

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6210

Chapter 69, Laws of 2000

56th Legislature
2000 Regular Session

OIL SPILL PREVENTION AND RESPONSE

EFFECTIVE DATE: 6/8/00

Passed by the Senate March 6, 2000
YEAS 45 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 1, 2000
YEAS 98 NAYS 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

FRANK CHOPP
**Speaker of the
House of Representatives**

Approved March 22, 2000

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6210** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

March 22, 2000 - 4:16 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6210

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington

56th Legislature

2000 Regular Session

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

Read first time 01/26/00.

1 AN ACT Relating to technical and clarifying amendments relating to
2 the oil spill prevention and response statutes; amending RCW 88.46.010,
3 88.46.020, 88.46.030, 88.46.040, 88.46.050, 88.46.060, 88.46.070,
4 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.160, 88.46.170,
5 88.46.200, 90.56.010, 90.56.060, 90.56.080, 90.56.100, 90.56.200,
6 90.56.210, 90.56.370, 90.56.510, 90.56.540, 90.56.560, 82.23B.020,
7 43.21I.010, 43.21I.030, 43.21I.040, 88.40.011, 88.40.020, 88.40.030,
8 88.40.040, 90.56.310, and 43.21I.005; creating a new section;
9 decodifying RCW 43.21I.005, 88.46.150, 88.46.924, 88.46.925, and
10 88.46.927; and repealing RCW 88.46.140, 90.56.903, and 88.46.922.

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

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

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

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

18 (2)) "Best achievable protection" means the highest level of
19 protection that can be achieved through the use of the best achievable

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

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

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

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

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

25 ~~((+7))~~ (6) "Department" means the department of ecology.

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

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

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

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

1 agricultural activity as provided in RCW 82.04.330; (iv) underground
2 storage tank regulated by the department or a local government under
3 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
4 more than three thousand gallons of fuel to a ship that is not a
5 covered vessel, in a single transaction.

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

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

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

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

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

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

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

1 owning or operating the facility; and (iii) in the case of an abandoned
2 vessel or onshore or offshore facility, the person who owned or
3 operated the vessel or facility immediately before its abandonment.

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

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

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

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

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

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

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

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

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

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

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

36 In carrying out the purposes of this chapter, including the
37 adoption of rules for contingency plans, the ((administrator)) director

1 shall to the greatest extent practicable implement this chapter in a
2 manner consistent with federal law.

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

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

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

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

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

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

36 (1) The owner or operator for each tank vessel shall prepare and
37 submit to the ((office)) department an oil spill prevention plan in

1 conformance with the requirements of this chapter. The plans shall be
2 submitted to the ((office)) department in the time and manner directed
3 by the ((office, but not later than January 1, 1993)) department. The
4 spill prevention plan may be consolidated with a spill contingency plan
5 submitted pursuant to RCW 88.46.060. The ((office)) department may
6 accept plans prepared to comply with other state or federal law as
7 spill prevention plans to the extent those plans comply with the
8 requirements of this chapter. The ((office)) department, by rule,
9 shall establish standards for spill prevention plans. ((The rules
10 shall be adopted not later than July 1, 1992.))

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

13 (a) Establish compliance with the federal oil pollution act of 1990
14 and state and federal financial responsibility requirements, if
15 applicable;

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

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

23 (d) Describe the vessel operations with respect to staffing
24 standards;

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

27 (f) Describe the training given to vessel crews with respect to
28 spill prevention;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (a) Examining available information sources for evidence that a
4 cargo or passenger vessel may pose a substantial risk to safe marine
5 transportation or the state's natural resources. Information sources
6 may include: Vessel casualty lists, United States coast guard casualty
7 reports, maritime insurance ratings, the index of contingency plans
8 compiled by the department of ecology, other data gathered by the
9 (~~office or the~~) maritime commission, or any other resources;

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

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

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

21 (e) Enforcement actions.

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

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

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

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

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

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

8 (e) State the number, training preparedness, and fitness of all
9 dedicated, prepositioned personnel assigned to direct and implement the
10 plan;

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

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

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

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

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

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

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

5 (m) Until a spill prevention plan has been submitted pursuant to
6 RCW 88.46.040, state the measures that have been taken to reduce the
7 likelihood that a spill will occur, including but not limited to,
8 design and operation of a vessel, training of personnel, number of
9 personnel, and backup systems designed to prevent a spill;

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

13 (o) If the department (~~((of ecology))~~) has adopted rules permitting
14 the use of dispersants, the circumstances, if any, and the manner for
15 the application of the dispersants in conformance with the department's
16 rules.

17 (2)(a) The owner or operator of a tank vessel of three thousand
18 gross tons or more shall submit a contingency plan to the (~~((office))~~)
19 department within six months after the (~~((office))~~) department adopts
20 rules establishing standards for contingency plans under subsection (1)
21 of this section.

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

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

36 (b) The contingency plan for a cargo vessel or passenger vessel may
37 be submitted by the owner or operator of the cargo vessel or passenger
38 vessel, by the agent for the vessel resident in this state, or by a
39 Washington state nonprofit corporation established for the purpose of

1 oil spill response and contingency plan coverage and of which the owner
2 or operator is a member. Subject to conditions imposed by the
3 ((office)) department, the owner, operator, or agent may submit a
4 single contingency plan for cargo vessels or passenger vessels of a
5 particular class.

