
ENGROSSED SUBSTITUTE HOUSE BILL 2389

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Environmental Affairs (originally sponsored by Representatives Rust, Horn, Valle, Pruitt, Bray, J. Kohl, Brekke, D. Sommers and Jones)

Read first time 01/21/92.

1 AN ACT Relating to revisions in existing oil spill prevention and
2 clean-up statutes; amending RCW 43.21B.110, 43.21B.300, 43.21B.310,
3 43.21I.010, 43.21I.020, 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040,
4 43.21I.030, 88.40.011, 88.40.020, 88.40.040, 88.44.010, 88.44.100,
5 88.44.110, 88.46.010, 88.46.050, 88.46.060, 88.46.070, 88.46.080,
6 88.46.090, 88.46.110, 90.48.120, 90.48.140, 90.48.144, 90.48.366,
7 90.48.368, 90.48.400, 90.56.010, 90.56.100, 90.56.210, 90.56.300,
8 90.56.310, 90.56.330, 90.56.380, 90.56.390, 90.56.400, 90.56.450,
9 90.56.510, and 90.56.520; adding a new section to chapter 82.23B RCW;
10 creating new sections; prescribing penalties; providing an effective
11 date; and declaring an emergency.

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

13 **Sec. 1.** RCW 43.21B.110 and 1989 c 175 s 102 are each amended to
14 read as follows:

1 (1) The hearings board shall only have jurisdiction to hear and
2 decide appeals from the following decisions of the department, the
3 director, the administrator of the office of marine safety, and the air
4 pollution control boards or authorities as established pursuant to
5 chapter 70.94 RCW, or local health departments:

6 (a) Civil penalties imposed pursuant to RCW 70.94.431, 70.105.080,
7 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
8 ((~~90.48.350~~)) 90.56.330.

9 (b) Orders issued pursuant to RCW 43.27A.190, 70.94.211, 70.94.332,
10 70.105.095, 86.16.020, 88.46.070, 90.14.130, and 90.48.120.

11 (c) The issuance, modification, or termination of any permit,
12 certificate, or license by the department or any air authority in the
13 exercise of its jurisdiction, including the issuance or termination of
14 a waste disposal permit, the denial of an application for a waste
15 disposal permit, or the modification of the conditions or the terms of
16 a waste disposal permit.

17 (d) Decisions of local health departments regarding the grant or
18 denial of solid waste permits pursuant to chapter 70.95 RCW.

19 (e) Any other decision by the department, the administrator of the
20 office of marine safety, or an air authority which pursuant to law must
21 be decided as an adjudicative proceeding under chapter 34.05 RCW.

22 (2) The following hearings shall not be conducted by the hearings
23 board:

24 (a) Hearings required by law to be conducted by the shorelines
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
27 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

28 (c) Proceedings by the department relating to general adjudications
29 of water rights pursuant to chapter 90.03 or 90.44 RCW.

1 (d) Hearings conducted by the department to adopt, modify, or
2 repeal rules.

3 (3) Review of rules and regulations adopted by the hearings board
4 shall be subject to review in accordance with the provisions of the
5 Administrative Procedure Act, chapter 34.05 RCW.

6 **Sec. 2.** RCW 43.21B.300 and 1987 c 109 s 5 are each amended to read
7 as follows:

8 (1) Any civil penalty provided in RCW 70.94.431, 70.105.080,
9 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
10 (~~90.48.350~~) 90.56.330 shall be imposed by a notice in writing, either
11 by certified mail with return receipt requested or by personal service,
12 to the person incurring the penalty from the department, the
13 administrator of the office of marine safety, or the local air
14 authority, describing the violation with reasonable particularity.
15 Within fifteen days after the notice is received, the person incurring
16 the penalty may apply in writing to the department, the administrator,
17 or the authority for the remission or mitigation of the penalty. Upon
18 receipt of the application, the department, the administrator, or
19 authority may remit or mitigate the penalty upon whatever terms the
20 department, the administrator, or the authority in its discretion deems
21 proper. The department or the authority may ascertain the facts
22 regarding all such applications in such reasonable manner and under
23 such rules as it may deem proper and shall remit or mitigate the
24 penalty only upon a demonstration of extraordinary circumstances such
25 as the presence of information or factors not considered in setting the
26 original penalty.

27 (2) Any penalty imposed under this section may be appealed to the
28 pollution control hearings board in accordance with this chapter if the
29 appeal is filed with the hearings board and served on the department,

1 the administrator, or authority thirty days after receipt by the person
2 penalized of the notice imposing the penalty or thirty days after
3 receipt of the notice of disposition of the application for relief from
4 penalty.

5 (3) A penalty shall become due and payable on the later of:

6 (a) Thirty days after receipt of the notice imposing the penalty;

7 (b) Thirty days after receipt of the notice of disposition on
8 application for relief from penalty, if such an application is made; or

9 (c) Thirty days after receipt of the notice of decision of the
10 hearings board if the penalty is appealed.

11 (4) If the amount of any penalty is not paid to the department or
12 the administrator within thirty days after it becomes due and payable,
13 the attorney general, upon request of the department or the
14 administrator, shall bring an action in the name of the state of
15 Washington in the superior court of Thurston county, or of any county
16 in which the violator does business, to recover the penalty. If the
17 amount of the penalty is not paid to the authority within thirty days
18 after it becomes due and payable, the authority may bring an action to
19 recover the penalty in the superior court of the county of the
20 authority's main office or of any county in which the violator does
21 business. In these actions, the procedures and rules of evidence shall
22 be the same as in an ordinary civil action.

23 (5) All penalties recovered shall be paid into the state treasury
24 and credited to the general fund except those penalties imposed
25 pursuant to RCW 70.94.431, the disposition of which shall be governed
26 by that provision, RCW 70.105.080, which shall be credited to the
27 hazardous waste control and elimination account, created by RCW
28 70.105.180, and RCW (~~90.48.350~~) 90.56.330, which shall be credited to
29 the coastal protection fund created by RCW 90.48.390.

1 **Sec. 3.** RCW 43.21B.310 and 1989 c 2 s 14 are each amended to read
2 as follows:

3 (1) Any order issued by the department, the administrator of the
4 office of marine safety, or authority pursuant to RCW 70.94.211,
5 70.94.332, 70.105.095, 43.27A.190, 86.16.020, 88.46.070, or
6 90.48.120(2) or any provision enacted after July 26, 1987, or any
7 permit, certificate, or license issued by the department may be
8 appealed to the pollution control hearings board if the appeal is filed
9 with the board and served on the department or authority within thirty
10 days after receipt of the order. Except as provided under chapter
11 70.105D RCW, this is the exclusive means of appeal of such an order.

12 (2) The department, the administrator, or the authority in its
13 discretion may stay the effectiveness of an order during the pendency
14 of such an appeal.

15 (3) At any time during the pendency of an appeal of such an order
16 to the board, the appellant may apply pursuant to RCW 43.21B.320 to the
17 hearings board for a stay of the order or for the removal thereof.

18 (4) Any appeal must contain the following in accordance with the
19 rules of the hearings board:

20 (a) The appellant's name and address;

21 (b) The date and docket number of the order, permit, or license
22 appealed;

23 (c) A description of the substance of the order, permit, or license
24 that is the subject of the appeal;

25 (d) A clear, separate, and concise statement of every error alleged
26 to have been committed;

27 (e) A clear and concise statement of facts upon which the requester
28 relies to sustain his or her statements of error; and

29 (f) A statement setting forth the relief sought.

1 (5) Upon failure to comply with any final order of the department
2 or the administrator, the attorney general, on request of the
3 department or the administrator, may bring an action in the superior
4 court of the county where the violation occurred or the potential
5 violation is about to occur to obtain such relief as necessary,
6 including injunctive relief, to insure compliance with the order. The
7 air authorities may bring similar actions to enforce their orders.

8 (6) An appealable decision or order shall be identified as such and
9 shall contain a conspicuous notice to the recipient that it may be
10 appealed only by filing an appeal with the hearings board and serving
11 it on the department within thirty days of receipt.

12 **Sec. 4.** RCW 43.21I.010 and 1991 c 200 s 402 are each amended to
13 read as follows:

14 (1) There is hereby created an agency of state government to be
15 known as the office of marine safety. The office shall be vested with
16 all powers and duties transferred to it and such other powers and
17 duties as may be authorized by law. The main administrative office of
18 the office shall be located in the city of Olympia. The administrator
19 may establish administrative facilities in other locations, if deemed
20 necessary for the efficient operation of the office, and if consistent
21 with the principles set forth in subsection (2) of this section.

22 (2) The office of marine safety shall be organized consistent with
23 the goals of providing state government with a focus in marine
24 transportation and serving the people of this state. The legislature
25 recognizes that the administrator needs sufficient organizational
26 flexibility to carry out the office's various duties. To the extent
27 practical, the administrator shall consider the following
28 organizational principles:

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

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

6 (c) Maximum span of control without jeopardizing adequate
7 supervision.

8 (3) The office shall provide leadership and coordination in
9 identifying and resolving threats to the safety of marine
10 transportation and the impact of marine transportation on the
11 environment:

12 (a) Working with other state agencies and local governments to
13 strengthen the state and local governmental partnership in providing
14 public protection;

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

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

18 (d) Working with other federal, state, and local agencies and
19 facilitating their involvement in planning and implementing marine
20 safety measures;

21 (e) Providing information to the public; and

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

24 (4) In accordance with the administrative procedure act, chapter
25 34.05 RCW, the office shall ensure an opportunity for consultation,
26 review, and comment before the adoption of standards, guidelines, and
27 rules.

