
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1186

State of Washington

62nd Legislature

2011 Regular Session

By House General Government Appropriations & Oversight (originally sponsored by Representatives Rolfes, Hudgins, Upthegrove, Appleton, Roberts, Pedersen, Carlyle, Goodman, Liiias, Van De Wege, Dickerson, Cody, Fitzgibbon, Dunshee, McCoy, Finn, Jacks, Reykdal, Tharinger, Frockt, Billig, Hunt, Kenney, Stanford, Ryu, and Seaquist)

READ FIRST TIME 02/22/11.

1 AN ACT Relating to requirements under the state's oil spill
2 program; amending RCW 88.46.060, 88.46.100, 88.46.090, 90.48.366, and
3 90.56.370; reenacting and amending RCW 88.46.010; adding new sections
4 to chapter 88.46 RCW; creating new sections; prescribing penalties; and
5 providing expiration dates.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 "deepwater horizon" wellhead blowout, explosion, and oil spill in the
9 Gulf of Mexico on April 20, 2010, resulted in the release of two
10 hundred million gallons of crude oil into the environment. Impacts
11 after the spill have included deaths and injuries, extensive damage to
12 the marine environment and wildlife habitats, as well as large
13 socioeconomic damages to local citizens, commercial fishing, tourism,
14 businesses, and recreation. As late as six months after the spill,
15 four thousand two hundred square miles of the Gulf of Mexico were
16 closed to commercial shrimp harvest. The incident in the Gulf of
17 Mexico is a reminder that the threat of major spills to Washington's
18 environment, natural resources, economy, quality of life, and private
19 property is significant.

1 (2) The legislature further finds that during the fall of 2010 the
2 department of ecology compiled lessons learned from the Gulf of Mexico
3 spill and the Puget Sound partnership convened an oil spill work group
4 in an effort to ensure there is a rapid and aggressive response to a
5 large scale spill in Washington and that oversight of spills is well
6 coordinated among different levels of government and industry. The
7 legislature intends to build upon these efforts, and other recent
8 studies, to improve Washington's prevention and response capabilities.
9 While current oil spill contingency plans are required to address worst
10 case spills, it is also clear that the state may be underprepared for
11 a large scale oil spill of the magnitude possible by failures of an oil
12 tanker or a tank barge, particularly within the confined waters of
13 Puget Sound. Lessons learned from the 2010 deepwater horizon incident
14 demonstrate that improvements to Washington's existing oil spill
15 prevention, preparedness, and response capabilities are both necessary
16 and possible.

17 **Sec. 2.** RCW 88.46.010 and 2009 c 11 s 7 are each reenacted and
18 amended to read as follows:

19 The definitions in this section apply throughout this chapter
20 unless the context clearly requires otherwise.

21 (1) "Best achievable protection" means the highest level of
22 protection that can be achieved through the use of the best achievable
23 technology and those staffing levels, training procedures, and
24 operational methods that provide the greatest degree of protection
25 achievable. The director's determination of best achievable protection
26 shall be guided by the critical need to protect the state's natural
27 resources and waters, while considering:

- 28 (a) The additional protection provided by the measures;
29 (b) The technological achievability of the measures; and
30 (c) The cost of the measures.

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

33 ~~((a))~~ (i) Processes that are being developed, or could feasibly
34 be developed, given overall reasonable expenditures on research and
35 development~~((7))~~i and

36 ~~((b))~~ (ii) Processes that are currently in use.

1 **(b)** In determining what is best achievable technology, the director
2 shall consider the effectiveness, engineering feasibility, and
3 commercial availability of the technology.

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

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

11 (5) "Covered vessel" means a tank vessel, cargo vessel, or
12 passenger vessel.

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

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

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

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

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

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

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

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

6 (13) "Oil" or "oils" means oil of any kind that is liquid at
7 atmospheric temperature and any fractionation thereof, including, but
8 not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil,
9 biological oils and blends, oil sludge, oil refuse, and oil mixed with
10 wastes other than dredged spoil. Oil does not include any substance
11 listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989,
12 under section 101(14) of the federal comprehensive environmental
13 response, compensation, and liability act of 1980, as amended by P.L.
14 99-499.

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

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

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

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

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

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

37 (19) "Severe weather conditions" means observed nautical conditions

1 with sustained winds measured at forty knots and wave heights measured
2 between twelve and eighteen feet.

