The Clean Water Act and Washington's Water Pollution Control and Oil and Hazardous Substance Spill Prevention and Response Acts

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NEBC Business & The Environment Conference

An Overview and Case Study

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Schwabe

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Overview

Oil Spill Response

- Federal and state oil pollution laws work together to plan for, prevent, respond to, and compensate for oil spills.
- The federal and state agencies with primary authority for carrying out spill response and enforcement are the **EPA**, **Coast Guard**, and **Department of Ecology**.
- The party responsible for an oil spill is liable for all of the agency costs of responding to the release and cleaning up the spilled oil, compensation for injury to resources, and penalties.

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Overview

In the event of a significant oil spill, agencies and the responsible party coordinate through the Incident Command System/Unified Command.

- Combines different federal, state, local and tribal agencies and the Responsible Party into the same organizational system to maximize coordination of spill response activities and avoid duplication of efforts.

DEPARTMENT OF ECOLOGY
State of Washington

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES COAST GUARD 1790

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Overview

Incident Command System/Unified Command.

- A Unified Command structure allows the Incident Commander position to be shared among several agencies and organizations with jurisdiction.
- In oil spills in the coastal zone, the Unified Command typically comprises the Federal On-Scene Coordinator (FOSC), the State On-Scene Coordinator(s) (SOSC), and a Responsible Party representative (RP).

DEPARTMENT OF ECOLOGY
State of Washington

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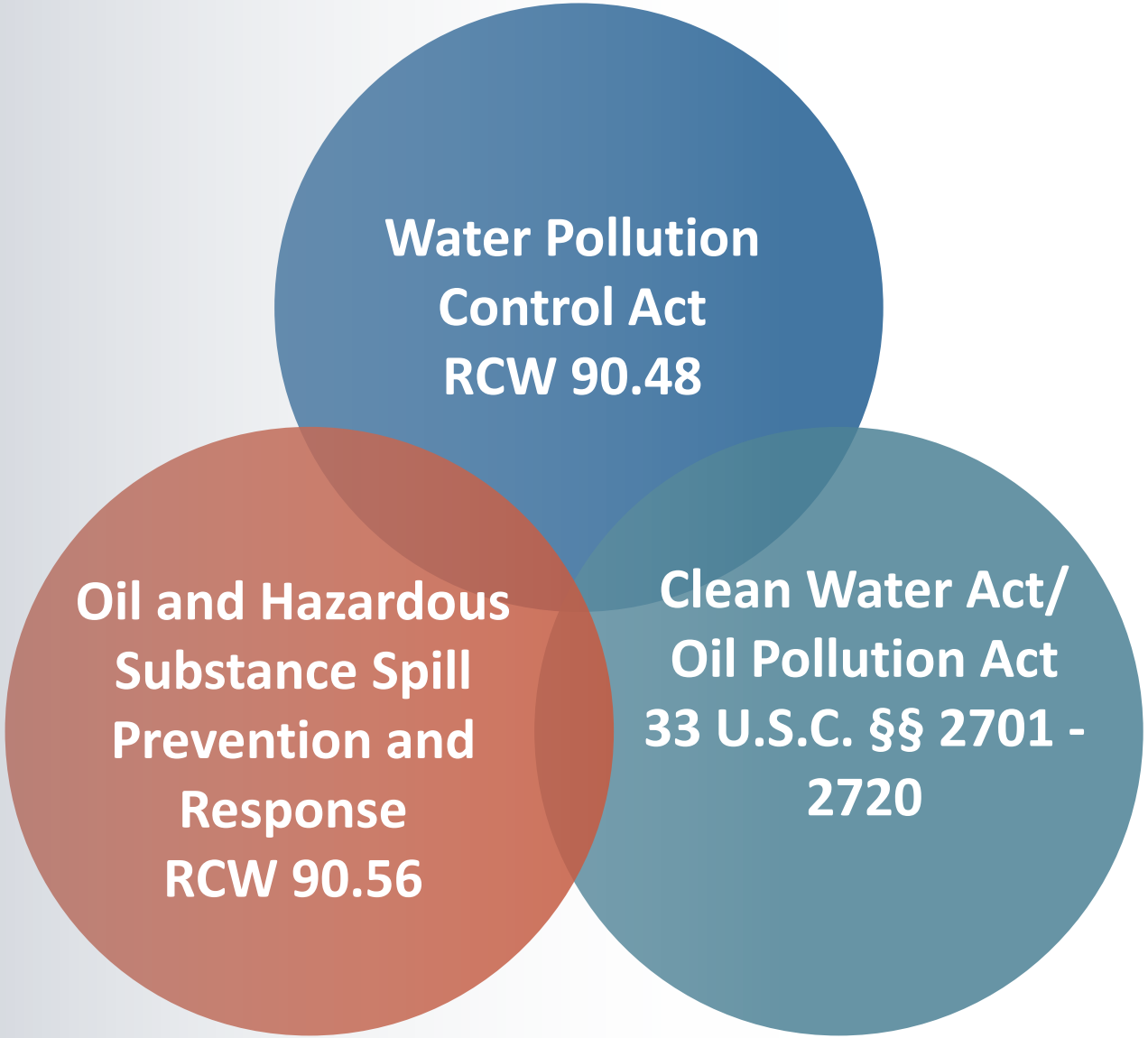
Overview