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

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

21 (5) In reviewing the contingency plans required by this section,
22 the ((office)) department shall consider at least the following
23 factors:

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

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

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

33 (d) The existence of navigational hazards within the area covered
34 by the plan;

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

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

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

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

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

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

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

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

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

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

32 (1) The provisions of prevention plans and contingency plans
33 approved by the ((office)) department pursuant to this chapter shall be
34 legally binding on those persons submitting them to the ((office))
35 department and on their successors, assigns, agents, and employees.
36 The superior court shall have jurisdiction to restrain a violation of,
37 compel specific performance of, or otherwise to enforce such plans upon
38 application by the ((office)) department. The ((office)) department

1 may issue an order pursuant to chapter 34.05 RCW requiring compliance
2 with a contingency plan or a prevention plan and may impose
3 administrative penalties for failure to comply with a plan.

4 (2) If the ((~~administrator~~)) director believes a person has
5 violated or is violating or creates a substantial potential to violate
6 the provisions of this chapter, the ((~~administrator~~)) director shall
7 notify the person of the ((~~administrator's~~)) director's determination
8 by registered mail. The determination shall not constitute an order or
9 directive under RCW 43.21B.310. Within thirty days from the receipt of
10 notice of the determination, the person shall file with the
11 ((~~administrator~~)) director a full report stating what steps have been
12 and are being taken to comply with the determination of the
13 ((~~administrator~~)) director. The ((~~administrator~~)) director shall issue
14 an order or directive, as the ((~~administrator~~)) director deems
15 appropriate under the circumstances, and shall notify the person by
16 registered mail.

17 (3) If the ((~~administrator~~)) director believes immediate action is
18 necessary to accomplish the purposes of this chapter, the
19 ((~~administrator~~)) director may issue an order or directive, as
20 appropriate under the circumstances, without first issuing a notice or
21 determination pursuant to subsection (2) of this section. An order or
22 directive issued pursuant to this subsection shall be served by
23 registered mail or personally upon any person to whom it is directed.

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

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

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

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

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

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

(3) A person may rely on a copy of the statement issued by the
((office)) department pursuant to RCW 88.46.060 as evidence that a
vessel has an approved contingency plan and the statement issued
pursuant to RCW 88.46.040 that a vessel has an approved prevention
plan.

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

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

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

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

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

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

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

10 (b) A contingency plan and prevention plan has been submitted to
11 the ((~~office~~)) department as required by this chapter and rules adopted
12 by the ((~~office~~)) department and the ((~~office~~)) department is reviewing
13 the plan and has not denied approval; or

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

16 (5) Any person may rely on a copy of the statement issued by the
17 ((~~office~~)) department to RCW 88.46.060 as evidence that the vessel has
18 an approved contingency plan and the statement issued pursuant to RCW
19 88.46.040 as evidence that the vessel has an approved spill prevention
20 plan.

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

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

37 (1) In order to assist the state in identifying areas of the
38 navigable waters of the state needing special attention, the owner or

operator of a covered vessel shall notify the coast guard within one hour:

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

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

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

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

(4) For the purposes of this section:

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

(i) Any accidental or intentional grounding;

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

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

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

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

(i) The towing mechanism becomes disabled;

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

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

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

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

5 The ((office)) department may adopt rules including but not limited
6 to standards for spill response equipment to be maintained on tank
7 vessels. The standards adopted under this section shall be consistent
8 with spill response equipment standards adopted by the United States
9 coast guard.

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

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

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

33 (1) The ((office)) department shall establish a field operations
34 program to enforce the provisions of this chapter. The field
35 operations program shall include, but is not limited to, the following
36 elements:

1 (a) Education and public outreach;
2 (b) Review of lightering and bunkering operations to prevent oil
3 spills;
4 (c) Evaluation and boarding of tank vessels for compliance with
5 prevention plans prepared pursuant to this chapter;
6 (d) Evaluation and boarding of covered vessels that may pose a
7 substantial risk to the public health, safety, and the environment;
8 (e) Evaluation and boarding of covered vessels for compliance with
9 rules adopted by the ((office)) department to implement recommendations
10 of regional marine safety committees; and
11 (f) Collection of vessel information to assist in identifying
12 vessels which pose a substantial risk to the public health, safety, and
13 the environment.

14 (2) The ((office)) department shall coordinate the field operations
15 program with similar activities of the United States coast guard. To
16 the extent feasible, the ((office)) department shall coordinate its
17 boarding schedules with those of the United States coast guard to
18 reduce the impact of boardings on vessel operators, to more efficiently
19 use state and federal resources, and to avoid duplication of United
20 States coast guard inspection operations.

21 (3) In developing and implementing the field operations program,
22 the ((office)) department shall give priority to activities designed to
23 identify those vessels which pose the greatest risk to the waters of
24 the state. The ((office)) department shall consult with the marine
25 transportation industry, individuals concerned with the marine
26 environment, other state and federal agencies, and the public in
27 developing and implementing the program required by this section.

