
SENATE BILL 6243

State of Washington

63rd Legislature

2014 Regular Session

By Senators Ericksen, McCoy, and Schoesler; by request of Department of Ecology

Read first time 01/17/14. Referred to Committee on Energy, Environment & Telecommunications.

1 AN ACT Relating to modifying the definition of "oil" or "oils";
2 amending RCW 88.40.011 and 90.56.010; and reenacting and amending RCW
3 88.46.010.

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

5 **Sec. 1.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to read
6 as follows:

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

9 (1) "Barge" means a vessel that is not self-propelled.

10 (2) "Cargo vessel" means a self-propelled ship in commerce, other
11 than a tank vessel, fishing vessel, or a passenger vessel, of three
12 hundred or more gross tons.

13 (3) "Bulk" means material that is stored or transported in a loose,
14 unpackaged liquid, powder, or granular form capable of being conveyed
15 by a pipe, bucket, chute, or belt system.

16 (4) "Covered vessel" means a tank vessel, cargo vessel, or
17 passenger vessel.

18 (5) "Department" means the department of ecology.

19 (6) "Director" means the director of the department of ecology.

1 (7)(a) "Facility" means any structure, group of structures,
2 equipment, pipeline, or device, other than a vessel, located on or near
3 the navigable waters of the state that transfers oil in bulk to or from
4 any vessel with an oil carrying capacity over two hundred fifty barrels
5 or pipeline, that is used for producing, storing, handling,
6 transferring, processing, or transporting oil in bulk.

7 (b) A facility does not include any: (i) Railroad car, motor
8 vehicle, or other rolling stock while transporting oil over the
9 highways or rail lines of this state; (ii) retail motor vehicle motor
10 fuel outlet; (iii) facility that is operated as part of an exempt
11 agricultural activity as provided in RCW 82.04.330; (iv) underground
12 storage tank regulated by the department or a local government under
13 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
14 more than three thousand gallons of fuel to a ship that is not a
15 covered vessel, in a single transaction.

16 (8) "Fishing vessel" means a self-propelled commercial vessel of
17 three hundred or more gross tons that is used for catching or
18 processing fish.

19 (9) "Gross tons" means tonnage as determined by the United States
20 coast guard under 33 C.F.R. section 138.30.

21 (10) "Hazardous substances" means any substance listed as of March
22 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section
23 (~~(101-14)~~) 102(a) of the federal comprehensive environmental response,
24 compensation, and liability act of 1980, as amended by P.L. 99-499.
25 The following are not hazardous substances for purposes of this
26 chapter:

27 (a) Wastes listed as F001 through F028 in Table 302.4; and

28 (b) Wastes listed as K001 through K136 in Table 302.4.

29 (11) "Navigable waters of the state" means those waters of the
30 state, and their adjoining shorelines, that are subject to the ebb and
31 flow of the tide and/or are presently used, have been used in the past,
32 or may be susceptible for use to transport intrastate, interstate, or
33 foreign commerce.

34 (12) "Oil" or "oils" means oil of any kind that is liquid at
35 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
36 atmosphere of pressure and any fractionation thereof, including, but
37 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
38 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological

1 oils and blends, oil sludge, oil refuse, and oil mixed with wastes
2 other than dredged spoil. Oil does not include any substance listed as
3 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under
4 section ((101(14))) 102(a) of the federal comprehensive environmental
5 response, compensation, and liability act of 1980, as amended by P.L.
6 99-499.

7 (13) "Offshore facility" means any facility located in, on, or
8 under any of the navigable waters of the state, but does not include a
9 facility any part of which is located in, on, or under any land of the
10 state, other than submerged land.

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

16 (15)(a) "Owner or operator" means (i) in the case of a vessel, any
17 person owning, operating, or chartering by demise, the vessel; (ii) in
18 the case of an onshore or offshore facility, any person owning or
19 operating the facility; and (iii) in the case of an abandoned vessel or
20 onshore or offshore facility, the person who owned or operated the
21 vessel or facility immediately before its abandonment.

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

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

28 (17) "Ship" means any boat, ship, vessel, barge, or other floating
29 craft of any kind.

30 (18) "Spill" means an unauthorized discharge of oil into the waters
31 of the state.

32 (19) "Tank vessel" means a ship that is constructed or adapted to
33 carry, or that carries, oil in bulk as cargo or cargo residue, and
34 that:

- 35 (a) Operates on the waters of the state; or
- 36 (b) Transfers oil in a port or place subject to the jurisdiction of
37 this state.

1 (20) "Waters of the state" includes lakes, rivers, ponds, streams,
2 inland waters, underground water, salt waters, estuaries, tidal flats,
3 beaches and lands adjoining the seacoast of the state, sewers, and all
4 other surface waters and watercourses within the jurisdiction of the
5 state of Washington.

6 **Sec. 2.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and
7 amended to read as follows:

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

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

- 17 (a) The additional protection provided by the measures;
- 18 (b) The technological achievability of the measures; and
- 19 (c) The cost of the measures.