28 (5) Consistent with the principles set forth in subsection (2) of
29 this section, the administrator may create such administrative
30 divisions, offices, bureaus, and programs within the office as the

1 administrator deems necessary. The administrator shall have complete
2 charge of and supervisory powers over the office, except where the
3 administrator's authority is specifically limited by law.

4 (6) The administrator shall appoint such personnel as are necessary
5 to carry out the duties of the office (~~in accordance with chapter~~
6 ~~41.06 RCW~~). In addition to exemptions set forth in RCW 41.06.070(28),
7 the administrator, the administrator's confidential secretary, and up
8 to four professional staff members shall be exempt from the provisions
9 of chapter 41.06 RCW. All other employees of the office shall be
10 subject to the provisions of chapter 41.06 RCW.

11 **Sec. 5.** RCW 43.21I.020 and 1991 c 200 s 403 are each amended to
12 read as follows:

13 The executive head and appointing authority of the office shall be
14 the administrator of marine safety. The administrator shall be
15 appointed by, and serve at the pleasure of, the governor (~~in~~
16 ~~accordance with RCW 43.17.020~~). The administrator shall be paid a
17 salary to be fixed by the governor in accordance with RCW 43.03.040.

18 **Sec. 6.** RCW 82.23B.010 and 1991 c 200 s 801 are each amended to
19 read as follows:

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

22 (1) "Barrel" means a unit of measurement of volume equal to forty-
23 two United States gallons of crude oil or petroleum product.

24 (2) "Crude oil" means any naturally occurring liquid hydrocarbons
25 at atmospheric temperature and pressure coming from the earth,
26 including condensate and natural gasoline.

27 (3) "Department" means the department of revenue.

1 (4) "Marine terminal" means a facility of any kind, other than a
2 waterborne vessel, that is used for transferring crude oil or petroleum
3 products to or from a waterborne vessel or barge.

4 (5) "Navigable waters" means those waters of the state and their
5 adjoining shorelines that are subject to the ebb and flow of the tide,
6 including the Columbia and Snake rivers.

7 (6) "Person" has the meaning provided in RCW 82.04.030.

8 (7) "Petroleum product" means any liquid hydrocarbons at
9 atmospheric temperature and pressure that are the product of the
10 fractionation, distillation, or other refining or processing of crude
11 oil, and that are used as, useable as, or may be refined as a fuel or
12 fuel blendstock, including but not limited to, gasoline, diesel fuel,
13 aviation fuel, bunker fuel, and fuels containing a blend of alcohol and
14 petroleum.

15 (8) "Taxpayer" means the person owning crude oil or petroleum
16 products immediately (~~before the same are off-loaded at~~) after
17 receipt of the same into the storage tanks of a marine terminal in this
18 state from a waterborne vessel or barge and who is liable for the taxes
19 imposed by this chapter.

20 (9) "Waterborne vessel or barge" means any ship, barge, or other
21 watercraft capable of travelling on the navigable waters of this state
22 and capable of transporting any crude oil or petroleum product in
23 quantities of ten thousand gallons or more for purposes other than
24 providing fuel for its motor or engine.

25 **Sec. 7.** RCW 82.23B.020 and 1991 c 200 s 802 are each amended to
26 read as follows:

27 (1) An oil spill response tax is imposed on the privilege of (~~off-~~
28 ~~loading~~) receiving crude oil or petroleum products at a marine
29 terminal within this state from a waterborne vessel or barge operating

1 on the navigable waters of this state. The tax imposed in this section
2 is levied upon the owner of the crude oil or petroleum products
3 immediately (~~((before off-loading begins))~~) after receipt of the same
4 into the storage tanks of a marine terminal from a waterborne vessel or
5 barge at the rate of two cents per barrel of crude oil or petroleum
6 product (~~((off-loaded))~~) 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 (~~((off-loading))~~) receiving crude oil or petroleum products at a marine
10 terminal within this state from a waterborne vessel or barge operating
11 on the navigable waters of this state. The tax imposed in this section
12 is levied upon the owner of the crude oil or petroleum products
13 immediately (~~((before off-loading begins))~~) after receipt of the same
14 into the storage tanks of a marine terminal from a waterborne vessel or
15 barge at the rate of three cents per barrel of crude oil or petroleum
16 product (~~((off-loaded))~~).

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

29 (4) Taxes collected under this chapter shall be held in trust until
30 paid to the department. Any person collecting the taxes who

1 appropriates or converts the taxes collected shall be guilty of a gross
2 misdemeanor if the money required to be collected is not available for
3 payment on the date payment is due. The taxes required by this chapter
4 to be collected shall be stated separately from other charges made by
5 the marine terminal operator in any invoice or other statement of
6 account provided to the taxpayer.

7 (5) If a taxpayer fails to pay the taxes imposed by this chapter to
8 the person charged with collection of the taxes and the person charged
9 with collection fails to pay the taxes to the department, the
10 department may, in its discretion, proceed directly against the
11 taxpayer for collection of the taxes.

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

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

23 (8) Upon prior approval of the department, the (~~owner of crude oil~~
24 ~~or petroleum products off-loaded in this state~~) taxpayer may pay the
25 taxes imposed by this chapter directly to the department. The
26 department shall give its approval for direct payment under this
27 section whenever it appears, in the department's judgment, that direct
28 payment will enhance the administration of the taxes imposed under this
29 chapter. The department shall provide by rule for the issuance of a
30 direct payment certificate to any taxpayer qualifying for direct

1 payment of the taxes. Good faith acceptance of a direct payment
2 certificate by a terminal operator shall relieve the marine terminal
3 operator from any liability for the collection or payment of the taxes
4 imposed under this chapter.

5 (9) All receipts from the tax imposed in subsection (1) of this
6 section shall be deposited into the state oil spill response account.
7 All receipts from the tax imposed in subsection (2) of this section
8 shall be deposited into the state oil spill administration account.

9 (10) Within forty-five days after the end of each calendar quarter,
10 the office of financial management shall determine the balance of the
11 oil spill response account as of the last day of that calendar quarter.
12 Balance determinations by the office of financial management under this
13 section are final and shall not be used to challenge the validity of
14 any tax imposed under this chapter. The office of financial management
15 shall promptly notify the departments of revenue and ecology of the
16 account balance once a determination is made. For each subsequent
17 calendar quarter, the tax imposed by subsection (1) of this section
18 shall be imposed during the entire calendar quarter unless:

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

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

25 (11) The office of marine safety, the department of revenue, and
26 the department of trade and economic development shall study tax
27 credits for taxpayers employing vessels with the best achievable
28 technology and the best available protection to reduce the risk of oil
29 spills to the navigable waters of the state and submit the study to the
30 appropriate standing committees of the legislature by December 1, 1992.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 82.23B RCW
2 to read as follows:

3 (1) Any person having paid the tax imposed by this chapter who uses
4 petroleum products as a consumer for a purpose other than as a fuel may
5 claim refund or credit against the tax imposed under this chapter. For
6 this purpose, the term consumer shall be defined as provided in RCW
7 82.04.190.

8 (2) Any person having paid the tax imposed by this chapter who uses
9 petroleum products as a component or ingredient in the manufacture of
10 an item which is not a fuel may claim a refund or credit against the
11 tax imposed by this chapter.

12 (3) The amount of refund or credit claimed under this section may
13 not exceed the amount of tax paid by the person making such claim on
14 the petroleum products so consumed or used. The refund or credit
15 allowed by this section shall be claimed on such forms and subject to
16 such requirements as the department may prescribe by rule.

17 **Sec. 9.** RCW 82.23B.030 and 1991 c 200 s 803 are each amended to
18 read as follows:

19 The taxes imposed under this chapter shall only apply to the first
20 ~~((off-loading))~~ receipt of crude oil or petroleum products at a marine
21 terminal in this state and not to the later transporting and subsequent
22 ~~((off-loading))~~ receipt of the same oil or petroleum product, whether
23 in the form originally ~~((off-loaded))~~ received at a marine terminal in
24 this state or after refining or other processing.

25 **Sec. 10.** RCW 82.23B.040 and 1991 c 200 s 804 are each amended to
26 read as follows:

27 Credit shall be allowed against the taxes imposed under this
28 chapter for any crude oil or petroleum products ~~((off-loaded))~~ received

1 at a marine terminal and subsequently exported from or sold for export
2 from the state.

3 **Sec. 11.** RCW 43.21I.030 and 1991 c 200 s 405 are each amended to
4 read as follows:

5 In addition to any other powers granted the administrator, the
6 administrator may:

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

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

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

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

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

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

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

1 **Sec. 12.** RCW 88.40.011 and 1991 c 200 s 702 are each amended to
2 read as follows:

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

5 (1) "Administrator" means the administrator of the office of marine
6 safety created in RCW 43.21I.010.

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

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

14 (4) "Covered vessel" means a tank vessel, cargo vessel, or
15 passenger vessel.

16 (5) "Department" means the department of ecology.

17 (6) "Director" means the director of the department of ecology.

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

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

1 dispense more than three thousand gallons of fuel to a ship that is not
2 a covered vessel, in a single transaction.

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

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

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

11 (9) "Inland barge" means any barge operating on the waters of the
12 state and certified by the coast guard as an inland barge.

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

18 (11) "Office" means the office of marine safety established by RCW
19 43.21I.010.

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

29 (13) "Offshore facility" means any facility(~~(, as defined in~~
30 ~~subsection (7) of this section,~~) located in, on, or under any of the

1 navigable waters of the state, but does not include a facility any part
2 of which is located in, on, or under any land of the state, other than
3 submerged land.