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

30 The ((~~administrator~~)) director may appoint ad hoc, advisory marine
31 safety committees to solicit recommendations and technical advice
32 concerning vessel traffic safety. The ((office)) department may
33 implement recommendations made in regional marine safety plans that are
34 approved by the ((office)) department and over which the ((office))
35 department has authority. If federal authority or action is required
36 to implement the recommendations, the ((office)) department may
37 petition the appropriate agency or the congress.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (~~((12))~~) (11)(a) "Facility" means any structure, group of
2 structures, equipment, pipeline, or device, other than a vessel,
3 located on or near the navigable waters of the state that transfers oil
4 in bulk to or from a tank vessel or pipeline, that is used for
5 producing, storing, handling, transferring, processing, or transporting
6 oil in bulk.

7 (b) A facility does not include any: (i) Railroad car, motor
8 vehicle, or other rolling stock while transporting oil over the
9 highways or rail lines of this state; (ii) underground storage tank
10 regulated by the department or a local government under chapter 90.76
11 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
12 operated as part of an exempt agricultural activity as provided in RCW
13 82.04.330; or (v) marine fuel outlet that does not dispense more than
14 three thousand gallons of fuel to a ship that is not a covered vessel,
15 in a single transaction.

16 (~~((13))~~) (12) "Fund" means the state coastal protection fund as
17 provided in RCW 90.48.390 and 90.48.400.

18 (~~((14))~~) (13) "Having control over oil" shall include but not be
19 limited to any person using, storing, or transporting oil immediately
20 prior to entry of such oil into the waters of the state, and shall
21 specifically include carriers and bailees of such oil.

22 (~~((15))~~) (14) "Marine facility" means any facility used for tank
23 vessel wharfage or anchorage, including any equipment used for the
24 purpose of handling or transferring oil in bulk to or from a tank
25 vessel.

26 (~~((16))~~) (15) "Navigable waters of the state" means those waters of
27 the state, and their adjoining shorelines, that are subject to the ebb
28 and flow of the tide and/or are presently used, have been used in the
29 past, or may be susceptible for use to transport intrastate,
30 interstate, or foreign commerce.

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

38 (~~((18))~~) (17) "Oil" or "oils" means naturally occurring liquid
39 hydrocarbons at atmospheric temperature and pressure coming from the

1 earth, including condensate and natural gasoline, and any fractionation
2 thereof, including, but not limited to, crude oil, petroleum, gasoline,
3 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
4 other than dredged spoil. Oil does not include any substance listed in
5 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
6 section 101(14) of the federal comprehensive environmental response,
7 compensation, and liability act of 1980, as amended by P.L. 99-499.

8 ~~((+19+))~~ (18) "Offshore facility" means any facility located in,
9 on, or under any of the navigable waters of the state, but does not
10 include a facility any part of which is located in, on, or under any
11 land of the state, other than submerged land.

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

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

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

27 ~~((+22+))~~ (21) "Passenger vessel" means a ship of three hundred or
28 more gross tons with a fuel capacity of at least six thousand gallons
29 carrying passengers for compensation.

30 ~~((+23+))~~ (22) "Person" means any political subdivision, government
31 agency, municipality, industry, public or private corporation,
32 copartnership, association, firm, individual, or any other entity
33 whatsoever.

34 ~~((+24+))~~ (23) "Ship" means any boat, ship, vessel, barge, or other
35 floating craft of any kind.

36 ~~((+25+))~~ (24) "Spill" means an unauthorized discharge of oil or
37 hazardous substances into the waters of the state.

1 (~~((26))~~) (25) "Tank vessel" means a ship that is constructed or
2 adapted to carry, or that carries, oil in bulk as cargo or cargo
3 residue, and that:

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

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

7 (~~((27))~~) (26) "Waters of the state" includes lakes, rivers, ponds,
8 streams, inland waters, underground water, salt waters, estuaries,
9 tidal flats, beaches and lands adjoining the seacoast of the state,
10 sewers, and all other surface waters and watercourses within the
11 jurisdiction of the state of Washington.

12 (~~((28))~~) (27) "Worst case spill" means: (a) In the case of a
13 vessel, a spill of the entire cargo and fuel of the vessel complicated
14 by adverse weather conditions; and (b) in the case of an onshore or
15 offshore facility, the largest foreseeable spill in adverse weather
16 conditions.

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

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

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

31 (a) Take into consideration the elements of oil spill prevention
32 and contingency plans approved or submitted for approval pursuant to
33 this chapter and chapter 88.46 RCW and oil and hazardous substance
34 spill contingency plans prepared pursuant to other state or federal law
35 or prepared by federal agencies and regional entities;

36 (b) State the respective responsibilities as established by
37 relevant statutes and rules of each of the following in the prevention
38 of and the assessment, containment, and cleanup of a worst case spill

1 of oil or hazardous substances into the environment of the state: (i)
2 State agencies; (ii) local governments; (iii) appropriate federal
3 agencies; (iv) facility operators; (v) property owners whose land or
4 other property may be affected by the oil or hazardous substance spill;
5 and (vi) other parties identified by the department as having an
6 interest in or the resources to assist in the containment and cleanup
7 of an oil or hazardous substance spill;