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

5 (21) "Spill" means an unauthorized discharge of oil into the waters
6 of the state.

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

11 (23) "Tank vessel" means a ship that is constructed or adapted to
12 carry, or that carries, oil in bulk as cargo or cargo residue, and
13 that:

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

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

17 (24) "Vessel emergency" means a substantial threat of pollution
18 originating from a covered vessel, including loss or serious
19 degradation of propulsion, steering, means of navigation, primary
20 electrical generating capability, and seakeeping capability.

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

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

30 (27) "Vessels of opportunity response system" means a fleet of
31 nondedicated commercial vessels and crew, including commercial fishing
32 vessels, other commercial vessels, publicly owned vessels, and other
33 appropriate nonrecreational vessels, that are under contract with, and
34 equipped by, contingency plan holders to assist with oil spill response
35 activities, including on-water oil recovery in the near shore
36 environment and the placement of oil spill containment booms to protect
37 sensitive habitats.

1 (28) "Regional vessels of opportunity response group" means a fleet
2 of vessels participating in a vessels of opportunity response system
3 and directed and positioned to respond to spills in a defined
4 geographic area.

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

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

14 NEW SECTION. Sec. 3. A new section is added to chapter 88.46 RCW
15 to read as follows:

16 (1)(a) The owner or operator of a tank vessel transiting to or from
17 a Washington marine facility shall establish or fund a vessels of
18 opportunity response system to supplement the timely and effective
19 response to spills in the vessel's area of operation.

20 (b) Except for tank vessels with an area of operation limited to
21 the Columbia river, the vessels of opportunity response system must be
22 composed of an adequate number of regional vessels of opportunity
23 response groups so as to be prepared to respond to a spill anywhere
24 within the tank vessel's area of operation within twelve hours after
25 notification of a spill event, to the extent that a twelve-hour spill
26 response is determined to be safe and effective. For tank vessels with
27 an area of operation limited to the Columbia river, the vessels of
28 opportunity system may be limited to one regional vessels of
29 opportunity response group located near the mouth of the river.

30 (c) Each regional vessels of opportunity response group must be
31 composed of a sufficient number of participating vessels to satisfy a
32 planning standard of having at least six capable vessels available at
33 any one time during a spill response incident. To achieve the planning
34 standard of deploying six individual nondedicated vessels at any one
35 time, a regional vessels of opportunity response group must include a
36 total of more than six participating nondedicated vessels.

1 (2) A vessels of opportunity response system must include the
2 maintenance of active contracts with an adequate sized fleet of
3 capable, nondedicated vessels that ensures the following:

4 (a) Participating vessels can be rapidly equipped, consistent with
5 subsection (3) of this section, with dedicated response equipment that
6 represents the best achievable technology, given the expected operating
7 environment, for the booming, storage, and recovery of oil. The best
8 achievable technology may vary among regional vessels of opportunity
9 response groups and the individual participating vessels based on
10 whether or not the expected response area is open marine water, harbor
11 areas, Puget Sound, or river environments; however, the vessels
12 participating in an individual response group must, at a minimum,
13 collectively have access to equipment that includes containment boom
14 and oil recovery systems capable of operating in currents of at least
15 four knots;

16 (b) The appropriate response equipment is readily available to the
17 individual vessels participating in a regional vessels of opportunity
18 response group; and

19 (c) Crews of the participating vessels are:

20 (i) Equipped with adequate personal protection gear; and

21 (ii) Properly trained to utilize response equipment that represents
22 the highest level of available oil spill response technology for the
23 expected operating environment. Crew training may be limited to safe
24 response equipment utilization and deployment and not the maintenance
25 of response equipment.

26 (3)(a) The dedicated response equipment actually provided to
27 individual participating vessels in a regional vessels of opportunity
28 system may differ among participating vessels; however, the equipment
29 provided collectively to the individual participants in a response
30 group must satisfy the requirements of this section. As such, when
31 necessary to satisfy the requirements of this section, not all
32 participating vessels are, individually, required to be equipped with
33 technology representing the best achievable protection.

