

FINAL BILL REPORT

ESHB 1136

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Synopsis as Enacted

Brief Description: Exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

Sponsors: House Committee on Environment (originally sponsored by Representatives Dye, Blake, Haler, Shea, Taylor, Farrell, Dent, Nealey, Manweller, Short, Muri, Schmick, Ormsby, Fey, Young and Buys).

House Committee on Environment
Senate Committee on Energy, Environment & Telecommunications

Background:

State Oil Spill Contingency Planning.

The Department of Ecology (ECY) administers an oil spill preparedness, prevention, and response program. As one component of ECY's program, oil refineries, terminals, pipelines, other facilities, and vessel operators involved in the bulk transfer of oil must put in place oil spill contingency plans that outline containment and remediation responses to potential oil spills. Contingency plans approved by the ECY must identify personnel, materials, and equipment capable of promptly and properly removing oil with minimal environmental damage. In 2015 railroads were added to the categories of facilities that must complete contingency plans.

In August 2016 the ECY finalized contingency planning rules for railroads hauling oil in bulk, based on the 2015 statutory change. Under the rule, contingency planning requirements were phased in to first apply to railroads hauling crude oil. Railroads hauling other types of oil had a later contingency plan commission deadline than did crude oil haulers, plus extended timelines to secure an agreement with an oil spill primary response contractor and to secure adequate equipment. Railroads must rely on their contingency plans in the event of a spill, unless state and federal on-scene coordinators allow for a deviation from the plan.

Railroads hauling oil in bulk must annually update their contingency plans for accuracy or must submit a letter to the ECY noting that the previously submitted plan remains accurate. Plans must also be resubmitted every five years to the ECY for approval. In addition, when significant aspects of a railroad's contingency plan change, such as the loss or movement of

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equipment or staff, or if the railroad begins handling new types of oil, the railroad must notify the ECY within one day.

Railroad contingency plans must include the following components:

- a statement guaranteeing the railroad's safe and immediate response to spills and threatened spills using the contingency plan;
- lists and maps of rail routes and operations, including fueling locations and types of oil transported;
- information regarding the worst case spill volume that the railroad anticipates could occur on a rail route;
- information regarding the chain of command available to respond in the event of a spill, including the primary response contractor and other personnel;
- procedures for responding to the oil spill, including accounting for oil volumes, site-specific conditions, and evaluations of impact to groundwater;
- plans for identifying and protecting sensitive areas, including environmental, cultural, and economic resources;
- a field document that includes time-critical information included in the response plan for use by personnel involved in oil handling operations;
- a demonstration of the ability to access specified types and quantities of oil spill response equipment within 6, 12, 24, and 48 hours of a spill event; and
- specific plans for crude oil spills, on-site burning of oil, shoreline cleanup, air monitoring, wildlife rescue, and public and first responder notification. Crude oil spill plans must include an agreement with a primary response contractor that has the capabilities to respond to spilled oil that may weather, sink, or submerge, and that maintains specified types of response equipment.

Railroad contingency plan holders are also required to participate in a drill and equipment verification process. Railroads must participate in different types of drills, including unannounced drills at prescribed intervals, annual tabletop drills evaluating a worst-case discharge scenario, and twice-per-year deployment drills in which equipment listed in the contingency plan is tested in operating environments that could be impacted by spills. The ECY may grant waivers from drill requirements upon request.

The ECY evaluates submitted contingency plans for accuracy. After public comment, the ECY may approve or disapprove of a plan, or grant a temporary conditional approval that requires that certain changes be made within 18 months. After a spill or a drill, the ECY may require additional changes to a plan.

The ECY may revoke or condition plan approval if a railroad's contingency plan or associated drill performances do not meet required standards. The ECY may issue civil penalties of up to \$100,000 per day for violations of contingency plan requirements, plus criminal penalties for willful violations.

Federal Oil Spill Response Planning.

Certain railroads are required under federal law to develop oil spill response plans. Comprehensive federal oil spill response plans are required of any railroads that transport oil in containers of 42,000 gallons or more; however, according to the United States Department

of Transportation (USDOT), the typical capacity of a railroad tank car is 30,000 gallons, and as a result, no railroads are currently required to prepare comprehensive oil spill response plans. The USDOT recently proposed, but has not finalized, a draft regulation that would require comprehensive contingency plans of railroads carrying at least 20 tank cars of any petroleum oil in a continuous block or at least 35 tank cars throughout the train.

Comprehensive federal oil spill response plans include a variety of components, including documentation requirements, the identification of personnel available for spill response, established coordination procedures, and periodic drill performance and other spill response training requirements.

Basic federal oil spill response plans are required of railroads transporting petroleum oil in containers of 3,500 gallons or more. Basic oil spill response plans are more limited than comprehensive plans and require the submission of a written plan that sets forth a response plan to discharges, considers the maximum potential discharge from a tank car, and identifies private equipment and response personnel. Railroads hauling nonpetroleum oils are not required to develop basic oil spill response plans.

Oil Definition.

For purposes of state contingency planning requirements, "oil" is defined as any kind or distillate of oil that is liquid at atmospheric pressure and temperature of 25 degrees Celsius. A variety of specific types of oil are explicitly included within this definition, including crude oil, gasoline, biological oils and blends, diesel oil, and oil sludge.

Class III Railroads.

The USDOT's Surface Transportation Board (STB) is responsible for a variety of aspects of federal railroad regulatory oversight, including railroad rates, service issues, mergers, sales, construction, and abandonment of rail lines. The STB also classifies types of railroads by annual carrier operating revenue:

- Class I—\$250 million or more;
- Class II—\$20 million or more; and
- Class III—\$0 to \$20 million.

These amounts were adopted in 1991, and the STB uses a formula to adjust them for inflation. As of 2016, pursuant to this inflationary adjustment, the maximum operating revenue for Class III railroads was set at \$36.6 million.

Summary:

The contingency planning requirements under ECY rules are narrowed for certain Class III railroads, as defined by the STB, that do not haul bulk crude oil. The degree to which the contingency plan requirements are narrowed depends on the volume of noncrude oil transported each year by the railroad:

- Contingency plan rules adopted by the ECY may not require Class III railroads hauling 49 or more carloads of bulk noncrude oil to contract for access to spill response equipment or to complete more than a total of one table-top drill every three years to test the contingency plans.

- Class III railroads hauling less than 49 carloads of bulk noncrude oil may only be required to submit a basic contingency plan that includes contact information for personnel involved in spill response operations, accident insurance information, contingency plan document filing requirements, and the development of a spill response field document for use by railroad personnel. These basic contingency plans must also be reviewed annually for accuracy.

Class III railroads that haul bulk oil other than crude oil may submit a federal oil spill response plan in lieu of a state oil spill contingency plan.

Votes on Final Passage:

House	97	1	
Senate	46	3	(Senate amended)
House	94	1	(House concurred)

Effective: July 23, 2017