
SUBSTITUTE SENATE BILL 5123

State of Washington

65th Legislature

2017 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Warnick and Chase)

READ FIRST TIME 02/10/17.

1 AN ACT Relating to exempting short-line railroads that haul
2 nonfuel oils from oil spill contingency planning requirements; and
3 amending RCW 90.56.210.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to
6 read as follows:

7 (1) Each onshore and offshore facility shall have a contingency
8 plan for the containment and cleanup of oil spills from the facility
9 into the waters of the state and for the protection of fisheries and
10 wildlife, shellfish beds, natural resources, and public and private
11 property from such spills. The department shall by rule adopt and
12 periodically revise standards for the preparation of contingency
13 plans. The department shall require contingency plans, at a minimum,
14 to meet the following standards:

15 (a) Include full details of the method of response to spills of
16 various sizes from any facility which is covered by the plan;

17 (b) Be designed to be capable in terms of personnel, materials,
18 and equipment, of promptly and properly, to the maximum extent
19 practicable, as defined by the department removing oil and minimizing
20 any damage to the environment resulting from a worst case spill;

1 (c) Provide a clear, precise, and detailed description of how the
2 plan relates to and is integrated into relevant contingency plans
3 which have been prepared by cooperatives, ports, regional entities,
4 the state, and the federal government;

5 (d) Provide procedures for early detection of oil spills and
6 timely notification of such spills to appropriate federal, state, and
7 local authorities under applicable state and federal law;

8 (e) State the number, training preparedness, and fitness of all
9 dedicated, prepositioned personnel assigned to direct and implement
10 the plan;

11 (f) Incorporate periodic training and drill programs to evaluate
12 whether personnel and equipment provided under the plan are in a
13 state of operational readiness at all times;

14 (g) Describe important features of the surrounding environment,
15 including fish and wildlife habitat, shellfish beds, environmentally
16 and archaeologically sensitive areas, and public facilities. The
17 departments of ecology, fish and wildlife, and natural resources, and
18 the department of archaeology and historic preservation, upon
19 request, shall provide information that they have available to assist
20 in preparing this description. The description of archaeologically
21 sensitive areas shall not be required to be included in a contingency
22 plan until it is reviewed and updated pursuant to subsection (9) of
23 this section;

24 (h) State the means of protecting and mitigating effects on the
25 environment, including fish, shellfish, marine mammals, and other
26 wildlife, and ensure that implementation of the plan does not pose
27 unacceptable risks to the public or the environment;

28 (i) Provide arrangements for the prepositioning of oil spill
29 containment and cleanup equipment and trained personnel at strategic
30 locations from which they can be deployed to the spill site to
31 promptly and properly remove the spilled oil;

32 (j) Provide arrangements for enlisting the use of qualified and
33 trained cleanup personnel to implement the plan;

34 (k) Provide for disposal of recovered spilled oil in accordance
35 with local, state, and federal laws;

36 (l) Until a spill prevention plan has been submitted pursuant to
37 RCW 90.56.200, state the measures that have been taken to reduce the
38 likelihood that a spill will occur, including but not limited to,
39 design and operation of a facility, training of personnel, number of
40 personnel, and backup systems designed to prevent a spill;

1 (m) State the amount and type of equipment available to respond
2 to a spill, where the equipment is located, and the extent to which
3 other contingency plans rely on the same equipment; and

4 (n) If the department has adopted rules permitting the use of
5 dispersants, the circumstances, if any, and the manner for the
6 application of the dispersants in conformance with the department's
7 rules.

8 (2)(a) The following shall submit contingency plans to the
9 department within six months after the department adopts rules
10 establishing standards for contingency plans under subsection (1) of
11 this section:

12 (i) Onshore facilities capable of storing one million gallons or
13 more of oil; and

14 (ii) Offshore facilities.

15 (b) Contingency plans for all other onshore and offshore
16 facilities shall be submitted to the department within eighteen
17 months after the department has adopted rules under subsection (1) of
18 this section. The department may adopt a schedule for submission of
19 plans within the eighteen-month period.

20 (3) The department by rule shall determine the contingency plan
21 requirements for railroads transporting oil in bulk. A contingency
22 plan under this subsection is not required for transport by a class
23 III railroad, as defined by the United States surface transportation
24 board as of the effective date of this section, of oil in bulk that
25 is not crude oil or is not a refined petroleum product used for fuel.
26 A contingency plan is required for the bulk transport by a class III
27 railroad of crude oil or a refined petroleum product used for fuel.
28 Federal oil spill response plans created pursuant to 33 U.S.C. Sec.
29 1321 may be submitted in lieu of contingency plans until state rules
30 are adopted.

31 (4)(a) The owner or operator of a facility shall submit the
32 contingency plan for the facility.

33 (b) A person who has contracted with a facility to provide
34 containment and cleanup services and who meets the standards
35 established pursuant to RCW 90.56.240, may submit the plan for any
36 facility for which the person is contractually obligated to provide
37 services. Subject to conditions imposed by the department, the person
38 may submit a single plan for more than one facility.

39 (5) A contingency plan prepared for an agency of the federal
40 government or another state that satisfies the requirements of this

1 section and rules adopted by the department may be accepted by the
2 department as a contingency plan under this section. The department
3 shall ensure that to the greatest extent possible, requirements for
4 contingency plans under this section are consistent with the
5 requirements for contingency plans under federal law.

6 (6) In reviewing the contingency plans required by this section,
7 the department shall consider at least the following factors:

8 (a) The adequacy of containment and cleanup equipment, personnel,
9 communications equipment, notification procedures and call down
10 lists, response time, and logistical arrangements for coordination
11 and implementation of response efforts to remove oil spills promptly
12 and properly and to protect the environment;

13 (b) The nature and amount of vessel traffic within the area
14 covered by the plan;

15 (c) The volume and type of oil being transported within the area
16 covered by the plan;

17 (d) The existence of navigational hazards within the area covered
18 by the plan;

19 (e) The history and circumstances surrounding prior spills of oil
20 within the area covered by the plan;

21 (f) The sensitivity of fisheries, shellfish beds, and wildlife
22 and other natural resources within the area covered by the plan;

23 (g) Relevant information on previous spills contained in on-scene
24 coordinator reports prepared by the department; and

25 (h) The extent to which reasonable, cost-effective measures to
26 prevent a likelihood that a spill will occur have been incorporated
27 into the plan.

28 (7) The department shall approve a contingency plan only if it
29 determines that the plan meets the requirements of this section and
30 that, if implemented, the plan is capable, in terms of personnel,
31 materials, and equipment, of removing oil promptly and properly and
32 minimizing any damage to the environment.

33 (8) The approval of the contingency plan shall be valid for five
34 years. Upon approval of a contingency plan, the department shall
35 provide to the person submitting the plan a statement indicating that
36 the plan has been approved, the facilities or vessels covered by the
37 plan, and other information the department determines should be
38 included.

39 (9) An owner or operator of a facility shall notify the
40 department in writing immediately of any significant change of which

1 it is aware affecting its contingency plan, including changes in any
2 factor set forth in this section or in rules adopted by the
3 department. The department may require the owner or operator to
4 update a contingency plan as a result of these changes.

5 (10) The department by rule shall require contingency plans to be
6 reviewed, updated, if necessary, and resubmitted to the department at
7 least once every five years.

8 (11) Approval of a contingency plan by the department does not
9 constitute an express assurance regarding the adequacy of the plan
10 nor constitute a defense to liability imposed under this chapter or
11 other state law.

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