

E2SHB 1186 - S COMM AMD TO WM COMM AMD (S-2644.1/11)
By Committee on Ways & Means

NOT ADOPTED 04/05/2011

1 Beginning on page 1, after line 2 of the amendment, strike all of
2 section 1

3 Renumber the remaining sections and correct any internal references
4 accordingly.

5 Beginning on page 5, line 35 of the amendment, strike all of
6 sections 3 through 15 and insert the following:

7 "NEW SECTION. **Sec. 2.** A new section is added to chapter 88.46 RCW
8 to read as follows:

9 (1) The department shall evaluate and update planning standards for
10 oil spill response equipment required under contingency plans required
11 by this chapter, including aerial surveillance, in order to ensure
12 access in the state to equipment that represents the best achievable
13 protection to respond to a worst case spill and provide for continuous
14 operation of oil spill response activities to the maximum extent
15 practicable and without jeopardizing crew safety, as determined by the
16 incident commander or the unified command.

17 (2) The department shall by rule update the planning standards at
18 five-year intervals to ensure the maintenance of best available
19 protection over time.

20 (3) The department shall evaluate and update planning standards for
21 tank vessels by December 31, 2012.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.46 RCW
23 to read as follows:

24 By December 31, 2012, the department shall complete rule making for
25 purposes of improving the effectiveness of the vessels of opportunity
26 system to participate in spill response.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW
2 to read as follows:

3 (1) The department shall establish a volunteer coordination system.
4 The volunteer coordination system may be included as a part of the
5 state's overall oil spill response strategy, and may be implemented by
6 local emergency management organizations, in coordination with any
7 analogous federal efforts, to supplement the state's timely and
8 effective response to spills.

9 (2) The department should consider how the volunteer coordination
10 system will:

11 (a) Coordinate with the incident commander or unified command of an
12 oil spill and any affected local governments to receive, screen, and
13 register volunteers who are not affiliated with the emergency
14 management organization or a local nongovernmental organization;

15 (b) Coordinate the management of volunteers with local
16 nongovernmental organizations and their affiliated volunteers;

17 (c) Coordinate appropriate response operations with different
18 classes of volunteers, including pretrained volunteers and convergent
19 volunteers, to fulfill requests by the department or an oil spill
20 incident commander or unified command;

21 (d) Coordinate public outreach regarding the need for and use of
22 volunteers;

23 (e) Determine minimum participation criteria for volunteers; and

24 (f) Identify volunteer training requirements and, if applicable,
25 provide training opportunities for volunteers prior to an oil spill
26 response incident.

27 (3) An act or omission by any volunteer participating in a spill
28 response or training as part of a volunteer coordination system, while
29 engaged in such activities, does not impose any liability on any state
30 agency, any participating local emergency management organization, or
31 the volunteer for civil damages resulting from the act or omission.
32 However, the immunity provided under this subsection does not apply to
33 an act or omission that constitutes gross negligence or willful or
34 wanton misconduct.

35 (4) The decisions to utilize volunteers in an oil spill response,
36 which volunteers to utilize, and to determine which response activities
37 are appropriate for volunteer participation in any given response are

1 the sole responsibilities of the designated incident commander or
2 unified command.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46 RCW
4 to read as follows:

5 (1) The department is responsible for requiring joint large-scale,
6 multiple plan equipment deployment drills of tank vessels to determine
7 the adequacy of the owner's or operator's compliance with the
8 contingency plan requirements of this chapter. The department must
9 order at least one drill as outlined in this section every three years.

10 (2) Drills required under this section must focus on, at a minimum,
11 the following:

12 (a) The functional ability for multiple contingency plans to be
13 simultaneously activated with the purpose of testing the ability for
14 dedicated equipment and trained personnel cited in multiple contingency
15 plans to be activated in a large scale spill; and

16 (b) The operational readiness during both the first six hours of a
17 spill and, at the department's discretion, over multiple operational
18 periods of response.

19 (3) Drills required under this section may be incorporated into
20 other drill requirements under this chapter to avoid increasing the
21 number of drills and equipment deployments otherwise required.

