

ESHB 1136 - S COMM AMD

By Committee on Energy, Environment & Telecommunications

ADOPTED 04/04/2017

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.56.210 and 2015 c 274 s 5 are each amended to  
4 read as follows:

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

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

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

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

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

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

29 (f) Incorporate periodic training and drill programs to evaluate  
30 whether personnel and equipment provided under the plan are in a  
31 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 prepositioning 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)(a) The department by rule shall determine the contingency  
8 plan requirements for railroads transporting oil in bulk.

9 (b) For class III railroads transporting oil in bulk that is not  
10 crude oil in an amount of forty-nine or more tank car loads per year,  
11 the rules adopted under this subsection may not require contingency  
12 plans to include:

13 (i) Contracted access to oil spill response equipment; or

14 (ii) The completion of more than a total of one basic table-top  
15 drill every three years to test the contingency plans.

16 (c) For class III railroads transporting oil in bulk that is not  
17 crude oil in an amount less than forty-nine tank car loads per year,  
18 rules adopted under this subsection may only require railroads to  
19 submit a basic contingency plan to the department. A basic  
20 contingency plan filed under this subsection (3)(c) must be limited  
21 to requiring the class III railroads to:

22 (i) Keep documentation of the basic contingency plan on file with  
23 the department at the plan holder's principal place of business and  
24 at dispatcher field offices of the railroad;

25 (ii) Identify and include contact information for the chain of  
26 command and other personnel, including employees or spill response  
27 contractors, who will be involved in the railroad's response in the  
28 event of a spill;

29 (iii) Include information related to the relevant accident  
30 insurance carried by the railroad and provide a certificate of  
31 insurance upon request;

32 (iv) Develop a field document for use by personnel involved in  
33 oil handling operations that includes time-critical information  
34 regarding basic contingency plan procedures to be used in the initial  
35 response to a spill or a threatened spill; and

36 (v) Annually review the plan for accuracy.

37 (d) Federal oil spill response plans created pursuant to 33  
38 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans  
39 ((until state rules are adopted)) by a class III railroad  
40 transporting oil in bulk that is not crude oil.

1       (e) For the purposes of this section, "class III railroad" has  
2 the same meaning as defined by the United States surface  
3 transportation board as of January 1, 2017.

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

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

12       (5) A contingency plan prepared for an agency of the federal  
13 government or another state that satisfies the requirements of this  
14 section and rules adopted by the department may be accepted by the  
15 department as a contingency plan under this section. The department  
16 shall ensure that to the greatest extent possible, requirements for  
17 contingency plans under this section are consistent with the  
18 requirements for contingency plans under federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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25 On page 1, line 2 of the title, after "requirements;" strike the  
26 remainder of the title and insert "and amending RCW 90.56.210."

EFFECT: Exempts class III railroads hauling 49 instead of 24 or more tank car loads of noncrude oil per year from certain drill performance and equipment contracting requirements associated with oil spill contingency plans. Requires class III railroads hauling less than 49 instead of 24 tank car loads of noncrude oil per year to complete a basic contingency plan.

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