4 (14) "Onshore facility" means any facility(~~(, as defined in~~
5 ~~subsection (7) of this section,~~) any part of which is located in, on,
6 or under any land of the state, other than submerged land, that because
7 of its location, could reasonably be expected to cause substantial harm
8 to the environment by discharging oil into or on the navigable waters
9 of the state or the adjoining shorelines.

10 (15)(a) "Owner or operator" means (i) in the case of a vessel, any
11 person owning, operating, or chartering by demise, the vessel; (ii) in
12 the case of an onshore or offshore facility, any person owning or
13 operating the facility; and (iii) in the case of an abandoned vessel or
14 onshore or offshore facility, the person who owned or operated the
15 vessel or facility immediately before its abandonment.

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

19 (16) "Passenger vessel" means a ship of (~~greater than~~) three
20 hundred or more gross tons (~~or five hundred or more international~~
21 ~~gross tons~~) with a fuel capacity of at least five thousand gallons
22 carrying passengers for compensation.

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

25 (18) "Spill" means an unauthorized discharge of oil into the waters
26 of the state.

27 (19) "Tank vessel" means a ship that is constructed or adapted to
28 carry, or that carries, oil in bulk as cargo or cargo residue, and
29 that:

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

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

3 (20) "Waters of the state" includes lakes, rivers, ponds, streams,
4 inland waters, underground water, salt waters, estuaries, tidal flats,
5 beaches and lands adjoining the seacoast of the state, sewers, and all
6 other surface waters and watercourses within the jurisdiction of the
7 state of Washington.

8 **Sec. 13.** RCW 88.40.020 and 1991 c 200 s 703 are each amended to
9 read as follows:

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

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

18 (b) The administrator by rule may establish a lesser standard of
19 financial responsibility for barges of three hundred gross tons or
20 less. The standard shall set the level of financial responsibility
21 based on the quantity of cargo the barge is capable of carrying. The
22 administrator shall not set the standard for barges of three
23 (~~thousand~~) hundred gross tons or less below that required under
24 federal law.

25 (c) The owner or operator of a tank vessel who is a member of an
26 international protection and indemnity mutual organization and is
27 covered for oil pollution risks up to the amounts required under this
28 section is not required to demonstrate financial responsibility under

1 this chapter. The administrator may require the owner or operator of
2 a tank vessel to prove membership in such an organization.

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

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

11 (5) The office may by rule set a lesser amount of financial
12 responsibility for a tank vessel that meets standards for construction,
13 propulsion, equipment, and personnel established by the office. The
14 office shall require as a minimum level of financial responsibility
15 under this subsection the same level of financial responsibility
16 required under federal law.

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

19 **Sec. 14.** RCW 88.40.040 and 1991 c 200 s 706 are each amended to
20 read as follows:

21 (1) The office shall deny entry to the waters of the state to any
22 vessel that does not meet the financial responsibility requirements of
23 this chapter. Any vessel owner or operator that does not meet the
24 financial responsibility requirements of this chapter and any rules
25 prescribed thereunder or the federal oil pollution act of 1990 shall be
26 reported by the office to the United States coast guard.

27 (2) The office shall enforce section 1016 of the federal oil
28 pollution act of 1990 as authorized by section 1019 of the federal act.

1 (~~(3) Any onshore or offshore facility owner or operator who does~~
2 ~~not meet the financial responsibility requirements of RCW 88.40.025 and~~
3 ~~any rules adopted by the department or office shall be reported to the~~
4 ~~secretary of state. The secretary of state shall suspend the~~
5 ~~facility's privilege of operating in this state until financial~~
6 ~~responsibility is demonstrated.))~~

7 **Sec. 15.** RCW 88.44.010 and 1991 c 200 s 901 are each amended to
8 read as follows:

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

11 (1) "Administrator" means the administrator of the office of marine
12 safety created by RCW 43.21I.010.

13 (2) "Business class" means a recognized trade segment of the
14 maritime industry.

15 (3) "Commission" means the Washington state maritime commission.

16 (4) "Fishing vessel" means a vessel (a) on which persons
17 commercially engage in: (i) Catching, taking, or harvesting fish; (ii)
18 preparing fish or fish products; or (b) that supplies, stores,
19 refrigerates, or transports fish, fish products, or materials directly
20 related to fishing or the preparation of fish.

21 (5) "Foreign vessel" means a vessel of foreign registry or operated
22 under the authority of a country, except the United States.

23 (6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel
24 oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural
25 gas, propane, butane, oils distilled from coal, and other liquid
26 hydrocarbons regardless of specific gravity, or any other petroleum
27 related products.

28 (7) "Oceanographic research vessel" means a vessel that is employed
29 only in instruction in oceanography or limnology, or both, or only in

1 oceanographic or limnological research, including those studies about
2 the sea such as seismic, gravity meter, and magnetic exploration and
3 other marine geophysical or geological surveys, atmospheric research,
4 and biological research.

5 (8) "Protection and indemnity club" means a mutual insurance
6 organization formed by a group of shipowners or operators in order to
7 secure cover for various risks of vessel operation, including oil spill
8 costs, not covered by normal hull insurance.

9 (9) "Public vessel" means a vessel that is owned, or chartered and
10 operated by the United States government, by a state of the United
11 States, or a government of a foreign country and is not engaged in
12 commercial service.

13 (10) "State" means a state of the United States, Guam, Puerto Rico,
14 the Virgin Islands, American Samoa, the District of Columbia, the
15 Northern Mariana Islands, and any other territory or possession of the
16 United States.

17 (11) "Steamship agent or agency" means an agent or agency appointed
18 by a vessel owner or operator to enter or clear vessels at ports within
19 the state of Washington and to conduct onshore activities, or contract
20 on behalf of the owner or operator for whatever is required for the
21 efficient operation of the vessel.

22 (12) "Steamship liner company" means a steamship company
23 maintaining a regular schedule of calls at designated ports of the
24 state of Washington.

25 (13) "Towboat" means a commercial vessel engaged in, or intending
26 to engage in, the service of pulling, pushing, or hauling along side,
27 or any combination of pulling, pushing, or hauling along side.

28 (14) "United States flag vessel" means a vessel documented under
29 the laws of the United States or registered under the laws of any state
30 of the United States.

1 (15) "Vessel" means every description of watercraft, other than a
2 seaplane on water, used or capable of being used as a means of
3 transportation on water, carrying oil as fuel or cargo, ~~((and over))~~ of
4 three hundred or more gross registered tons, except oceanographic
5 research vessels, public vessels, passenger vessels with a maximum fuel
6 capacity of less than five thousand gallons, vessels being employed
7 exclusively for pleasure, or vessels which, prior to entering
8 Washington waters, have a contingency plan approved pursuant to RCW
9 88.46.060, or have ~~((formerly))~~ arranged for immediate oil spill
10 response with an officially recognized cleanup cooperative or with a
11 private cleanup contractor ~~((for immediate oil spill response))~~.

12 (16) "Vessel owner or operator" means the legal owner of a vessel
13 and/or the charterer or other person in charge of the day-to-day
14 operation.

15 (17) "Waters of this state" or "waters of the state of Washington"
16 has the meaning in RCW 90.56.010.

17 **Sec. 16.** RCW 88.44.100 and 1990 c 117 s 11 are each amended to
18 read as follows:

19 There is levied on and after October 1, 1990, an assessment upon
20 all vessels, or the owners or operators thereof, which transit upon
21 waters of this state, except as exempted herein and not including
22 vessels which transit upon the portion of the Columbia river that runs
23 between the states of Washington and Oregon, an assessment to be set by
24 the commission on each vessel transit, plus annual increases as are
25 imposed pursuant to the provisions of RCW 88.44.110. ~~((Vessels which~~
26 ~~show proof to the commission or the department of ecology that they~~
27 ~~have previously and individually arranged with an officially recognized~~
28 ~~cleanup cooperative or with a private cleanup contractor to provide~~
29 ~~immediate response capabilities in the event of an oil spill or~~

1 ~~threatened release, are exempt from assessment under this chapter.))~~
2 Of those vessels assessed, the commission may set the rate. When the
3 fund reaches one million five hundred thousand dollars, the commission
4 shall discontinue the assessment until the fund declines to one million
5 dollars, at which time the assessment must be reinstated. The
6 assessment, at a minimum, must be able to generate the maximum fund
7 level within four years. All moneys collected hereunder shall be
8 expended to effectuate the purpose and objects of this chapter.

9 If the commission establishes an oil spill first response system
10 for the Columbia river, there may be levied on and after ((January))
11 July 1, 1992, an assessment upon all vessels, or the owners or
12 operators thereof, which transit upon the portion of the Columbia river
13 that runs between the states of Washington and Oregon.

14 **Sec. 17.** RCW 88.44.110 and 1991 c 200 s 906 are each amended to
15 read as follows:

16 If it appears from investigation by the commission that the revenue
17 from the assessment levied on vessels under this chapter is inadequate
18 to accomplish the purposes of this chapter, the commission by rule
19 shall increase the assessment to a sum determined by the commission to
20 be necessary for those purposes. The rule adopting the increase shall
21 be filed with the administrator(~~(. An increase shall not take effect~~
22 ~~earlier than ninety days after the rule is adopted and filed with the~~
23 ~~administrator, unless)) at least thirty days prior to the date set by
24 the commission for final adoption of the rule. If the administrator
25 determines that the increase is not justified, not later than the date
26 set by the commission for adoption of the final rule, the administrator
27 shall notify the commission that the rule has been disapproved.~~

1 **Sec. 18.** RCW 88.46.010 and 1991 c 200 s 414 are each amended to
2 read as follows:

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

5 (1) "Administrator" means the administrator of the office of marine
6 safety created in RCW 43.21I.010.