22 (4) Each successful drill conducted under this section may be
23 considered by the department as a drill of the underlying contingency
24 plan and credit may be awarded to the plan holder accordingly.

25 (5) The department shall, when practicable, coordinate with
26 applicable federal agencies, the state of Oregon, and the province of
27 British Columbia to establish a drill incident command and to help
28 ensure that lessons learned from the drills are evaluated with the goal
29 of improving the underlying contingency plans.

30 **Sec. 6.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read
31 as follows:

32 (1) Each covered vessel shall have a contingency plan for the
33 containment and cleanup of oil spills from the covered vessel into the
34 waters of the state and for the protection of fisheries and wildlife,
35 shellfish beds, natural resources, and public and private property from
36 such spills. The department shall by rule adopt and periodically

1 revise standards for the preparation of contingency plans. The
2 department shall require contingency plans, at a minimum, to meet the
3 following standards:

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

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

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

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

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

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

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

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

37 (i) Establish guidelines for the use of equipment by the crew of a

1 vessel to minimize vessel damage, stop or reduce any spilling from the
2 vessel, and, only when appropriate and only when vessel safety is
3 assured, contain and clean up the spilled oil;

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

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

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

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

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

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

24 (p) Compliance with section 7 of this act if the contingency plan
25 is submitted by an umbrella plan holder; and

26 (q) Include any additional elements of contingency plans as
27 required by this chapter.

28 ~~(2)((a+)) The owner or operator of a ((tank)) covered vessel ((of~~
29 ~~three thousand gross tons or more shall)) must submit ((a)) any~~
30 ~~required contingency plan updates to the department within ((six months~~
31 ~~after)) the timelines established by the department ((adopts rules~~
32 ~~establishing standards for contingency plans under subsection (1) of~~
33 ~~this section.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (b) The department must notify the plan holder in writing within
22 sixty-five days of an initial or amended plan's submittal to the
23 department as to whether the plan is disapproved, approved, or
24 conditionally approved. If a plan is conditionally approved, the
25 department must clearly describe each condition and specify a schedule
26 for plan holders to submit required updates.

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

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

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

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

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 88.46 RCW
9 to read as follows:

10 (1) When submitting a contingency plan to the department under RCW
11 88.46.060, any umbrella plan holder that enrolls both tank vessels and
12 covered vessels that are not tank vessels must, in addition to
13 satisfying the other requirements of this chapter, specify:

14 (a) The maximum worst case discharge volume from covered vessels
15 that are not tank vessels to be covered by the umbrella plan holder's
16 contingency plan; and

17 (b) The maximum worst case discharge volume from tank vessels to be
18 covered by the umbrella plan holder's contingency plan.

19 (2) Any owner or operator of a covered vessel having a worst case
20 discharge volume that exceeds the maximum volume covered by an approved
21 umbrella plan holder may enroll with the umbrella plan holder if the
22 owner or operator of the covered vessel maintains an agreement with
23 another entity to provide supplemental equipment sufficient to meet the
24 requirements of this chapter.

25 (3) The department may approve an umbrella plan holder that covers
26 vessels having a worst case discharge volume that exceeds the maximum
27 volume if:

28 (a) The department determines that the umbrella plan holder should
29 be approved for a lower discharge volume;

30 (b) The owner or operator includes documentation in the plan and
31 demonstrates to the satisfaction of the department showing that any
32 vessel that exceeds the umbrella plan holder's maximum volume has
33 access to supplemental equipment and programs sufficient to meet the
34 worst case discharge volume of the vessel; and

35 (c) The department has previously approved a plan that relies on a
36 listing of the supplemental equipment and programs to meet the
37 requirements of this chapter.

