thereof, including, but not limited to, crude oil, petroleum gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by P.L. 99-499.

(27) "On scene coordinator" (OSC) means the department official who supervises the spill response team and compiles the initial report concerning the facts and circumstances of the spill for the department.

(28) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(29) "Potentially liable party" means the person or persons who may be liable for damages resulting from an oil spill.

(30) "Preassessment screening" means the investigation and determination of the facts and circumstances surrounding an oil spill which are used to determine whether a damage assessment investigation should be conducted, or alternatively, whether the compensation schedule will be used to assess damages.

(31) "Public resources" or "publicly owned resources" means fish, animals, vegetation, land, waters of the state, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state.

(32) "Reasonable cost" for a damage assessment means a cost that is anticipated to be less than the amount of damages that may have occurred or may occur.

(33) "Receiving environment" means waters of the state exposed to the spill and all public resources associated with or dependent on the exposed waters.

(34) "Resource damage assessment committee" or "RDA committee" means the preassessment screening committee established under RCW 90.48.368 and charged with determining whether to conduct detailed damage assessment studies or to apply the compensation schedule for oil spills into waters of the state, and overseeing reconnaissance and damage assessment activities.

(35) "Restoration or enhancement projects or studies" means an activity that is intended to restore, replenish,

restock, or replace public resources, or to further investigate the long-term effect of resource injuries as determined by the RDA committee for the benefit of the public.

(36) "Salmon," in context of the compensation schedule, means the species listed in Appendix 3.

(37) "Scientific advisory board" means the advisory group established by the department to assist in development of the compensation schedule as required by RCW 90.48.-366.

(38) "Season" or "seasons" means winter, spring, summer, and/or fall, where winter occurs during the months December through February, spring occurs during the months March through May, summer occurs during the months June through August, and fall occurs during the months September through November.

(39) "Shellfish," in context of the compensation schedule, means the species listed in Appendix 4, but does not include privately grown shellfish on public lands.

(40) "Spill" means an unauthorized discharge of oil into waters of the state.

(41) "State" means state of Washington.

(42) "State trustee agencies" means the state agencies with responsibility for protecting and/or managing public resources.

(43) "Subregion" or "subregions" means the areas into which state marine and estuarine waters have been divided for purposes of the compensation schedule as designated on the maps attached as Appendix 1.

(44) "Technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the public resource before the injury.

(45) "Trust resources" means the public resource(s) under a particular state agency's jurisdiction for protection and/or management.

(46) "Unquantifiable damage" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable period of time.

(47) "Waters of the state" or "state waters" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(48) "Wetland" or "wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominantly undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

**WAC 173-182-030 Definitions.** (1) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(4) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(5) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that identifies personnel, equipment and services capable of being provided by the primary response contractor within stipulated planning standard times; acknowledges that the primary response contractor intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(7) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(8) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(9) "Director" means the director of the state of Washington department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(12) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(13) "Ecology" means the state of Washington department of ecology.

(14) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(15) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(16) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(17) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(18) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(19) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(20) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(21) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(22) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(23) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(24) "Nonpersistent or group 1 oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(a) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(b) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(25) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(26) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(27) "Oil" or "oils" means (~~naturally occurring~~) oil of any kind that is liquid (hydrocarbons) at atmospheric temperature and pressure (~~coming from the earth, including condensate and natural gasoline,~~) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101 (14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(28) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(29) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(30) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(31) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(32) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(33) "Persistent oil" means petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and



American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(a) Group 2 - specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(b) Group 3 - specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(c) Group 4 - specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(d) Group 5 - specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(34) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(35) "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (14) of this section.

(36) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(37) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(38) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(39) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(40) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(41) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(42) "Resident" means the spill response resources are staged at a location within the described planning area.

(43) "Responsible party" means a person liable under RCW 90.56.370.

(44) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(45) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(46) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(47) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(48) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(49) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(50) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(51) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(52) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(53) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(54) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(55) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending Order 06-02, filed 9/25/06, effective 10/26/06)

**WAC 173-180-025 Definitions.** (1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection available. The director's determination of best achievable protection must be guided by the critical need to protect the state's natural resources and waters, while considering: The additional protection provided by the measures, the technological achievability of the measures, and the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration: Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and processes that are currently in use. In determining what best achievable technology is, the director must consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(4) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil discharged onto the surface of the water.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(7) "Certification" means the documentation that a facility employee has met all requirements of an oil transfer training and certification program that meets the requirements of this chapter.