20 (2)(a) "Best achievable technology" means the technology that
21 provides the greatest degree of protection taking into consideration:

- 22 (i) Processes that are being developed, or could feasibly be
23 developed, given overall reasonable expenditures on research and
24 development; and
- 25 (ii) Processes that are currently in use.

26 (b) In determining what is best achievable technology, the director
27 shall consider the effectiveness, engineering feasibility, and
28 commercial availability of the technology.

29 (3) "Bulk" means material that is stored or transported in a loose,
30 unpackaged liquid, powder, or granular form capable of being conveyed
31 by a pipe, bucket, chute, or belt system.

32 (4) "Cargo vessel" means a self-propelled ship in commerce, other
33 than a tank vessel or a passenger vessel, of three hundred or more
34 gross tons, including but not limited to, commercial fish processing
35 vessels and freighters.

36 (5) "Covered vessel" means a tank vessel, cargo vessel, or
37 passenger vessel.

1 (6) "Department" means the department of ecology.

2 (7) "Director" means the director of the department of ecology.

3 (8) "Discharge" means any spilling, leaking, pumping, pouring,
4 emitting, emptying, or dumping.

5 (9)(a) "Facility" means any structure, group of structures,
6 equipment, pipeline, or device, other than a vessel, located on or near
7 the navigable waters of the state that transfers oil in bulk to or from
8 a tank vessel or pipeline, that is used for producing, storing,
9 handling, transferring, processing, or transporting oil in bulk.

10 (b) A facility does not include any: (i) Railroad car, motor
11 vehicle, or other rolling stock while transporting oil over the
12 highways or rail lines of this state; (ii) retail motor vehicle motor
13 fuel outlet; (iii) facility that is operated as part of an exempt
14 agricultural activity as provided in RCW 82.04.330; (iv) underground
15 storage tank regulated by the department or a local government under
16 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
17 more than three thousand gallons of fuel to a ship that is not a
18 covered vessel, in a single transaction.

19 (10) "Marine facility" means any facility used for tank vessel
20 wharfage or anchorage, including any equipment used for the purpose of
21 handling or transferring oil in bulk to or from a tank vessel.

22 (11) "Navigable waters of the state" means those waters of the
23 state, and their adjoining shorelines, that are subject to the ebb and
24 flow of the tide and/or are presently used, have been used in the past,
25 or may be susceptible for use to transport intrastate, interstate, or
26 foreign commerce.

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

32 (13) "Oil" or "oils" means oil of any kind that is liquid at
33 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one
34 atmosphere of pressure and any fractionation thereof, including, but
35 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
36 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological
37 oils and blends, oil sludge, oil refuse, and oil mixed with wastes
38 other than dredged spoil. Oil does not include any substance listed in

1 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
2 section ((101(14))) 102(a) of the federal comprehensive environmental
3 response, compensation, and liability act of 1980, as amended by P.L.
4 99-499.

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

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

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

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

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

25 (18) "Race Rocks light" means the nautical landmark located
26 southwest of the city of Victoria, British Columbia.

27 (19) "Regional vessels of opportunity response group" means a group
28 of nondedicated vessels participating in a vessels of opportunity
29 response system to respond when needed and available to spills in a
30 defined geographic area.

31 (20) "Severe weather conditions" means observed nautical conditions
32 with sustained winds measured at forty knots and wave heights measured
33 between twelve and eighteen feet.

34 (21) "Ship" means any boat, ship, vessel, barge, or other floating
35 craft of any kind.

36 (22) "Spill" means an unauthorized discharge of oil into the waters
37 of the state.

1 (23) "Strait of Juan de Fuca" means waters off the northern coast
2 of the Olympic Peninsula seaward of a line drawn from New Dungeness
3 light in Clallam county to Discovery Island light on Vancouver Island,
4 British Columbia, Canada.

5 (24) "Tank vessel" means a ship that is constructed or adapted to
6 carry, or that carries, oil in bulk as cargo or cargo residue, and
7 that:

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

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

11 (25) "Umbrella plan holder" means a nonprofit corporation
12 established consistent with this chapter for the purposes of providing
13 oil spill response and contingency plan coverage.

14 (26) "Vessel emergency" means a substantial threat of pollution
15 originating from a covered vessel, including loss or serious
16 degradation of propulsion, steering, means of navigation, primary
17 electrical generating capability, and seakeeping capability.

18 (27) "Vessels of opportunity response system" means nondedicated
19 boats and operators, including fishing and other vessels, that are
20 under contract with and equipped by contingency plan holders to assist
21 with oil spill response activities, including on-water oil recovery in
22 the near shore environment and the placement of oil spill containment
23 booms to protect sensitive habitats.

24 (28) "Volunteer coordination system" means an oil spill response
25 system that, before a spill occurs, prepares for the coordination of
26 volunteers to assist with appropriate oil spill response activities,
27 which may include shoreline protection and cleanup, wildlife recovery,
28 field observation, light construction, facility maintenance, donations
29 management, clerical support, and other aspects of a spill response.

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

35 (30) "Worst case spill" means: (a) In the case of a vessel, a
36 spill of the entire cargo and fuel of the vessel complicated by adverse
37 weather conditions; and (b) in the case of an onshore or offshore
38 facility, the largest foreseeable spill in adverse weather conditions.

