
SUBSTITUTE SENATE BILL 6210

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Environmental Quality & Water Resources (originally sponsored by Senators Fraser, Morton, Eide, Jacobsen, Fairley, Prentice, McAuliffe, Winsley, Franklin, Kline, Spanel and Kohl-Welles)

Read first time 01/26/00.

1 AN ACT Relating to technical and clarifying amendments relating to
2 the oil spill prevention and response statutes; amending RCW 88.46.010,
3 88.46.020, 88.46.030, 88.46.040, 88.46.050, 88.46.060, 88.46.070,
4 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 88.46.170,
5 88.46.200, 90.56.010, 90.56.060, 90.56.080, 90.56.100, 90.56.200,
6 90.56.210, 90.56.370, 90.56.510, 90.56.540, 90.56.560, and 82.23B.020;
7 creating a new section; decodifying RCW 88.46.150; and repealing RCW
8 88.46.140, 90.56.903, 88.46.921, 88.46.922, 88.46.924, 88.46.925,
9 88.46.926, and 88.46.927.

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

11 **Sec. 1.** RCW 88.46.010 and 1992 c 73 s 18 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) (~~("Administrator" means the administrator of the office of~~
16 ~~marine safety created in RCW 43.211.010.~~

17 (2)) "Best achievable protection" means the highest level of
18 protection that can be achieved through the use of the best achievable
19 technology and those staffing levels, training procedures, and

1 operational methods that provide the greatest degree of protection
2 achievable. The (~~administrator's~~) director's determination of best
3 achievable protection shall be guided by the critical need to protect
4 the state's natural resources and waters, while considering (a) the
5 additional protection provided by the measures; (b) the technological
6 achievability of the measures; and (c) the cost of the measures.

7 (~~(3)~~) (2) "Best achievable technology" means the technology that
8 provides the greatest degree of protection taking into consideration
9 (a) processes that are being developed, or could feasibly be developed,
10 given overall reasonable expenditures on research and development, and
11 (b) processes that are currently in use. In determining what is best
12 achievable technology, the (~~administrator~~) director shall consider
13 the effectiveness, engineering feasibility, and commercial availability
14 of the technology.

15 (~~(4)~~) (3) "Cargo vessel" means a self-propelled ship in commerce,
16 other than a tank vessel or a passenger vessel, of three hundred or
17 more gross tons, including but not limited to, commercial fish
18 processing vessels and freighters.

19 (~~(5)~~) (4) "Bulk" means material that is stored or transported in
20 a loose, unpackaged liquid, powder, or granular form capable of being
21 conveyed by a pipe, bucket, chute, or belt system.

22 (~~(6)~~) (5) "Covered vessel" means a tank vessel, cargo vessel, or
23 passenger vessel.

24 (~~(7)~~) (6) "Department" means the department of ecology.

25 (~~(8)~~) (7) "Director" means the director of the department of
26 ecology.

27 (~~(9)~~) (8) "Discharge" means any spilling, leaking, pumping,
28 pouring, emitting, emptying, or dumping.

29 (~~(10)~~) (9)(a) "Facility" means any structure, group of
30 structures, equipment, pipeline, or device, other than a vessel,
31 located on or near the navigable waters of the state that transfers oil
32 in bulk to or from a tank vessel or pipeline, that is used for
33 producing, storing, handling, transferring, processing, or transporting
34 oil in bulk.

35 (b) A facility does not include any: (i) Railroad car, motor
36 vehicle, or other rolling stock while transporting oil over the
37 highways or rail lines of this state; (ii) retail motor vehicle motor
38 fuel outlet; (iii) facility that is operated as part of an exempt
39 agricultural activity as provided in RCW 82.04.330; (iv) underground

1 storage tank regulated by the department or a local government under
2 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
3 more than three thousand gallons of fuel to a ship that is not a
4 covered vessel, in a single transaction.

5 ~~((11))~~ (10) "Marine facility" means any facility used for tank
6 vessel wharfage or anchorage, including any equipment used for the
7 purpose of handling or transferring oil in bulk to or from a tank
8 vessel.

9 ~~((12))~~ (11) "Navigable waters of the state" means those waters of
10 the state, and their adjoining shorelines, that are subject to the ebb
11 and flow of the tide and/or are presently used, have been used in the
12 past, or may be susceptible for use to transport intrastate,
13 interstate, or foreign commerce.

14 ~~((13))~~ "Office" means the office of marine safety established by
15 RCW 43.211.010.

16 ~~(14))~~ (12) "Oil" or "oils" means any naturally occurring liquid
17 hydrocarbons at atmospheric temperature and pressure coming from the
18 earth, including condensate and natural gasoline, and any fractionation
19 thereof, including, but not limited to, crude oil, petroleum, gasoline,
20 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
21 other than dredged spoil. Oil does not include any substance listed in
22 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
23 section 101(14) of the federal comprehensive environmental response,
24 compensation, and liability act of 1980, as amended by P.L. 99-499.

25 ~~((15))~~ (13) "Offshore facility" means any facility located in,
26 on, or under any of the navigable waters of the state, but does not
27 include a facility any part of which is located in, on, or under any
28 land of the state, other than submerged land. "Offshore facility" does
29 not include a marine facility.

30 ~~((16))~~ (14) "Onshore facility" means any facility any part of
31 which is located in, on, or under any land of the state, other than
32 submerged land, that because of its location, could reasonably be
33 expected to cause substantial harm to the environment by discharging
34 oil into or on the navigable waters of the state or the adjoining
35 shorelines.

36 ~~((17))~~ (15)(a) "Owner or operator" means (i) in the case of a
37 vessel, any person owning, operating, or chartering by demise, the
38 vessel; (ii) in the case of an onshore or offshore facility, any person
39 owning or operating the facility; and (iii) in the case of an abandoned

1 vessel or onshore or offshore facility, the person who owned or
2 operated the vessel or facility immediately before its abandonment.

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

6 (~~(18)~~) (16) "Passenger vessel" means a ship of three hundred or
7 more gross tons with a fuel capacity of at least six thousand gallons
8 carrying passengers for compensation.

9 (~~(19)~~) (17) "Person" means any political subdivision, government
10 agency, municipality, industry, public or private corporation,
11 copartnership, association, firm, individual, or any other entity
12 whatsoever.

13 (~~(20)~~) (18) "Ship" means any boat, ship, vessel, barge, or other
14 floating craft of any kind.

15 (~~(21)~~) (19) "Spill" means an unauthorized discharge of oil into
16 the waters of the state.

17 (~~(22)~~) (20) "Tank vessel" means a ship that is constructed or
18 adapted to carry, or that carries, oil in bulk as cargo or cargo
19 residue, and that:

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

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

23 (~~(23)~~) (21) "Waters of the state" includes lakes, rivers, ponds,
24 streams, inland waters, underground water, salt waters, estuaries,
25 tidal flats, beaches and lands adjoining the seacoast of the state,
26 sewers, and all other surface waters and watercourses within the
27 jurisdiction of the state of Washington.