- **Oil** means oil of any kind or in any form, including, but not limited to:
  - Fats, oils, or greases of animal, fish, or marine mammal origin;
  - Vegetable oils, including oils from seeds, nuts, fruits, or kernels;
  - Other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil.

Spill Response

- Federal and state laws designed to prevent and respond to oil spills and other releases of contaminants to surface and ground water



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Exxon Valdez Oil Spill, March 24, 1989

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- Enacted in the wake of the Exxon Valdez spill in 1989
- Provided for a more robust federal response to spills, increased the liability of polluters (responsible parties) for spills, and provided for compensation for removal costs and damages caused by spills

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- Addresses pollution from oil and hazardous substance releases, providing the EPA and the U.S. Coast Guard with the authority to establish a program for preventing, preparing for, and responding to oil spills or hazardous substances that reach or may reach surface waters.

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- Designed to prepare for and respond to any oil spill affecting the inland waters of the United States.
- Civil penalties for discharges of oil or hazardous substances into navigable waters or adjoining shorelines.

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- EPA shares jurisdiction over oil and hazardous substances with the Coast Guard.
- MOUs establish guidelines for each agency's activities and, generally, allocate enforcement authority for inland spill events to the EPA and for coastal events to the Coast Guard.

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge, is liable for damages resulting from the discharged oil, and removal costs incurred by the responding agencies

Overview

Clean Water Act (CWA)/Oil Pollution Act (OPA)

- Civil penalties are authorized for up to $25,000 per day of violation
- States may impose additional liability funding mechanisms, requirements for removal, and fines and penalties for responsible parties

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Overview

Washington Water Pollution Control Act (RCW 90.48)

- One of two laws governing oil spill prevention in Washington, along with the Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)
- Prohibits the discharge of any organic or inorganic matter into waters of the state that cause pollution

Overview

Washington Water Pollution Control Act (RCW 90.48)

- Provides for a civil penalty of up to $10,000 per day for any violation of the statute, including an unlawful discharge of pollution or noncompliance with an Ecology order
- Responsible parties must compensate the state for discharges of oil in violation of RCW 90.48 and 90.56

Overview

Washington Water Pollution Control Act (RCW 90.48)

- Created a Compensation Schedule for damages for any adverse environmental, recreational, aesthetic, or other effects of a spill, taking into account such factors as the characteristic of the oil spilled, the location, and the sensitivity of the affected area; as well as the actions taken by the responsible party

Overview

Washington Water Pollution Control Act (RCW 90.48)

- Compensation is assessed for the cost to restore any damaged resource to its pre-spill condition and compensate for the lost value incurred during the period between injury and restoration.

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Overview

Washington Water Pollution Control Act (RCW 90.48)

- Restoration includes the cost to restock fish, replenish or replace injured resources, and otherwise restore the state's stream, lake, or other waters, including any estuary, ocean area, submerged lands, shoreline, bank, or other adjoining lands to its pre-spill condition.

Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Second of two laws governing oil spill prevention in Washington, along with RCW 90.48
- Reflects the determination of the legislature that preventing spills is the best way to protect the marine resources of the state and the objective of the state to achieve a zero spills strategy

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Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Liability for the state's response costs, plus penalties (in addition to response costs for EPA and Coast Guard, plus damages and penalties, under OPA)

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Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Duty to report to the Coast Guard's National Response Center and the Washington Division of Emergency Management any discharge of oil or hazardous substances to the state's waters.
- The statute, by its plain language and the Pollution Control Hearings Board's interpretation, **requires notification to both entities even if state or federal agencies have responded** to the spill or are otherwise aware of it.

Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Duty to immediately collect and remove any oil or hazardous substances spilled, or all practicable actions to contain, treat and disperse if collection and removal is not feasible.
  - In calculating penalties and natural resource damages, one of the factors considered is the response action taken by the responsible party - a responsible party may receive “credit” for oil that is recovered **within the first 24 hours after a spill**.

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Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Enhanced penalties can be imposed for negligent, reckless, or intentional spills.
  - Up to $100,000 for a negligent spill and up to $500,000 for a reckless or intentional spill.
- A penalty is imposed for each day the spill poses risks to the environment, as determined by Ecology.
- The penalty is in addition to penalties imposed under RCW 90.48; it is a supplement to the strict liability for the spill itself under RCW 90.48 or RCW 90.56.

Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- In addition to liability for penalties and response costs, also strictly liable for damages to property (public or private) and natural resources.
- Costs reimbursed to the state by the responsible party are deposited to the Oil Spill Response Account to pay for costs associated with spill response.

Overview

Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56)

- Take rapid action to reduce damages owed
  - Quickly remove oil from the water
    - 24 hours for non-persistent oil
    - 48 hours for persistent oil
    - Effectively contain oil (using booms, berms, etc.)
    - Keep oil off shorelines
- Documentation – damages will only be reduced if the spiller properly documents the actions taken, and provides the data to the Ecology On-Scene Coordinator (who will verify the accuracy of the data)

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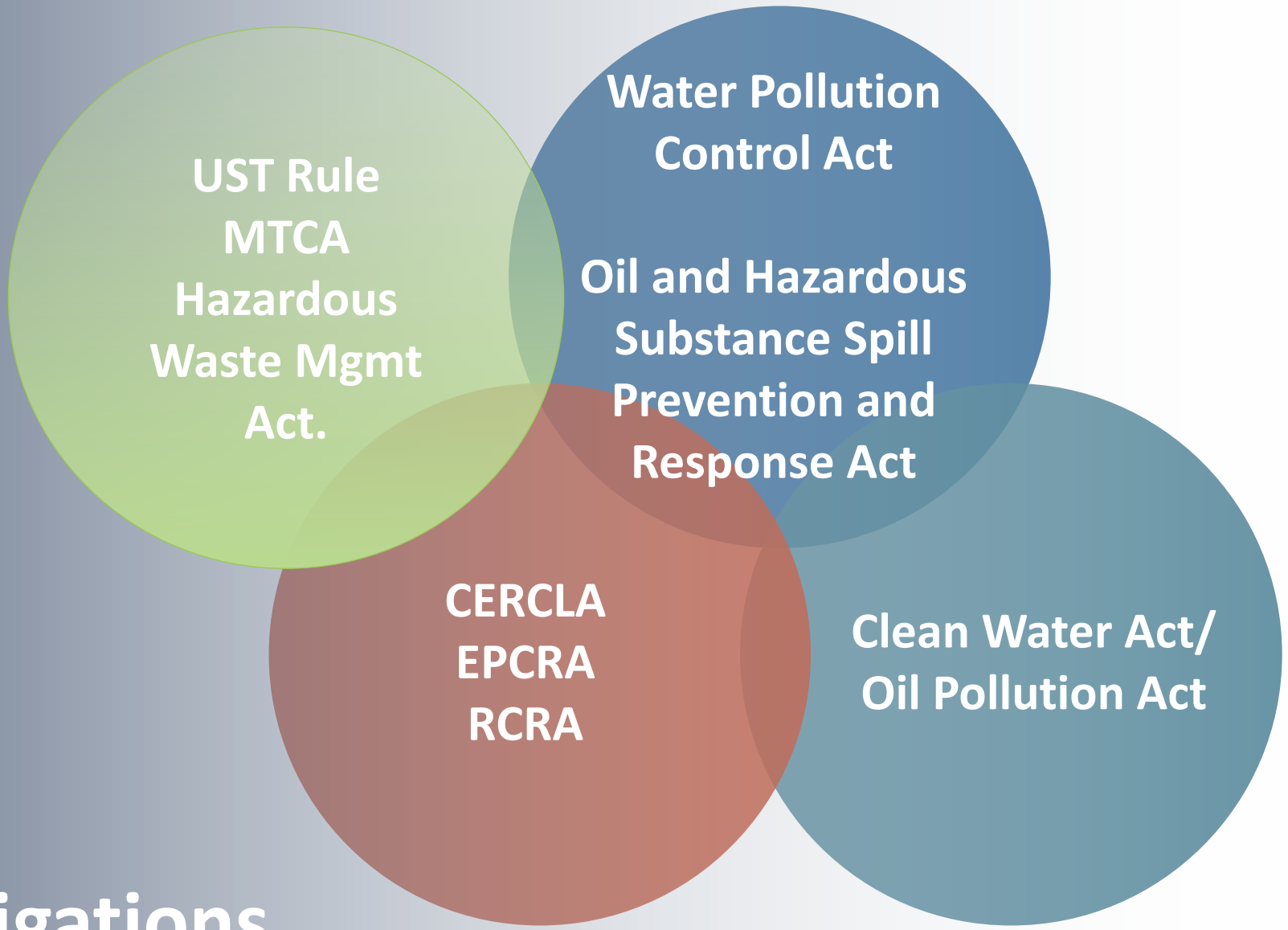
Spill Reporting Obligations



