
SUBSTITUTE HOUSE BILL 2298

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Linville, L. Thomas, Carlson, Costa and Anderson; by request of Department of Ecology)

Read first time 01/26/98. Referred to Committee on .

1 AN ACT Relating to underground storage tanks; amending RCW
2 90.76.010, 90.76.020, 90.76.040, 90.76.050, 90.76.060, and 90.76.090;
3 adding a new section to chapter 90.76 RCW; adding a new section to
4 chapter 90.48 RCW; adding new sections to chapter 43.131 RCW; creating
5 a new section; repealing RCW 90.76.030 and 90.76.903; and providing an
6 expiration date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that it is in the best
9 interest of the citizens of the state to reauthorize the state
10 underground storage tank regulatory program so that responsibility for
11 administering the program remains with the state rather than the
12 federal government. The legislature recognizes that the process of wet
13 fueling vehicles directly from tank trucks can result in the
14 circumvention of the requirements for underground storage tanks, and
15 that this process should require the establishment of source control
16 best management practices similar to fixed base fueling stations. It
17 is the intent of the legislature to enact legislation that will conform
18 with new federal environmental protection agency mandates for

1 underground storage tanks and that narrows the wet fueling exception to
2 its requirements.

3 **Sec. 2.** RCW 90.76.010 and 1989 c 346 s 2 are each amended to read
4 as follows:

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

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

8 (2) "Director" means the director of the department.

9 (3) "Facility compliance tag" means a marker, constructed of metal,
10 plastic, or other durable material, that clearly identifies all
11 qualifying underground storage tanks on the particular site for which
12 it is issued.

13 (4) "Federal act" means the federal resource conservation and
14 recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

15 (~~(4)~~) (5) "Federal regulations" means the underground storage
16 tanks regulations (40 C.F.R. Secs. 280 and 281) adopted by the United
17 States environmental protection agency under the federal act.

18 Except as provided in this section and any rules adopted by the
19 department under this chapter, the definitions contained in the federal
20 regulations apply to the terms in this chapter.

21 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.76 RCW
22 to read as follows:

23 The practice of fueling licensed on-road vehicles directly from
24 tank trucks or mobile platforms, known as "wet fueling," is exempt from
25 this chapter but is subject to section 4 of this act.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.48 RCW
27 to read as follows:

28 (1) The department shall establish source control best management
29 practices for wet fueling operations that occur in areas exposed to
30 storm water, by December 31, 1998. These source control best
31 management practices shall protect surface water, ground water, and
32 soil to the same level as source control best management practices that
33 apply to fixed-base fueling stations, and be applied in the same areas
34 where these best management practices are applied to fixed-base fueling
35 stations. The department shall study the need for additional
36 protective measures which may be appropriate for wet fueling operations

1 and report the findings to the appropriate legislative committees by
2 December 31, 1998. The department may adopt rules to implement this
3 section.

4 (2) For purposes of this section, "wet fueling" means the refueling
5 of licensed, on-road vehicles from a bulk tank or mobile platform.
6 "Wet fueling" does not include fueling of farm, construction, highway
7 or road building, marine, logging, aviation, or other off-road
8 vehicles.

9 **Sec. 5.** RCW 90.76.020 and 1989 c 346 s 3 are each amended to read
10 as follows:

11 (1) (~~By July 1, 1990,~~) The department shall adopt rules
12 establishing requirements for all underground storage tanks that are
13 regulated under the federal act, taking into account the various
14 classes or categories of tanks to be regulated. The rules must be
15 consistent with and no less stringent than the federal regulations and
16 consist of requirements for the following:

17 (a) New underground storage tank system design, construction,
18 installation, and notification;

19 (b) Upgrading existing underground storage tank systems;

20 (c) General operating requirements;

21 (d) Release detection;

22 (e) Release reporting;

23 (f) Out-of-service underground storage tank systems and closure;

24 and

25 (g) Financial responsibility for underground storage tanks
26 containing regulated substances.