1 **Sec. 3.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

14 (2) "Best achievable technology" means the technology that provides
15 the greatest degree of protection taking into consideration (a)
16 processes that are being developed, or could feasibly be developed,
17 given overall reasonable expenditures on research and development, and
18 (b) processes that are currently in use. In determining what is best
19 achievable technology, the director shall consider the effectiveness,
20 engineering feasibility, and commercial availability of the technology.

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

22 (4) "Cargo vessel" means a self-propelled ship in commerce, other
23 than a tank vessel or a passenger vessel, three hundred or more gross
24 tons, including but not limited to, commercial fish processing vessels
25 and freighters.

26 (5) "Bulk" means material that is stored or transported in a loose,
27 unpackaged liquid, powder, or granular form capable of being conveyed
28 by a pipe, bucket, chute, or belt system.

29 (6) "Committee" means the preassessment screening committee
30 established under RCW 90.48.368.

31 (7) "Covered vessel" means a tank vessel, cargo vessel, or
32 passenger vessel.

33 (8) "Department" means the department of ecology.

34 (9) "Director" means the director of the department of ecology.

35 (10) "Discharge" means any spilling, leaking, pumping, pouring,
36 emitting, emptying, or dumping.

37 (11)(a) "Facility" means any structure, group of structures,
38 equipment, pipeline, or device, other than a vessel, located on or near

1 the navigable waters of the state that transfers oil in bulk to or from
2 a tank vessel or pipeline, that is used for producing, storing,
3 handling, transferring, processing, or transporting oil in bulk.

4 (b) A facility does not include any: (i) Railroad car, motor
5 vehicle, or other rolling stock while transporting oil over the
6 highways or rail lines of this state; (ii) underground storage tank
7 regulated by the department or a local government under chapter 90.76
8 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
9 operated as part of an exempt agricultural activity as provided in RCW
10 82.04.330; or (v) marine fuel outlet that does not dispense more than
11 three thousand gallons of fuel to a ship that is not a covered vessel,
12 in a single transaction.

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

15 (13) "Having control over oil" shall include but not be limited to
16 any person using, storing, or transporting oil immediately prior to
17 entry of such oil into the waters of the state, and shall specifically
18 include carriers and bailees of such oil.

19 (14) "Marine facility" means any facility used for tank vessel
20 wharfage or anchorage, including any equipment used for the purpose of
21 handling or transferring oil in bulk to or from a tank vessel.

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

27 (16) "Necessary expenses" means the expenses incurred by the
28 department and assisting state agencies for (a) investigating the
29 source of the discharge; (b) investigating the extent of the
30 environmental damage caused by the discharge; (c) conducting actions
31 necessary to clean up the discharge; (d) conducting predamage and
32 damage assessment studies; and (e) enforcing the provisions of this
33 chapter and collecting for damages caused by a discharge.

34 (17) "Oil" or "oils" means oil of any kind that is liquid at
35 (~~atmospheric temperature~~) twenty-five degrees Celsius and one
36 atmosphere of pressure and any fractionation thereof, including, but
37 not limited to, crude oil, bitumen, synthetic crude oil, natural gas
38 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological

1 oils and blends, oil sludge, oil refuse, and oil mixed with wastes
2 other than dredged spoil. Oil does not include any substance listed in
3 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
4 section ((101(14))) 102(a) of the federal comprehensive environmental
5 response, compensation, and liability act of 1980, as amended by P.L.
6 99-499.

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

11 (19) "Onshore facility" means any facility any part of which is
12 located in, on, or under any land of the state, other than submerged
13 land, that because of its location, could reasonably be expected to
14 cause substantial harm to the environment by discharging oil into or on
15 the navigable waters of the state or the adjoining shorelines.

16 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
17 person owning, operating, or chartering by demise, the vessel; (ii) in
18 the case of an onshore or offshore facility, any person owning or
19 operating the facility; and (iii) in the case of an abandoned vessel or
20 onshore or offshore facility, the person who owned or operated the
21 vessel or facility immediately before its abandonment.

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

25 (21) "Passenger vessel" means a ship of three hundred or more gross
26 tons with a fuel capacity of at least six thousand gallons carrying
27 passengers for compensation.

28 (22) "Person" means any political subdivision, government agency,
29 municipality, industry, public or private corporation, copartnership,
30 association, firm, individual, or any other entity whatsoever.

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

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

35 (25) "Tank vessel" means a ship that is constructed or adapted to
36 carry, or that carries, oil in bulk as cargo or cargo residue, and
37 that:

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

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

3 (26) "Waters of the state" includes lakes, rivers, ponds, streams,
4 inland waters, underground water, salt waters, estuaries, tidal flats,
5 beaches and lands adjoining the seacoast of the state, sewers, and all
6 other surface waters and watercourses within the jurisdiction of the
7 state of Washington.

8 (27) "Worst case spill" means: (a) In the case of a vessel, a
9 spill of the entire cargo and fuel of the vessel complicated by adverse
10 weather conditions; and (b) in the case of an onshore or offshore
11 facility, the largest foreseeable spill in adverse weather conditions.

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