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

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

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

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

1 (6) "Covered vessel" means a tank vessel, cargo vessel, or
2 passenger vessel.

3 (7) "Department" means the department of ecology.

4 (8) "Director" means the director of the department of ecology.

5 (9) "Discharge" means any spilling, leaking, pumping, pouring,
6 emitting, emptying, or dumping.

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

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

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

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

29 (13) "Office" means the office of marine safety established by RCW
30 43.21I.010.

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

10 (15) "Offshore facility" means any facility(~~(, as defined in~~
11 ~~subsection (10) of this section,~~) located in, on, or under any of the
12 navigable waters of the state, but does not include a facility any part
13 of which is located in, on, or under any land of the state, other than
14 submerged land. "Offshore facility" does not include a marine facility
15 (~~(as defined in subsection (11) of this section)~~).

16 (16) "Onshore facility" means any facility(~~(, as defined in~~
17 ~~subsection (10) of this section,~~) any part of which is located in, on,
18 or under any land of the state, other than submerged land, that because
19 of its location, could reasonably be expected to cause substantial harm
20 to the environment by discharging oil into or on the navigable waters
21 of the state or the adjoining shorelines.

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

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

1 (18) "Passenger vessel" means a ship of (~~greater than~~) three
2 hundred or more gross tons (~~or five hundred or more international~~
3 ~~gross tons~~) with a fuel capacity of at least five thousand gallons
4 carrying passengers for compensation.

5 (19) "Person" means any political subdivision, government agency,
6 municipality, industry, public or private corporation, copartnership,
7 association, firm, individual, or any other entity whatsoever.

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

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

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

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

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

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

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

27 **Sec. 19.** RCW 88.46.050 and 1991 c 200 s 418 are each amended to
28 read as follows:

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

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

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

17 (b) (~~((A request to))~~) Requesting the United States coast guard to
18 deny a cargo vessel or passenger vessel entry into the navigable waters
19 of the state, if the vessel poses a substantial environmental risk;

20 (c) (~~((A notice to))~~) Notifying the state's spill response system
21 that a cargo or passenger vessel entering the state's navigable waters
22 poses a substantial environmental risk;

23 (d) ((A)) Inspecting a cargo or passenger vessel (~~((inspection for~~
24 ~~vessels))~~) that may pose a substantial environmental risk, to determine
25 whether (~~((a cargo vessel or passenger))~~) the vessel complies with
26 applicable state or federal laws. Any vessel inspection conducted
27 pursuant to this section shall be performed during the vessel's
28 scheduled stay in port; and

29 (e) Enforcement actions.

1 **Sec. 20.** RCW 88.46.060 and 1991 c 200 s 419 are each amended to
2 read as follows:

3 (1) Each covered vessel shall have a contingency plan for the
4 containment and cleanup of oil spills from the covered vessel into the
5 waters of the state and for the protection of fisheries and wildlife,
6 natural resources, and public and private property from such spills.
7 The office shall by rule adopt and periodically revise standards for
8 the preparation of contingency plans. The office shall require
9 contingency plans, at a minimum, to meet the following standards:

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

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

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

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

23 (e) State the number, training preparedness, and fitness of all
24 dedicated, prepositioned personnel assigned to direct and implement the
25 plan;

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

29 (g) Describe important features of the surrounding environment,
30 including fish and wildlife habitat, environmentally and

1 archaeologically sensitive areas, and public facilities. The
2 departments of ecology, fisheries, wildlife, and natural resources, and
3 the office of archaeology and historic preservation, upon request,
4 shall provide information that they have available to assist in
5 preparing this description. If the office has adopted rules for
6 contingency plans prior to July 1, 1992, the description of
7 archaeologically sensitive areas shall only be required when the office
8 revises the rules for contingency plans after July 1, 1992. The
9 description of archaeologically sensitive areas shall not be required
10 to be included in a contingency plan until it is reviewed and updated
11 pursuant to subsection (9) of this section;

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

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

20 (j) Provide arrangements for the repositioning of spill
21 containment and cleanup equipment and trained personnel at strategic
22 locations from which they can be deployed to the spill site to promptly
23 and properly remove the spilled oil;

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

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

28 (m) Until a spill prevention plan has been submitted pursuant to
29 RCW 88.46.040, state the measures that have been taken to reduce the
30 likelihood that a spill will occur, including but not limited to,

1 design and operation of a vessel, training of personnel, number of
2 personnel, and backup systems designed to prevent a spill;

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

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

10 (2)(a) The owner or operator of a tank vessel of three thousand
11 gross tons or more shall submit a contingency plan to the office within
12 six months after the office adopts rules establishing standards for
13 contingency plans under subsection (1) of this section.

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

19 (3)(a) The owner or operator of a tank vessel or of the facilities
20 at which the vessel will be unloading its cargo shall submit the
21 contingency plan for the tank vessel. Subject to conditions imposed by
22 the office, the owner or operator of a facility may submit a single
23 contingency plan for tank vessels of a particular class that will be
24 unloading cargo at the facility.

25 (b) The contingency plan for a cargo vessel or passenger vessel may
26 be submitted by the owner or operator of the cargo vessel or passenger
27 vessel, by the agent for the vessel resident in this state, or by the
28 Washington state maritime commission pursuant to RCW 88.44.020.
29 Subject to conditions imposed by the office, the owner, operator, or

1 agent may submit a single contingency plan for cargo vessels or
2 passenger vessels of a particular class.

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

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

16 (5) In reviewing the contingency plans required by this section,
17 the office shall consider at least the following factors:

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

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

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

27 (d) The existence of navigational hazards within the area covered
28 by the plan;

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

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

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

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

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

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

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

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

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

1 **Sec. 21.** RCW 88.46.070 and 1991 c 200 s 420 are each amended to
2 read as follows:

3 (1) The provisions of prevention plans and contingency plans
4 approved by the office pursuant to this chapter shall be legally
5 binding on those persons submitting them to the office and on their
6 successors, assigns, agents, and employees. The superior court shall
7 have jurisdiction to restrain a violation of, compel specific
8 performance of, or otherwise to enforce such plans upon application by
9 the office. The office may issue an order pursuant to chapter 34.05
10 RCW requiring compliance with a contingency plan or a prevention plan
11 and may impose administrative penalties for failure to comply with a
12 plan.

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

24 (3) If the administrator believes immediate action is necessary to
25 accomplish the purposes of this chapter, the administrator may issue an
26 order or directive, as appropriate under the circumstances, without
27 first issuing a notice or determination pursuant to subsection (2) of
28 this section. An order or directive issued pursuant to this subsection
29 shall be served by registered mail or personally upon any person to
30 whom it is directed.

1 **Sec. 22.** RCW 88.46.080 and 1991 c 200 s 421 are each amended to
2 read as follows:

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

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

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

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

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

21 (3) A person may rely on a copy of the statement issued by the
22 office pursuant to RCW 88.46.060 as evidence that a vessel has an
23 approved contingency plan and the statement issued pursuant to RCW
24 88.46.040 that a vessel has an approved prevention plan.

25 (4) Any person found guilty of willfully violating any of the
26 provisions of this chapter, or any final written orders or directive of
27 the administrator or a court in pursuance thereof shall be deemed
28 guilty of a gross misdemeanor, as provided in chapter 9A.20 RCW, and
29 upon conviction thereof shall be punished by a fine of up to ten
30 thousand dollars and costs of prosecution, or by imprisonment in the

1 county jail for not more than one year, or by both such fine and
2 imprisonment in the discretion of the court. Each day upon which a
3 willful violation of the provisions of this chapter occurs may be
4 deemed a separate and additional violation.

5 **Sec. 23.** RCW 88.46.090 and 1991 c 200 s 422 are each amended to
6 read as follows:

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

15 (2) Except as provided in subsection (4) of this section, it shall
16 be unlawful for a covered vessel to transfer oil to or from an onshore
17 or offshore facility that does not have an approved contingency plan
18 required under RCW 90.56.210, a spill prevention plan required by RCW
19 90.56.200, or financial responsibility in compliance with chapter 88.40
20 RCW and the federal oil pollution act of 1990.

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

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

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

1 (b) A contingency plan and prevention plan has been submitted to
2 the office as required by this chapter and rules adopted by the office
3 and the office is reviewing the plan and has not denied approval; or

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

6 (5) Any person may rely on a copy of the statement issued by the
7 office to RCW 88.46.060 as evidence that the vessel has an approved
8 contingency plan and the statement issued pursuant to RCW 88.46.040 as
9 evidence that the vessel has an approved spill prevention plan.

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

24 **Sec. 24.** RCW 88.46.110 and 1991 c 200 s 424 are each amended to
25 read as follows:

26 (1) The office shall establish regional marine safety committees
27 (~~at least~~) for the Strait of Juan de Fuca/Northern Puget Sound,
28 Southern Puget Sound, and Grays Harbor/Pacific coast. It is the intent
29 of the legislature that the office also establish a regional marine

1 safety committee jointly with the state of Oregon for the Columbia
2 river. The office by rule shall establish the boundaries of the
3 committees. The office may establish additional committees that it
4 determines will be in the public interest.

5 (2) The administrator shall appoint to each regional committee for
6 a term of three years six persons representing a cross section of
7 interests and the public with an interest in maritime transportation
8 and environmental issues.