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Overview

Type of Spill	Reporting Requirement	Statute / Regulation
Oil and hazardous substance spills to water	Report immediately	Clean Water Act / Oil Pollution Act Washington Water Pollution Control Act Oil and Hazardous Substance Spill Prevention and Response Act

Overview

Type of Spill	Reporting Requirement	Statute / Regulation
Release of hazardous or extremely hazardous substance	Report immediately	CERCLA §103 40 CFR Part 302 Emergency Planning and Community Right to Know Act (EPCRA) §304 MTCA WAC 173-340-300

Overview

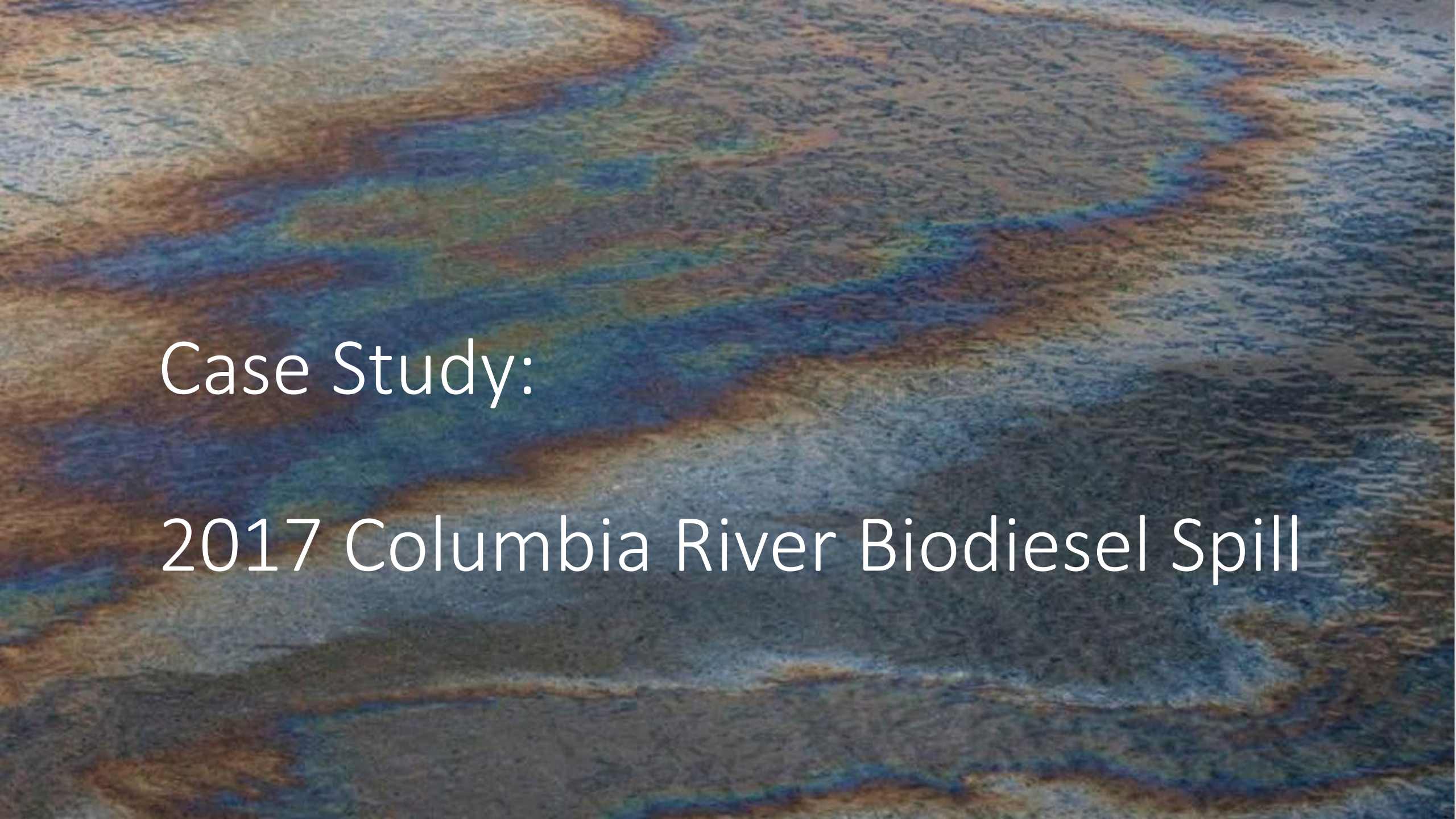
Type of Spill	Reporting Requirement	Statute / Regulation
Dangerous waste	Report immediately	RCRA 42 U.S.C. Chapter 8 40 CFR §256.56 Hazardous Waste Management Act RCW 70A.300 WAC 173-303-145 WAC 173-303-360(2)(d)