34 (b) The dedicated response equipment provided to individual
35 participating vessels in a regional vessels of opportunity system may
36 be dedicated equipment owned and maintained by the contingency plan
37 holder and not by the owner or operator of the participating vessel as
38 long as the participating vessels have access to, and can be equipped

1 with, the equipment as required in this section. Equipment that is
2 required to be available to dedicated responders under section 5 of
3 this act may supplement but not substitute for equipment available to
4 regional vessels of opportunity response groups.

5 (4) In addition to meeting requirements specified in RCW 88.46.060,
6 contingency plans for tank vessels operating in Washington waters must
7 provide for the organization and contracting of a vessels of
8 opportunity response system as required by this section.

9 (5)(a) The requirements of this section may be fulfilled by one or
10 more private organizations or nonprofit corporations providing umbrella
11 coverage under contract to single or multiple tank vessels. Any
12 organization or corporation providing coverage to satisfy the
13 requirements of this section must ensure that the vessels of
14 opportunity response system being provided includes the establishment
15 of a minimum of six distinct regional vessels of opportunity response
16 groups that are located strategically to ensure a timely response in
17 any of Washington's marine waters or the Columbia river.

18 (b) Unless otherwise directed by the department, the response
19 groups must at a minimum be stationed so as to be able to respond to
20 incidents occurring in the following locations:

- 21 (i) The outer coast;
- 22 (ii) The Strait of Juan de Fuca;
- 23 (iii) Northern Puget Sound;
- 24 (iv) Central Puget Sound;
- 25 (v) Southern Puget Sound; and
- 26 (vi) The mouth of the Columbia river.

27 (c) The department may require a private organization or nonprofit
28 corporation providing umbrella coverage to satisfy the requirements of
29 this section to station regional vessels of opportunity response groups
30 in areas that are in addition to the minimum required response areas of
31 this subsection based on risk and need.

32 (6) Each regional vessel of opportunity response group must undergo
33 a minimum of two drills a year to ensure that the overall vessels of
34 opportunity response system is maintained at an appropriate level of
35 readiness and that the actual number of participating vessels is
36 sufficient to meet the planning goal of deploying a minimum of six
37 capable vessels at any one time during a spill response incident. The
38 department may award credit to the plan holder for practice drills

1 accordingly. Each successful activation of the vessels of opportunity
2 response system may be considered by the department to satisfy a drill
3 covering this portion of the contingency plan.

4 (7) The decision to activate a vessels of opportunity response
5 system during a spill response, and provide direction as to how and
6 where the regional vessels of opportunity response groups should
7 respond, is the sole responsibility of the designated incident
8 commander or the unified command. The incident commander or unified
9 command is the only entity empowered to direct which of the response
10 equipment available to a regional vessels of opportunity response group
11 is appropriate for the operating environment and for the capabilities
12 of the specific individual responding vessels.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW
14 to read as follows:

15 (1) The department shall establish a volunteer coordination system.
16 The volunteer coordination system may be included as a part of the
17 state's overall oil spill response strategy, and may be implemented by
18 local emergency management organizations, in coordination with any
19 analogous federal efforts, to supplement the state's timely and
20 effective response to spills.

21 (2) The department should consider how the volunteer coordination
22 system will:

23 (a) Coordinate with the incident commander or unified command of an
24 oil spill and any affected local governments to receive, screen, and
25 register volunteers who are not affiliated with the emergency
26 management organization or a local nongovernmental organization;

27 (b) Coordinate the management of volunteers with local
28 nongovernmental organizations and their affiliated volunteers;

29 (c) Coordinate appropriate response operations with different
30 classes of volunteers, including pretrained volunteers and convergent
31 volunteers, to fulfill requests by the department or an oil spill
32 incident commander or unified command;

33 (d) Coordinate public outreach regarding the need for and use of
34 volunteers;

35 (e) Determine minimum participation criteria for volunteers; and

36 (f) Identify volunteer training requirements and, if applicable,

1 provide training opportunities for volunteers prior to an oil spill
2 response incident.

3 (3) An act or omission by any volunteer participating in a spill
4 response or training as part of a volunteer coordination system, while
5 engaged in such activities, does not impose any liability on the
6 department, any participating local emergency management organization,
7 or the volunteer for civil damages resulting from the act or omission.
8 However, the immunity provided under this subsection does not apply to
9 an act or omission that constitutes gross negligence or willful or
10 wanton misconduct.