28 (~~(24)~~) (22) "Worst case spill" means: (a) In the case of a
29 vessel, a spill of the entire cargo and fuel of the vessel complicated
30 by adverse weather conditions; and (b) in the case of an onshore or
31 offshore facility, the largest foreseeable spill in adverse weather
32 conditions.

33 **Sec. 2.** RCW 88.46.020 and 1991 c 200 s 415 are each amended to
34 read as follows:

35 In carrying out the purposes of this chapter, including the
36 adoption of rules for contingency plans, the (~~administrator~~) director
37 shall to the greatest extent practicable implement this chapter in a
38 manner consistent with federal law.

1 **Sec. 3.** RCW 88.46.030 and 1991 c 200 s 416 are each amended to
2 read as follows:

3 (1) All tank vessels entering the navigable waters of the state
4 shall be subject to inspection to assure that they comply with all
5 applicable federal and state standards.

6 (2) The ((office)) department shall review the tank vessel
7 inspection programs conducted by the United States coast guard and
8 other federal agencies to determine if the programs as actually
9 operated by those agencies provide the best achievable protection to
10 the waters of the state. If the ((office)) department determines that
11 the tank vessel inspection programs conducted by these agencies are not
12 adequate to protect the state's waters, it shall adopt rules for a
13 state tank vessel inspection program. The ((office)) department shall
14 adopt rules providing for a random review of individual tank vessel
15 inspections conducted by federal agencies. The ((office)) department
16 may accept a tank vessel inspection report issued by another state if
17 that state's tank vessel inspection program is determined by the
18 ((office)) department to be at least as protective of the public health
19 and the environment as the program adopted by the ((office))
20 department.

21 (3) The state tank vessel inspection program shall ensure that all
22 tank vessels entering state waters are inspected at least annually. To
23 the maximum extent feasible, the state program shall consist of the
24 monitoring of existing tank vessel inspection programs conducted by the
25 federal government. The ((office)) department shall consult with the
26 coast guard regarding the tank vessel inspection program. Any tank
27 vessel inspection conducted pursuant to this section shall be performed
28 during the vessel's scheduled stay in port.

29 (4) Any violation of coast guard or other federal regulations
30 uncovered during a state tank vessel inspection shall be immediately
31 reported to the appropriate agency.

32 **Sec. 4.** RCW 88.46.040 and 1991 c 200 s 417 are each amended to
33 read as follows:

34 (1) The owner or operator for each tank vessel shall prepare and
35 submit to the ((office)) department an oil spill prevention plan in
36 conformance with the requirements of this chapter. The plans shall be
37 submitted to the ((office)) department in the time and manner directed
38 by the ((office, but not later than January 1, 1993)) department. The

1 spill prevention plan may be consolidated with a spill contingency plan
2 submitted pursuant to RCW 88.46.060. The ((office)) department may
3 accept plans prepared to comply with other state or federal law as
4 spill prevention plans to the extent those plans comply with the
5 requirements of this chapter. The ((office)) department, by rule,
6 shall establish standards for spill prevention plans. ((The rules
7 shall be adopted not later than July 1, 1992.))

8 (2) The spill prevention plan for a tank vessel or a fleet of tank
9 vessels operated by the same operator shall:

10 (a) Establish compliance with the federal oil pollution act of 1990
11 and state and federal financial responsibility requirements, if
12 applicable;

13 (b) State all discharges of oil of more than twenty-five barrels
14 from the vessel within the prior five years and what measures have been
15 taken to prevent a reoccurrence;

16 (c) Describe all accidents, collisions, groundings, and near miss
17 incidents in which the vessel has been involved in the prior five
18 years, analyze the causes, and state the measures that have been taken
19 to prevent a reoccurrence;

20 (d) Describe the vessel operations with respect to staffing
21 standards;

22 (e) Describe the vessel inspection program carried out by the owner
23 or operator of the vessel;

24 (f) Describe the training given to vessel crews with respect to
25 spill prevention;

26 (g) Establish compliance with federal drug and alcohol programs;

27 (h) Describe all spill prevention technology that has been
28 incorporated into the vessel;

29 (i) Describe the procedures used by the vessel owner or operator to
30 ensure English language proficiency of at least one bridge officer
31 while on duty in waters of the state;

32 (j) Describe relevant prevention measures incorporated in any
33 applicable regional marine spill safety plan that have not been adopted
34 and the reasons for that decision; and

35 (k) Include any other information reasonably necessary to carry out
36 the purposes of this chapter required by rules adopted by the
37 ((office)) department.

38 (3) The ((office)) department shall only approve a prevention plan
39 if it provides the best achievable protection from damages caused by

1 the discharge of oil into the waters of the state and if it determines
2 that the plan meets the requirements of this section and rules adopted
3 by the ((office)) department.

4 (4) Upon approval of a prevention plan, the ((office)) department
5 shall provide to the person submitting the plan a statement indicating
6 that the plan has been approved, the vessels covered by the plan, and
7 other information the ((office)) department determines should be
8 included.

9 (5) The approval of a prevention plan shall be valid for five
10 years. An owner or operator of a tank vessel shall notify the
11 ((office)) department in writing immediately of any significant change
12 of which it is aware affecting its prevention plan, including changes
13 in any factor set forth in this section or in rules adopted by the
14 ((office)) department. The ((office)) department may require the owner
15 or operator to update a prevention plan as a result of these changes.

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

19 (7) Approval of a prevention plan by the ((office)) department does
20 not constitute an express assurance regarding the adequacy of the plan
21 nor constitute a defense to liability imposed under this chapter or
22 other state law.

23 (8) This section does not authorize the ((office)) department to
24 modify the terms of a collective bargaining agreement.

25 **Sec. 5.** RCW 88.46.050 and 1992 c 73 s 19 are each amended to read
26 as follows:

27 (1) In order to ensure the safety of marine transportation within
28 the navigable waters of the state and to protect the state's natural
29 resources, the ((administrator)) department shall adopt rules ((by July
30 1, 1992,)) for determining whether cargo vessels and passenger vessels
31 entering the navigable waters of the state pose a substantial risk of
32 harm to the public health and safety and the environment.