Overview

Type of Spill	Reporting Requirement	Statute / Regulation
Leaking underground storage tanks	Report within 24 hours	MTCA WAC 173-340-300 Underground Storage Tank Rule (RCW 70A.355), WAC 173-340-450

Overview

Type of Spill	Reporting Requirement	Statute / Regulation
Oil spills to ground	Report within 90 days	MTCA WAC 173-340-300



Case Study:

2017 Columbia River Biodiesel Spill

Case Study

2017 Columbia River Biodiesel Spill

Friday, March 17, 2017

8:00 p.m., Wenatchee Fire reports a “large mystery sheen” on the Columbia River just south of Wenatchee City Center, with strong diesel odor. Source of the sheen and odor are unknown.

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Case Study

2017 Columbia River Biodiesel Spill

Saturday, March 18, 2017

By 4:45 a.m. Ecology's Central Regional Office has arrived to the scene to conduct a shore-side assessment and to help determine the source Saturday morning.

Ecology and Chelan PUD both put boats on the water Saturday morning to begin on-water observations and to continue work identifying a source.

Case Study

2017 Columbia River Biodiesel Spill

Saturday, March 18, 2017

An oil sheen remained in the river, approximately 50 feet from the west shoreline, between Thurston and Chehalis Streets in Wenatchee.

The continuous sheen spreads to approximately 20 feet wide, and extends approximately 1 mile down river.

Responders are reporting a diesel odor in the area. There have been no observations of wildlife directly impacted by oil.

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Case Study

2017 Columbia River Biodiesel Spill

Saturday, March 18, 2017

A Unified Command has been formed with representatives from Ecology, the EPA, and Chelan Emergency Management, who are supported by a number of other federal, state, and local agencies.

The Washington State Patrol, City of Wenatchee, and Chelan County Fire District 1 have also provided on-scene resources to support the spill.

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Case Study

2017 Columbia River Biodiesel Spill

Saturday, March 18, 2017

Ecology has mobilized eight Response Team members to:

- Investigate the source of the oil.
- Attempt to contain and recover the leaking oil.
- Protect sensitive environmental, cultural, and economic resources.
- Assess shoreline impacts.
- Determine if wildlife impacts have occurred.
- Keep the public informed.

Case Study

2017 Columbia River Biodiesel Spill

Saturday, March 18, 2017

Ecology continues to inspect the shoreline to determine the source of the sheen.

The Washington Department of Fish and Wildlife begins assisting with evaluation of impacts.

Later in the afternoon, an underwater camera is deployed in the Columbia at Wenatchee to find the source of the oil sheen.

Case Study

2017 Columbia River Biodiesel Spill

Sunday, March 19, 2017

Responders continue to address the sheen on the Columbia River in the Wenatchee area.

Chelan County Emergency Management places a boom on the river to contain the sheen.

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Case Study

2017 Columbia River Biodiesel Spill

Monday, March 20, 2017

Water samples are sent to the lab to determine the type of product in the river.

