

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1136

Chapter 239, Laws of 2017

65th Legislature
2017 Regular Session

OIL SPILL CONTINGENCY PLANNING--SHORT-LINE RAILROADS--NONFUEL OILS

EFFECTIVE DATE: 7/23/2017

Passed by the House April 17, 2017
Yeas 94 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 4, 2017
Yeas 46 Nays 3

CYRUS HABIB

President of the Senate
Approved May 8, 2017 11:04 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1136** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED
May 8, 2017

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1136

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

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

READ FIRST TIME 02/16/17.

1 AN ACT Relating to exempting short-line railroads that haul
2 nonfuel oils from oil spill contingency planning requirements; and
3 amending RCW 90.56.210.

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

5 **Sec. 1.** RCW 90.56.210 and 2015 c 274 s 5 are each amended to
6 read as follows:

7 (1) Each onshore and offshore facility shall have a contingency
8 plan for the containment and cleanup of oil spills from the facility
9 into the waters of the state and for the protection of fisheries and
10 wildlife, shellfish beds, natural resources, and public and private
11 property from such spills. The department shall by rule adopt and
12 periodically revise standards for the preparation of contingency
13 plans. The department shall require contingency plans, at a minimum,
14 to meet the following standards:

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

17 (b) Be designed to be capable in terms of personnel, materials,
18 and equipment, of promptly and properly, to the maximum extent
19 practicable, as defined by the department removing oil and minimizing
20 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
3 which have been prepared by cooperatives, ports, regional entities,
4 the state, and the federal government;

5 (d) Provide procedures for early detection of oil spills and
6 timely notification of such spills to appropriate federal, state, and
7 local 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
10 the plan;

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

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

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

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

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

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

36 (l) Until a spill prevention plan has been submitted pursuant to
37 RCW 90.56.200, state the measures that have been taken to reduce the
38 likelihood that a spill will occur, including but not limited to,
39 design and operation of a facility, training of personnel, number of
40 personnel, and backup systems designed to prevent a spill;

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

4 (n) If the department has adopted rules permitting the use of
5 dispersants, the circumstances, if any, and the manner for the
6 application of the dispersants in conformance with the department's
7 rules.

8 (2)(a) The following shall submit contingency plans to the
9 department within six months after the department adopts rules
10 establishing standards for contingency plans under subsection (1) of
11 this section:

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

14 (ii) Offshore facilities.

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

20 (3)(a) The department by rule shall determine the contingency
21 plan requirements for railroads transporting oil in bulk.

22 (b) For class III railroads transporting oil in bulk that is not
23 crude oil in an amount of forty-nine or more tank car loads per year,
24 the rules adopted under this subsection may not require contingency
25 plans to include:

26 (i) Contracted access to oil spill response equipment; or

27 (ii) The completion of more than a total of one basic table-top
28 drill every three years to test the contingency plans.

29 (c) For class III railroads transporting oil in bulk that is not
30 crude oil in an amount less than forty-nine tank car loads per year,
31 rules adopted under this subsection may only require railroads to
32 submit a basic contingency plan to the department. A basic
33 contingency plan filed under this subsection (3)(c) must be limited
34 to requiring the class III railroads to:

35 (i) Keep documentation of the basic contingency plan on file with
36 the department at the plan holder's principal place of business and
37 at dispatcher field offices of the railroad;

38 (ii) Identify and include contact information for the chain of
39 command and other personnel, including employees or spill response

1 contractors, who will be involved in the railroad's response in the
2 event of a spill;

3 (iii) Include information related to the relevant accident
4 insurance carried by the railroad and provide a certificate of
5 insurance upon request;

6 (iv) Develop a field document for use by personnel involved in
7 oil handling operations that includes time-critical information
8 regarding basic contingency plan procedures to be used in the initial
9 response to a spill or a threatened spill; and

10 (v) Annually review the plan for accuracy.

11 (d) Federal oil spill response plans created pursuant to 33
12 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans
13 ((until state rules are adopted)) by a class III railroad
14 transporting oil in bulk that is not crude oil.

15 (e) For the purposes of this section, "class III railroad" has
16 the same meaning as defined by the United States surface
17 transportation board as of January 1, 2017.

18 (4)(a) The owner or operator of a facility shall submit the
19 contingency plan for the facility.

20 (b) A person who has contracted with a facility to provide
21 containment and cleanup services and who meets the standards
22 established pursuant to RCW 90.56.240, may submit the plan for any
23 facility for which the person is contractually obligated to provide
24 services. Subject to conditions imposed by the department, the person
25 may submit a single plan for more than one facility.

26 (5) A contingency plan prepared for an agency of the federal
27 government or another state that satisfies the requirements of this
28 section and rules adopted by the department may be accepted by the
29 department as a contingency plan under this section. The department
30 shall ensure that to the greatest extent possible, requirements for
31 contingency plans under this section are consistent with the
32 requirements for contingency plans under federal law.

33 (6) In reviewing the contingency plans required by this section,
34 the department shall consider at least the following factors:

35 (a) The adequacy of containment and cleanup equipment, personnel,
36 communications equipment, notification procedures and call down
37 lists, response time, and logistical arrangements for coordination
38 and implementation of response efforts to remove oil spills promptly
39 and properly and to protect the environment;

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

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

5 (d) The existence of navigational hazards within the area covered
6 by the plan;

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

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

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

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

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

21 (8) The approval of the contingency plan shall be valid for five
22 years. Upon approval of a contingency plan, the department shall
23 provide to the person submitting the plan a statement indicating that
24 the plan has been approved, the facilities or vessels covered by the
25 plan, and other information the department determines should be
26 included.

27 (9) An owner or operator of a facility shall notify the
28 department in writing immediately of any significant change of which
29 it is aware affecting its contingency plan, including changes in any
30 factor set forth in this section or in rules adopted by the
31 department. The department may require the owner or operator to
32 update a contingency plan as a result of these changes.

33 (10) The department by rule shall require contingency plans to be
34 reviewed, updated, if necessary, and resubmitted to the department at
35 least once every five years.

36 (11) Approval of a contingency plan by the department does not
37 constitute an express assurance regarding the adequacy of the plan
38 nor constitute a defense to liability imposed under this chapter or
39 other state law.

Passed by the House April 17, 2017.
Passed by the Senate April 4, 2017.
Approved by the Governor May 8, 2017.
Filed in Office of Secretary of State May 8, 2017.

--- END ---