

HOUSE BILL REPORT

ESHB 1136

As Amended by the Senate

Title: An act relating to exempting short-line railroads that haul nonfuel oils from oil spill contingency planning requirements.

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).

Brief History:

Committee Activity:

Environment: 2/6/17, 2/14/17 [DPS].

Floor Activity:

Passed House: 3/1/17, 97-1.

Senate Amended.

Passed Senate: 4/4/17, 46-3.

Brief Summary of Engrossed Substitute Bill

- Limits the scope of oil spill contingency plan requirements for Class III railroads that do not haul crude oil in bulk.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Fey, Kagi and McBride.

Staff: Jacob Lipson (786-7196).

Background:

State Oil Spill Contingency Planning.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Ecology (ECY) administers an oil spill preparedness, prevention, and response program. State law directs oil refineries, terminals, pipelines, other facilities, and vessel operators involved in the bulk transfer of oil to 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 the Legislature added railroads 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 have until April 2017 to submit a contingency plan, 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 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, 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 requirements 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 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 United States Department of Transportation'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 of Engrossed Substitute Bill:

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 more than 24 carloads of bulk noncrude oil to contract for access to spill response equipment or to complete more than a total of one drill of any type every three years to test the contingency plans.
- Class III railroads hauling less than 24 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 and pollution 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.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment:

- raises the threshold from 24 tank cars to 49 tank cars per year that a Class III railroad may haul before the railroad is no longer eligible to submit a basic contingency plan to the Department of Ecology instead of a full or nearly-full contingency plan;
- prohibits the Department of Ecology's contingency plan rules for Class III railroads that haul more than 49 tank cars per year of noncrude oil from requiring more than one basic table-top drill every three years (but without specifying limits on the frequency of other types of drills required under contingency plans), instead of prohibiting the contingency plan rules from requiring more than one drill of any type every three years;
- eliminates the requirement to include pollution insurance information as part of the basic contingency plans filed by Class III railroads hauling 49 or less tank car loads of noncrude oil per year; and

- requires Class III railroads filing a basic contingency plan to provide a certificate of insurance to the Department of Ecology upon request.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature did not have small railroads hauling oils other than crude oil in mind when they required certain railroads to develop contingency plans. There is less risk associated with hauling oils other than crude oil. The ECY's rules are not appropriate for or tailored to short-line railroads, who do not haul high volumes of oil, travel at slow speeds, and may not operate near waterways. The costs of these regulations do not justify the compliance expenditures that would be required of small railroads, and as common carriers, railroads have an obligation to move all types of products. The costs of regulations will be passed on to the shippers, who will choose to move product by motor vehicle, which has a less safe accident record. The ECY's rule requires railroads to undertake costly drill exercises. Regulations must protect the environment, but also provide flexibility that allow railroads to move freight.

(Opposed) The 2015 Oil Transportation Safety Act was a good investment by the state, because contingency planning pays off in terms of reduced damages from oil spills. Even though the rule has not begun to be enforced, the contingency planning process has led several railroads to already adopt safer oil transportation processes. Contingency plans will ensure that railroads have rapid access to oil spill response equipment, which is important in the event of a spill. The ECY's rule was not a one-size-fits-all approach, and contains flexibility and exemptions for smaller railroads. Small railroads will be able to develop their contingency plans by using a template developed by the ECY, which won't place a high administrative burden on the railroads. Even if toxicity is comparatively lower, oils other than crude can be damaging to the environment and to wildlife, by suffocating fish and causing hypothermia in marine mammals. There is not a history of oil spills by railroads in Washington. The ECY should be given a chance to implement the rule, and railroads will discover the burdens are not as high as they fear.

Persons Testifying: (In support) Representative Dye, prime sponsor; Tim Kelly, Columbia Basin Railroad and Central Washington Railroad; Patrick Boss, Columbia Basin Railroad; and Amber Carter, Portland Junction Railroad.

(Opposed) Dale Jensen, Department of Ecology; and Bruce Wishart, Puget Soundkeeper Alliance.

Persons Signed In To Testify But Not Testifying: None.