11 (4) The decisions to utilize volunteers in an oil spill response,
12 which volunteers to utilize, and to determine which response activities
13 are appropriate for volunteer participation in any given response are
14 the sole responsibilities of the designated incident commander or
15 unified command.

16 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46 RCW
17 to read as follows:

18 (1) In addition to meeting the requirements specified in this
19 chapter applicable to all covered vessels, contingency plans for tank
20 vessels must provide for:

21 (a) Rapid access to equipment located within the state that
22 reflects the best achievable protection for the expected operating
23 environment in the vessel's area of operation without requiring
24 equipment with capabilities that exceeds the response requirements for
25 the expected operating environment; and

26 (b) Continuous operation of oil spill response activities without
27 regard to the operating environment to the maximum extent practicable
28 and without unreasonably jeopardizing crew safety, as determined by the
29 incident commander or the unified command.

30 (2) In reviewing tank vessel contingency plans to measure
31 compliance with this section, the department must ensure that, at a
32 minimum, plans:

33 (a) Provide access to dedicated equipment appropriate for the
34 operating environment as needed to achieve oil recovery, to the maximum
35 extent practicable and without unreasonably jeopardizing crew safety;
36 including, at minimum, equipment representing the best value per dollar
37 based on the volume of oil the response equipment is capable of

1 containing, processing, or removing and that includes containment boom
2 and oil recovery systems capable of operating in currents of at least
3 four knots. Equipment intended to be used for response activities on
4 the outer coast or the Strait of Juan de Fuca must also be capable of
5 open water operations;

6 (b) Include a technical analysis of best achievable technology and
7 best achievable protection for the expected operating environment in
8 the vessel's area of operation, and incorporate best achievable
9 protection; and

10 (c) Provide adequate capacity for storage or proper disposal of the
11 volume and type of oil considered by the contingency plan so as to
12 achieve continuous operation of oil recovery to the maximum extent
13 practicable.

14 (3) Contingency plans for tank vessels must provide for the ability
15 of the tank vessel to have access, either directly or through an
16 assured contract with a third party, to multispectrum scanning
17 technologies that enhance the ability of responders to detect and
18 respond to oil spills in times of low visibility and at night,
19 including technology that is capable of aerial oil identification,
20 location mapping, and downloading of the information in real time to
21 response vessels and the command post. This technology is not required
22 to be stationed in Washington, but must be capable of being operational
23 at the site of an incident within four hours of plan activation.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46 RCW
25 to read as follows:

26 (1) The department is responsible for ordering joint large-scale,
27 multiple plan equipment deployment drills of tank vessels to determine
28 the adequacy of the owner's or operator's compliance with the
29 contingency plan requirements of this chapter. The department must
30 order at least one drill as outlined in this section every three years.

31 (2) The tank vessel equipment deployment drills must focus on, at
32 a minimum, the following:

33 (a) The functional ability for multiple contingency plans to be
34 simultaneously activated with the purpose of testing the ability for
35 dedicated equipment and trained personnel cited in multiple contingency
36 plans to be activated in a large scale spill; and

1 (b) The operational readiness during both the first six hours of a
2 spill and, at the department's discretion, over multiple operational
3 periods of response.

4 (3) Joint drills ordered under this section may be incorporated
5 into other drill requirements under this chapter when deemed beneficial
6 by the department for enabling larger scale drills within the overall
7 drill management framework.

8 (4) Each successful large-scale, multiple plan equipment deployment
9 drill conducted under this section may be considered by the department
10 as a drill of the underlying contingency plan and credit may be awarded
11 to the plan holder accordingly.

12 (5) The department shall, when practicable, coordinate with
13 applicable federal agencies, the state of Oregon, and the province of
14 British Columbia to establish a drill incident command and to help
15 ensure that lessons learned from the drills are evaluated with the goal
16 of improving the underlying contingency plans.

