

U.S. Navy, Manchester Fuel Depot

Chapter 173-180 WAC incorporates by reference 40 CFR 112, Federal Oil Pollution Prevention regulations. Federal facilities in Washington State are regulated by the Environmental Protection Agency (EPA) with the rules contained in 40 CFR 112. To our knowledge the EPA has not delegated authority to the Washington State Department of Ecology, nor has the Federal government waived sovereign immunity to Washington State to allow Federal facilities to be regulated by the state under 40 CFR 112, or state rules incorporating 40 CFR 112. Washington Ecology currently conducts inspections of upland tanks, pipelines, fuel dispensing equipment and related upland facilities on Federal installations under Chapter 173-180 WAC. Due to the nature of these inspections we assume these inspections to be conducted under sections of 173-180 WAC that are incorporating 40 CFR 112 provisions. Additionally, Ecology requests reviews, and provides approval letters for, Federal Spill Prevention, Control, and Countermeasure (SPCC) Plans prepared under 40 CFR 112 regulations. As Federal facilities are already regulated by the EPA under 40 CFR 112 regulations, the Navy appears to be double regulated by the state via sections of 173-180 WAC that are incorporating 40 CFR 112 provisions. The Navy requests that the State clearly outline in the updated Chapter 173-180 WAC the authority by which it can conduct announced or unannounced compliance inspections of upland Federal fuel facilities and conduct reviews and approvals of Federal SPCC plans under sections of 173-180 WAC. For better clarity in parsing the applicability of 173-180 WAC to Federal facilities we suggest that the sections or individual provisions of 173-180 WAC incorporating 40 CFR 112 regulations be clearly identified/footnoted in the updated Chapter 173-180 WAC.