Ecology continues to investigate the source of the sheen, deploying a side-scanning underwater sonar device and an underwater camera.

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Case Study

2017 Columbia River Biodiesel Spill

Monday, March 20, 2017

An odor of diesel remains in the area and there is a light rainbow sheen inside the boom.

Minimal to light staining of the absorbent materials that have been in the river for 24 hours.

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Case Study

2017 Columbia River Biodiesel Spill

Tuesday, March 21, 2017

Ecology continues its investigation to identify and block the source of the spill.

Ecology contractor Global Diving & Salvage, Inc. deploys a side-scanning underwater sonar unit to map the underwater terrain.

Chelan PUD provides security surveillance video footage from numerous cameras it has pointed at the river. The footage appears to show that the sheen began passing through the area on March 15, two days before it was initially reported.

River flows are up.

Case Study

2017 Columbia River Biodiesel Spill

Wednesday, March 22, 2017

State laboratory tests reveal that the substance creating an oil sheen in Columbia River at Wenatchee is biodiesel.

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Case Study

2017 Columbia River Biodiesel Spill

Thursday, March 23, 2017

Ecology continues its aggressive investigation to find the source of the spill, collecting additional samples from the river and from possible sources to look for a potential match.

Chelan PUD provides historical maps of the area. The maps date to the 1930s and provide a detailed reference of the local infrastructure at that time, including petroleum tanks and storm systems.

Case Study

2017 Columbia River Biodiesel Spill

Thursday, March 23, 2017

Ecology continues to monitor the oil-containment boom from the shore and water today.

Some of the oil continues to escape from the containment area due to high river flow.

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Case Study

2017 Columbia River Biodiesel Spill

Friday, March 24, 2017

Ecology focuses on Coleman Oil Company's facility, which handles biodiesel and renewable diesel.

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Case Study

2017 Columbia River Biodiesel Spill

Friday, March 24 – Sunday, March 26, 2017

Coleman Oil's contractor performs a line tightness test on the underground lines used to transfer fuel from ASTs at Tank Farm A to the truck loading rack and two of them would not hold pressure: the R99 Renewable Diesel fuel line and the B75 biodiesel fuel line.

Review of Coleman Oil inventory records indicated that the release was most likely from the R99 Renewable Diesel fuel line, a total of 4,543 gallons.

Case Study

2017 Columbia River Biodiesel Spill

Friday, March 24 – Sunday, March 26, 2017

R99 renewable diesel is a red-dyed product very similar in color to traditional diesel fuels, dyed for identification for off-road use.

Coleman Oil Company works cooperatively with state and federal officials to excavate parts of the site, discovering underground pipes leaking R99 renewable diesel.

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2017 Columbia River Biodiesel Spill

Friday, March 24 – Sunday, March 26, 2017

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Case Study

2017 Columbia River Biodiesel Spill

Monday, March 27, 2017

Ecology reports: "The samples in the soil and the pipes matched the samples we've collected from the river." . . . "We appreciate the company helping us locate the exact source of the leak."

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Case Study

2017 Columbia River Biodiesel Spill

March 27 – April 4, 2017

Coleman Oil takes over daily maintenance and monitoring of the boom, removal and replacement of sorbent materials, and reporting to Ecology (starting 3/26/2017).