33 (2) The rules ((adopted by the administrator pursuant to this
34 section)) may include((, but are not limited to the following)):

35 (a) Examining available information sources for evidence that a
36 cargo or passenger vessel may pose a substantial risk to safe marine
37 transportation or the state's natural resources. Information sources
38 may include: Vessel casualty lists, United States coast guard casualty

1 reports, maritime insurance ratings, the index of contingency plans
2 compiled by the department of ecology, other data gathered by the
3 ((office or the)) maritime commission, or any other resources;

4 (b) Requesting the United States coast guard to deny a cargo vessel
5 or passenger vessel entry into the navigable waters of the state, if
6 the vessel poses a substantial environmental risk;

7 (c) Notifying the state's spill response system that a cargo or
8 passenger vessel entering the state's navigable waters poses a
9 substantial environmental risk;

10 (d) Inspecting a cargo or passenger vessel that may pose a
11 substantial environmental risk, to determine whether the vessel
12 complies with applicable state or federal laws. Any vessel inspection
13 conducted pursuant to this section shall be performed during the
14 vessel's scheduled stay in port; and

15 (e) Enforcement actions.

16 **Sec. 6.** RCW 88.46.060 and 1995 c 148 s 3 are each amended to read
17 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (m) Until a spill prevention plan has been submitted pursuant to
37 RCW 88.46.040, state the measures that have been taken to reduce the
38 likelihood that a spill will occur, including but not limited to,

1 design and operation of a vessel, training of personnel, number of
2 personnel, and backup systems designed to prevent a spill;

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

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

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

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

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

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

38 (c) A person who has contracted with a covered vessel to provide
39 containment and cleanup services and who meets the standards

1 established pursuant to RCW 90.56.240, may submit the plan for any
2 covered vessel for which the person is contractually obligated to
3 provide services. Subject to conditions imposed by the ((office))
4 department, the person may submit a single plan for more than one
5 covered vessel.

6 (4) A contingency plan prepared for an agency of the federal
7 government or another state that satisfies the requirements of this
8 section and rules adopted by the ((office)) department may be accepted
9 by the ((office)) department as a contingency plan under this section.
10 The ((office)) department shall assure that to the greatest extent
11 possible, requirements for contingency plans under this section are
12 consistent with the requirements for contingency plans under federal
13 law.

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

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

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

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

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

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

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

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

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

37 (6) The ((office)) department shall approve a contingency plan only
38 if it determines that the plan meets the requirements of this section
39 and that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

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

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

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

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

22 **Sec. 7.** RCW 88.46.070 and 1992 c 73 s 21 are each amended to read
23 as follows:

24 (1) The provisions of prevention plans and contingency plans
25 approved by the ((office)) department pursuant to this chapter shall be
26 legally binding on those persons submitting them to the ((office))
27 department and on their successors, assigns, agents, and employees.
28 The superior court shall have jurisdiction to restrain a violation of,
29 compel specific performance of, or otherwise to enforce such plans upon
30 application by the ((office)) department. The ((office)) department
31 may issue an order pursuant to chapter 34.05 RCW requiring compliance
32 with a contingency plan or a prevention plan and may impose
33 administrative penalties for failure to comply with a plan.

34 (2) If the ((administrator)) director believes a person has
35 violated or is violating or creates a substantial potential to violate
36 the provisions of this chapter, the ((administrator)) director shall
37 notify the person of the ((administrator's)) director's determination
38 by registered mail. The determination shall not constitute an order or

1 directive under RCW 43.21B.310. Within thirty days from the receipt of
2 notice of the determination, the person shall file with the
3 ((administrator)) director a full report stating what steps have been
4 and are being taken to comply with the determination of the
5 ((administrator)) director. The ((administrator)) director shall issue
6 an order or directive, as the ((administrator)) director deems
7 appropriate under the circumstances, and shall notify the person by
8 registered mail.

9 (3) If the ((administrator)) director believes immediate action is
10 necessary to accomplish the purposes of this chapter, the
11 ((administrator)) director may issue an order or directive, as
12 appropriate under the circumstances, without first issuing a notice or
13 determination pursuant to subsection (2) of this section. An order or
14 directive issued pursuant to this subsection shall be served by
15 registered mail or personally upon any person to whom it is directed.

16 **Sec. 8.** RCW 88.46.080 and 1992 c 73 s 22 are each amended to read
17 as follows:

18 (1) Except as provided in subsection (2) of this section, it shall
19 be unlawful for the owner or operator to knowingly and intentionally
20 operate in this state or on the waters of this state a covered vessel
21 without an approved contingency plan or an approved prevention plan as
22 required by this chapter, or financial responsibility in compliance
23 with chapter 88.40 RCW and the federal oil pollution act of 1990. The
24 first conviction under this section shall be a gross misdemeanor under
25 chapter 9A.20 RCW. A second or subsequent conviction shall be a class
26 C felony under chapter 9A.20 RCW.

27 (2) It shall not be unlawful for the owner or operator to operate
28 a covered vessel if:

29 (a) The covered vessel is not required to have a contingency plan,
30 spill prevention plan, or financial responsibility;

31 (b) All required plans have been submitted to the ((office))
32 department as required by this chapter and rules adopted by the
33 ((office)) department and the ((office)) department is reviewing the
34 plan and has not denied approval; or

35 (c) The covered vessel has entered state waters after the United
36 States coast guard has determined that the vessel is in distress.

37 (3) A person may rely on a copy of the statement issued by the
38 ((office)) department pursuant to RCW 88.46.060 as evidence that a

1 vessel has an approved contingency plan and the statement issued
2 pursuant to RCW 88.46.040 that a vessel has an approved prevention
3 plan.

4 (4) Any person found guilty of willfully violating any of the
5 provisions of this chapter, or any final written orders or directive of
6 the ((~~administrator~~)) director or a court in pursuance thereof shall be
7 deemed guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW,
8 and upon conviction thereof shall be punished by a fine of up to ten
9 thousand dollars and costs of prosecution, or by imprisonment in the
10 county jail for not more than one year, or by both such fine and
11 imprisonment in the discretion of the court. Each day upon which a
12 willful violation of the provisions of this chapter occurs may be
13 deemed a separate and additional violation.

14 **Sec. 9.** RCW 88.46.090 and 1992 c 73 s 23 are each amended to read
15 as follows:

16 (1) Except as provided in subsection (4) of this section, it shall
17 be unlawful for a covered vessel to enter the waters of the state
18 without an approved contingency plan required by RCW 88.46.060, a spill
19 prevention plan required by RCW 88.46.040, or financial responsibility
20 in compliance with chapter 88.40 RCW and the federal oil pollution act
21 of 1990. The ((~~office~~)) department may deny entry onto the waters of
22 the state to any covered vessel that does not have a required
23 contingency or spill prevention plan or financial responsibility.

24 (2) Except as provided in subsection (4) of this section, it shall
25 be unlawful for a covered vessel to transfer oil to or from an onshore
26 or offshore facility that does not have an approved contingency plan
27 required under RCW 90.56.210, a spill prevention plan required by RCW
28 90.56.200, or financial responsibility in compliance with chapter 88.40
29 RCW and the federal oil pollution act of 1990.

30 (3) The ((~~administrator~~)) director may assess a civil penalty of up
31 to one hundred thousand dollars against the owner or operator of a
32 vessel who is in violation of subsection (1) or (2) of this section.
33 Each day that the owner or operator of a covered vessel is in violation
34 of this section shall be considered a separate violation.

