SUBSTITUTE SENATE BILL 5676

Chapter 78, Laws of 2005

59th Legislature
2005 Regular Session

OIL SPILL MANAGEMENT--SHELLFISH BEDS

EFFECTIVE DATE: 7/24/05

Passed by the Senate March 8, 2005
YEAS 47  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House April 5, 2005
YEAS 93  NAYS 1

FRANK CHOPP
Speaker of the House of Representatives

Approved April 18, 2005.

CERTIFICATE
I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5676 as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN
Secretary

Approved April 18, 2005.

CHRISTINE GREGOIRE
Governor of the State of Washington

FILED
April 18, 2005 - 2:02 p.m.

Secretary of State
State of Washington
AN ACT Relating to oil spill management; and amending RCW 90.56.210 and 88.46.060.

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

Sec. 1. RCW 90.56.210 and 2000 c 69 s 20 are each amended to read as follows:

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

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

(b) Be designed to be capable in terms of personnel, materials, and equipment, of promptly and properly, to the maximum extent practicable, as defined by the department removing oil and minimizing any damage to the environment resulting from a worst case spill;
(c) Provide a clear, precise, and detailed description of how the plan relates to and is integrated into relevant contingency plans which have been prepared by cooperatives, ports, regional entities, the state, and the federal government;

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Offshore facilities.

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

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

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

(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.
In reviewing the contingency plans required by this section, the department shall consider at least the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. RCW 88.46.060 and 2000 c 69 s 6 are each amended to read as follows:

(1) Each covered vessel shall have a contingency plan for the containment and cleanup of oil spills from the covered vessel into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

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

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

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

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

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

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

(g) Describe important features of the surrounding environment,
including fish and wildlife habitat, shellfish beds, environmentally
and archaeologically sensitive areas, and public facilities. The
departments of ecology, fish and wildlife, and natural resources, and
the office of archaeology and historic preservation, upon request,
shall provide information that they have available to assist in
preparing this description. (If the office of marine safety adopted
rules for contingency plans prior to July 1, 1992, the description of
archaeologically sensitive areas shall only be required when the
department revises the rules for contingency plans after July 1,
1992.) The description of archaeologically sensitive areas shall not
be required to be included in a contingency plan until it is reviewed
and updated pursuant to subsection (9) of this section;

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

(i) Establish guidelines for the use of equipment by the crew of a
vessel to minimize vessel damage, stop or reduce any spilling from the
vessel, and, only when appropriate and only when vessel safety is
assured, contain and clean up the spilled oil;

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

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

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

(m) Until a spill prevention plan has been submitted pursuant to
RCW 88.46.040, state the measures that have been taken to reduce the
likelihood that a spill will occur, including but not limited to,
design and operation of a vessel, training of personnel, number of
personnel, and backup systems designed to prevent a spill;

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

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

(2)(a) The owner or operator of a tank vessel of three thousand
gross tons or more shall submit a contingency plan to the department
within six months after the department adopts rules establishing
standards for contingency plans under subsection (1) of this section.

(b) Contingency plans for all other covered vessels shall be
submitted to the department within eighteen months after the department
has adopted rules under subsection (1) of this section. The department
may adopt a schedule for submission of plans within the eighteen-month
period.

(3)(a) The owner or operator of a tank vessel or of the facilities
at which the vessel will be unloading its cargo, or a Washington state
nonprofit corporation established for the purpose of oil spill response
and contingency plan coverage and of which the owner or operator is a
member, shall submit the contingency plan for the tank vessel. Subject
to conditions imposed by the department, the owner or operator of a
facility may submit a single contingency plan for tank vessels of a
particular class that will be unloading cargo at the facility.

(b) The contingency plan for a cargo vessel or passenger vessel may
be submitted by the owner or operator of the cargo vessel or passenger
vessel, by the agent for the vessel resident in this state, or by a
Washington state nonprofit corporation established for the purpose of
oil spill response and contingency plan coverage and of which the owner
or operator is a member. Subject to conditions imposed by the
department, the owner, operator, or agent may submit a single
contingency plan for cargo vessels or passenger vessels of a particular
class.

(c) A person who has contracted with a covered vessel to provide
containment and cleanup services and who meets the standards
established pursuant to RCW 90.56.240, may submit the plan for any
covered vessel for which the person is contractually obligated to
provide services. Subject to conditions imposed by the department, the
person may submit a single plan for more than one covered vessel.
(4) A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this section and rules adopted by the department may be accepted by the department as a contingency plan under this section. The department shall (ensure) ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law.

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

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

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

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

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

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

(f) Relevant information on previous spills contained in on-scene coordinator reports prepared by the director; and

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

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

(7) The approval of the contingency plan shall be valid for five years. Upon approval of a contingency plan, the department shall provide to the person submitting the plan a statement indicating that
the plan has been approved, the vessels covered by the plan, and other
information the department determines should be included.

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

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

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

Passed by the Senate March 8, 2005.
Passed by the House April 5, 2005.
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