
HOUSE BILL 2896

State of Washington

64th Legislature

2016 Regular Session

By Representatives Moscoso, Dye, Manweller, Schmick, Shea, and
Condotta

Read first time 01/26/16. Referred to Committee on Environment.

1 AN ACT Relating to limiting oil spill contingency planning
2 requirements to those railroads that haul crude oil or petroleum
3 products; amending RCW 88.46.010; and reenacting and amending RCW
4 90.56.010.

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

6 **Sec. 1.** RCW 88.46.010 and 2015 c 274 s 2 are each amended to
7 read as follows:

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

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

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

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

1 (i) Processes that are being developed, or could feasibly be
2 developed, given overall reasonable expenditures on research and
3 development; and

4 (ii) Processes that are currently in use.

5 (b) In determining what is best achievable technology, the
6 director shall consider the effectiveness, engineering feasibility,
7 and commercial availability of the technology.

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

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

15 (5) "Covered vessel" means a tank vessel, cargo vessel, or
16 passenger vessel.

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

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

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

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

27 (b) For the purposes of oil spill contingency planning in RCW
28 90.56.210, facility also means a railroad that is not owned by the
29 state that transports oil, other than biological oils and blends, as
30 bulk cargo.

31 (c) Except as provided under (b) of this subsection, a facility
32 does not include any: (i) Railroad car, motor vehicle, or other
33 rolling stock while transporting oil over the highways or rail lines
34 of this state; (ii) retail motor vehicle motor fuel outlet; (iii)
35 facility that is operated as part of an exempt agricultural activity
36 as provided in RCW 82.04.330; (iv) underground storage tank regulated
37 by the department or a local government under chapter 90.76 RCW; or
38 (v) marine fuel outlet that does not dispense more than three
39 thousand gallons of fuel to a ship that is not a covered vessel, in a
40 single transaction.

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

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

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

14 (13) "Oil" or "oils" means oil of any kind that is liquid at
15 twenty-five degrees Celsius and one atmosphere of pressure and any
16 fractionation thereof, including, but not limited to, crude oil,
17 bitumen, synthetic crude oil, natural gas well condensate, petroleum,
18 gasoline, fuel oil, diesel oil, biological oils and blends, oil
19 sludge, oil refuse, and oil mixed with wastes other than dredged
20 spoil. Oil does not include any substance listed in Table 302.4 of 40
21 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the
22 federal comprehensive environmental response, compensation, and
23 liability act of 1980, as amended by P.L. 99-499.

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

29 (15)(a) "Owner or operator" means (i) in the case of a vessel,
30 any person owning, operating, or chartering by demise, the vessel;
31 (ii) in the case of an onshore or offshore facility, any person
32 owning or operating the facility; and (iii) in the case of an
33 abandoned vessel or onshore or offshore facility, the person who
34 owned or operated the vessel or facility immediately before its
35 abandonment.

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

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

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

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

9 (19) "Regional vessels of opportunity response group" means a
10 group of nondedicated vessels participating in a vessels of
11 opportunity response system to respond when needed and available to
12 spills in a defined geographic area.

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

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

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

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

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

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

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

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

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

37 (27) "Vessels of opportunity response system" means nondedicated
38 boats and operators, including fishing and other vessels, that are
39 under contract with and equipped by contingency plan holders to
40 assist with oil spill response activities, including on-water oil

1 recovery in the near shore environment and the placement of oil spill
2 containment booms to protect sensitive habitats.

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

10 (29) "Waters of the state" includes lakes, rivers, ponds,
11 streams, inland waters, underground water, salt waters, estuaries,
12 tidal flats, beaches and lands adjoining the seacoast of the state,
13 sewers, and all other surface waters and watercourses within the
14 jurisdiction of the state of Washington.

15 (30) "Worst case spill" means: (a) In the case of a vessel, a
16 spill of the entire cargo and fuel of the vessel complicated by
17 adverse weather conditions; and (b) in the case of an onshore or
18 offshore facility, the largest foreseeable spill in adverse weather
19 conditions.

20 **Sec. 2.** RCW 90.56.010 and 2015 c 274 s 3 are each reenacted and
21 amended to read as follows:

22 The definitions in this section apply throughout this chapter
23 unless the context clearly requires otherwise.

24 (1) "Best achievable protection" means the highest level of
25 protection that can be achieved through the use of the best
26 achievable technology and those staffing levels, training procedures,
27 and operational methods that provide the greatest degree of
28 protection achievable. The director's determination of best
29 achievable protection shall be guided by the critical need to protect
30 the state's natural resources and waters, while considering (a) the
31 additional protection provided by the measures; (b) the technological
32 achievability of the measures; and (c) the cost of the measures.