35 (4) It shall not be unlawful for a covered vessel to operate on the
36 waters of the state if:

37 (a) A contingency plan, a prevention plan, or financial
38 responsibility is not required for the covered vessel;

1 (b) A contingency plan and prevention plan has been submitted to
2 the ((office)) department as required by this chapter and rules adopted
3 by the ((office)) department and the ((office)) department is reviewing
4 the plan and has not denied approval; or

5 (c) The covered vessel has entered state waters after the United
6 States coast guard has determined that the vessel is in distress.

7 (5) Any person may rely on a copy of the statement issued by the
8 ((office)) department to RCW 88.46.060 as evidence that the vessel has
9 an approved contingency plan and the statement issued pursuant to RCW
10 88.46.040 as evidence that the vessel has an approved spill prevention
11 plan.

12 (6) Except for violations of subsection (1) or (2) of this section,
13 any person who violates the provisions of this chapter or rules or
14 orders adopted or issued pursuant thereto, shall incur, in addition to
15 any other penalty as provided by law, a penalty in an amount of up to
16 ten thousand dollars a day for each violation. Each violation is a
17 separate offense, and in case of a continuing violation, every day's
18 continuance is a separate violation. Every act of commission or
19 omission which procures, aids, or abets in the violation shall be
20 considered a violation under the provisions of this subsection and
21 subject to penalty. The penalty amount shall be set in consideration
22 of the previous history of the violator and the severity of the
23 violation's impact on public health and the environment in addition to
24 other relevant factors. The penalty shall be imposed pursuant to the
25 procedures set forth in RCW 43.21B.300.

26 **Sec. 10.** RCW 88.46.100 and 1995 c 391 s 9 are each amended to read
27 as follows:

28 (1) In order to assist the state in identifying areas of the
29 navigable waters of the state needing special attention, the owner or
30 operator of a covered vessel shall notify the coast guard within one
31 hour:

32 (a) Of the disability of the covered vessel if the disabled vessel
33 is within twelve miles of the shore of the state; and

34 (b) Of a collision or a near miss incident within twelve miles of
35 the shore of the state.

36 (2) The state military department and the ((office)) department
37 shall request the coast guard to notify the state military department
38 as soon as possible after the coast guard receives notice of a disabled

1 covered vessel or of a collision or near miss incident within twelve
2 miles of the shore of the state. The ((office)) department shall
3 negotiate an agreement with the coast guard governing procedures for
4 coast guard notification to the state regarding disabled covered
5 vessels and collisions and near miss incidents.

6 (3) The ((office)) department shall prepare a summary of the
7 information collected under this section and provide the summary to the
8 regional marine safety committees, the coast guard, and others in order
9 to identify problems with the marine transportation system.

10 (4) For the purposes of this section:

11 (a) A tank vessel or cargo vessel is considered disabled if any of
12 the following occur:

13 (i) Any accidental or intentional grounding;

14 (ii) The total or partial failure of the main propulsion or primary
15 steering or any component or control system that causes a reduction in
16 the maneuvering capabilities of the vessel;

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

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

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

23 (i) The towing mechanism becomes disabled;

24 (ii) The towboat towing the barge becomes disabled through
25 occurrences defined in (a) of this subsection.

26 (c) A near miss incident is an incident that requires the pilot or
27 master of a covered vessel to take evasive actions or make significant
28 course corrections in order to avoid a collision with another ship or
29 to avoid a grounding as required by the international rules of the
30 road.

31 (5) Failure of any person to make a report under this section shall
32 not be used as the basis for the imposition of any fine or penalty.

33 **Sec. 11.** RCW 88.46.120 and 1991 c 200 s 425 are each amended to
34 read as follows:

35 The ((office)) department may adopt rules including but not limited
36 to standards for spill response equipment to be maintained on tank
37 vessels. The standards adopted under this section shall be consistent

1 with spill response equipment standards adopted by the United States
2 coast guard.

3 **Sec. 12.** RCW 88.46.160 and 1991 c 200 s 438 are each amended to
4 read as follows:

5 Any person or facility conducting ship refueling and bunkering
6 operations, or the lightering of petroleum products, and any person or
7 facility transferring oil between an onshore or offshore facility and
8 a tank vessel shall have containment and recovery equipment readily
9 available for deployment in the event of the discharge of oil into the
10 waters of the state and shall deploy the containment and recovery
11 equipment in accordance with standards adopted by the ((office))
12 department. All persons conducting refueling, bunkering, or lightering
13 operations, or oil transfer operations shall be trained in the use and
14 deployment of oil spill containment and recovery equipment. The
15 ((office)) department shall adopt rules as necessary to carry out the
16 provisions of this section. The rules shall include standards for the
17 circumstances under which containment equipment should be deployed. An
18 onshore or offshore facility shall include the procedures used to
19 contain and recover discharges in the facility's contingency plan. It
20 is the responsibility of the person providing bunkering, refueling, or
21 lightering services to provide any containment or recovery equipment
22 required under this section. This section does not apply to a person
23 operating a ship for personal pleasure or for recreational purposes.

24 **Sec. 13.** RCW 88.46.170 and 1993 c 162 s 1 are each amended to read
25 as follows:

26 (1) The ((office)) department shall establish a field operations
27 program to enforce the provisions of this chapter. The field
28 operations program shall include, but is not limited to, the following
29 elements:

30 (a) Education and public outreach;

31 (b) Review of lightering and bunkering operations to prevent oil
32 spills;

33 (c) Evaluation and boarding of tank vessels for compliance with
34 prevention plans prepared pursuant to this chapter;

35 (d) Evaluation and boarding of covered vessels that may pose a
36 substantial risk to the public health, safety, and the environment;

1 (e) Evaluation and boarding of covered vessels for compliance with
2 rules adopted by the ((office)) department to implement recommendations
3 of regional marine safety committees; and

4 (f) Collection of vessel information to assist in identifying
5 vessels which pose a substantial risk to the public health, safety, and
6 the environment.

7 (2) The ((office)) department shall coordinate the field operations
8 program with similar activities of the United States coast guard. To
9 the extent feasible, the ((office)) department shall coordinate its
10 boarding schedules with those of the United States coast guard to
11 reduce the impact of boardings on vessel operators, to more efficiently
12 use state and federal resources, and to avoid duplication of United
13 States coast guard inspection operations.

14 (3) In developing and implementing the field operations program,
15 the ((office)) department shall give priority to activities designed to
16 identify those vessels which pose the greatest risk to the waters of
17 the state. The ((office)) department shall consult with the marine
18 transportation industry, individuals concerned with the marine
19 environment, other state and federal agencies, and the public in
20 developing and implementing the program required by this section.