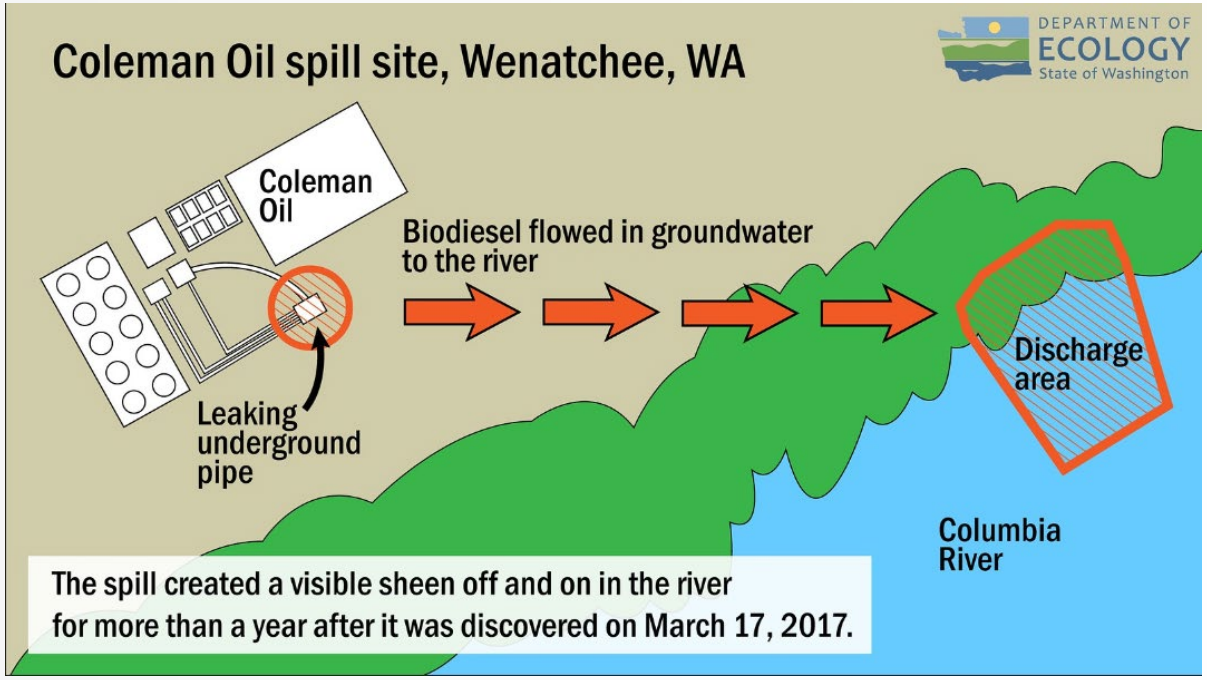
Coleman Oil removes all of the fuel from the part of its site that is the source of the R99 release, along with the truck fuel loading rack, associated piping, and the eight 2,100-gallon ASTs in Tank Farm B.

Case Study

2017 Columbia River Biodiesel Spill

March 27 – April 4, 2017

Coleman Oil excavates and inspects its underground pipes and finds no more leaks. The R99 released from the tanks over time is what is continuing to leak into the river.



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Case Study

2017 Columbia River Biodiesel Spill

March 27 – April 4, 2017

Coleman Oil hires an environmental consultant to help develop and submit a cleanup plan to Ecology detailing how it will stop the release of oil into the river, identify its source, and contain and recover oil that is in the water.

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Case Study

2017 Columbia River Biodiesel Spill

April - July, 2017

Coleman Oil completely decommissions its bulk plant and excavates and removes 741.43 tons of R99-contaminated soil located less than 10’ below ground surface (and thus above groundwater - preventing the spill of 703 gallons of R99 to groundwater).

Coleman Oil demolishes and removes all buildings on the site, and installs two dozen monitoring and extraction wells.

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Case Study

2017 Columbia River Biodiesel Spill

Maintenance and monitoring of the boom and sorbent materials continues for 2 years.

As of June 30, 2019, Coleman Oil had recovered 2,439.76 gallons of R99 renewable biodiesel from the environment:

- 214.10 gallons from the Columbia River
- 241.66 gallons from monitoring wells, sumps, and oil water separators
- 1,984 gallons in R99-contaminated soil

Case Study

2017 Columbia River Biodiesel Spill

Coleman Oil Response Costs (through April 2019)

- Coleman Oil's costs: $3.3 million
- USGC Cost Recovery: $15k
- Ecology Order for Reimbursement: $225k

Case Study

2017 Columbia River Biodiesel Spill

In 2019, Coleman Oil settled its liability to the state for spill penalties and natural resource injury through a payment of $65k to Ecology to be used for habitat restoration efforts. Coleman Oil also agreed to perform specific facility upgrades within two years and to implement additional staff training.

Coleman Oil also settled its liability to the EPA through two administrative Consent Agreements to address a federal spill penalty ($159k) and noncompliance with the Spill Prevention, Control, and Countermeasure (SPCC) and the Facility Response Plan (FRP) rules ($133k).

Questions?

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Connie Sue's environmental practice focuses primarily on hazardous substance contamination.

Spills happen, and when they do, Connie Sue guides clients through emergency spill response, investigations, remediation, regulatory compliance and reporting, enforcement actions, and citizen suits. She also helps clients to prevent or reduce environmental liabilities through environmental due diligence, contractual allocations of liability, and negotiated or litigated resolutions.

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