17 **Sec. 7.** RCW 88.46.060 and 2005 c 78 s 2 are each amended to read
18 as follows:

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

27 (a) Include full details of the method of response to spills of
28 various sizes from any vessel 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 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 consistent
8 with this chapter to evaluate whether personnel and equipment provided
9 under the plan are in a state of operational readiness at all times;

10 (g) Describe important features of the surrounding environment,
11 including fish and wildlife habitat, shellfish beds, environmentally
12 and archaeologically sensitive areas, and public facilities. The
13 departments of ecology, fish and wildlife, (~~and~~) natural resources,
14 and (~~the office of~~) archaeology and historic preservation, upon
15 request, shall provide information that they have available to assist
16 in preparing this description. The description of archaeologically
17 sensitive areas shall not be required to be included in a contingency
18 plan until it is reviewed and updated pursuant to subsection (9) of
19 this section;

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

1 likelihood that a spill will occur, including but not limited to,
2 design and operation of a vessel, training of personnel, number of
3 personnel, and backup systems designed to prevent a spill;

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

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

11 (p) Compliance with section 8 of this act if the contingency plan
12 is submitted by an umbrella plan holder; and

13 (q) Include any additional elements of contingency plans as
14 required by this chapter.

15 (2)~~((a))~~ The owner or operator of a ~~((tank))~~ covered vessel ~~((of~~
16 ~~three-thousand-gross-tons-or-more-shall))~~ must submit ~~((a))~~ any
17 required contingency plan updates to the department within ~~((six-months~~
18 ~~after))~~ the timelines established by the department ~~((adopts-rules~~
19 ~~establishing-standards-for-contingency-plans-under-subsection-(1)-of~~
20 ~~this-section.~~

21 ~~((b)-Contingency-plans-for-all-other-covered-vessels-shall-be~~
22 ~~submitted-to-the-department-within-eighteen-months-after-the-department~~
23 ~~has-adopted-rules-under-subsection-(1)-of-this-section.-The-department~~
24 ~~may-adopt-a-schedule-for-submission-of-plans-within-the-eighteen-month~~
25 ~~period)).~~

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

34 (b) The contingency plan for a cargo vessel or passenger vessel may
35 be submitted by the owner or operator of the cargo vessel or passenger
36 vessel, by the agent for the vessel resident in this state, or by a
37 Washington state nonprofit corporation established for the purpose of
38 oil spill response and contingency plan coverage and of which the owner

1 or operator is a member. Subject to conditions imposed by the
2 department, the owner, operator, or agent may submit a single
3 contingency plan for cargo vessels or passenger vessels of a particular
4 class.

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

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

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

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

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

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

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

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

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

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

37 (h) The extent to which reasonable, cost-effective measures to

1 prevent a likelihood that a spill will occur have been incorporated
2 into the plan.

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

8 (b) The department must notify the plan holder in writing within
9 sixty-five days of an initial or amended plan's submittal to the
10 department as to whether the plan is disapproved, approved, or
11 conditionally approved. If a plan is conditionally approved, the
12 department must clearly describe each condition and specify a schedule
13 for plan holders to submit required updates.

14 (7) The approval of the contingency plan shall be valid for five
15 years. Upon approval of a contingency plan, the department shall
16 provide to the person submitting the plan a statement indicating that
17 the plan has been approved, the vessels covered by the plan, and other
18 information the department determines should be included.

19 (8) An owner or operator of a covered vessel shall notify the
20 department in writing immediately of any significant change of which it
21 is aware affecting its contingency plan, including changes in any
22 factor set forth in this section or in rules adopted by the department.
23 The department may require the owner or operator to update a
24 contingency plan as a result of these changes.

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

28 (10) Approval of a contingency plan by the department does not
29 constitute an express assurance regarding the adequacy of the plan nor
30 constitute a defense to liability imposed under this chapter or other
31 state law.

32 NEW SECTION. Sec. 8. A new section is added to chapter 88.46 RCW
33 to read as follows:

34 (1) When submitting a contingency plan to the department under RCW
35 88.46.060, any umbrella plan holders that enroll both tank vessels and
36 covered vessels that are not tank vessels must, in addition to
37 satisfying the other requirements of this chapter, specify:

1 (a) The maximum worst case discharge volume from covered vessels
2 that are not tank vessels to be covered by the umbrella plan holder's
3 contingency plan; and

4 (b) The maximum worst case discharge volume from tank vessels to be
5 covered by the umbrella plan holder's contingency plan.

6 (2) Tank vessel owners or operators that are enrolled with an
7 umbrella plan holder and that have worse case discharge volumes larger
8 than the maximum volume covered by the contingency plan of the umbrella
9 plan holder must demonstrate to the satisfaction of the department that
10 the owner or operator of the tank vessel has access to the necessary
11 additional response capabilities.