1 **Sec. 8.** RCW 88.46.100 and 2000 c 69 s 10 are each amended to read
2 as follows:

3 ~~((1)) In (order to assist the state in identifying areas of the~~
4 ~~navigable waters of the state needing special attention, the owner or~~
5 ~~operator of a covered vessel shall notify the)) addition to any~~
6 ~~notifications that the owner or operator of a covered vessel must~~
7 ~~provide to the United States coast guard ((within one hour:~~

8 ~~(a) Of the disability of the covered vessel if the disabled vessel~~
9 ~~is within twelve miles of the shore of the state; and~~

10 ~~(b) Of a collision or a near miss incident within twelve miles of~~
11 ~~the shore of the state.~~

12 ~~(2) The state military department and the department shall request~~
13 ~~the coast guard to notify the state military department as soon as~~
14 ~~possible after the coast guard receives notice of a disabled covered~~
15 ~~vessel or of a collision or near miss incident within twelve miles of~~
16 ~~the shore of the state. The department shall negotiate an agreement~~
17 ~~with the coast guard governing procedures for coast guard notification~~
18 ~~to the state regarding disabled covered vessels and collisions and near~~
19 ~~miss incidents.~~

20 ~~(3) The department shall prepare a summary of the information~~
21 ~~collected under this section and provide the summary to the regional~~
22 ~~marine safety committees, the coast guard, and others in order to~~
23 ~~identify problems with the marine transportation system.~~

24 ~~(4) For the purposes of this section:~~

25 ~~(a) A tank vessel or cargo vessel is considered disabled if any of~~
26 ~~the following occur:~~

27 ~~(i) Any accidental or intentional grounding;~~

28 ~~(ii) The total or partial failure of the main propulsion or primary~~
29 ~~steering or any component or control system that causes a reduction in~~
30 ~~the maneuvering capabilities of the vessel;~~

31 ~~(iii) An occurrence materially and adversely affecting the vessel's~~
32 ~~seaworthiness or fitness for service, including but not limited to,~~
33 ~~fire, flooding, or collision with another vessel;~~

34 ~~(iv) Any other occurrence that creates the serious possibility of~~
35 ~~an oil spill or an occurrence that may result in such a spill.~~

36 ~~(b) A barge is considered disabled if any of the following occur:~~

37 ~~(i) The towing mechanism becomes disabled;~~

1 ~~(ii) The towboat towing the barge becomes disabled through~~
2 ~~occurrences defined in (a) of this subsection.~~

3 ~~(c) A near miss incident is an incident that requires the pilot or~~
4 ~~master of a covered vessel to take evasive actions or make significant~~
5 ~~course corrections in order to avoid a collision with another ship or~~
6 ~~to avoid a grounding as required by the international rules of the~~
7 ~~road.~~

8 ~~(5) Failure of any person to make a report under this section shall~~
9 ~~not be used as the basis for the imposition of any fine or penalty))~~
10 regarding a vessel emergency, the owner or operator of a covered vessel
11 must notify the state of any vessel emergency that results in the
12 discharge or substantial threat of discharge of oil to state waters or
13 that may affect the natural resources of the state within one hour of
14 the onset of that emergency. The purpose of this notification is to
15 enable the department to coordinate with the vessel operator,
16 contingency plan holder, and the United States coast guard to protect
17 the public health, welfare, and natural resources of the state and to
18 ensure all reasonable spill preparedness and response measures are in
19 place prior to a spill occurring.

20 **Sec. 9.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
21 as follows:

22 (1) The department, in consultation with the departments of fish
23 and wildlife and natural resources, and the parks and recreation
24 commission, shall adopt rules establishing a compensation schedule for
25 the discharge of oil in violation of this chapter and chapter 90.56
26 RCW. The amount of compensation assessed under this schedule shall be:

27 (a) For spills totaling one thousand gallons or more in any one
28 event, no less than ((one dollar)) three dollars per gallon of oil
29 spilled and no greater than ((one)) three hundred dollars per gallon of
30 oil spilled; and

31 (b) For spills totaling less than one thousand gallons in any one
32 event, no less than one dollar per gallon of oil spilled and no greater
33 than one hundred dollars per gallon of oil spilled.

34 (2) Persistent oil recovered from the surface of the water within
35 forty-eight hours of a discharge must be deducted from the total spill
36 volume for purposes of determining the amount of compensation assessed
37 under the compensation schedule.