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

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

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

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

16 (3) In preparing and updating the state master plan, the department
17 shall:

18 (a) Consult with federal, provincial, municipal, and community
19 officials, other state agencies, the state of Oregon, and with
20 representatives of affected regional organizations;

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

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

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

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

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

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

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

4 (3) Provide training to local oil and hazardous materials emergency
5 response personnel; and

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

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

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

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

15 (a) A representative of the department of fish and wildlife
16 designated by the director of fish and wildlife. The department of
17 fish and wildlife shall be designated as lead agency in the operations
18 of the coalition. The coalition shall be chaired by the representative
19 from the department of fish and wildlife;

20 (b) A representative of the department of ecology designated by the
21 director;

22 (c) A representative of the (~~((department of community, trade, and~~
23 ~~economic development))~~) Washington military department emergency
24 management (~~((program))~~) division, designated by the director of
25 (~~((community, trade, and economic development))~~) the Washington military
26 department;

27 (d) A licensed veterinarian, with experience and training in
28 wildlife rehabilitation, appointed by the veterinary board of
29 governors;

30 (~~((The director of the Washington conservation corps;~~

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

33 (~~((g)))~~) (f) A person designated by the legislative authority of the
34 county where oil spills or spills of other hazardous substances may
35 occur. This member of the coalition shall serve on the coalition until
36 wildlife rescue and rehabilitation is completed in that county. The
37 completion of any rescue or rehabilitation project shall be determined
38 by the director of fish and wildlife.

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

3 (a) Develop an emergency mobilization plan to rescue and
4 rehabilitate waterfowl and other wildlife that are injured or
5 endangered by an oil spill or the release of other hazardous substances
6 into the environment;

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

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

19 (d) Obtain and maintain equipment and supplies used in emergency
20 rescue efforts.

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

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

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

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

chapter. The department, by rule, shall establish standards for spill prevention plans. (~~The rules shall be adopted not later than July 1, 1992.~~)

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall only approve a prevention plan if it provides the best achievable protection from damages caused by the discharge of oil into the waters of the state and if it determines that

1 the plan meets the requirements of this section and rules adopted by
2 the department.

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

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

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

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

21 (8) This section does not authorize the department to modify the
22 terms of a collective bargaining agreement.

23 **Sec. 20.** RCW 90.56.210 and 1992 c 73 s 33 are each amended to read
24 as follows:

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

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

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

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

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

8 (e) State the number, training preparedness, and fitness of all
9 dedicated, prepositioned personnel assigned to direct and implement the
10 plan;

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

14 (g) Describe important features of the surrounding environment,
15 including fish and wildlife habitat, environmentally and
16 archaeologically sensitive areas, and public facilities. The
17 departments of ecology, ~~((fisheries, wildlife))~~ fish and wildlife, and
18 natural resources, and the office of archaeology and historic
19 preservation, upon request, shall provide information that they have
20 available to assist in preparing this description. ~~((If the department
21 has adopted rules for contingency plans prior to July 1, 1992, the
22 description of archaeologically sensitive areas shall only be required
23 when the department revises the rules for contingency plans after July
24 1, 1992.))~~ The description of archaeologically sensitive areas shall
25 not be required to be included in a contingency plan until it is
26 reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

1 (1) Until a spill prevention plan has been submitted pursuant to
2 RCW 90.56.200, state the measures that have been taken to reduce the
3 likelihood that a spill will occur, including but not limited to,
4 design and operation of a facility, training of personnel, number of
5 personnel, and backup systems designed to prevent a spill;

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

9 (n) If the department has adopted rules permitting the use of
10 dispersants, the circumstances, if any, and the manner for the
11 application of the dispersants in conformance with the department's
12 rules.

13 (2)(a) The following shall submit contingency plans to the
14 department within six months after the department adopts rules
15 establishing standards for contingency plans under subsection (1) of
16 this section:

17 (i) Onshore facilities capable of storing one million gallons or
18 more of oil; and

19 (ii) Offshore facilities.

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

25 (3)(a) The owner or operator of a facility shall submit the
26 contingency plan for the facility.

27 (b) A person who has contracted with a facility to provide
28 containment and cleanup services and who meets the standards
29 established pursuant to RCW 90.56.240, may submit the plan for any
30 facility for which the person is contractually obligated to provide
31 services. Subject to conditions imposed by the department, the person
32 may submit a single plan for more than one facility.

33 (4) A contingency plan prepared for an agency of the federal
34 government or another state that satisfies the requirements of this
35 section and rules adopted by the department may be accepted by the
36 department as a contingency plan under this section. The department
37 shall assure that to the greatest extent possible, requirements for
38 contingency plans under this section are consistent with the
39 requirements for contingency plans under federal law.

