
SENATE BILL 5137

State of Washington

65th Legislature

2017 Regular Session

By Senator Warnick

1 AN ACT Relating to limiting oil spill contingency planning
2 requirements to those railroads that haul oils used as fuel; amending
3 RCW 90.56.210; and reenacting and amending RCW 90.56.010.

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

5 **Sec. 1.** RCW 90.56.010 and 2015 c 274 s 3 are each reenacted and
6 amended to read as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Best achievable protection" means the highest level of
10 protection that can be achieved through the use of the best
11 achievable technology and those staffing levels, training procedures,
12 and operational methods that provide the greatest degree of
13 protection achievable. The director's determination of best
14 achievable protection shall be guided by the critical need to protect
15 the state's natural resources and waters, while considering (a) the
16 additional protection provided by the measures; (b) the technological
17 achievability of the measures; and (c) the cost of the measures.

18 (2) "Best achievable technology" means the technology that
19 provides the greatest degree of protection taking into consideration
20 (a) processes that are being developed, or could feasibly be
21 developed, given overall reasonable expenditures on research and

1 development, and (b) processes that are currently in use. In
2 determining what is best achievable technology, the director shall
3 consider the effectiveness, engineering feasibility, and commercial
4 availability of the technology.

5 (3) "Board" means the pollution control hearings board.

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

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

13 (6) "Committee" means the preassessment screening committee
14 established under RCW 90.48.368.

15 (7) "Covered vessel" means a tank vessel, cargo vessel, or
16 passenger vessel.

17 (8) "Crude oil" means any naturally occurring hydrocarbons coming
18 from the earth that are liquid at twenty-five degrees Celsius and one
19 atmosphere of pressure including, but not limited to, crude oil,
20 bitumen and diluted bitumen, synthetic crude oil, and natural gas
21 well condensate.

22 (9) "Department" means the department of ecology.

23 (10) "Director" means the director of the department of ecology.

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

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

32 (b) For the purposes of oil spill contingency planning in RCW
33 90.56.210, facility also means a railroad that is not owned by the
34 state that transports oil as bulk cargo.

35 (c) Except as provided in (b) of this subsection, a facility does
36 not include any: (i) Railroad car, motor vehicle, or other rolling
37 stock while transporting oil over the highways or rail lines of this
38 state; (ii) underground storage tank regulated by the department or a
39 local government under chapter 90.76 RCW; (iii) motor vehicle motor
40 fuel outlet; (iv) facility that is operated as part of an exempt

1 agricultural activity as provided in RCW 82.04.330; or (v) marine
2 fuel outlet that does not dispense more than three thousand gallons
3 of fuel to a ship that is not a covered vessel, in a single
4 transaction.

5 (13) "Fund" means the state coastal protection fund as provided
6 in RCW 90.48.390 and 90.48.400.

7 (14) "Having control over oil" shall include but not be limited
8 to any person using, storing, or transporting oil immediately prior
9 to entry of such oil into the waters of the state, and shall
10 specifically include carriers and bailees of such oil.

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

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

19 (17) "Necessary expenses" means the expenses incurred by the
20 department and assisting state agencies for (a) investigating the
21 source of the discharge; (b) investigating the extent of the
22 environmental damage caused by the discharge; (c) conducting actions
23 necessary to clean up the discharge; (d) conducting predamage and
24 damage assessment studies; and (e) enforcing the provisions of this
25 chapter and collecting for damages caused by a discharge.

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

30 (19) "Oil" or "oils" means oil of any kind that is liquid at
31 twenty-five degrees Celsius and one atmosphere of pressure and any
32 fractionation thereof, including, but not limited to, crude oil,
33 bitumen, synthetic crude oil, natural gas well condensate, petroleum,
34 gasoline, fuel oil, diesel oil, biological oils and blends, oil
35 sludge, oil refuse, and oil mixed with wastes other than dredged
36 spoil. Oil does not include any substance listed in Table 302.4 of 40
37 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the
38 federal comprehensive environmental response, compensation, and
39 liability act of 1980, as amended by P.L. 99-499.

1 (20) "Onshore facility" means any facility any part of which is
2 located in, on, or under any land of the state, other than submerged
3 land, that because of its location, could reasonably be expected to
4 cause substantial harm to the environment by discharging oil into or
5 on the navigable waters of the state or the adjoining shorelines.