12 **Sec. 9.** RCW 88.46.100 and 2000 c 69 s 10 are each amended to read
13 as follows:

14 ~~((1)) In (order to assist the state in identifying areas of the~~
15 ~~navigable waters of the state needing special attention, the owner or~~
16 ~~operator of a covered vessel shall notify the)) addition to any~~
17 ~~notifications that the owner or operator of a covered vessel must~~
18 ~~provide to the United States coast guard (within one hour:~~

19 ~~(a) Of the disability of the covered vessel if the disabled vessel~~
20 ~~is within twelve miles of the shore of the state; and~~

21 ~~(b) Of a collision or a near miss incident within twelve miles of~~
22 ~~the shore of the state.~~

23 ~~(2) The state military department and the department shall request~~
24 ~~the coast guard to notify the state military department as soon as~~
25 ~~possible after the coast guard receives notice of a disabled covered~~
26 ~~vessel or of a collision or near miss incident within twelve miles of~~
27 ~~the shore of the state. The department shall negotiate an agreement~~
28 ~~with the coast guard governing procedures for coast guard notification~~
29 ~~to the state regarding disabled covered vessels and collisions and near~~
30 ~~miss incidents.~~

31 ~~(3) The department shall prepare a summary of the information~~
32 ~~collected under this section and provide the summary to the regional~~
33 ~~marine safety committees, the coast guard, and others in order to~~
34 ~~identify problems with the marine transportation system.~~

35 ~~(4) For the purposes of this section:~~

36 ~~(a) A tank vessel or cargo vessel is considered disabled if any of~~
37 ~~the following occur:~~

1 ~~(i) Any accidental or intentional grounding;~~
2 ~~(ii) The total or partial failure of the main propulsion or primary~~
3 ~~steering or any component or control system that causes a reduction in~~
4 ~~the maneuvering capabilities of the vessel;~~
5 ~~(iii) An occurrence materially and adversely affecting the vessel's~~
6 ~~seaworthiness or fitness for service, including but not limited to,~~
7 ~~fire, flooding, or collision with another vessel;~~
8 ~~(iv) Any other occurrence that creates the serious possibility of~~
9 ~~an oil spill or an occurrence that may result in such a spill.~~
10 ~~(b) A barge is considered disabled if any of the following occur:~~
11 ~~(i) The towing mechanism becomes disabled;~~
12 ~~(ii) The towboat towing the barge becomes disabled through~~
13 ~~occurrences defined in (a) of this subsection.~~
14 ~~(c) A near miss incident is an incident that requires the pilot or~~
15 ~~master of a covered vessel to take evasive actions or make significant~~
16 ~~course corrections in order to avoid a collision with another ship or~~
17 ~~to avoid a grounding as required by the international rules of the~~
18 ~~road.~~
19 ~~(5) Failure of any person to make a report under this section shall~~
20 ~~not be used as the basis for the imposition of any fine or penalty))~~
21 regarding a vessel emergency, the owner or operator of a covered vessel
22 must notify the state of any vessel emergency that results in the
23 discharge or substantial threat of discharge of oil to state waters or
24 that may affect the natural resources of the state. The purpose of
25 this notification is to enable the department to coordinate with the
26 vessel operator, contingency plan holder, and the United States coast
27 guard to protect the public health, welfare, and natural resources of
28 the state and to ensure all reasonable spill preparedness and response
29 measures are in place prior to a spill occurring.

30 **Sec. 10.** RCW 88.46.090 and 2000 c 69 s 9 are each amended to read
31 as follows:

32 (1) Except as provided in subsection (4) of this section, it shall
33 be unlawful for a covered vessel to enter the waters of the state
34 without an approved contingency plan required by ((RCW 88.46.060)) this
35 chapter, a spill prevention plan required by RCW 88.46.040, or
36 financial responsibility in compliance with chapter 88.40 RCW and the
37 federal oil pollution act of 1990. The department may deny entry onto

1 the waters of the state to any covered vessel that does not have a
2 required contingency or spill prevention plan or financial
3 responsibility.

4 (2) Except as provided in subsection (4) of this section, it shall
5 be unlawful for a covered vessel to transfer oil to or from an onshore
6 or offshore facility that does not have an approved contingency plan
7 required under RCW 90.56.210, a spill prevention plan required by RCW
8 90.56.200, or financial responsibility in compliance with chapter 88.40
9 RCW and the federal oil pollution act of 1990.