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

3 (a) The adequacy of containment and cleanup equipment, personnel,
4 communications equipment, notification procedures and call down lists,
5 response time, and logistical arrangements for coordination and
6 implementation of response efforts to remove oil spills promptly and
7 properly and to protect the environment;

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

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

12 (d) The existence of navigational hazards within the area covered
13 by the plan;

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) An act of war or sabotage;

20 (b) An act of God;

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

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

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

29 ~~((4) The chapter 116, Laws of 1990 changes to subsection (2) of~~
30 ~~this section requiring the defenses in that subsection to be the sole~~
31 ~~causes of the discharge, and the text of subsection (2)(b) of this~~
32 ~~section shall apply prospectively and not retroactively after June 7,~~
33 ~~1990.))~~

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

36 (1) The oil spill ((administration)) prevention account is created
37 in the state treasury. All receipts from RCW 82.23B.020(2) shall be

1 deposited in the account. Moneys from the account may be spent only
2 after appropriation. The account is subject to allotment procedures
3 under chapter 43.88 RCW. If, on the first day of any calendar month,
4 the balance of the oil spill response account is greater than nine
5 million dollars and the balance of the oil spill ((administration))
6 prevention account exceeds the unexpended appropriation for the current
7 biennium, then the tax under RCW 82.23B.020(2) shall be suspended on
8 the first day of the next calendar month until the beginning of the
9 following biennium, provided that the tax shall not be suspended during
10 the last six months of the biennium. If the tax imposed under RCW
11 82.23B.020(2) is suspended during two consecutive biennia, the
12 department shall by November 1st after the end of the second biennium,
13 recommend to the appropriate standing committees an adjustment in the
14 tax rate. For the biennium ending June 30, 1999, and the biennium
15 ending June 30, 2001, the state treasurer may transfer a total of up to
16 one million dollars from the oil spill response account to the oil
17 spill ((administration)) prevention account to support appropriations
18 made from the oil spill ((administration)) prevention account in the
19 omnibus appropriations act adopted not later than June 30, 1999.

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

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

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

3 (1) A person is guilty of operating a vessel while under the
4 influence of intoxicating liquor or drugs if the person operates a
5 covered vessel within this state while:

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

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

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

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

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

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

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

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

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

36 (1) An oil spill response tax is imposed on the privilege of
37 receiving crude oil or petroleum products at a marine terminal within

1 this state from a waterborne vessel or barge operating on the navigable
2 waters of this state. The tax imposed in this section is levied upon
3 the owner of the crude oil or petroleum products immediately after
4 receipt of the same into the storage tanks of a marine terminal from a
5 waterborne vessel or barge at the rate of one cent per barrel of crude
6 oil or petroleum product received.

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

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

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

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

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

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

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

23 (9) All receipts from the tax imposed in subsection (1) of this
24 section shall be deposited into the state oil spill response account.
25 All receipts from the tax imposed in subsection (2) of this section
26 shall be deposited into the oil spill ((administration)) prevention
27 account.

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

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

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

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

Sec. 27. RCW 43.21I.010 and 1992 c 73 s 4 are each amended to read as follows:

(1) There is hereby created ~~((an agency of state government to be known as the office of marine safety. The office))~~ within the department of ecology an oil spill prevention program. For the program, the department shall be vested with all powers and duties transferred to it from the office of marine safety and such other powers and duties as may be authorized by law. The main administrative office ~~((of))~~ for the ~~((office))~~ program shall be located in the city of Olympia. The ~~((administrator))~~ director may establish administrative facilities in other locations, if deemed necessary for the efficient operation of the ~~((office))~~ program, and if consistent with the principles set forth in subsection (2) of this section.

(2) The ~~((office of marine safety))~~ oil spill prevention program shall be organized consistent with the goals of providing state government with a focus in marine transportation and serving the people of this state. The legislature recognizes that the ~~((administrator))~~ director needs sufficient organizational flexibility to carry out the ~~((office's))~~ program's various duties. To the extent practical, the ~~((administrator))~~ director shall consider the following organizational principles:

(a) Clear lines of authority which avoid functional duplication within and between subelements of the ~~((office))~~ program;

(b) A clear and simplified organizational design promoting accessibility, responsiveness, and accountability to the legislature, the consumer, and the general public; and

1 (c) Maximum span of control without jeopardizing adequate
2 supervision.

3 (3) The ((office)) department, through the program, shall provide
4 leadership and coordination in identifying and resolving threats to the
5 safety of marine transportation and the impact of marine transportation
6 on the environment:

7 (a) Working with other state agencies and local governments to
8 strengthen the state and local governmental partnership in providing
9 public protection;

10 (b) Providing expert advice to the executive and legislative
11 branches of state government;

12 (c) Providing active and fair enforcement of rules;

13 (d) Working with other federal, state, and local agencies and
14 facilitating their involvement in planning and implementing marine
15 safety measures;

16 (e) Providing information to the public; and

17 (f) Carrying out such other related actions as may be appropriate
18 to this purpose.

19 (4) In accordance with the administrative procedure act, chapter
20 34.05 RCW, the ((office)) department shall ensure an opportunity for
21 consultation, review, and comment before the adoption of standards,
22 guidelines, and rules.

23 (5) Consistent with the principles set forth in subsection (2) of
24 this section, the ((administrator)) director may create such
25 administrative divisions, offices, bureaus, and programs within the
26 ((office)) program as the ((administrator)) director deems necessary.
27 The ((administrator)) director shall have complete charge of and
28 supervisory powers over the ((office)) program, except where the
29 ((administrator's)) director's authority is specifically limited by
30 law.