9 (3) The administrator or his or her designee shall chair each of
10 the regional committees. Each member of the committee shall be
11 reimbursed for actual and necessary expenses incurred in the
12 performance of committee duties in accordance with RCW 43.03.250.

13 (4) Each regional committee shall be responsible for planning for
14 the safe navigation and operation of tankers, barges, and other vessels
15 within each region. Each committee shall prepare a regional marine
16 safety plan, encompassing all vessel traffic within the region. The
17 coast guard, the federal environmental protection agency, the army
18 corps of engineers, and the navy shall be invited to attend the
19 meetings of each marine regional safety committee.

20 (5) The administrator shall adopt rules and guidelines for regional
21 marine safety plans in consultation with affected parties. The rules
22 shall require the committees to establish subcommittees to involve all
23 interested parties in the development of the plans and to require the
24 committees to include a summary of public comments and any minority
25 reports with recommendations submitted to the administrator. The rules
26 shall also require the plans to consider all of the following:

27 (a) Requirements for tug escorts of tankers and other commercial
28 vessels, and speed limits for tankers and other vessels in addition to
29 the requirements imposed by statute;

1 (b) A review and evaluation of the adequacy of and any changes
2 needed in:

3 (i) Anchorage designations and sounding checks;

4 (ii) Communications systems;

5 (iii) Commercial and recreational fishing, recreational boaters,
6 and other small vessel congestion in shipping lanes; and

7 (iv) Placement and effectiveness of navigational aids, channel
8 design plans, and the traffic and routings from port construction and
9 dredging projects;

10 (c) Procedures for routing vessels during emergencies that impact
11 navigation;

12 (d) Management requirements for vessel control bridges;

13 (e) Special protection for environmentally sensitive areas;

14 (f) Suggested mechanisms to ensure that the provisions of the plan
15 are fully and regularly enforced; and

16 (g) A recommendation as to whether establishing or expanding vessel
17 traffic safety systems within the regions is desirable.

18 (6) Each regional marine safety plan shall be submitted to the
19 office for approval within one year after the regional marine safety
20 committee is established. The office shall review the plans for
21 consistency with the rules and guidelines and shall approve the plans
22 or give reasons for their disapproval. If a regional marine safety
23 committee does not submit a regional marine safety plan to the office
24 within one year after the committee is established, the office, after
25 consulting with affected interests, may adopt a plan for the region
26 that meets the requirements of subsection (5) of this section.

27 (7) Upon approval of a plan, the office shall implement those
28 elements of the plan over which the state has authority. If federal
29 authority or action is required, the office shall petition the
30 appropriate agency or congress.

1 (8) Not later than July 1st of each even-numbered year each
2 regional marine safety committee shall report its findings and
3 recommendations to the marine oversight board established in RCW
4 90.56.450 and the office concerning vessel traffic safety in its region
5 and any recommendations for improving tanker, barge, and other vessel
6 safety in the region by amending the regional marine safety plan. The
7 regional committees shall also provide technical assistance to the
8 marine oversight board.

9 (9) The regional safety committees shall recommend to the office
10 the need for, and the structure and design of, an emergency response
11 system for the Strait of Juan de Fuca and the Pacific coast.

12 **Sec. 25.** RCW 90.48.120 and 1987 c 109 s 131 are each amended to
13 read as follows:

14 (1) Whenever, in the opinion of the department, any person shall
15 violate or creates a substantial potential to violate the provisions of
16 this chapter or chapter 90.56 RCW, or fails to control the polluting
17 content of waste discharged or to be discharged into any waters of the
18 state, the department shall notify such person of its determination by
19 registered mail. Such determination shall not constitute an order or
20 directive under RCW 43.21B.310. Within thirty days from the receipt of
21 notice of such determination, such person shall file with the
22 department a full report stating what steps have been and are being
23 taken to control such waste or pollution or to otherwise comply with
24 the determination of the department. Whereupon the department shall
25 issue such order or directive as it deems appropriate under the
26 circumstances, and shall notify such person thereof by registered mail.

27 (2) Whenever the department deems immediate action is necessary to
28 accomplish the purposes of this chapter (~~(90.48)~~) or chapter 90.56 RCW,
29 it may issue such order or directive, as appropriate under the

1 circumstances, without first issuing a notice or determination pursuant
2 to subsection (1) of this section. An order or directive issued
3 pursuant to this subsection shall be served by registered mail or
4 personally upon any person to whom it is directed.

5 **Sec. 26.** RCW 90.48.140 and 1973 c 155 s 8 are each amended to read
6 as follows:

7 Any person found guilty of willfully violating any of the
8 provisions of this chapter or chapter 90.56 RCW, or any final written
9 orders or directive of the department or a court in pursuance thereof
10 shall be deemed guilty of a crime, and upon conviction thereof shall be
11 punished by a fine of up to ten thousand dollars and costs of
12 prosecution, or by imprisonment in the county jail for not more than
13 one year, or by both such fine and imprisonment in the discretion of
14 the court. Each day upon which a willful violation of the provisions
15 of this chapter or chapter 90.56 RCW occurs may be deemed a separate
16 and additional violation.

17 **Sec. 27.** RCW 90.48.144 and 1987 c 109 s 17 are each amended to
18 read as follows:

19 Every person who:

20 (1) Violates the terms or conditions of a waste discharge permit
21 issued pursuant to RCW 90.48.180 or 90.48.260 through 90.48.262, or

22 (2) Conducts a commercial or industrial operation or other point
23 source discharge operation without a waste discharge permit as required
24 by RCW 90.48.160 or 90.48.260 through 90.48.262, or

25 (3) Violates the provisions of RCW 90.48.080, or other sections of
26 this chapter or chapter 90.56 RCW or ~~((regulations))~~ rules or orders
27 adopted or issued pursuant ~~((thereto))~~ to either of those chapters,
28 shall incur, in addition to any other penalty as provided by law, a

1 penalty in an amount of up to ten thousand dollars a day for every such
2 violation. Each and every such violation shall be a separate and
3 distinct offense, and in case of a continuing violation, every day's
4 continuance shall be and be deemed to be a separate and distinct
5 violation. Every act of commission or omission which procures, aids or
6 abets in the violation shall be considered a violation under the
7 provisions of this section and subject to the penalty herein provided
8 for. The penalty amount shall be set in consideration of the previous
9 history of the violator and the severity of the violation's impact on
10 public health and/or the environment in addition to other relevant
11 factors. The penalty herein provided for shall be imposed pursuant to
12 the procedures set forth in RCW 43.21B.300.

13 **Sec. 28.** RCW 90.48.366 and 1991 c 200 s 812 are each amended to
14 read as follows:

15 By July 1, 1991, the department, in consultation with the
16 departments of fisheries, wildlife, and natural resources, and the
17 parks and recreation commission, shall adopt rules establishing a
18 compensation schedule for the discharge of oil in violation of this
19 chapter and chapter 90.56 RCW. The department shall establish a
20 scientific advisory board to assist in establishing the compensation
21 schedule. The amount of compensation assessed under this schedule
22 shall be no less than one dollar per gallon of oil spilled and no
23 greater than fifty dollars per gallon of oil spilled. The compensation
24 schedule shall reflect adequate compensation for unquantifiable damages
25 or for damages not quantifiable at reasonable cost for any adverse
26 environmental, recreational, aesthetic, or other effects caused by the
27 spill and shall take into account:

28 (1) Characteristics of any oil spilled, such as toxicity,
29 dispersibility, solubility, and persistence, that may affect the

1 severity of the effects on the receiving environment, living organisms,
2 and recreational and aesthetic resources;

3 (2) The sensitivity of the affected area as determined by such
4 factors as: (a) The location of the spill; (b) habitat and living
5 resource sensitivity; (c) seasonal distribution or sensitivity of
6 living resources; (d) areas of recreational use or aesthetic
7 importance; (e) the proximity of the spill to important habitats for
8 birds, aquatic mammals, fish, or to species listed as threatened or
9 endangered under state or federal law; (f) significant archaeological
10 resources as determined by the office of archaeology and historic
11 preservation; and ~~((f))~~ (g) other areas of special ecological or
12 recreational importance, as determined by the department. If the
13 department has adopted rules for a compensation table prior to July 1,
14 1992, the sensitivity of significant archaeological resources shall
15 only be included among factors to be used in the compensation table
16 when the department revises the rules for the compensation table after
17 July 1, 1992; and

18 (3) Actions taken by the party who spilled oil or any party liable
19 for the spill that: (a) Demonstrate a recognition and affirmative
20 acceptance of responsibility for the spill, such as the immediate
21 removal of oil and the amount of oil removed from the environment; or
22 (b) enhance or impede the detection of the spill, the determination of
23 the quantity of oil spilled, or the extent of damage, including the
24 unauthorized removal of evidence such as injured fish or wildlife.

25 **Sec. 29.** RCW 90.48.368 and 1991 c 200 s 814 are each amended to
26 read as follows:

27 (1) The department shall adopt rules establishing a formal process
28 for preassessment screening of damages resulting from spills to the
29 waters of the state causing the death of, or injury to, fish, animals,

1 vegetation, or other resources of the state. The rules shall specify
2 the conditions under which the department shall convene a preassessment
3 screening committee. The preassessment screening process shall occur
4 concurrently with reconnaissance activities. The committee shall use
5 information obtained from reconnaissance activities as well as any
6 other relevant resource and resource use information. For each
7 incident, the committee shall determine whether a damage assessment
8 investigation should be conducted, or, whether the compensation
9 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to
10 assess damages. The committee may accept restoration or enhancement
11 projects or studies proposed by the liable parties in lieu of some or
12 all of: (a) The compensation schedule authorized under RCW 90.48.366
13 and 90.48.367; or (b) the claims from damage assessment studies
14 authorized under RCW 90.48.142.