21 **Sec. 14.** RCW 88.46.200 and 1994 sp.s. c 9 s 854 are each amended
22 to read as follows:

23 The ((~~administrator~~)) director may appoint ad hoc, advisory marine
24 safety committees to solicit recommendations and technical advice
25 concerning vessel traffic safety. The ((office)) department may
26 implement recommendations made in regional marine safety plans that are
27 approved by the ((office)) department and over which the ((office))
28 department has authority. If federal authority or action is required
29 to implement the recommendations, the ((office)) department may
30 petition the appropriate agency or the congress.

31 **Sec. 15.** RCW 90.56.010 and 1992 c 73 s 31 are each amended to read
32 as follows:

33 For purposes of this chapter, the following definitions shall apply
34 unless the context indicates otherwise:

35 (1) (~~"Administrator" means the administrator of the office of~~
36 ~~marine safety created in RCW 43.21I.010.~~

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

10 ~~((3))~~ (2) "Best achievable technology" means the technology that
11 provides the greatest degree of protection taking into consideration
12 (a) processes that are being developed, or could feasibly be developed,
13 given overall reasonable expenditures on research and development, and
14 (b) processes that are currently in use. In determining what is best
15 achievable technology, the director shall consider the effectiveness,
16 engineering feasibility, and commercial availability of the technology.

17 ~~((4))~~ (3) "Board" means the pollution control hearings board.

18 ~~((5))~~ (4) "Cargo vessel" means a self-propelled ship in commerce,
19 other than a tank vessel or a passenger vessel, three hundred or more
20 gross tons, including but not limited to, commercial fish processing
21 vessels and freighters.

22 ~~((6))~~ (5) "Bulk" means material that is stored or transported in
23 a loose, unpackaged liquid, powder, or granular form capable of being
24 conveyed by a pipe, bucket, chute, or belt system.

25 ~~((7))~~ (6) "Committee" means the preassessment screening committee
26 established under RCW 90.48.368.

27 ~~((8))~~ (7) "Covered vessel" means a tank vessel, cargo vessel, or
28 passenger vessel.

29 ~~((9))~~ (8) "Department" means the department of ecology.

30 ~~((10))~~ (9) "Director" means the director of the department of
31 ecology.

32 ~~((11))~~ (10) "Discharge" means any spilling, leaking, pumping,
33 pouring, emitting, emptying, or dumping.

34 ~~((12))~~ (11)(a) "Facility" means any structure, group of
35 structures, equipment, pipeline, or device, other than a vessel,
36 located on or near the navigable waters of the state that transfers oil
37 in bulk to or from a tank vessel or pipeline, that is used for
38 producing, storing, handling, transferring, processing, or transporting
39 oil in bulk.

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

10 (~~(13)~~) (12) "Fund" means the state coastal protection fund as
11 provided in RCW 90.48.390 and 90.48.400.

12 (~~(14)~~) (13) "Having control over oil" shall include but not be
13 limited to any person using, storing, or transporting oil immediately
14 prior to entry of such oil into the waters of the state, and shall
15 specifically include carriers and bailees of such oil.

16 (~~(15)~~) (14) "Marine facility" means any facility used for tank
17 vessel wharfage or anchorage, including any equipment used for the
18 purpose of handling or transferring oil in bulk to or from a tank
19 vessel.

20 (~~(16)~~) (15) "Navigable waters of the state" means those waters of
21 the state, and their adjoining shorelines, that are subject to the ebb
22 and flow of the tide and/or are presently used, have been used in the
23 past, or may be susceptible for use to transport intrastate,
24 interstate, or foreign commerce.

25 (~~(17)~~) (16) "Necessary expenses" means the expenses incurred by
26 the department and assisting state agencies for (a) investigating the
27 source of the discharge; (b) investigating the extent of the
28 environmental damage caused by the discharge; (c) conducting actions
29 necessary to clean up the discharge; (d) conducting predamage and
30 damage assessment studies; and (e) enforcing the provisions of this
31 chapter and collecting for damages caused by a discharge.

32 (~~(18)~~) (17) "Oil" or "oils" means naturally occurring liquid
33 hydrocarbons at atmospheric temperature and pressure coming from the
34 earth, including condensate and natural gasoline, and any fractionation
35 thereof, including, but not limited to, crude oil, petroleum, gasoline,
36 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
37 other than dredged spoil. Oil does not include any substance listed in
38 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under

1 section 101(14) of the federal comprehensive environmental response,
2 compensation, and liability act of 1980, as amended by P.L. 99-499.

3 ~~((19))~~ (18) "Offshore facility" means any facility located in,
4 on, or under any of the navigable waters of the state, but does not
5 include a facility any part of which is located in, on, or under any
6 land of the state, other than submerged land.

7 ~~((20))~~ (19) "Onshore facility" means any facility any part of
8 which is located in, on, or under any land of the state, other than
9 submerged land, that because of its location, could reasonably be
10 expected to cause substantial harm to the environment by discharging
11 oil into or on the navigable waters of the state or the adjoining
12 shorelines.

13 ~~((21))~~ (20)(a) "Owner or operator" means (i) in the case of a
14 vessel, any person owning, operating, or chartering by demise, the
15 vessel; (ii) in the case of an onshore or offshore facility, any person
16 owning or operating the facility; and (iii) in the case of an abandoned
17 vessel or onshore or offshore facility, the person who owned or
18 operated the vessel or facility immediately before its abandonment.

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

22 ~~((22))~~ (21) "Passenger vessel" means a ship of three hundred or
23 more gross tons with a fuel capacity of at least six thousand gallons
24 carrying passengers for compensation.

25 ~~((23))~~ (22) "Person" means any political subdivision, government
26 agency, municipality, industry, public or private corporation,
27 copartnership, association, firm, individual, or any other entity
28 whatsoever.

29 ~~((24))~~ (23) "Ship" means any boat, ship, vessel, barge, or other
30 floating craft of any kind.

31 ~~((25))~~ (24) "Spill" means an unauthorized discharge of oil or
32 hazardous substances into the waters of the state.

33 ~~((26))~~ (25) "Tank vessel" means a ship that is constructed or
34 adapted to carry, or that carries, oil in bulk as cargo or cargo
35 residue, and that:

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

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

1 (~~(27)~~) (26) "Waters of the state" includes lakes, rivers, ponds,
2 streams, inland waters, underground water, salt waters, estuaries,
3 tidal flats, beaches and lands adjoining the seacoast of the state,
4 sewers, and all other surface waters and watercourses within the
5 jurisdiction of the state of Washington.

6 (~~(28)~~) (27) "Worst case spill" means: (a) In the case of a
7 vessel, a spill of the entire cargo and fuel of the vessel complicated
8 by adverse weather conditions; and (b) in the case of an onshore or
9 offshore facility, the largest foreseeable spill in adverse weather
10 conditions.