31 (6) The ((administrator)) director shall appoint such personnel as
32 are necessary to carry out the duties of the ((office)) program. In
33 addition to exemptions set forth in RCW 41.06.070((-28),—the
34 ~~administrator, the administrator's confidential secretary, and~~), up to
35 four professional staff members shall be exempt from the provisions of
36 chapter 41.06 RCW. All other employees of the ((office)) program shall
37 be subject to the provisions of chapter 41.06 RCW.

38 (7) The definitions in this section apply throughout this chapter.

39 (a) "Department" means the department of ecology.

1 (b) "Director" means the director of the department.

2 **Sec. 28.** RCW 43.21I.030 and 1992 c 73 s 11 are each amended to
3 read as follows:

4 In addition to any other powers granted the ((~~administrator~~))
5 director, the ((~~administrator~~)) director may:

6 (1) Adopt, in accordance with chapter 34.05 RCW, rules necessary to
7 carry out the provisions of this chapter and chapter 88.46 RCW;

8 (2) Appoint such advisory committees as may be necessary to carry
9 out the provisions of this chapter and chapter 88.46 RCW. Members of
10 such advisory committees are authorized to receive travel expenses in
11 accordance with RCW 43.03.050 and 43.03.060. The ((~~administrator~~))
12 director shall review each advisory committee within the jurisdiction
13 of the ((~~office~~)) program and each statutory advisory committee on a
14 biennial basis to determine if such advisory committee is needed. The
15 criteria specified in RCW 43.131.070 shall be used to determine whether
16 or not each advisory committee shall be continued;

17 (3) Undertake studies, research, and analysis necessary to carry
18 out the provisions of this chapter and chapter 88.46 RCW;

19 (4) Delegate powers, duties, and functions of the ((~~office~~))
20 program to employees of the ((~~office~~)) department as the
21 ((~~administrator~~)) director deems necessary to carry out the provisions
22 of this chapter and chapter 88.46 RCW;

23 (5) Enter into contracts on behalf of the ((~~office~~)) department to
24 carry out the purposes of this chapter and chapter 88.46 RCW;

25 (6) Act for the state in the initiation of, or the participation
26 in, any intergovernmental program for the purposes of this chapter and
27 chapter 88.46 RCW; or

28 (7) Accept gifts, grants, or other funds.

29 **Sec. 29.** RCW 43.21I.040 and 1991 c 200 s 407 are each amended to
30 read as follows:

31 (1) The ((~~administrator~~)) director shall have full authority to
32 administer oaths and take testimony thereunder, to issue subpoenas
33 requiring the attendance of witnesses before the ((~~administrator~~))
34 director together with all books, memoranda, papers, and other
35 documents, articles or instruments, and to compel the disclosure by
36 such witnesses of all facts known to them relative to the matters under
37 investigation.

(2) Subpoenas issued in adjudicative proceedings shall be governed by chapter 34.05 RCW.

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by chapter 34.05 RCW.

Sec. 30. RCW 88.40.011 and 1992 c 73 s 12 are each amended to read as follows:

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

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

~~(+2))~~ "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

~~((+3))~~ (2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

~~((+4))~~ (3) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

~~((+5))~~ (4) "Department" means the department of ecology.

~~((+6))~~ (5) "Director" means the director of the department of ecology.

~~((+7))~~ (6)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

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

1 ~~((+8+))~~ (7) "Hazardous substances" means any substance listed in
2 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
3 section 101(14) of the federal comprehensive environmental response,
4 compensation, and liability act of 1980, as amended by P.L. 99-499.
5 The following are not hazardous substances for purposes of this
6 chapter:

7 (a) Wastes listed as F001 through F028 in Table 302.4; and

8 (b) Wastes listed as K001 through K136 in Table 302.4.

9 ~~((+9+))~~ (8) "Inland barge" means any barge operating on the waters
10 of the state and certified by the coast guard as an inland barge.

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

16 ~~((+11+))~~ "Office" means the office of marine safety established by
17 RCW ~~43.211.010~~.

18 ~~(+12+))~~ (10) "Oil" or "oils" means any naturally occurring liquid
19 hydrocarbons at atmospheric temperature and pressure coming from the
20 earth, including condensate and natural gasoline, and any fractionation
21 thereof, including, but not limited to, crude oil, petroleum, gasoline,
22 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
23 other than dredged spoil. Oil does not include any substance listed in
24 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
25 section 101(14) of the federal comprehensive environmental response,
26 compensation, and liability act of 1980, as amended by P.L. 99-499.

27 ~~((+13+))~~ (11) "Offshore facility" means any facility located in,
28 on, or under any of the navigable waters of the state, but does not
29 include a facility any part of which is located in, on, or under any
30 land of the state, other than submerged land.

31 ~~((+14+))~~ (12) "Onshore facility" means any facility any part of
32 which is located in, on, or under any land of the state, other than
33 submerged land, that because of its location, could reasonably be
34 expected to cause substantial harm to the environment by discharging
35 oil into or on the navigable waters of the state or the adjoining
36 shorelines.