15 (2) A preassessment screening committee may consist of
16 representatives of the departments of ecology, fisheries, wildlife,
17 natural resources, social and health services, and emergency
18 management, the parks and recreation commission, the office of
19 archaeology and historic preservation, as well as other federal, state,
20 and local agencies, and tribal and local governments whose presence
21 would enhance the reconnaissance or damage assessment aspects of spill
22 response. The department shall chair the committee and determine which
23 representatives will be needed on a spill-by-spill basis.

24 (3) The committee shall consider the following factors when
25 determining whether a damage assessment study authorized under RCW
26 90.48.367 should be conducted: (a) Whether evidence from
27 reconnaissance investigations suggests that injury has occurred or is
28 likely to occur to publicly owned resources; (b) the potential loss in
29 services provided by resources injured or likely to be injured and the
30 expected value of the potential loss; (c) whether a restoration project

1 to return lost services is technically feasible; (d) the accuracy of
2 damage quantification methods that could be used and the anticipated
3 cost-effectiveness of applying each method; (e) the extent to which
4 likely injury to resources can be verified with available
5 quantification methods; and (f) whether the injury, once quantified,
6 can be translated into monetary values with sufficient precision or
7 accuracy.

8 (4) When a resource damage assessment is required for an oil spill
9 in the navigable waters of the state, as defined in RCW 90.56.010, the
10 state trustee agency responsible for the resource and habitat damaged
11 shall conduct the damage assessment and pursue all appropriate remedies
12 with the responsible party.

13 (5) Oil spill damage assessment studies authorized under RCW
14 90.48.367 may only be conducted if the committee, after considering the
15 factors enumerated in subsection (3) of this section, determines that
16 the damages to be investigated are quantifiable at a reasonable cost
17 and that proposed assessment studies are clearly linked to
18 quantification of the damages incurred.

19 (6) As new information becomes available, the committee may
20 reevaluate the scope of damage assessment using the factors listed in
21 subsection (3) of this section and may reduce or expand the scope of
22 damage assessment as appropriate.

23 (7) The preassessment screening process shall provide for the
24 ongoing involvement of persons who may be liable for damages resulting
25 from an oil spill. The department may negotiate with a potentially
26 liable party to perform restoration and enhancement projects or studies
27 which may substitute for all or part of the compensation authorized
28 under RCW 90.48.366 and 90.48.367 or the damage assessment studies
29 authorized under RCW 90.48.367.

1 (8) For the purposes of this section and RCW 90.48.367, the cost of
2 a damage assessment shall be considered "reasonable" when the
3 anticipated cost of the damage assessment is expected to be less than
4 the anticipated damage that may have occurred or may occur.

5 **Sec. 30.** RCW 90.48.400 and 1991 c 200 s 816 are each amended to
6 read as follows:

7 (1) Moneys in the coastal protection fund shall be disbursed for
8 the following purposes and no others:

9 (a) Environmental restoration and enhancement projects intended to
10 restore or enhance environmental, recreational, archaeological, or
11 aesthetic resources for the benefit of Washington's citizens;

12 (b) Investigations of the long-term effects of oil spills; and

13 (c) Development and implementation of an aquatic land geographic
14 information system.

15 (2) The director may allocate a portion of the fund to be devoted
16 to research and development in the causes, effects, and removal of
17 pollution caused by the discharge of oil or other hazardous substances.

18 (3) A steering committee consisting of representatives of the
19 department of ecology, fisheries, wildlife, and natural resources, and
20 the parks and recreation commission shall authorize the expenditure of
21 the moneys collected under RCW 90.48.366 through 90.48.368, after
22 consulting impacted local agencies and local and tribal governments.

23 (4) Agencies may not be reimbursed from the coastal protection fund
24 for the salaries and benefits of permanent employees for routine
25 operational support. Agencies may only be reimbursed under this
26 section if money for reconnaissance and damage assessment activities is
27 unavailable from other sources.

1 **Sec. 31.** RCW 90.56.010 and 1991 c 200 s 102 are each amended to
2 read as follows:

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

5 (1) "Administrator" means the administrator of the office of marine
6 safety created in RCW 43.21I.010.

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

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

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

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

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

1 (7) "Committee" means the preassessment screening committee
2 established under RCW 90.48.368.

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

5 (9) "Department" means the department of ecology.

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

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

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

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

23 (13) "Fund" means the state coastal protection fund as provided in
24 RCW 90.48.390 and 90.48.400.

25 (14) "Having control over oil" shall include but not be limited to
26 any person using, storing, or transporting oil immediately prior to
27 entry of such oil into the waters of the state, and shall specifically
28 include carriers and bailees of such oil.

1 (15) "Marine facility" means any facility used for tank vessel
2 wharfage or anchorage, including any equipment used for the purpose of
3 handling or transferring oil in bulk to or from a tank vessel.

4 (16) "Navigable waters of the state" means those waters of the
5 state, and their adjoining shorelines, that are subject to the ebb and
6 flow of the tide and/or are presently used, have been used in the past,
7 or may be susceptible for use to transport intrastate, interstate, or
8 foreign commerce.

9 (17) "Necessary expenses" means the expenses incurred by the
10 department and assisting state agencies for (a) investigating the
11 source of the discharge; (b) investigating the extent of the
12 environmental damage caused by the discharge; (c) conducting actions
13 necessary to clean up the discharge; (d) conducting predamage and
14 damage assessment studies; and (e) enforcing the provisions of this
15 chapter and collecting for damages caused by a discharge.

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

25 (19) "Offshore facility" means any facility(~~(, as defined in~~
26 ~~subsection (12) of this section,~~) located in, on, or under any of the
27 navigable waters of the state, but does not include a facility any part
28 of which is located in, on, or under any land of the state, other than
29 submerged land.

1 (20) "Onshore facility" means any facility(~~(, as defined in~~
2 ~~subsection (12) of this section,~~) any part of which is located in, on,
3 or under any land of the state, other than submerged land, that because
4 of its location, could reasonably be expected to cause substantial harm
5 to the environment by discharging oil into or on the navigable waters
6 of the state or the adjoining shorelines.

7 (21)(a) "Owner or operator" means (i) in the case of a vessel, any
8 person owning, operating, or chartering by demise, the vessel; (ii) in
9 the case of an onshore or offshore facility, any person owning or
10 operating the facility; and (iii) in the case of an abandoned vessel or
11 onshore or offshore facility, the person who owned or operated the
12 vessel or facility immediately before its abandonment.

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

16 (22) "Passenger vessel" means a ship of (~~greater than~~) three
17 hundred or more gross tons (~~or five hundred or more international~~
18 ~~gross tons~~) with a fuel capacity of at least five thousand gallons
19 carrying passengers for compensation.

20 (23) "Person" means any political subdivision, government agency,
21 municipality, industry, public or private corporation, copartnership,
22 association, firm, individual, or any other entity whatsoever.

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

25 (25) "Spill" means an unauthorized discharge of oil or hazardous
26 substances into the waters of the state.

27 (26) "Tank vessel" means a ship that is constructed or adapted to
28 carry, or that carries, oil in bulk as cargo or cargo residue, and
29 that:

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

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

3 (~~(27) ("Technical feasibility" or "technically feasible" shall mean~~
4 ~~that given available technology, a restoration or enhancement project~~
5 ~~can be successfully completed at a cost that is not disproportionate to~~
6 ~~the value of the resource prior to the injury.~~

7 (~~28~~)) "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 (~~(29)~~) (28) "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. 32.** RCW 90.56.100 and 1990 c 116 s 12 are each amended to
18 read as follows:

19 (1) The Washington wildlife rescue coalition shall be established
20 for the purpose of coordinating the rescue and rehabilitation of
21 wildlife injured or endangered by oil spills or the release of other
22 hazardous substances into the environment.

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

24 (a) A representative of the department of wildlife designated by
25 the director of wildlife. The department of wildlife shall be
26 designated as lead agency in the operations of the coalition. The
27 coalition shall be chaired by the representative from the department of
28 wildlife;

1 (b) A representative of the department of ecology designated by the
2 director;

3 (c) A representative of the department of community development
4 emergency management program designated by the director of community
5 development;

6 (d) A licensed veterinarian, with experience and training in
7 wildlife rehabilitation, appointed by the veterinary board of
8 governors;

9 (e) The director of the Washington conservation corps;

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

12 (g) A person designated by the legislative authority of the county
13 where oil spills or spills of other hazardous substances may occur.
14 This member of the coalition shall serve on the coalition until
15 wildlife rescue and rehabilitation is completed in that county. The
16 completion of any rescue or rehabilitation project shall be determined
17 by the director of wildlife.

18 (3) The duties of the Washington wildlife rescue coalition shall be
19 to:

20 (a) Develop an emergency mobilization plan to rescue and
21 rehabilitate waterfowl and other wildlife that are injured or
22 endangered by an oil spill or the release of other hazardous substances
23 into the environment;

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

27 (c) Provide advance training and instruction to volunteers in
28 rescuing and rehabilitating waterfowl and wildlife injured or
29 endangered by oil spills or the release of other hazardous substances
30 into the environment. The training may be provided through grants to

1 community colleges or to groups that conduct programs for training
2 volunteers. The coalition representatives from the agencies described
3 in subsection (2) of this section shall coordinate training efforts
4 with the director of the Washington conservation corps and work to
5 provide training opportunities for young citizens;

6 (d) Obtain and maintain equipment and supplies used in emergency
7 rescue efforts;

8 (e) Report to the appropriate standing committees of the
9 legislature on the progress of the coalition's efforts and detail
10 future funding options necessary for the implementation of this section
11 and RCW 90.56.110. The coalition shall report by January 30, 1991.

