



March 2, 2023

Ms. Brittany Flittner
Department of Ecology
Spill Prevention, Preparedness, and Response Program
P.O. Box 47600
Olympia, WA 98504-7600

Subject: Proposal to amend Chapter 173-180 WAC and Chapter 173-184 WAC

Dear Ms. Flittner,

US Oil & Refining (USOR) appreciates the opportunity to comment on the “Proposal to amend Chapter 173-180 WAC and Chapter 173-184 WAC.” that has been facilitated by the Washington Department of Ecology (DOE). Due to the complexity and capital investment requirements of the revisions to these rules USOR anticipates that significant time and resources will be required to understand and comply with the full set of interrelated impacts that will result from the proposed changes to these rules. USOR formally requests that DOE provide clarification on several items, as well as completing a more thorough due diligence review on how these rules economically impact Class 1 facilities like USOR in Tacoma.

Changes or Additions To:

WAC 173-180-320 Secondary containment requirements for storage tanks

Addition of: (1)(c) Constructed to prevent any discharge from a primary containment system (e.g., tank) from escaping the secondary containment system before cleanup occurs;

USOR Comments on Changes to WAC 173-180-320 (1)(c) –

- 1.) No analysis was completed by the DOE in their Preliminary Regulatory Analyses (Dated January 2023 – Publication 23-08-001) on the direct costs of having to replace or make significant changes to large secondary containment systems currently in place at several Class 1 facilities in response to the addition of WAC 173-180-320 (1)(c). The costs to comply with the proposed changes could range over \$20 million dollars per facility and take several years to complete. Some rudimentary labor analysis was done by DOE on the costs and effects of permeability studies on secondary containment systems, but no analysis or due diligence was completed on the costs or resources needed to ensure that all secondary containment systems can comply with WAC 170-180-320. Therefore, DOE has not performed the required due diligence to make a sound decision in relation to this regulatory change and how it will ultimately affect Class 1 facilities and the real world economic feasibility of these changes.



- 2.) Changes to WAC 173-180-320 places USOR at a significant economic disadvantage to its peers in Washington that have larger capital expense budgets or are located in areas that have native soil types that are more conducive to containment of different types of petroleum. Since Class 1 facilities in Washington can vary widely in size, precipitation, and soil type, a "one size fits all" approach to secondary containment issues may cause more burdens for some facilities than others in many respects.
- 3.) The timeline to comply with these changes to section 173-180-320 has not been completely and thoroughly addressed by DOE. If any secondary containment systems are found to be non-compliant with the proposed changes to section 173-180-320, the resulting secondary containment upgrades could take years to complete and bring into compliance. DOE needs to provide guidance on implementation of rule changes and provide a grace period so that facilities have a realistic timeline to complete these secondary containment changes or upgrades.
- 4.) DOE has not adequately taken into account the higher amount of precipitation in some parts of Washington lends itself to oil spill response clean-ups in secondary containment areas, where petroleum floats on stormwater water inside of secondary containment systems and delays direct contact and penetration into soil containment systems. This delayed penetration of petroleum spills by storm water, allows more time for spill clean-up and would affect the permeability (k) factor in many situations.
- 5.) One tactic for responding to a large oil spill response of lighter hydrocarbons in a secondary containment is to quickly add manageable amounts of water to the spill in the secondary containment area. This method of response quickly helps to avoid ground penetration of the secondary containment structure. Some of these quick response actions would negate the concern of fast ground penetration of lighter hydrocarbons. DOE hasn't completely considered and analyzed how light hydrocarbon spills can be managed quickly to avoid rapid ground penetration.
- 6.) The nature of these regulatory changes are contradictory to the product recovery interests of oil refining sites, where oil related spills are voluntarily cleaned-up as expeditiously as possible. Refineries have a substantial fiduciary interest to clean-up, recover, and reprocess any spilled material as fast as possible in order to minimize the operational loss of any spilled petroleum inputs or products. Therefore, much of this regulation is unnecessary as all Class 1 refineries will always be fiducially motivated to recover as much spilled petroleum as fast as possible and then re-refine the spilled material to offset costs.