37 ~~((+15+))~~ (13)(a) "Owner or operator" means (i) in the case of a
38 vessel, any person owning, operating, or chartering by demise, the
39 vessel; (ii) in the case of an onshore or offshore facility, any person

1 owning or operating the facility; and (iii) in the case of an abandoned
2 vessel or onshore or offshore facility, the person who owned or
3 operated the vessel or facility immediately before its abandonment.

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

7 (~~((+16+))~~) (14) "Passenger vessel" means a ship of three hundred or
8 more gross tons with a fuel capacity of at least six thousand gallons
9 carrying passengers for compensation.

10 (~~((+17+))~~) (15) "Ship" means any boat, ship, vessel, barge, or other
11 floating craft of any kind.

12 (~~((+18+))~~) (16) "Spill" means an unauthorized discharge of oil into
13 the waters of the state.

14 (~~((+19+))~~) (17) "Tank vessel" means a ship that is constructed or
15 adapted to carry, or that carries, oil in bulk as cargo or cargo
16 residue, and that:

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

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

20 (~~((+20+))~~) (18) "Waters of the state" includes lakes, rivers, ponds,
21 streams, inland waters, underground water, salt waters, estuaries,
22 tidal flats, beaches and lands adjoining the seacoast of the state,
23 sewers, and all other surface waters and watercourses within the
24 jurisdiction of the state of Washington.

25 **Sec. 31.** RCW 88.40.020 and 1992 c 73 s 13 are each amended to read
26 as follows:

27 (1) Any inland barge that transports hazardous substances in bulk
28 as cargo, using any port or place in the state of Washington or the
29 navigable waters of the state shall establish evidence of financial
30 responsibility in the amount of the greater of one million dollars, or
31 one hundred fifty dollars per gross ton of such vessel.

32 (2)(a) Except as provided in (c) of this subsection, a tank vessel
33 that carries oil as cargo in bulk shall demonstrate financial
34 responsibility to pay at least five hundred million dollars.

35 (b) The (~~(administrator)~~) director by rule may establish a lesser
36 standard of financial responsibility for barges of three hundred gross
37 tons or less. The standard shall set the level of financial
38 responsibility based on the quantity of cargo the barge is capable of

1 carrying. The ((~~administrator~~)) director shall not set the standard
2 for barges of three hundred gross tons or less below that required
3 under federal law.

4 (c) The owner or operator of a tank vessel who is a member of an
5 international protection and indemnity mutual organization and is
6 covered for oil pollution risks up to the amounts required under this
7 section is not required to demonstrate financial responsibility under
8 this chapter. The ((~~administrator~~)) director may require the owner or
9 operator of a tank vessel to prove membership in such an organization.

10 (3) A cargo vessel or passenger vessel that carries oil as fuel
11 shall demonstrate financial responsibility to pay the greater of at
12 least six hundred dollars per gross ton or five hundred thousand
13 dollars.

14 (4) The documentation of financial responsibility shall demonstrate
15 the ability of the document holder to meet state and federal financial
16 liability requirements for the actual costs for removal of oil spills,
17 for natural resource damages, and necessary expenses.

18 (5) The ((~~office~~)) department may by rule set a lesser amount of
19 financial responsibility for a tank vessel that meets standards for
20 construction, propulsion, equipment, and personnel established by the
21 ((~~office~~)) department. The ((~~office~~)) department shall require as a
22 minimum level of financial responsibility under this subsection the
23 same level of financial responsibility required under federal law.

24 (6) This section shall not apply to a covered vessel owned or
25 operated by the federal government or by a state or local government.

26 **Sec. 32.** RCW 88.40.030 and 1991 c 200 s 705 are each amended to
27 read as follows:

28 Financial responsibility required by this chapter may be
29 established by any one of, or a combination of, the following methods
30 acceptable to the ((~~office of marine safety or the~~)) department of
31 ecology: (1) Evidence of insurance; (2) surety bonds; (3)
32 qualification as a self-insurer; or (4) other evidence of financial
33 responsibility. Any bond filed shall be issued by a bonding company
34 authorized to do business in the United States. Documentation of such
35 financial responsibility shall be kept on any covered vessel and filed
36 with the ((~~office~~)) department at least twenty-four hours before entry
37 of the vessel into the navigable waters of the state. A covered vessel
38 is not required to file documentation of financial responsibility

1 twenty-four hours before entry of the vessel into the navigable waters
2 of the state, if the vessel has filed documentation of financial
3 responsibility with the federal government, and the level of financial
4 responsibility required by the federal government is the same as or
5 exceeds state requirements. The owner or operator of the vessel may
6 file with the ((office)) department a certificate evidencing compliance
7 with the requirements of another state's or federal financial
8 responsibility requirements if the state or federal government requires
9 a level of financial responsibility the same as or greater than that
10 required under this chapter.

11 **Sec. 33.** RCW 88.40.040 and 1992 c 73 s 14 are each amended to read
12 as follows:

13 (1) The ((office)) department shall deny entry to the waters of the
14 state to any vessel that does not meet the financial responsibility
15 requirements of this chapter. Any vessel owner or operator that does
16 not meet the financial responsibility requirements of this chapter and
17 any rules prescribed thereunder or the federal oil pollution act of
18 1990 shall be reported by the ((office)) department to the United
19 States coast guard.