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

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

20 **Sec. 33.** RCW 90.56.210 and 1991 c 200 s 202 are each amended to
21 read as follows:

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

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

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

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

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

14 (e) State the number, training preparedness, and fitness of all
15 dedicated, prepositioned personnel assigned to direct and implement the
16 plan;

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

20 (g) Describe important features of the surrounding environment,
21 including fish and wildlife habitat, environmentally and
22 archaeologically sensitive areas, and public facilities. The
23 departments of ecology, fisheries, wildlife, and natural resources, and
24 the office of archaeology and historic preservation, upon request,
25 shall provide information that they have available to assist in
26 preparing this description. If the department has adopted rules for
27 contingency plans prior to July 1, 1992, the description of
28 archaeologically sensitive areas shall only be required when the
29 department revises the rules for contingency plans after July 1, 1992.
30 The description of archaeologically sensitive areas shall not be

1 required to be included in a contingency plan until it is reviewed and
2 updated pursuant to subsection (9) of this section;

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

7 (i) Provide arrangements for the repositioning of oil spill
8 containment and cleanup equipment and trained personnel at strategic
9 locations from which they can be deployed to the spill site to promptly
10 and properly remove the spilled oil;

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

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

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

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

23 (n) If the department has adopted rules permitting the use of
24 dispersants, the circumstances, if any, and the manner for the
25 application of the dispersants in conformance with the department's
26 rules.

27 (2)(a) The following shall submit contingency plans to the
28 department within six months after the department adopts rules
29 establishing standards for contingency plans under subsection (1) of
30 this section:

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

3 (ii) Offshore facilities.

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

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

11 (b) A person who has contracted with a facility to provide
12 containment and cleanup services and who meets the standards
13 established pursuant to RCW 90.56.240, may submit the plan for any
14 facility for which the person is contractually obligated to provide
15 services. Subject to conditions imposed by the department, the person
16 may submit a single plan for more than one facility.

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

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

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

1 (b) The nature and amount of vessel traffic within the area covered
2 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 and wildlife and other natural
10 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 (6) 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 (7) 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 (8) An owner or operator of a facility shall notify the department
28 in writing immediately of any significant change of which it is aware
29 affecting its contingency plan, including changes in any factor set
30 forth in this section or in rules adopted by the department. The

1 department may require the owner or operator to update a contingency
2 plan as a result of these changes.

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

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

10 **Sec. 34.** RCW 90.56.300 and 1991 c 200 s 301 are each amended to
11 read as follows:

12 (1) Except as provided in subsection (2) of this section, it shall
13 be unlawful for the owner or operator to knowingly and intentionally
14 operate in this state or on the waters of this state an onshore or
15 offshore facility without an approved contingency plan or an approved
16 prevention plan as required by this chapter, or financial
17 responsibility in compliance with chapter 88.40 RCW and the federal oil
18 pollution act of 1990. The first conviction under this section shall
19 be a gross misdemeanor under chapter 9A.20 RCW. A second or subsequent
20 conviction shall be a class C felony under chapter 9A.20 RCW.

21 (2) It shall not be unlawful for the owner or operator to operate
22 an onshore or offshore facility if:

23 (a) The facility is not required to have a contingency plan, spill
24 prevention plan, or financial responsibility; or

25 (b) All required plans have been submitted to the department as
26 required by RCW 90.56.210 and rules adopted by the department and the
27 department is reviewing the plan and has not denied approval.

28 (3) A person may rely on a copy of the statement issued by the
29 department pursuant to RCW 90.56.210(7) as evidence that a facility has

1 an approved contingency plan and the statement issued pursuant to RCW
2 (~~90.56.200(5)~~) 90.56.200(4) that a facility has an approved
3 prevention plan.

4 **Sec. 35.** RCW 90.56.310 and 1991 c 200 s 302 are each amended to
5 read as follows:

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

8 (a) For the owner or operator to operate an onshore or offshore
9 facility without an approved contingency plan as required under RCW
10 90.56.210, a spill prevention plan required by RCW 90.56.200, or
11 financial responsibility in compliance with chapter 88.40 RCW and the
12 federal oil pollution act of 1990; or

13 (b) For the owner or operator of an onshore or offshore facility to
14 (~~accept~~) transfer cargo or passengers to or from a covered vessel
15 that does not have an approved contingency plan or an approved
16 prevention plan required under chapter 88.46 RCW or financial
17 responsibility in compliance with chapter 88.40 RCW and the federal oil
18 pollution act of 1990.

19 (2) (~~The department may notify the secretary of state to suspend~~
20 ~~the business license of any onshore or offshore facility or other~~
21 ~~person that is in violation of this section.)) The department may
22 assess a civil penalty under RCW 43.21B.300 of up to one hundred
23 thousand dollars against any person who is in violation of this
24 section. Each day that a facility or person is in violation of this
25 section shall be considered a separate violation.~~

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

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

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

5 (4) Any person may rely on a copy of the statement issued by the
6 department pursuant to RCW 90.56.210(7) as evidence that the facility
7 has an approved contingency plan and the statement issued pursuant to
8 RCW (~~(90.56.200(5))~~) 90.56.200(4) as evidence that the facility has an
9 approved spill prevention plan. Any person may rely on a copy of the
10 statement issued by the office to RCW 88.46.060 as evidence that the
11 vessel has an approved contingency plan and the statement issued
12 pursuant to RCW 88.46.040 as evidence that the vessel has an approved
13 prevention plan.

14 **Sec. 36.** RCW 90.56.330 and 1990 c 116 s 20 are each amended to
15 read as follows:

16 Except as otherwise provided in RCW (~~(90.48.383)~~) 90.56.390, any
17 person who negligently discharges oil, or causes or permits the entry
18 of the same, shall incur, in addition to any other penalty as provided
19 by law, a penalty in an amount of up to twenty thousand dollars for
20 every such violation, and for each day the spill poses risks to the
21 environment as determined by the director. Any person who
22 intentionally or recklessly discharges or causes or permits the entry
23 of oil into the waters of the state shall incur, in addition to any
24 other penalty authorized by law, a penalty of up to one hundred
25 thousand dollars for every such violation and for each day the spill
26 poses risks to the environment as determined by the director. The
27 amount of the penalty shall be determined by the director after taking
28 into consideration the gravity of the violation, the previous record of
29 the violator in complying, or failing to comply, with the provisions of

1 chapter 90.48 RCW, the speed and thoroughness of the collection and
2 removal of the oil, and such other considerations as the director deems
3 appropriate. Every act of commission or omission which procures, aids
4 or abets in the violation shall be considered a violation under the
5 provisions of this section and subject to the penalty herein provided
6 for. The penalty herein provided for shall be imposed pursuant to RCW
7 43.21B.300.

8 **Sec. 37.** RCW 90.56.380 and 1990 c 116 s 19 are each amended to
9 read as follows:

10 In addition to any cause of action the state may have to recover
11 necessary expenses for the cleanup of oil pursuant to RCW 90.56.340 and
12 90.56.330, and except as otherwise provided in RCW ~~((90.48.383))~~
13 90.56.390, any other person causing the entry of oil shall be directly
14 liable to the state for the necessary expenses of oil cleanup arising
15 from such entry and the state shall have a cause of action to recover
16 from any or all of said persons. Except as otherwise provided in RCW
17 ~~((90.48.383))~~ 90.56.390, any person liable for cost of oil cleanup as
18 provided in RCW 90.56.340 and 90.56.330 shall have a cause of action to
19 recover for costs of cleanup from any other person causing the entry of
20 oil into the waters of the state including any amount recoverable by
21 the state as necessary expenses under RCW 90.56.330.

22 **Sec. 38.** RCW 90.56.390 and 1991 c 200 s 304 are each amended to
23 read as follows:

24 (1)(a) ~~((Notwithstanding any other provision of law,))~~ A person is
25 not liable for removal costs or damages that result from actions taken
26 or omitted to be taken in the course of rendering care, assistance, or
27 advice consistent with the national contingency plan or as otherwise
28 directed by the federal on-scene coordinator or by the official within

1 the department with responsibility for oil spill response. This
2 subsection (1)(a) does not apply:

3 (i) To a responsible party;

4 (ii) With respect to personal injury or wrongful death; or

5 (iii) If the person is grossly negligent or engages in willful
6 misconduct.

7 (b) A responsible party is liable for any removal costs and damages
8 that another person is relieved of under (a) of this subsection.

9 (c) Nothing in this section affects the liability of a responsible
10 party for oil spill response under state law.

11 (2) For the purposes of this section:

12 (a) "Damages" means damages of any kind for which liability may
13 exist under the laws of this state resulting from, arising out of, or
14 related to the discharge or threatened discharge of oil.

15 (b) (~~"Discharge" means any emission other than natural seepage,~~
16 ~~intentional or unintentional, and includes, but is not limited to,~~
17 ~~spilling, leaking, pumping, pouring, emitting, emptying, or dumping.~~

18 (c)) "Federal on-scene coordinator" means the federal official
19 predesignated by the United States environmental protection agency or
20 the United States coast guard to coordinate and direct federal
21 responses under subpart D, or the official designated by the lead
22 agency to coordinate and direct removal under subpart E, of the
23 national contingency plan.

