
SECOND SUBSTITUTE HOUSE BILL 3112

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Cooper and D. Simpson)

READ FIRST TIME 02/10/04.

1 AN ACT Relating to marine fuel facilities; amending RCW 90.56.200
2 and 90.56.210; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
5 importance of prevention in obtaining the goal of zero oil spills to
6 waters of the state. The legislature also recognizes that the
7 regulation of oil and fuel transfers on or near waters of the state
8 vary depending on many factors including the type of facility or
9 equipment that is used, the type of products being transferred, where
10 the transfer takes place, and the type of vessels involved in the
11 transfer. The legislature therefore finds that the department of
12 ecology shall initiate a review of the current statewide marine fueling
13 practices for covered vessels and ships as those terms are defined in
14 RCW 88.46.010.

15 (2) The department of ecology shall work with stakeholders to
16 develop a report describing:

17 (a) The types of fueling practices being employed by covered
18 vessels and ships;

1 (b) The current spill prevention planning requirements that are
2 applicable under state and federal law for covered vessels and ships;
3 and

4 (c) The current spill response requirements under state and federal
5 law for covered vessels and ships.

6 (3) The department of ecology shall report recommendations for
7 regulatory improvements for covered vessel and ship fueling. These
8 recommendations must include any new authorities that the department of
9 ecology believes are necessary to establish a protective regulatory
10 system for the fueling of covered vessels and ships. The department of
11 ecology shall consider any applicable federal requirements and the
12 state's desire to not duplicate federal vessel fueling laws. The
13 department of ecology shall also provide recommendations for funding to
14 implement recommendations.

15 (4) The department of ecology shall deliver the report with its
16 recommendations and findings to the appropriate committees of the
17 legislature by December 15, 2004.

18 **Sec. 2.** RCW 90.56.200 and 2000 c 69 s 19 are each amended to read
19 as follows:

20 (1) The owner or operator for each onshore and offshore facility
21 and any state agency conducting ship refueling or bunkering of more
22 than one million gallons of oil on the waters of the state during any
23 calendar year shall prepare and submit to the department an oil spill
24 prevention plan in conformance with the requirements of this chapter.
25 The plans shall be submitted to the department in the time and manner
26 directed by the department. The spill prevention plan may be
27 consolidated with a spill contingency plan submitted pursuant to RCW
28 90.56.210. The department may accept plans prepared to comply with
29 other state or federal law as spill prevention plans to the extent
30 those plans comply with the requirements of this chapter. The
31 department, by rule, shall establish standards for spill prevention
32 plans.

33 (2) The spill prevention plan for an onshore or offshore facility
34 and state agencies identified under subsection (1) of this section
35 shall:

36 (a) Establish compliance with the federal oil pollution act of

1 1990, if applicable, and financial responsibility requirements under
2 federal and state law;

3 (b) Certify that supervisory and other key personnel in charge of
4 transfer, storage, and handling of oil have received certification
5 pursuant to RCW 90.56.220;

6 (c) Certify that the facility has an operations manual required by
7 RCW 90.56.230;

8 (d) Certify the implementation of alcohol and drug use awareness
9 programs;

10 (e) Describe the facility's maintenance and inspection program and
11 contain a current maintenance and inspection record of the storage and
12 transfer facilities and related equipment;

13 (f) Describe the facility's alcohol and drug treatment programs;

14 (g) Describe spill prevention technology that has been installed,
15 including overflow alarms, automatic overflow cut-off switches,
16 secondary containment facilities, and storm water retention, treatment,
17 and discharge systems;

18 (h) Describe any discharges of oil to the land or the water of more
19 than twenty-five barrels in the prior five years and the measures taken
20 to prevent a reoccurrence;

21 (i) Describe the procedures followed by the facility to contain and
22 recover any oil that spills during the transfer of oil to or from the
23 facility;

24 (j) Provide for the incorporation into the facility during the
25 period covered by the plan of those measures that will provide the best
26 achievable protection for the public health and the environment; and

27 (k) Include any other information reasonably necessary to carry out
28 the purposes of this chapter required by rules adopted by the
29 department.

30 (3) The department shall only approve a prevention plan if it
31 provides the best achievable protection from damages caused by the
32 discharge of oil into the waters of the state and if it determines that
33 the plan meets the requirements of this section and rules adopted by
34 the department.

35 (4) Upon approval of a prevention plan, the department shall
36 provide to the person submitting the plan a statement indicating that
37 the plan has been approved, the facilities covered by the plan, and
38 other information the department determines should be included.

1 (5) The approval of a prevention plan shall be valid for five
2 years. An owner or operator of a facility shall notify the department
3 in writing immediately of any significant change of which it is aware
4 affecting its prevention plan, including changes in any factor set
5 forth in this section or in rules adopted by the department. The
6 department may require the owner or operator to update a prevention
7 plan as a result of these changes.

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

11 (7) Approval of a prevention plan by the department does not
12 constitute an express assurance regarding the adequacy of the plan nor
13 constitute a defense to liability imposed under this chapter or other
14 state law.

15 (8) This section does not authorize the department to modify the
16 terms of a collective bargaining agreement.

17 **Sec. 3.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read
18 as follows:

19 (1) Each onshore and offshore facility and any state agency
20 conducting ship refueling or bunkering of more than one million gallons
21 of oil on the waters of the state during any calendar year shall have
22 a contingency plan for the containment and cleanup of oil spills from
23 the facility into the waters of the state and for the protection of
24 fisheries and wildlife, natural resources, and public and private
25 property from such spills. The department shall by rule adopt and
26 periodically revise standards for the preparation of contingency plans.
27 The department shall require contingency plans, at a minimum, to meet
28 the following standards:

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

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

35 (c) Provide a clear, precise, and detailed description of how the
36 plan relates to and is integrated into relevant contingency plans which

1 have been prepared by cooperatives, ports, regional entities, the
2 state, and the federal government;

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

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

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

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

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

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

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

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

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

1 (m) State the amount and type of equipment available to respond to
2 a spill, where the equipment is located, and the extent to which other
3 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 facilities
16 shall be submitted to the department within eighteen months after the
17 department has adopted rules under subsection (1) of this section. The
18 department may adopt a schedule for submission of plans within the
19 eighteen-month period.

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

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

28 (4) A contingency plan prepared for an agency of the federal
29 government or another state that satisfies the requirements of this
30 section and rules adopted by the department may be accepted by the
31 department as a contingency plan under this section. The department
32 shall ~~((assure))~~ ensure that to the greatest extent possible,
33 requirements for contingency plans under this section are consistent
34 with the requirements for contingency plans under federal law.

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

37 (a) The adequacy of containment and cleanup equipment, personnel,
38 communications equipment, notification procedures and call down lists,

1 response time, and logistical arrangements for coordination and
2 implementation of response efforts to remove oil spills promptly and
3 properly and to protect the environment;

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

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

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

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

12 (f) The sensitivity of fisheries and wildlife and other natural
13 resources within the area covered by the plan;

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

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

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

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

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

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

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

5 NEW SECTION. **Sec. 4.** If specific funding for the purposes of
6 section 2 and section 3 of this act, referencing these sections of this
7 act by bill or chapter number, is not provided by June 30, 2004, in the
8 2003-2005 Transportation Budget, section 2 and section 3 of this act
9 are null and void.

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