6 (21)(a) "Owner or operator" means (i) in the case of a vessel,
7 any person owning, operating, or chartering by demise, the vessel;
8 (ii) in the case of an onshore or offshore facility, any person
9 owning or operating the facility; and (iii) in the case of an
10 abandoned vessel or onshore or offshore facility, the person who
11 owned or operated the vessel or facility immediately before its
12 abandonment.

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

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

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

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

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

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

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

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

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

37 (28) "Worst case spill" means: (a) In the case of a vessel, a
38 spill of the entire cargo and fuel of the vessel complicated by
39 adverse weather conditions; and (b) in the case of an onshore or

1 offshore facility, the largest foreseeable spill in adverse weather
2 conditions.

3 (29) "Food grade vegetable oil" means a nonpetroleum oil of fat
4 or vegetable origin that is intended for human or animal consumption
5 as food. Food grade vegetable oil includes but is not limited to oils
6 and fats derived from plant seeds, nuts, fruits, and kernels. Food
7 grade vegetable oil does not include biodiesel, biodiesel blends, or
8 similar plant-based oils that have undergone processing for use as a
9 fuel.

10 **Sec. 2.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to
11 read as follows:

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

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

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

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

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

33 (e) State the number, training preparedness, and fitness of all
34 dedicated, prepositioned personnel assigned to direct and implement
35 the plan;

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

1 (g) Describe important features of the surrounding environment,
2 including fish and wildlife habitat, shellfish beds, environmentally
3 and archaeologically sensitive areas, and public facilities. The
4 departments of ecology, fish and wildlife, and natural resources, and
5 the department of archaeology and historic preservation, upon
6 request, shall provide information that they have available to assist
7 in preparing this description. The description of archaeologically
8 sensitive areas shall not be required to be included in a contingency
9 plan until it is reviewed and updated pursuant to subsection (9) of
10 this section;

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

15 (i) Provide arrangements for the repositioning of oil spill
16 containment and cleanup equipment and trained personnel at strategic
17 locations from which they can be deployed to the spill site to
18 promptly and properly remove the spilled oil;

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

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

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

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

31 (n) If the department has adopted rules permitting the use of
32 dispersants, the circumstances, if any, and the manner for the
33 application of the dispersants in conformance with the department's
34 rules.

35 (2)(a) The following shall submit contingency plans to the
36 department within six months after the department adopts rules
37 establishing standards for contingency plans under subsection (1) of
38 this section:

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

1 (ii) Offshore facilities.

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

7 (3) The department by rule shall determine the contingency plan
8 requirements for railroads transporting oil in bulk. A contingency
9 plan under this subsection is not required for railroad transport of
10 food grade vegetable oil. Federal oil spill response plans created
11 pursuant to 33 U.S.C. Sec. 1321 may be submitted in lieu of
12 contingency plans until state rules are adopted.

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

15 (b) A person who has contracted with a facility to provide
16 containment and cleanup services and who meets the standards
17 established pursuant to RCW 90.56.240, may submit the plan for any
18 facility for which the person is contractually obligated to provide
19 services. Subject to conditions imposed by the department, the person
20 may submit a single plan for more than one facility.

21 (5) A contingency plan prepared for an agency of the federal
22 government or another state that satisfies the requirements of this
23 section and rules adopted by the department may be accepted by the
24 department as a contingency plan under this section. The department
25 shall ensure that to the greatest extent possible, requirements for
26 contingency plans under this section are consistent with the
27 requirements for contingency plans under federal law.

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

30 (a) The adequacy of containment and cleanup equipment, personnel,
31 communications equipment, notification procedures and call down
32 lists, response time, and logistical arrangements for coordination
33 and implementation of response efforts to remove oil spills promptly
34 and properly and to protect the environment;

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

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

39 (d) The existence of navigational hazards within the area covered
40 by the plan;

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

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

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

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

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

15 (8) The approval of the contingency plan shall be valid for five
16 years. Upon approval of a contingency plan, the department shall
17 provide to the person submitting the plan a statement indicating that
18 the plan has been approved, the facilities or vessels covered by the
19 plan, and other information the department determines should be
20 included.

21 (9) An owner or operator of a facility shall notify the
22 department in writing immediately of any significant change of which
23 it is aware affecting its contingency plan, including changes in any
24 factor set forth in this section or in rules adopted by the
25 department. The department may require the owner or operator to
26 update a contingency plan as a result of these changes.

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

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

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