1 (3) The compensation schedule adopted under this section shall
2 reflect adequate compensation for unquantifiable damages or for damages
3 not quantifiable at reasonable cost for any adverse environmental,
4 recreational, aesthetic, or other effects caused by the spill and shall
5 take into account:

6 ~~((1))~~ (a) Characteristics of any oil spilled, such as toxicity,
7 dispersibility, solubility, and persistence, that may affect the
8 severity of the effects on the receiving environment, living organisms,
9 and recreational and aesthetic resources;

10 ~~((2))~~ (b) The sensitivity of the affected area as determined by
11 such factors as:

12 ~~((a))~~ (i) The location of the spill;

13 ~~((b))~~ (ii) Habitat and living resource sensitivity;

14 ~~((c))~~ (iii) Seasonal distribution or sensitivity of living
15 resources;

16 ~~((d))~~ (iv) Areas of recreational use or aesthetic importance;

17 ~~((e))~~ (v) The proximity of the spill to important habitats for
18 birds, aquatic mammals, fish, or to species listed as threatened or
19 endangered under state or federal law;

20 ~~((f))~~ (vi) Significant archaeological resources as determined by
21 the department of archaeology and historic preservation; and

22 ~~((g))~~ (vii) Other areas of special ecological or recreational
23 importance, as determined by the department; and

24 ~~((3))~~ (c) Actions taken by the party who spilled oil or any party
25 liable for the spill that:

26 ~~((a))~~ (i) Demonstrate a recognition and affirmative acceptance of
27 responsibility for the spill, such as the immediate removal of oil and
28 the amount of oil removed from the environment; or

29 ~~((b))~~ (ii) Enhance or impede the detection of the spill, the
30 determination of the quantity of oil spilled, or the extent of damage,
31 including the unauthorized removal of evidence such as injured fish or
32 wildlife.

33 **Sec. 10.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read
34 as follows:

35 (1) Any person owning oil or having control over oil that enters
36 the waters of the state in violation of RCW 90.56.320 shall be strictly

1 liable, without regard to fault, for the damages to persons or
2 property, public or private, caused by such entry.

3 (2) Damages for which responsible parties are liable under this
4 section include loss of income, net revenue, the means of producing
5 income or revenue, or an economic benefit resulting from an injury to
6 or loss of real or personal property or natural resources.

7 (3) Damages for which responsible parties are liable under this
8 section include damages provided in subsections (1) and (2) of this
9 section resulting from the use and deployment of chemical dispersants
10 or from in situ burning in response to a violation of RCW 90.56.320.

11 (4) In any action to recover damages resulting from the discharge
12 of oil in violation of RCW 90.56.320, the owner or person having
13 control over the oil shall be relieved from strict liability, without
14 regard to fault, if that person can prove that the discharge was caused
15 solely by:

- 16 (a) An act of war or sabotage;
- 17 (b) An act of God;
- 18 (c) Negligence on the part of the United States government; or
- 19 (d) Negligence on the part of the state of Washington.

20 ~~((+3))~~ (5) The liability established in this section shall in no
21 way affect the rights which: (a) The owner or other person having
22 control over the oil may have against any person whose acts may in any
23 way have caused or contributed to the discharge of oil, or (b) the
24 state of Washington may have against any person whose actions may have
25 caused or contributed to the discharge of oil.

26 NEW SECTION. Sec. 11. (1) The director of the department of
27 ecology must formally request that the federal government contribute to
28 the establishment of regional oil spill response equipment caches in
29 Washington to ensure adequate response capabilities during a multiple
30 spill event.

31 (2) This section expires December 31, 2014."

NOT ADOPTED 04/05/2011

1 On page 23, beginning on line 2 of the title amendment, after
2 "insert" strike the remainder of the title amendment and insert
3 "amending RCW 88.46.060, 88.46.100, 90.48.366, and 90.56.370;
4 reenacting and amending RCW 88.46.010; adding new sections to chapter
5 88.46 RCW; creating a new section; prescribing penalties; and providing
6 an expiration date."

--- END ---