
SENATE BILL 6210

State of Washington

56th Legislature

2000 Regular Session

By Senators Fraser, Morton, Eide, Jacobsen, Fairley, Prentice, McAuliffe, Winsley, Franklin, Kline, Spanel and Kohl-Welles

Read first time 01/10/2000. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to technical and clarifying amendments relating to
2 the oil spill prevention and response statutes; amending RCW 88.46.010,
3 88.46.020, 88.46.030, 88.46.040, 88.46.050, 88.46.060, 88.46.070,
4 88.46.080, 88.46.090, 88.46.100, 88.46.120, 88.46.130, 88.46.160,
5 88.46.170, 88.46.200, 90.56.010, 90.56.060, 90.56.080, 90.56.100,
6 90.56.200, 90.56.210, 90.56.370, 90.56.510, 90.56.540, 90.56.560, and
7 82.23B.020; creating a new section; decodifying RCW 88.46.150; and
8 repealing RCW 88.46.140 and 90.56.903.

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

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

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

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

16 (2)) "Best achievable protection" means the highest level of
17 protection that can be achieved through the use of the best achievable
18 technology and those staffing levels, training procedures, and
19 operational methods that provide the greatest degree of protection

1 achievable. The (~~administrator's~~) director's determination of best
2 achievable protection shall be guided by the critical need to protect
3 the state's natural resources and waters, while considering (a) the
4 additional protection provided by the measures; (b) the technological
5 achievability of the measures; and (c) the cost of the measures.

6 (~~(+3)~~) (2) "Best achievable technology" means the technology that
7 provides the greatest degree of protection taking into consideration
8 (a) processes that are being developed, or could feasibly be developed,
9 given overall reasonable expenditures on research and development, and
10 (b) processes that are currently in use. In determining what is best
11 achievable technology, the (~~administrator~~) director shall consider
12 the effectiveness, engineering feasibility, and commercial availability
13 of the technology.

14 (~~(+4)~~) (3) "Cargo vessel" means a self-propelled ship in commerce,
15 other than a tank vessel or a passenger vessel, of three hundred or
16 more gross tons, including but not limited to, commercial fish
17 processing vessels and freighters.

18 (~~(+5)~~) (4) "Bulk" means material that is stored or transported in
19 a loose, unpackaged liquid, powder, or granular form capable of being
20 conveyed by a pipe, bucket, chute, or belt system.

21 (~~(+6)~~) (5) "Covered vessel" means a tank vessel, cargo vessel, or
22 passenger vessel.

23 (~~(+7)~~) (6) "Department" means the department of ecology.

24 (~~(+8)~~) (7) "Director" means the director of the department of
25 ecology.

26 (~~(+9)~~) (8) "Discharge" means any spilling, leaking, pumping,
27 pouring, emitting, emptying, or dumping.

28 (~~(+10)~~) (9)(a) "Facility" means any structure, group of
29 structures, equipment, pipeline, or device, other than a vessel,
30 located on or near the navigable waters of the state that transfers oil
31 in bulk to or from a tank vessel or pipeline, that is used for
32 producing, storing, handling, transferring, processing, or transporting
33 oil in bulk.

34 (b) A facility does not include any: (i) Railroad car, motor
35 vehicle, or other rolling stock while transporting oil over the
36 highways or rail lines of this state; (ii) retail motor vehicle motor
37 fuel outlet; (iii) facility that is operated as part of an exempt
38 agricultural activity as provided in RCW 82.04.330; (iv) underground
39 storage tank regulated by the department or a local government under

1 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
2 more than three thousand gallons of fuel to a ship that is not a
3 covered vessel, in a single transaction.

4 ~~((11))~~ (10) "Marine facility" means any facility used for tank
5 vessel wharfage or anchorage, including any equipment used for the
6 purpose of handling or transferring oil in bulk to or from a tank
7 vessel.

8 ~~((12))~~ (11) "Navigable waters of the state" means those waters of
9 the state, and their adjoining shorelines, that are subject to the ebb
10 and flow of the tide and/or are presently used, have been used in the
11 past, or may be susceptible for use to transport intrastate,
12 interstate, or foreign commerce.

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

15 ~~(14))~~ (12) "Oil" or "oils" means any naturally occurring liquid
16 hydrocarbons at atmospheric temperature and pressure coming from the
17 earth, including condensate and natural gasoline, and any fractionation
18 thereof, including, but not limited to, crude oil, petroleum, gasoline,
19 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
20 other than dredged spoil. Oil does not include any substance listed in
21 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
22 section 101(14) of the federal comprehensive environmental response,
23 compensation, and liability act of 1980, as amended by P.L. 99-499.

24 ~~((15))~~ (13) "Offshore facility" means any facility located in,
25 on, or under any of the navigable waters of the state, but does not
26 include a facility any part of which is located in, on, or under any
27 land of the state, other than submerged land. "Offshore facility" does
28 not include a marine facility.