10 (3) The director may assess a civil penalty of up to (~~one~~) three
11 hundred thousand dollars against the owner or operator of a vessel who
12 is in violation of subsection (1) or (2) of this section. Each day
13 that the owner or operator of a covered vessel is in violation of this
14 section shall be considered a separate violation.

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

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

19 (b) A contingency plan and prevention plan has been submitted to
20 the department as required by this chapter and rules adopted by the
21 department and the department is reviewing the plan and has not denied
22 approval; or

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

25 (5) Any person may rely on a copy of the statement issued by the
26 department to RCW 88.46.060 as evidence that the vessel has an approved
27 contingency plan and the statement issued pursuant to RCW 88.46.040 as
28 evidence that the vessel has an approved spill prevention plan.

29 (6) Except for violations of subsection (1) or (2) of this section,
30 any person who violates the provisions of this chapter or rules or
31 orders adopted or issued pursuant (~~thereto~~) to this chapter, shall
32 incur, in addition to any other penalty as provided by law, a penalty
33 in an amount of up to ten thousand dollars a day for each violation.
34 Each violation is a separate offense, and in case of a continuing
35 violation, every day's continuance is a separate violation. Every act
36 of commission or omission which procures, aids, or abets in the
37 violation shall be considered a violation under the provisions of this
38 subsection and subject to penalty. The penalty amount shall be set in

1 consideration of the previous history of the violator and the severity
2 of the violation's impact on public health and the environment in
3 addition to other relevant factors. The penalty shall be imposed
4 pursuant to the procedures set forth in RCW 43.21B.300.

5 **Sec. 11.** RCW 90.48.366 and 2007 c 347 s 1 are each amended to read
6 as follows:

7 (1) The department, in consultation with the departments of fish
8 and wildlife and natural resources, and the parks and recreation
9 commission, shall adopt rules establishing a compensation schedule for
10 the discharge of oil in violation of this chapter and chapter 90.56
11 RCW. The amount of compensation assessed under this schedule shall be:

12 (a) For spills totaling one thousand gallons or more in any one
13 event, no less than ~~((one-dollar))~~ three dollars per gallon of oil
14 spilled and no greater than ~~((one))~~ three hundred dollars per gallon of
15 oil spilled; and

16 (b) For spills totaling less than one thousand gallons in any one
17 event, no less than one dollar per gallon of oil spilled and no greater
18 than one hundred dollars per gallon of oil spilled.

19 (2) The compensation schedule adopted under this section shall
20 reflect adequate compensation for unquantifiable damages or for damages
21 not quantifiable at reasonable cost for any adverse environmental,
22 recreational, aesthetic, or other effects caused by the spill and shall
23 take into account:

24 ~~((+1))~~ (a) Characteristics of any oil spilled, such as toxicity,
25 dispersibility, solubility, and persistence, that may affect the
26 severity of the effects on the receiving environment, living organisms,
27 and recreational and aesthetic resources;

28 ~~((+2))~~ (b) The sensitivity of the affected area as determined by
29 such factors as:

30 ~~((+a))~~ (i) The location of the spill;

31 ~~((+b))~~ (ii) Habitat and living resource sensitivity;

32 ~~((+c))~~ (iii) Seasonal distribution or sensitivity of living
33 resources;

34 ~~((+d))~~ (iv) Areas of recreational use or aesthetic importance;

35 ~~((+e))~~ (v) The proximity of the spill to important habitats for
36 birds, aquatic mammals, fish, or to species listed as threatened or
37 endangered under state or federal law;

1 ~~((f))~~ (vi) Significant archaeological resources as determined by
2 the department of archaeology and historic preservation; and

3 ~~((g))~~ (vii) Other areas of special ecological or recreational
4 importance, as determined by the department; and

5 ~~((3))~~ (c) Actions taken by the party who spilled oil or any party
6 liable for the spill that:

7 ~~((a))~~ (i) Demonstrate a recognition and affirmative acceptance of
8 responsibility for the spill, such as the immediate removal of oil and
9 the amount of oil removed from the environment; or

10 ~~((b))~~ (ii) Enhance or impede the detection of the spill, the
11 determination of the quantity of oil spilled, or the extent of damage,
12 including the unauthorized removal of evidence such as injured fish or
13 wildlife.