20 (2) The ((office)) department shall enforce section 1016 of the
21 federal oil pollution act of 1990 as authorized by section 1019 of the
22 federal act.

23 **Sec. 34.** RCW 90.56.310 and 1992 c 73 s 35 are each amended to read
24 as follows:

25 (1) Except as provided in subsection (3) of this section, it shall
26 be unlawful:

27 (a) For the owner or operator to operate an onshore or offshore
28 facility without an approved contingency plan as required under RCW
29 90.56.210, a spill prevention plan required by RCW 90.56.200, or
30 financial responsibility in compliance with chapter 88.40 RCW and the
31 federal oil pollution act of 1990; or

32 (b) For the owner or operator of an onshore or offshore facility to
33 transfer cargo or passengers to or from a covered vessel that does not
34 have an approved contingency plan or an approved prevention plan
35 required under chapter 88.46 RCW or financial responsibility in
36 compliance with chapter 88.40 RCW and the federal oil pollution act of
37 1990.

(2) The department may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a facility or person is in violation of this section shall be considered a separate violation.

(3) It shall not be unlawful for a facility or other person to operate or accept cargo or passengers from a covered vessel if:

(a) A contingency plan, a prevention plan, or financial responsibility is not required for the facility; or

(b) A contingency and prevention plan has been submitted to the department as required by this chapter and rules adopted by the department and the department is reviewing the plan and has not denied approval.

(4) Any person may rely on a copy of the statement issued by the department pursuant to RCW 90.56.210(7) as evidence that the facility has an approved contingency plan and the statement issued pursuant to RCW 90.56.200(4) as evidence that the facility has an approved spill prevention plan. Any person may rely on a copy of the statement issued by the office of marine safety, or its successor agency, the department, pursuant to RCW 88.46.060 as evidence that the vessel has an approved contingency plan and the statement issued pursuant to RCW 88.46.040 as evidence that the vessel has an approved prevention plan.

Sec. 35. RCW 43.21I.005 and 1997 c 449 s 1 are each amended to read as follows:

(1) The legislature declares that Washington's waters have irreplaceable value for the citizens of the state. These waters are vital habitat for numerous and diverse marine life and wildlife and the source of recreation, aesthetic pleasure, and pride for Washington's citizens. These waters are also vital for much of Washington's economic vitality.

The legislature finds that the transportation of oil on these waters creates a great potential hazard to these important natural resources. The legislature also finds that there is no state agency responsible for maritime safety to ensure this state's interest in preserving these resources.

~~((The legislature therefore finds that in order to protect these waters it is necessary to establish an office of marine safety which will have the responsibility to promote the safety of marine transportation in Washington.))~~

1 (2) The legislature finds that adequate funding is necessary for
2 the state to continue its priority focus on the prevention of oil
3 spills, as well as maintain a strong oil spill response, planning, and
4 environmental restoration capability. The legislature further finds
5 that (~~{the}~~) the long-term environmental health of the state's waters
6 depends upon the strength and vitality of its oil spill prevention and
7 response program that fosters planning, coordination, and incident
8 command. To that end, the merger of the office of marine safety with
9 the department of ecology shall: Ensure coordination via streamlining
10 the marine safety functions of two agencies into one; provide a focused
11 prevention and response program under a single administration; generate
12 efficient incident command response capability and continue to meet the
13 challenges threatening marine safety and the environment; and increase
14 accountability to the public, the executive branch, and the
15 legislature.

16 (3) It is the intent of the legislature that the state's oil spill
17 prevention, response, planning, and environmental restoration
18 activities be sufficiently funded to maintain a strong prevention and
19 response program. It is further the intent of the legislature that the
20 merger of the office of marine safety with the department of ecology be
21 accomplished in an organizational manner that maintains a priority
22 focus and position for the oil spill prevention and response program.
23 The merger shall allow for ready identification of the program by the
24 public and ensure no diminution in the state's commitment to marine
25 safety and environmental protection as follows:

26 (a) The director of the department of ecology shall consolidate all
27 of the agency's oil spill prevention, planning, and response programs
28 and personnel into a division or equivalent unit of organization within
29 the department. The division shall be managed by a single
30 administrator who is an assistant director or person of equivalent
31 status in the department's organization. The administrator shall
32 report directly to the director.

33 (b) The consolidated oil spill program unit within the department
34 shall maintain prevention of oil spills as a specific program.

35 (c) The department shall identify and participate in resolving
36 threats to safety of marine transportation and the impact of marine
37 transportation on the environment.

1 NEW SECTION. **Sec. 36.** The following acts or parts of acts are
2 each decodified:

3 (1) RCW 43.21I.005 (Findings--Consolidation of oil spill programs--
4 Administrator of consolidated oil spill program);

5 (2) RCW 88.46.150 (Tow boat standards--Study);

6 (3) RCW 88.46.924 (Continuation of rules, pending business, and
7 obligations);

8 (4) RCW 88.46.925 (Prior acts valid); and

9 (5) RCW 88.46.927 (Collective bargaining agreements not altered).

10 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
11 each repealed:

12 (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200
13 s 428;

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

16 (3) RCW 88.46.922 (Transfer of property and appropriations) and
17 1991 c 200 s 431.

Passed the Senate March 6, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 22, 2000.

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