11 **Sec. 16.** RCW 90.56.060 and 1991 c 200 s 107 are each amended to
12 read as follows:

13 (1) The department shall prepare and annually update a state-wide
14 master oil and hazardous substance spill prevention and contingency
15 plan. In preparing the plan, the department shall consult with an
16 advisory committee representing diverse interests concerned with oil
17 and hazardous substance spills, including (~~the office of marine~~
18 ~~safety,~~) the United States coast guard, the federal environmental
19 protection agency, state agencies, local governments, port districts,
20 private facilities, environmental organizations, oil companies,
21 shipping companies, containment and cleanup contractors, tow companies,
22 and hazardous substance manufacturers.

23 (2) The state master plan prepared under this section shall at a
24 minimum:

25 (a) Take into consideration the elements of oil spill prevention
26 and contingency plans approved or submitted for approval pursuant to
27 this chapter and chapter 88.46 RCW and oil and hazardous substance
28 spill contingency plans prepared pursuant to other state or federal law
29 or prepared by federal agencies and regional entities;

30 (b) State the respective responsibilities as established by
31 relevant statutes and rules of each of the following in the prevention
32 of and the assessment, containment, and cleanup of a worst case spill
33 of oil or hazardous substances into the environment of the state: (i)
34 State agencies; (ii) local governments; (iii) appropriate federal
35 agencies; (iv) facility operators; (v) property owners whose land or
36 other property may be affected by the oil or hazardous substance spill;
37 and (vi) other parties identified by the department as having an

1 interest in or the resources to assist in the containment and cleanup
2 of an oil or hazardous substance spill;

3 (c) State the respective responsibilities of the parties identified
4 in (b) of this subsection in an emergency response;

5 (d) Identify actions necessary to reduce the likelihood of spills
6 of oil and hazardous substances;

7 (e) Identify and obtain mapping of environmentally sensitive areas
8 at particular risk to oil and hazardous substance spills; and

9 (f) Establish an incident command system for responding to oil and
10 hazardous substances spills.

11 (3) In preparing and updating the state master plan, the department
12 shall:

13 (a) Consult with federal, provincial, municipal, and community
14 officials, other state agencies, the state of Oregon, and with
15 representatives of affected regional organizations;

16 (b) Submit the draft plan to the public for review and comment;

17 (c) Submit to the appropriate standing committees of the
18 legislature for review, not later than November 1 of each year, the
19 plan and any annual revision of the plan; and

20 (d) Require or schedule unannounced oil spill drills as required by
21 RCW 90.56.260 to test the sufficiency of oil spill contingency plans
22 approved under RCW 90.56.210.

23 **Sec. 17.** RCW 90.56.080 and 1991 c 200 s 109 are each amended to
24 read as follows:

25 (~~Not later than twelve months after May 15, 1991,~~) The division
26 of fire protection services shall establish and manage the Washington
27 oil and hazardous substances incident response training and education
28 program to provide approved classes in hazardous substance response,
29 taught by trained instructors. To carry out this program, the division
30 of fire protection services shall:

31 (1) Adopt rules necessary to implement the program;

32 (2) Establish a training and education program by developing the
33 curriculum to be used in the program in colleges, academies, and other
34 educational institutions;

35 (3) Provide training to local oil and hazardous materials emergency
36 response personnel; and

37 (4) Establish and collect admission fees and other fees that may be
38 necessary to the program.

1 **Sec. 18.** RCW 90.56.100 and 1998 c 245 s 175 are each amended to
2 read as follows:

3 (1) The Washington wildlife rescue coalition (~~((shall be))~~) is
4 established for the purpose of coordinating the rescue and
5 rehabilitation of wildlife injured or endangered by oil spills or the
6 release of other hazardous substances into the environment.

7 (2) The Washington wildlife rescue coalition shall be composed of:

8 (a) A representative of the department of fish and wildlife
9 designated by the director of fish and wildlife. The department of
10 fish and wildlife shall be designated as lead agency in the operations
11 of the coalition. The coalition shall be chaired by the representative
12 from the department of fish and wildlife;

13 (b) A representative of the department of ecology designated by the
14 director;

15 (c) A representative of the (~~(department of community, trade, and~~
16 ~~economic development)) Washington military department emergency
17 management (~~(program))~~ division, designated by the director of
18 (~~(community, trade, and economic development))~~ the Washington military
19 department;~~

20 (d) A licensed veterinarian, with experience and training in
21 wildlife rehabilitation, appointed by the veterinary board of
22 governors;

23 (e) (~~The director of the Washington conservation corps;~~

24 ~~(f))~~) A lay person, with training and experience in the rescue and
25 rehabilitation of wildlife appointed by the department; and

26 (~~(g))~~) (f) A person designated by the legislative authority of the
27 county where oil spills or spills of other hazardous substances may
28 occur. This member of the coalition shall serve on the coalition until
29 wildlife rescue and rehabilitation is completed in that county. The
30 completion of any rescue or rehabilitation project shall be determined
31 by the director of fish and wildlife.

32 (3) The duties of the Washington wildlife rescue coalition (~~((shall~~
33 ~~be))~~) are to:

34 (a) Develop an emergency mobilization plan to rescue and
35 rehabilitate waterfowl and other wildlife that are injured or
36 endangered by an oil spill or the release of other hazardous substances
37 into the environment;

1 (b) Develop and maintain a resource directory of persons,
2 governmental agencies, and private organizations that may provide
3 assistance in an emergency rescue effort;

4 (c) Provide advance training and instruction to volunteers in
5 rescuing and rehabilitating waterfowl and wildlife injured or
6 endangered by oil spills or the release of other hazardous substances
7 into the environment. The training may be provided through grants to
8 community colleges or to groups that conduct programs for training
9 volunteers. The coalition representatives from the agencies described
10 in subsection (2) of this section shall coordinate their training
11 efforts (~~((with the director of the Washington conservation corps))~~) and
12 work to provide training opportunities for young citizens;

13 (d) Obtain and maintain equipment and supplies used in emergency
14 rescue efforts.

15 (4)(a) Expenses for the coalition may be provided by the coastal
16 protection fund administered according to RCW 90.48.400.

17 (b) The coalition is encouraged to seek grants, gifts, or donations
18 from private sources in order to carry out the provisions of this
19 section and RCW 90.56.110. Any private funds donated to the commission
20 shall be deposited into the wildlife rescue account hereby created
21 within the wildlife fund as authorized under Title 77 RCW.