27 (2) (~~By July 1, 1990,~~) The department shall adopt rules:

28 (a) Establishing physical site criteria to be used in designating
29 local environmentally sensitive areas;

30 (b) Establishing procedures for local government application for
31 this designation; and

32 (c) Establishing procedures for local government adoption and
33 department approval of rules more stringent than the state-wide
34 standards in these designated areas.

35 (3) (~~By July 1, 1990,~~) The department shall establish by rule an
36 administrative and enforcement program that is consistent with and no
37 less stringent than the program required under the federal regulations
38 in the areas of:

- 1 (a) Compliance monitoring, including procedures for recordkeeping
2 and a program for systematic inspections;
3 (b) Enforcement;
4 (c) Public participation; and
5 (d) Information sharing.

6 (4) (~~By July 1, 1990, the department shall establish a program~~
7 ~~that provides for the tagging of underground storage tanks. Tanks are~~
8 ~~not eligible for tagging unless the owner or operator is in compliance~~
9 ~~with the requirements of this chapter and annual state and local tank~~
10 ~~fees have been remitted. The tank tagging program shall be designed to~~
11 ~~ensure that tags will be clearly identifiable to persons delivering~~
12 ~~regulated substances to underground storage tanks.~~

13 (5)) The department shall establish a program that provides for
14 the annual licensing of underground storage tanks. The license shall
15 take the form of a tank endorsement on the facility's annual master
16 business license issued by the department of licensing. A tank is not
17 eligible for a license unless the owner or operator can demonstrate
18 compliance with the requirements of this chapter and the annual tank
19 fees have been remitted. The department may revoke a tank license if
20 a facility is not in compliance with this chapter. The master business
21 license shall be displayed by the tank owner or operator in a location
22 clearly identifiable.

23 (5)(a) The department shall issue a one-time "facility compliance
24 tag" to correspond with the December 22, 1998, underground storage tank
25 compliance deadline for corrosion, spill, and overfill protection.
26 Facility compliance tags may only be issued for facilities that have
27 installed the equipment required to meet corrosion, spill, and overfill
28 protection standards that are required by December 22, 1998, and at the
29 time of tag issuance have demonstrated financial responsibility and
30 paid annual tank fees. The facility shall continue to maintain
31 compliance with corrosion, spill, and overfill protection standards,
32 and financial responsibility, and have remitted annual tank fees to
33 display a facility compliance tag. The facility compliance tag shall
34 be displayed on the fire emergency shutoff device, or in the absence of
35 such a device in close proximity to the fill pipes and clearly
36 identifiable to persons delivering regulated substance to underground
37 storage tanks.

1 (b) The department may revoke a facility compliance tag if a
2 facility is not in compliance with the requirements needed to obtain or
3 display the tag.

4 (6) The department may establish programs to certify persons who
5 conduct inspections, testing, closure, cathodic protection, interior
6 tank lining, corrective action, or other activities required under this
7 chapter. Certification programs shall be designed to ensure that each
8 certification will be effective in all jurisdictions of the state.

9 ~~((6))~~ (7) When adopting rules under this chapter, the department
10 shall consult with the state building code council to ensure
11 coordination with the building and fire codes adopted under chapter
12 19.27 RCW.

13 **Sec. 6.** RCW 90.76.040 and 1989 c 346 s 5 are each amended to read
14 as follows:

15 (1) A city, town, or county may apply to the department to have an
16 area within its jurisdictional boundaries designated an environmentally
17 sensitive area. A city, town, or county may submit a joint application
18 with any other city, town, or county for joint administration under
19 chapter 39.34 RCW of a single environmentally sensitive area located in
20 both jurisdictions.

21 (2) A city, town, or county may adopt proposed ordinances or
22 resolutions establishing requirements for underground storage tanks
23 located within an environmentally sensitive area that are more
24 stringent than the state-wide standards established under RCW
25 90.76.020. ~~((If application for the designation of an environmentally~~
26 ~~sensitive area is made later than five years after the date of final~~
27 ~~adoption of the rules required under this chapter,))~~ Proposed local
28 ordinances and resolutions shall only apply to new underground storage
29 tank installations. The local government adopting the ordinances and
30 resolutions shall submit them to the department for approval.
31 Disapproved ordinances and resolutions may be modified and resubmitted
32 to the department for approval. Proposed local ordinances and
33 resolutions become effective when approved by the department.