7.) These regulatory changes would be better suited as a “Performance Based Rule” where Class 1 facilities are penalized for not cleaning up spills in a timely manner or are found to have released petroleum to a usable aquifer. Implementing a one size fits all regulation that forces responsible operators to spend large amounts of capital and time on unnecessary upgrades is unfair. DOE should examine revising this regulation to a “Performance Based Rule” that places the burden of meeting these additional performance requirements on poor performers.

Changes or Additions To:

WAC 173-180-630 Class 1 facility—Prevention plan content requirements.

(10) Each plan must describe spill prevention technology currently installed and in use, including:
(g) Secondary containment, including capacity, permeability, and material design. Permeability must meet requirements in WAC 173-180-320(1)(e).

When reviewing these requirements for approval, ecology will evaluate the requirements in this subsection (10)(g)(i) through (vi) and the facility's ability to respond to an oil discharge from primary containment. The description of permeability for each secondary containment system must include the following:

- (i) Type of oil stored;**
- (ii) A calculation of a discharge of the worst case spill volume for each system;**
- (iii) Type of soil media or material used;**
- (iv) Depth to tank footing;**
- (v) Depth and distance to waters of the state; and**
- (vi) A calculation of the time in which the oil reaches the tank footing or waters of the state.**

USOR Comments on Changes to WAC 173-180-630 (10)(g)-

1.) DOE Regulatory Analysis of WAC 173-180-630 revisions - *“If this analysis identifies needed changes to secondary containment permeability, a facility may incur additional costs. These costs would vary, depending on the identified needs. If no such changes are identified, no additional costs would be incurred.”*

DOE’s regulatory analysis conducted a light labor review on the costs and effects of permeability studies on secondary containment systems, but no analysis or due diligence was completed on the costs or resources needed to ensure that all secondary containment systems can comply with the permeability requirements of WAC 170-180-630 based on any findings from permeability studies. Therefore, DOE has not performed the required due diligence to make a sound decision in relation to this regulatory change and how it will ultimately affect Class 1 facilities and has failed to outline the real world economic feasibility of these



changes.

- 2.) DOE added WAC 173-180-630 “(g) Secondary containment, including capacity, permeability, and material design Permeability must meet requirements in WAC 173-180-320(1)(e).” DOE fails to identify what permeability value is acceptable or what value represents non-compliance with the rule. DOE also fails to define what constitutes a ground penetration release from secondary containment if high permeability is a contributing factor. Is any penetration of a soil containment system a violation of this rule or is a release of material to ground water before the spill can be completely cleaned up the deciding factor of compliance? DOE needs to be more specific on what permeability (K) value is compliant for secondary containment systems.
- 3.) The timeline to comply with changes to section 173-180-630 has not been completely and thoroughly addressed by DOE. If any secondary containment systems are found to be non-compliant with the proposed changes to section 173-180-630, the resulting secondary containment upgrades could cost millions of dollars and take years to complete and bring into compliance. DOE needs to provide guidance on implementation or provide a grace period so that facilities have a realistic timeline to complete these required changes or upgrades.

Changes or Additions To:

WAC 173-180-630 Class 1 facility—Prevention plan content requirements.

173-180-630 (13) Each plan must include a detailed and comprehensive risk analysis of facility’s risk of spills to waters of the state. As part of the risk analysis, a formal process must be used to evaluate the facility based on the information required in subsections (9) through (12) of this section, the requirements in WAC 173-180-330(4), and other relevant information.

USOR Comments on Changes to WAC 173-180-630 (13)-

- 1.) The proposed rule does not contain any specific numerical reference to permeability, or criteria outlining acceptable limits or benchmarks. The impetus is put on the ability of the owner/operator to demonstrate their combined ability to respond to a spill using all aspects – including existing physical conditions, response time, available equipment, transfer pumping, etc. This is made clear in newly revised section 173-180-630(13) – Facility Spill Risk Analysis Criteria.



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USOR thanks you for the opportunity to provide the Washington Department of Ecology with insights and comments on this proposed rule, and we look forward to constructive engagement as the rulemaking process proceeds. In the meantime, please do not hesitate to contact me with any questions or if we can provide any additional information that would assist The Department of Ecology in its deliberations.

Sincerely,

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Cc: AJT, TJG, MHH

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