14 **Sec. 12.** RCW 90.56.370 and 2000 c 69 s 21 are each amended to read
15 as follows:

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

20 (2) Damages for which responsible parties are liable under this
21 section include loss of income, revenue, the means of producing income
22 or revenue, or an economic benefit resulting from an injury to or loss
23 of real or personal property or natural resources.

24 (3) Damages for which responsible parties are liable under this
25 section include damages provided in subsections (1) and (2) of this
26 section resulting from any action conducted in response to a violation
27 of RCW 90.56.320, including actions to collect, investigate, perform
28 surveillance over, remove, contain, treat, or disperse oil discharged
29 into waters of the state.

30 (4) In any action to recover damages resulting from the discharge
31 of oil in violation of RCW 90.56.320, the owner or person having
32 control over the oil shall be relieved from strict liability, without
33 regard to fault, if that person can prove that the discharge was caused
34 solely by:

35 (a) An act of war or sabotage;

36 (b) An act of God;

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

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

2 ((+3+)) (5) The liability established in this section shall in no
3 way affect the rights which: (a) The owner or other person having
4 control over the oil may have against any person whose acts may in any
5 way have caused or contributed to the discharge of oil, or (b) the
6 state of Washington may have against any person whose actions may have
7 caused or contributed to the discharge of oil.

8 NEW SECTION. **Sec. 13.** (1) The director of the department of
9 ecology must formally request that the federal government contribute to
10 the establishment of regional oil spill response equipment caches in
11 Washington to ensure adequate response capabilities during a multiple
12 spill event.

13 (2) This section expires December 31, 2014.

14 NEW SECTION. **Sec. 14.** (1) The department of ecology shall prepare
15 a report to the legislature, consistent with RCW 43.01.036, that
16 identifies the lessons learned through the implementation of sections
17 3 through 6 of this act and presents any recommendations for changes in
18 the state oil spill preparation and response policies gleaned from the
19 lessons learned.

20 (2) In preparing the report required in this section, the
21 department of ecology shall consult with both the Puget Sound
22 partnership and a diverse selection of appropriate stakeholders
23 interested in tank vessel oil spill preparedness and response to be
24 invited to participate by the director of the department of ecology.
25 Any recommendations by the department of ecology must also identify any
26 relevant perspectives of the invited stakeholders on the cost-benefit
27 and cost-effectiveness of alternative approaches.

28 (3) The report required by this section must be delivered by
29 January 5, 2015.

30 (4) This section expires July 31, 2015.

31 NEW SECTION. **Sec. 15.** (1) The requirements of this act must be
32 met according to the compliance schedule provided in this subsection.
33 The owners or operators of all affected vessels must either have new
34 contingency plans approved by the department of ecology or updates to

1 existing contingency plans approved by the department of ecology for
2 the following plan components by the following dates:

3 (a) Compliance with section 3 of this act, relating to vessels of
4 opportunity response systems, by July 1, 2012;

5 (b) Compliance with section 5(3) of this act, relating to
6 multispectrum scanning technologies, by July 1, 2012;

7 (c) With the exception of section 5(3) of this act, compliance with
8 the remainder of section 5 of this act, relating to enhanced
9 contingency plan requirements for tank vessels, by January 1, 2013; and

10 (d) Other than sections 13 and 14 of this act and RCW 88.46.090 and
11 90.48.366, which become enforceable on the effective date of this
12 section, all other sections of this act must be complied with by
13 October 1, 2011.

14 (2) The department must comply with section 4 of this act, relating
15 to volunteer coordination systems, by July 1, 2014.

16 (3) In the initial implementation of sections 3 through 8 of this
17 act, the department of ecology shall consult with appropriate
18 stakeholders interested in tank vessel oil spill preparedness and
19 response, as invited to participate by the director of the department
20 of ecology. However, nothing in this subsection limits the ability of
21 the department of ecology to implement this act in the manner deemed
22 most appropriate by the department of ecology.

23 (4) Any rules the department of ecology deems necessary for the
24 implementation of this act must be adopted according to the compliance
25 schedule in subsection (1) of this section.

26 (5) This section expires July 31, 2014.

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