22 **Sec. 19.** RCW 90.56.200 and 1991 c 200 s 201 are each amended to
23 read as follows:

24 (1) The owner or operator for each onshore and offshore facility
25 shall prepare and submit to the department an oil spill prevention plan
26 in conformance with the requirements of this chapter. The plans shall
27 be submitted to the department in the time and manner directed by the
28 department(~~((, but not later than January 1, 1993))~~). The spill
29 prevention plan may be consolidated with a spill contingency plan
30 submitted pursuant to RCW 90.56.210. The department may accept plans
31 prepared to comply with other state or federal law as spill prevention
32 plans to the extent those plans comply with the requirements of this
33 chapter. The department, by rule, shall establish standards for spill
34 prevention plans. (~~((The rules shall be adopted not later than July 1,
35 1992.))~~)

36 (2) The spill prevention plan for an onshore or offshore facility
37 shall:

1 (a) Establish compliance with the federal oil pollution act of
2 1990, if applicable, and financial responsibility requirements under
3 federal and state law;

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

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

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

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

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

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

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

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

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

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

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

36 (4) Upon approval of a prevention plan, the department shall
37 provide to the person submitting the plan a statement indicating that
38 the plan has been approved, the facilities covered by the plan, and
39 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. 20.** RCW 90.56.210 and 1992 c 73 s 33 are each amended to read
18 as follows:

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

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

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

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

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

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

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

10 (g) Describe important features of the surrounding environment,
11 including fish and wildlife habitat, environmentally and
12 archaeologically sensitive areas, and public facilities. The
13 departments of ecology, (~~(fisheries, wildlife)~~) fish and wildlife, and
14 natural resources, and the office of archaeology and historic
15 preservation, upon request, shall provide information that they have
16 available to assist in preparing this description. (~~(If the department~~
17 ~~has adopted rules for contingency plans prior to July 1, 1992, the~~
18 ~~description of archaeologically sensitive areas shall only be required~~
19 ~~when the department revises the rules for contingency plans after July~~
20 ~~1, 1992.)) The description of archaeologically sensitive areas shall
21 not be required to be included in a contingency plan until it is
22 reviewed and updated pursuant to subsection (9) of this section;~~

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

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

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

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

35 (l) Until a spill prevention plan has been submitted pursuant to
36 RCW 90.56.200, state the measures that have been taken to reduce the
37 likelihood that a spill will occur, including but not limited to,
38 design and operation of a facility, training of personnel, number of
39 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 that to the greatest extent possible, requirements for
33 contingency plans under this section are consistent with the
34 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,
39 response time, and logistical arrangements for coordination and

1 implementation of response efforts to remove oil spills promptly and
2 properly and to protect the environment;

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

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

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

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

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

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

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

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

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

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

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

38 (10) Approval of a contingency plan by the department does not
39 constitute an express assurance regarding the adequacy of the plan nor

1 constitute a defense to liability imposed under this chapter or other
2 state law.

3 **Sec. 21.** RCW 90.56.370 and 1990 c 116 s 18 are each amended to
4 read as follows:

5 (1) Any person owning oil or having control over oil that enters
6 the waters of the state in violation of RCW 90.56.320 shall be strictly
7 liable, without regard to fault, for the damages to persons or
8 property, public or private, caused by such entry.

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

14 (a) An act of war or sabotage;

15 (b) An act of God;

16 (c) Negligence on the part of the United States government; or

17 (d) Negligence on the part of the state of Washington.

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

24 ~~((4) The chapter 116, Laws of 1990 changes to subsection (2) of~~
25 ~~this section requiring the defenses in that subsection to be the sole~~
26 ~~causes of the discharge, and the text of subsection (2)(b) of this~~
27 ~~section shall apply prospectively and not retroactively after June 7,~~
28 ~~1990.))~~

29 **Sec. 22.** RCW 90.56.510 and 1999 sp.s. c 7 s 2 are each amended to
30 read as follows:

31 (1) The oil spill ~~((administration))~~ prevention account is created
32 in the state treasury. All receipts from RCW 82.23B.020(2) shall be
33 deposited in the account. Moneys from the account may be spent only
34 after appropriation. The account is subject to allotment procedures
35 under chapter 43.88 RCW. If, on the first day of any calendar month,
36 the balance of the oil spill response account is greater than nine
37 million dollars and the balance of the oil spill ~~((administration))~~

1 prevention account exceeds the unexpended appropriation for the current
2 biennium, then the tax under RCW 82.23B.020(2) shall be suspended on
3 the first day of the next calendar month until the beginning of the
4 following biennium, provided that the tax shall not be suspended during
5 the last six months of the biennium. If the tax imposed under RCW
6 82.23B.020(2) is suspended during two consecutive biennia, the
7 department shall by November 1st after the end of the second biennium,
8 recommend to the appropriate standing committees an adjustment in the
9 tax rate. For the biennium ending June 30, 1999, and the biennium
10 ending June 30, 2001, the state treasurer may transfer a total of up to
11 one million dollars from the oil spill response account to the oil
12 spill ((~~administration~~)) prevention account to support appropriations
13 made from the oil spill ((~~administration~~)) prevention account in the
14 omnibus appropriations act adopted not later than June 30, 1999.

15 (2) Expenditures from the oil spill ((~~administration~~)) prevention
16 account shall be used exclusively for the administrative costs related
17 to the purposes of this chapter, and chapters 90.48, 88.40, and 88.46
18 RCW. Starting with the 1995-1997 biennium, the legislature shall give
19 activities of state agencies related to prevention of oil spills
20 priority in funding from the oil spill ((~~administration~~)) prevention
21 account. Costs of ((~~administration~~)) prevention include the costs of:

- 22 (a) Routine responses not covered under RCW 90.56.500;
- 23 (b) Management and staff development activities;
- 24 (c) Development of rules and policies and the state-wide plan
25 provided for in RCW 90.56.060;
- 26 (d) Facility and vessel plan review and approval, drills,
27 inspections, investigations, enforcement, and litigation;
- 28 (e) Interagency coordination and public outreach and education;
- 29 (f) Collection and administration of the tax provided for in
30 chapter 82.23B RCW; and
- 31 (g) Appropriate travel, goods and services, contracts, and
32 equipment.

33 **Sec. 23.** RCW 90.56.540 and 1991 c 200 s 605 are each amended to
34 read as follows:

- 35 (1) A person is guilty of operating a vessel while under the
36 influence of intoxicating liquor or drugs if the person operates a
37 covered vessel within this state while:

1 (a) The person has 0.06 grams or more of alcohol per two hundred
2 ten liters of breath, as shown by analysis of the person's breath made
3 under RCW ((88.16.230)) 90.56.550; or

4 (b) The person has 0.06 percent or more by weight of alcohol in the
5 person's blood as shown by analysis of the person's blood made under
6 RCW ((88.16.230)) 90.56.550; or

7 (c) The person is under the influence of or affected by
8 intoxicating liquor or drugs; or

9 (d) The person is under the combined influence of or affected by
10 intoxicating liquor or drugs.

11 (2) The fact that any person charged with a violation of this
12 section is or has been entitled to use such drug under the laws of this
13 state shall not constitute a defense against any charge of violating
14 this section.