34 (3) The department shall approve or disapprove each proposed local
35 ordinance or resolution based on the following criteria:

36 (a) The area to be regulated is found to be an environmentally
37 sensitive area based on rules adopted by the department; and

1 (b) The proposed local regulations are reasonably consistent with
2 previously approved local regulations for similar environmentally
3 sensitive areas.

4 (4) A city, town, or county for which a proposed local ordinance or
5 resolution establishing more stringent requirements is approved by the
6 department may establish local tank fees that meet the requirements of
7 RCW 90.76.090, if such fees are necessary for enhanced program
8 administration or enforcement.

9 **Sec. 7.** RCW 90.76.050 and 1989 c 346 s 6 are each amended to read
10 as follows:

11 ~~((Regulated substances shall not be delivered to any underground
12 storage tank in the state required to be tagged under RCW 90.76.020
13 unless proof of valid tagging is displayed on such tank itself or the
14 dispensing or measuring device connected thereto or, where appropriate,
15 in the office or kiosk of the facility where the tank is located.)) (1)
16 Between the effective date of this section and December 22, 1998,
17 persons delivering regulated substances to underground storage tanks
18 shall not deliver to facilities that do not have an underground storage
19 tank license. This subsection expires December 22, 1998.~~

20 (2) After December 22, 1998, persons delivering regulated
21 substances to underground storage tanks shall not deliver to facilities
22 that do not have a facility compliance tag displayed as required in RCW
23 90.76.020(5)(a).

24 (3) A supplier shall not refuse to deliver regulated substances to
25 an underground storage tank regulated under this chapter on the basis
26 of its potential to leak contents where the ((tank)) facility is either
27 tagged as required in ((RCW 90.76.020)) this chapter or is in
28 compliance with federal underground storage tank regulations and any
29 state or local regulations then in effect. This section does not apply
30 to a supplier who does not directly transfer a regulated substance into
31 an underground storage tank.

32 **Sec. 8.** RCW 90.76.060 and 1989 c 346 s 7 are each amended to read
33 as follows:

34 (1) If necessary to determine compliance with the requirements of
35 this chapter, an authorized representative of the state engaged in
36 compliance inspections, monitoring, and testing may, by request,
37 require an owner or operator to submit relevant information or

1 documents. The department may subpoena witnesses, documents, and other
2 relevant information that the department deems necessary. In the case
3 of any refusal to obey the subpoena, the superior court for any county
4 in which the person is found, resides, or transacts business has
5 jurisdiction to issue an order requiring the person to appear before
6 the department and give testimony or produce documents. Any failure to
7 obey the order of the court may be punished by the court as contempt.

8 (2) Any authorized representative of the state may require an owner
9 or operator to conduct monitoring or testing.

10 (3) Upon reasonable notice, an authorized representative of the
11 state may enter a premises or site subject to regulation under this
12 chapter or in which records relevant to the operation of an underground
13 storage tank system are kept. In the event of an emergency or in
14 circumstances where notice would undermine the effectiveness of an
15 inspection, notice is not required. The authorized representative may
16 copy these records, obtain samples of regulated substances, and inspect
17 or conduct monitoring or testing of an underground storage tank system.

18 (4) For purposes of this section, the term "authorized
19 representative" or "authorized representative of the state" means an
20 enforcement officer, employee, or representative of the department (~~or~~
21 ~~a local government unit that has obtained enforcement authority under~~
22 ~~RCW 90.76.030~~)).