(8) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A Class 1 facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(9) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(10) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(11) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installations that transfer to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(12) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(13) "Director" means the director of the department of ecology.

(14) "Directly impact" means without treatment.

(15) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(16) "Ecology" means the department of ecology.

(17) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(18) "Innage" means the difference from the surface of the liquid to the tank bottom.

(19) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(20) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(21) "Oil" or "oils" means oil of any ((naturally occurring)) kind that is liquid ((hydrocarbons)) at atmospheric temperature and pressure ((coming from the earth, including condensate and natural gasoline;)) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR Part 302 adopted August 14, 1989, under section 101(14) of the federal Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(22) "Offshore facility" means any class facility, as defined in this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(23) "Onshore facility" means any class facility, as defined in this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(24) "Owner or operator" means:

(a) In the case of a vessel, a person who owns, operates, or charters by demise, a vessel;

(b) In the case of an onshore or offshore facility, a person who owns or operates this type of facility;

(c) In the case of an abandoned vessel or abandoned onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(25) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(26) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(27) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(28) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for Class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

(29) "Process pipelines" means a pipeline used to carry oil within the oil refining/processing units of a Class 1 facility, process unit to tankage piping and tankage interconnecting piping. Process pipelines do not include pipelines used to transport oil to or from a tank vessel or transmission pipeline.

(30) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(31) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved, and if leased, rented, or chartered to another for recreational use, is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(32) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

(33) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(34) "Spill" means an unauthorized discharge of oil into the waters of the state.

(35) "State" means the state of Washington.

(36) "Storage tank" means all aboveground containers connected to transfer pipelines or any aboveground containers greater than ten thousand gallons (two hundred thirty-eight barrels), including storage and surge tanks, used to store bulk quantities of oil. Storage tanks do not include those tanks regulated by chapter 90.76 RCW, rolling stock, wastewater treatment equipment, process pressurized vessels or other tanks used in the process flow through portions of the facility.

(37) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(38) "Transmission pipeline" means an interstate or intrastate pipeline subject to regulation by the United States Department of Transportation under 49 CFR 195 in effect on the effective date of this section, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(39) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(40) "Transfer pipeline" is a buried or aboveground pipeline used to carry oil to or from a tank vessel or transmission pipeline, or to a vessel and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, tank vessel or storage tanks. Instances where the transfer pipeline is not well defined will be determined on a case-by-case basis by ecology.

(41) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(42) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

(43) "Waters of the state" include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**AMENDATORY SECTION** (Amending WSR 93-07-004, filed 3/4/93, effective 4/4/93)

**WAC 317-05-020 Definitions.** (1) "Administrator" means the administrator of the office of marine safety.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three

hundred gross tons or more, including but not limited to, commercial fish processing vessels and freighters.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(8)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Retail motor vehicle motor fuel outlet;

(iii) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330;

(iv) Underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or

(v) A stationary marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(9) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(10) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide, or are used presently, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce, or any of these factors.

(11) "Office" means the office of marine safety.

(12) "Oil" or "oils" means ~~oil of any ((naturally occurring)) kind that is liquid ((hydrocarbons))~~ at atmospheric temperature and pressure (~~(coming from the earth, including condensate and natural gasoline,))~~ and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302 adopted August 14, 1989, under section 101(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility, as defined in subsection (8) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility as defined in subsection (9) of this section.

(14) "Onshore facility" means any facility, as defined in subsection (8) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to

cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means:

(i) In the case of a vessel, any person owning, operating, or chartering by demise (bareboat charter), the vessel;

(ii) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(iii) In the case of an abandoned vessel, onshore, or offshore facility, the person who owned or operated the vessel, anchor or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, ship, or any other entity whatsoever.

(18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

(20) "State waters" means the navigable waters of the state.

(21) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

A ship is constructed or adapted to carry oil in bulk as cargo or cargo residue if authorized to do so under the ship's certification. A vessel carries oil as cargo or cargo residue if the oil is carried for dispensing to other vessels or equipment off the vessel, or for delivery from point to point, regardless of whether direct compensation for carriage is involved. A vessel being used to collect spilled oil from the water, and may have some recovered oil storage capacity, does not carry oil as cargo.