24 (~~(d))~~ (c) "National contingency plan" means the national
25 contingency plan prepared and published under section 311(d) of the
26 federal water pollution control act (33 U.S.C. Sec. 1321(d)), as
27 amended by the oil pollution act of 1990 (P.L. 101-380, 104 Stat. 484
28 (1990)).

1 ~~((e)) "Oil" means oil of any kind or in any form, including, but~~
2 ~~not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed~~
3 ~~with wastes other than dredged spoil.~~

4 ~~(f) "Person" means an individual, corporation, partnership,~~
5 ~~association, state, municipality, commission, or political subdivision~~
6 ~~of a state, or any interstate body.~~

7 ~~(g))~~ (d) "Removal costs" means the costs of removal that are
8 incurred after a discharge of oil has occurred or, in any case in which
9 there is a substantial threat of a discharge of oil, the costs to
10 prevent, minimize, or mitigate oil pollution from such an incident.

11 ~~((h))~~ (e) "Responsible party" means a person liable under RCW
12 90.56.370.

13 **Sec. 39.** RCW 90.56.400 and 1991 c 200 s 305 are each amended to
14 read as follows:

15 The department shall investigate each activity or project conducted
16 under RCW 90.56.350 to determine, if possible, the circumstances
17 surrounding the entry of oil into waters of the state and the person or
18 persons allowing said entry or responsible for the act or acts which
19 result in said entry. Whenever it appears to the department, after
20 investigation, that a specific person or persons are responsible for
21 the necessary expenses incurred by the state pertaining to a project or
22 activity as specified in RCW 90.56.360, the department shall notify
23 said person or persons by appropriate order. The department may not
24 issue an order pertaining to a project or activity which was completed
25 more than five years prior to the date of the proposed issuance of the
26 order. The order shall state the findings of the department, the
27 amount of necessary expenses incurred in conducting the project or
28 activity, and a notice that said amount is due and payable immediately
29 upon receipt of said order. The department may, upon application from

1 the recipient of an order received within thirty days from the receipt
2 of the order, reduce or set aside in its entirety the amount due and
3 payable, when it appears from the application, and from any further
4 investigation the department may desire to undertake, that a reduction
5 or setting aside is just and fair under all the circumstances. If the
6 amount specified in the order issued by the department notifying said
7 person or persons is not paid within thirty days after receipt of
8 notice imposing the same, or if an application has been made within
9 thirty days as herein provided and the amount provided in the order
10 issued by the department subsequent to such application is not paid
11 within fifteen days after receipt thereof, the attorney general, upon
12 request of the department, shall bring an action on behalf of the state
13 in the superior court of Thurston county or any county in which the
14 person to which the order is directed does business, or in any other
15 court of competent jurisdiction, to recover the amount specified in the
16 final order of the department. No order issued under this section
17 shall be construed as an order within the meaning of RCW 43.21B.310 and
18 shall not be appealable to the hearings board. In any action to
19 recover necessary expenses as herein provided said person shall be
20 relieved from liability for necessary expenses if the person can prove
21 that the oil to which the necessary expenses relate entered the waters
22 of the state by causes set forth in RCW (~~(90.56.320(2))~~) 90.56.370(2).

23 **Sec. 40.** RCW 90.56.450 and 1991 c 200 s 501 are each amended to
24 read as follows:

25 (1) The (~~oil~~) marine oversight board is established to provide
26 independent oversight of the actions of the federal government,
27 industry, the department, the office, and other state agencies with
28 respect to oil spill prevention and response for covered vessels and
29 onshore and offshore facilities.

1 (2)(a) The board may, at its own discretion, study any aspect of
2 oil spill prevention and response for covered vessels and onshore and
3 offshore facilities in the state. The board shall report to the
4 governor and make recommendations to the department and the office on
5 activities of the federal government and industry with respect to oil
6 spill prevention and response for covered vessels and onshore and
7 offshore facilities, including recommendations for the state's response
8 to those actions. The board shall specifically review the need for,
9 and the structure and design of an emergency response system for the
10 Strait of Juan de Fuca and the Pacific coast. The board shall also
11 make recommendations to the legislature and other state agencies on any
12 provision of this chapter, other state laws, and rules, policies, and
13 guidelines adopted by the department, the office, or((~~7~~)) other state
14 agencies relating to the prevention and cleanup of oil spills into the
15 waters of the state from covered vessels and onshore and offshore
16 facilities.

17 (b) To minimize duplication of effort, reviews conducted by the
18 board shall be coordinated with related activities of the federal
19 government, the department, the office, and other appropriate state and
20 international entities. The Puget Sound water quality authority shall
21 ensure that studies and recommendations by the board shall not be
22 duplicated by any recommendations prepared and adopted pursuant to
23 chapter 90.70 RCW after May 15, 1991.

24 (c) The board shall evaluate and report at least annually to the
25 governor and the appropriate standing committees of the legislature on
26 oil spill prevention, response, and preparedness programs within the
27 state for covered vessels and onshore and offshore facilities.

28 (3) There shall be five members of the board appointed by the
29 governor for terms of five years. Members' terms shall be staggered.
30 The members of the board shall be representative of the public and

1 shall have demonstrable knowledge of environmental protection and the
2 study of marine ecosystems, or have familiarity with marine
3 transportation systems.

4 (4) A chair shall be selected by majority vote of the board. The
5 board shall meet as often as required, but at least four times per
6 year. Members shall be reimbursed for travel and expenses for
7 attending meetings as provided in RCW 43.03.050 and 43.03.060.

8 (5) The chair may hire staff as necessary for the board to fulfill
9 its responsibilities.

10 **Sec. 41.** RCW 90.56.510 and 1991 c 200 s 806 are each amended to
11 read as follows:

12 The ((state)) oil spill administration account is created in the
13 state treasury. All receipts from RCW 82.23B.020(2) shall be deposited
14 in the account. Moneys from the account may be spent only after
15 appropriation. The account is subject to allotment procedures under
16 chapter 43.88 RCW. On July 1 of each odd-numbered year, if receipts
17 deposited in the account from the tax imposed by RCW 82.23B.020(2) for
18 the previous fiscal biennium exceed the amount appropriated from the
19 account for the previous fiscal biennium, the state treasurer shall
20 transfer the amount of receipts exceeding the appropriation to the oil
21 spill response account. If, on the first day of any calendar month,
22 the balance of the oil spill response account is greater than twenty-
23 five million dollars and the balance of the oil spill administration
24 account exceeds the unexpended appropriation for the current biennium,
25 then the tax under RCW 82.23B.020(2) shall be suspended on the first
26 day of the next calendar month until the beginning of the following
27 biennium, provided that the tax shall not be suspended during the last
28 six months of the biennium. If the tax imposed under RCW 82.23B.020(2)
29 is suspended during two consecutive biennia, the department shall by

1 November 1st after the end of the second biennium, recommend to the
2 appropriate standing committees an adjustment in the tax rate. For the
3 period 1991-93 the state treasurer may transfer funds from the oil
4 spill response account to the oil spill administration account in
5 amounts necessary to support appropriations made from the oil spill
6 administration account in the omnibus appropriations act. Expenditures
7 from the oil spill administration account shall be used exclusively for
8 the administrative costs related to the purposes of this chapter, and
9 chapters 90.48, 88.40, and 88.46 RCW. Costs of administration include
10 the costs of:

- 11 (1) Routine responses not covered under RCW 90.56.500;
- 12 (2) Management and staff development activities;
- 13 (3) Development of rules and policies and the state-wide plan
14 provided for in RCW 90.56.060;
- 15 (4) Facility and vessel plan review and approval, drills,
16 inspections, investigations, enforcement, and litigation;
- 17 (5) Interagency coordination and public outreach and education;
- 18 (6) Collection and administration of the tax provided for in
19 chapter 82.23B RCW; and
- 20 (7) Appropriate travel, goods and services, contracts, and
21 equipment.

22 **Sec. 42.** RCW 90.56.520 and 1991 c 200 s 807 are each amended to
23 read as follows:

24 The director of the department of ecology shall submit a report to
25 the appropriate standing committees of the legislature by November 1 of
26 each even-numbered year showing detailed information regarding
27 expenditures authorized by the director under RCW 90.56.500. The
28 report shall include, but not be limited to:

1 (1) The total amount spent for each response for which the director
2 has approved expenditures and the amount paid for from the oil spill
3 (~~prevention and~~) response account;

4 (2) The amount recovered from a responsible party for each spill;

5 (3) The amount of time between a spill and the time a responsible
6 party assumes responsibility for the response costs related to a spill;

7 (4) The number of incidents for which the director has determined
8 that the responsible party or another source was available to pay for
9 the response; and

10 (5) A recommendation concerning the need to continue collecting the
11 tax under RCW 82.23B.020(1).

12 This section shall expire December 31, 1996.

13 NEW SECTION. **Sec. 43.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 44.** The amendment of RCW 82.23B.010,
18 82.23B.020, 82.23B.030, and 82.23B.040 by chapter --, Laws of 1992,
19 (this act) shall not be construed as affecting any existing right
20 acquired or liability or obligation incurred under the sections or
21 under any rule or order adopted under the sections, nor as affecting
22 any proceeding instituted under the sections.

23 NEW SECTION. **Sec. 45.** Section 15 of this act shall apply to
24 vessels beginning May 15, 1991.

25 NEW SECTION. **Sec. 46.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take
2 effect immediately, except sections 6, 7, 9, and 10 of this act shall
3 take effect October 1, 1992.