33 (2) "Best achievable technology" means the technology that
34 provides the greatest degree of protection taking into consideration
35 (a) processes that are being developed, or could feasibly be
36 developed, given overall reasonable expenditures on research and
37 development, and (b) processes that are currently in use. In
38 determining what is best achievable technology, the director shall

1 consider the effectiveness, engineering feasibility, and commercial
2 availability of the technology.

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

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

7 (5) "Cargo vessel" means a self-propelled ship in commerce, other
8 than a tank vessel or a passenger vessel, three hundred or more gross
9 tons, including but not limited to, commercial fish processing
10 vessels and freighters.

11 (6) "Committee" means the preassessment screening committee
12 established under RCW 90.48.368.

13 (7) "Covered vessel" means a tank vessel, cargo vessel, or
14 passenger vessel.

15 (8) "Crude oil" means any naturally occurring hydrocarbons coming
16 from the earth that are liquid at twenty-five degrees Celsius and one
17 atmosphere of pressure including, but not limited to, crude oil,
18 bitumen and diluted bitumen, synthetic crude oil, and natural gas
19 well condensate.

20 (9) "Department" means the department of ecology.

21 (10) "Director" means the director of the department of ecology.

22 (11) "Discharge" means any spilling, leaking, pumping, pouring,
23 emitting, emptying, or dumping.

24 (12)(a) "Facility" means any structure, group of structures,
25 equipment, pipeline, or device, other than a vessel, located on or
26 near the navigable waters of the state that transfers oil in bulk to
27 or from a tank vessel or pipeline, that is used for producing,
28 storing, handling, transferring, processing, or transporting oil in
29 bulk.

30 (b) For the purposes of oil spill contingency planning in RCW
31 90.56.210, facility also means a railroad that is not owned by the
32 state that transports oil, other than biological oils and blends, as
33 bulk cargo.

34 (c) Except as provided in (b) of this subsection, a facility does
35 not include any: (i) Railroad car, motor vehicle, or other rolling
36 stock while transporting oil over the highways or rail lines of this
37 state; (ii) underground storage tank regulated by the department or a
38 local government under chapter 90.76 RCW; (iii) motor vehicle motor
39 fuel outlet; (iv) facility that is operated as part of an exempt
40 agricultural activity as provided in RCW 82.04.330; or (v) marine

1 fuel outlet that does not dispense more than three thousand gallons
2 of fuel to a ship that is not a covered vessel, in a single
3 transaction.

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

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

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

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

18 (17) "Necessary expenses" means the expenses incurred by the
19 department and assisting state agencies for (a) investigating the
20 source of the discharge; (b) investigating the extent of the
21 environmental damage caused by the discharge; (c) conducting actions
22 necessary to clean up the discharge; (d) conducting predamage and
23 damage assessment studies; and (e) enforcing the provisions of this
24 chapter and collecting for damages caused by a discharge.

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

29 (19) "Oil" or "oils" means oil of any kind that is liquid at
30 twenty-five degrees Celsius and one atmosphere of pressure and any
31 fractionation thereof, including, but not limited to, crude oil,
32 bitumen, synthetic crude oil, natural gas well condensate, petroleum,
33 gasoline, fuel oil, diesel oil, biological oils and blends, oil
34 sludge, oil refuse, and oil mixed with wastes other than dredged
35 spoil. Oil does not include any substance listed in Table 302.4 of 40
36 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the
37 federal comprehensive environmental response, compensation, and
38 liability act of 1980, as amended by P.L. 99-499.

39 (20) "Onshore facility" means any facility any part of which is
40 located in, on, or under any land of the state, other than submerged

1 land, that because of its location, could reasonably be expected to
2 cause substantial harm to the environment by discharging oil into or
3 on the navigable waters of the state or the adjoining shorelines.

4 (21)(a) "Owner or operator" means (i) in the case of a vessel,
5 any person owning, operating, or chartering by demise, the vessel;
6 (ii) in the case of an onshore or offshore facility, any person
7 owning or operating the facility; and (iii) in the case of an
8 abandoned vessel or onshore or offshore facility, the person who
9 owned or operated the vessel or facility immediately before its
10 abandonment.

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

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

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

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

22 (25) "Spill" means an unauthorized discharge of oil or hazardous
23 substances into the waters of the state.

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

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

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

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

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

1 offshore facility, the largest foreseeable spill in adverse weather
2 conditions.

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