23 **Sec. 9.** RCW 90.76.090 and 1989 c 346 s 10 are each amended to read
24 as follows:

25 (1) (~~An annual state tank fee of sixty dollars per tank for fiscal~~
26 ~~years ending June 30, 1990, and June 30, 1991, and seventy five dollars~~
27 ~~per tank each fiscal year thereafter, shall be paid no later than the~~
28 ~~December 31st of each fiscal year)) An annual tank fee of one hundred
29 dollars per tank is effective from July 1, 1998, to July 1, 1999.
30 Annually, beginning on July 1, 1999, and upon a finding by the
31 department that a fee increase is necessary, the previous tank fee
32 amount may be increased up to the fiscal growth factor for the next
33 year. The fiscal growth factor is calculated by the office of
34 financial management under RCW 43.135.025 for the upcoming biennium.
35 The department shall use the fiscal growth factor to calculate the fee
36 for the next year and shall publish the new fee by March 1st before the
37 year for which the new fee is effective. The new tank fee is effective~~

1 from July 1st to July 1st of every year. The tank fee shall be paid by
2 every person who:

- 3 (a) Owns an underground storage tank located in this state; and
- 4 (b) Was required to provide notification to the department under
5 the federal act.

6 This fee is not required of persons who have (i) permanently closed
7 their tanks, and (ii) if required, have completed corrective action in
8 accordance with the rules adopted under this chapter.

9 (2) The department may authorize the imposition of additional
10 annual local tank fees in environmentally sensitive areas designated
11 under RCW 90.76.040. Annual local tank fees may not exceed fifty
12 percent of the annual state tank fee.

13 (3) State and local tank fees collected under this section shall be
14 deposited in the account established under RCW 90.76.100.

15 (4) Other than the annual local tank fee authorized for
16 environmentally sensitive areas, no local government may levy an annual
17 tank fee on the ownership or operation of an underground storage tank.

18 NEW SECTION. Sec. 10. A new section is added to chapter 43.131
19 RCW to read as follows:

20 The underground storage tank program shall be terminated on July 1,
21 2009, as provided in section 11 of this act.

22 NEW SECTION. Sec. 11. A new section is added to chapter 43.131
23 RCW to read as follows:

24 The following acts or parts of acts, as now existing or hereafter
25 amended, are each repealed, effective July 1, 2010:

- 26 (1) RCW 90.76.005 and 1989 c 346 s 1;
- 27 (2) RCW 90.76.010 and 1998 c . . . s 2 (section 2 of this act) &
28 1989 c 346 s 2;
- 29 (3) RCW 90.76.020 and 1998 c . . . s 5 (section 5 of this act) &
30 1989 c 346 s 3;
- 31 (4) RCW 90.76.040 and 1998 c . . . s 6 (section 6 of this act) &
32 1989 c 346 s 5;
- 33 (5) RCW 90.76.050 and 1998 c . . . s 7 (section 7 of this act) &
34 1989 c 346 s 6;
- 35 (6) RCW 90.76.060 and 1998 c . . . s 8 (section 8 of this act) &
36 1989 c 346 s 7;
- 37 (7) RCW 90.76.070 and 1989 c 346 s 8;

- 1 (8) RCW 90.76.080 and 1995 c 403 s 639 & 1989 c 346 s 9;
2 (9) RCW 90.76.090 and 1998 c . . . s 9 (section 9 of this act) &
3 1989 c 346 s 10;
4 (10) RCW 90.76.100 and 1991 sp.s. c 13 s 72 & 1989 c 346 s 11;
5 (11) RCW 90.76.110 and 1991 c 83 s 1 & 1989 c 346 s 12;
6 (12) RCW 90.76.120 and 1989 c 346 s 13;
7 (13) RCW 90.76.900 and 1989 c 346 s 15;
8 (14) RCW 90.76.901 and 1989 c 346 s 14; and
9 (15) RCW 90.76.902 and 1989 c 346 s 18.

10 NEW SECTION. **Sec. 12.** The following acts or parts of acts are
11 each repealed:

- 12 (1) RCW 90.76.030 and 1989 c 346 s 4; and
13 (2) RCW 90.76.903 and 1989 c 346 s 17.

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

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