15 (3) Operating a vessel while intoxicated is a class C felony under
16 chapter 9A.20 RCW.

17 **Sec. 24.** RCW 90.56.560 and 1991 c 200 s 607 are each amended to
18 read as follows:

19 No physician, registered nurse, qualified technician, or hospital,
20 or duly licensed clinical laboratory employing or using services of the
21 physician, registered nurse, or qualified technician, may incur any
22 civil or criminal liability as a result of the act of withdrawing blood
23 from any person when directed by a law enforcement officer to do so for
24 the purpose of a blood test under RCW ((88.16.230)) 90.56.550. This
25 section shall not relieve any physician, registered nurse, qualified
26 technician, or hospital or duly licensed clinical laboratory from civil
27 liability arising from the use of improper procedures or failing to
28 exercise the required standard of care.

29 **Sec. 25.** RCW 82.23B.020 and 1999 sp.s. c 7 s 1 are each amended to
30 read as follows:

31 (1) An oil spill response tax is imposed on the privilege of
32 receiving crude oil or petroleum products at a marine terminal within
33 this state from a waterborne vessel or barge operating on the navigable
34 waters of this state. The tax imposed in this section is levied upon
35 the owner of the crude oil or petroleum products immediately after
36 receipt of the same into the storage tanks of a marine terminal from a

1 waterborne vessel or barge at the rate of one cent per barrel of crude
2 oil or petroleum product received.

3 (2) In addition to the tax imposed in subsection (1) of this
4 section, an oil spill administration tax is imposed on the privilege of
5 receiving crude oil or petroleum products at a marine terminal within
6 this state from a waterborne vessel or barge operating on the navigable
7 waters of this state. The tax imposed in this section is levied upon
8 the owner of the crude oil or petroleum products immediately after
9 receipt of the same into the storage tanks of a marine terminal from a
10 waterborne vessel or barge at the rate of four cents per barrel of
11 crude oil or petroleum product.

12 (3) The taxes imposed by this chapter shall be collected by the
13 marine terminal operator from the taxpayer. If any person charged with
14 collecting the taxes fails to bill the taxpayer for the taxes, or in
15 the alternative has not notified the taxpayer in writing of the
16 imposition of the taxes, or having collected the taxes, fails to pay
17 them to the department in the manner prescribed by this chapter,
18 whether such failure is the result of the person's own acts or the
19 result of acts or conditions beyond the person's control, he or she
20 shall, nevertheless, be personally liable to the state for the amount
21 of the taxes. Payment of the taxes by the owner to a marine terminal
22 operator shall relieve the owner from further liability for the taxes.

23 (4) Taxes collected under this chapter shall be held in trust until
24 paid to the department. Any person collecting the taxes who
25 appropriates or converts the taxes collected shall be guilty of a gross
26 misdemeanor if the money required to be collected is not available for
27 payment on the date payment is due. The taxes required by this chapter
28 to be collected shall be stated separately from other charges made by
29 the marine terminal operator in any invoice or other statement of
30 account provided to the taxpayer.

31 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
32 the person charged with collection of the taxes and the person charged
33 with collection fails to pay the taxes to the department, the
34 department may, in its discretion, proceed directly against the
35 taxpayer for collection of the taxes.

36 (6) The taxes shall be due from the marine terminal operator, along
37 with reports and returns on forms prescribed by the department, within
38 twenty-five days after the end of the month in which the taxable
39 activity occurs.

1 (7) The amount of taxes, until paid by the taxpayer to the marine
2 terminal operator or to the department, shall constitute a debt from
3 the taxpayer to the marine terminal operator. Any person required to
4 collect the taxes under this chapter who, with intent to violate the
5 provisions of this chapter, fails or refuses to do so as required and
6 any taxpayer who refuses to pay any taxes due under this chapter, shall
7 be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

8 (8) Upon prior approval of the department, the taxpayer may pay the
9 taxes imposed by this chapter directly to the department. The
10 department shall give its approval for direct payment under this
11 section whenever it appears, in the department's judgment, that direct
12 payment will enhance the administration of the taxes imposed under this
13 chapter. The department shall provide by rule for the issuance of a
14 direct payment certificate to any taxpayer qualifying for direct
15 payment of the taxes. Good faith acceptance of a direct payment
16 certificate by a terminal operator shall relieve the marine terminal
17 operator from any liability for the collection or payment of the taxes
18 imposed under this chapter.

19 (9) All receipts from the tax imposed in subsection (1) of this
20 section shall be deposited into the state oil spill response account.
21 All receipts from the tax imposed in subsection (2) of this section
22 shall be deposited into the oil spill ((administration)) prevention
23 account.

24 (10) Within forty-five days after the end of each calendar quarter,
25 the office of financial management shall determine the balance of the
26 oil spill response account as of the last day of that calendar quarter.
27 Balance determinations by the office of financial management under this
28 section are final and shall not be used to challenge the validity of
29 any tax imposed under this chapter. The office of financial management
30 shall promptly notify the departments of revenue and ecology of the
31 account balance once a determination is made. For each subsequent
32 calendar quarter, the tax imposed by subsection (1) of this section
33 shall be imposed during the entire calendar quarter unless:

34 (a) Tax was imposed under subsection (1) of this section during the
35 immediately preceding calendar quarter, and the most recent quarterly
36 balance is more than nine million dollars; or

37 (b) Tax was not imposed under subsection (1) of this section during
38 the immediately preceding calendar quarter, and the most recent
39 quarterly balance is more than eight million dollars.

1 NEW SECTION. **Sec. 26.** The section 18(2), chapter 116, Laws of
2 1990 changes requiring the defenses in that subsection to be the sole
3 causes of the discharge, and the text of section 18(2)(b), chapter 116,
4 Laws of 1990 shall apply prospectively and not retroactively after June
5 7, 1990.

6 NEW SECTION. **Sec. 27.** RCW 88.46.150 (Tow boat standards--Study)
7 is decodified.

8 NEW SECTION. **Sec. 28.** The following acts or parts of acts are
9 each repealed:

10 (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200
11 s 428;

12 (2) RCW 90.56.903 (Report on implementation) and 1991 c 200 s 1109;

13 (3) RCW 88.46.921 (Office of marine safety abolished) and 1991 c
14 200 s 430;

15 (4) RCW 88.46.922 (Transfer of property and appropriations) and
16 1991 c 200 s 431;

17 (5) RCW 88.46.924 (Continuation of rules, pending business, and
18 obligations) and 1991 c 200 s 433;

19 (6) RCW 88.46.925 (Prior acts valid) and 1991 c 200 s 434;

20 (7) RCW 88.46.926 (Apportionments of budgeted funds) and 1991 c 200
21 s 435; and

22 (8) RCW 88.46.927 (Collective bargaining agreements not altered)
23 and 1993 c 281 s 67 & 1991 c 200 s 436.

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