29 ~~((16))~~ (14) "Onshore facility" means any facility any part of
30 which is located in, on, or under any land of the state, other than
31 submerged land, that because of its location, could reasonably be
32 expected to cause substantial harm to the environment by discharging
33 oil into or on the navigable waters of the state or the adjoining
34 shorelines.

35 ~~((17))~~ (15)(a) "Owner or operator" means (i) in the case of a
36 vessel, any person owning, operating, or chartering by demise, the
37 vessel; (ii) in the case of an onshore or offshore facility, any person
38 owning or operating the facility; and (iii) in the case of an abandoned

1 vessel or onshore or offshore facility, the person who owned or
2 operated the vessel or facility immediately before its abandonment.

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

6 (~~(18)~~) (16) "Passenger vessel" means a ship of three hundred or
7 more gross tons with a fuel capacity of at least six thousand gallons
8 carrying passengers for compensation.

9 (~~(19)~~) (17) "Person" means any political subdivision, government
10 agency, municipality, industry, public or private corporation,
11 copartnership, association, firm, individual, or any other entity
12 whatsoever.

13 (~~(20)~~) (18) "Ship" means any boat, ship, vessel, barge, or other
14 floating craft of any kind.

15 (~~(21)~~) (19) "Spill" means an unauthorized discharge of oil into
16 the waters of the state.

17 (~~(22)~~) (20) "Tank vessel" means a ship that is constructed or
18 adapted to carry, or that carries, oil in bulk as cargo or cargo
19 residue, and that:

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

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

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

28 (~~(24)~~) (22) "Worst case spill" means: (a) In the case of a
29 vessel, a spill of the entire cargo and fuel of the vessel complicated
30 by adverse weather conditions; and (b) in the case of an onshore or
31 offshore facility, the largest foreseeable spill in adverse weather
32 conditions.

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

35 In carrying out the purposes of this chapter, including the
36 adoption of rules for contingency plans, the (~~administrator~~) director
37 shall to the greatest extent practicable implement this chapter in a
38 manner consistent with federal law.

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

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

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

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

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

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

34 (1) The owner or operator for each tank vessel shall prepare and
35 submit to the ((office)) department an oil spill prevention plan in
36 conformance with the requirements of this chapter. The plans shall be
37 submitted to the ((office)) department in the time and manner directed
38 by the ((office, but not later than January 1, 1993)) department. The

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

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

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

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

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

20 (d) Describe the vessel operations with respect to staffing
21 standards;

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

24 (f) Describe the training given to vessel crews with respect to
25 spill prevention;

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

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

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

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

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

38 (3) The ((office)) department shall only approve a prevention plan
39 if it provides the best achievable protection from damages caused by

1 the discharge of oil into the waters of the state and if it determines
2 that the plan meets the requirements of this section and rules adopted
3 by the ((office)) department.

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

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

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

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

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

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

27 (1) In order to ensure the safety of marine transportation within
28 the navigable waters of the state and to protect the state's natural
29 resources, the ((administrator)) department shall adopt rules ((by July
30 1, 1992,)) for determining whether cargo vessels and passenger vessels
31 entering the navigable waters of the state pose a substantial risk of
32 harm to the public health and safety and the environment.

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

35 (a) Examining available information sources for evidence that a
36 cargo or passenger vessel may pose a substantial risk to safe marine
37 transportation or the state's natural resources. Information sources
38 may include: Vessel casualty lists, United States coast guard casualty

1 reports, maritime insurance ratings, the index of contingency plans
2 compiled by the department of ecology, other data gathered by the
3 ((office or the)) maritime commission, or any other resources;

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

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

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

15 (e) Enforcement actions.

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

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

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

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

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

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

1 (e) State the number, training preparedness, and fitness of all
2 dedicated, prepositioned personnel assigned to direct and implement the
3 plan;

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

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

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

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

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

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

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

36 (m) Until a spill prevention plan has been submitted pursuant to
37 RCW 88.46.040, state the measures that have been taken to reduce the
38 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
7 the use of dispersants, the circumstances, if any, and the manner for
8 the 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))
12 department within six months after the ((office)) department adopts
13 rules establishing standards for contingency plans under subsection (1)
14 of this section.

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

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

29 (b) The contingency plan for a cargo vessel or passenger vessel may
30 be submitted by the owner or operator of the cargo vessel or passenger
31 vessel, by the agent for the vessel resident in this state, or by a
32 Washington state nonprofit corporation established for the purpose of
33 oil spill response and contingency plan coverage and of which the owner
34 or operator is a member. Subject to conditions imposed by the
35 ((office)) department, the owner, operator, or agent may submit a
36 single contingency plan for cargo vessels or passenger vessels of a
37 particular class.

38 (c) A person who has contracted with a covered vessel to provide
39 containment and cleanup services and who meets the standards

1 established pursuant to RCW 90.56.240, may submit the plan for any
2 covered vessel for which the person is contractually obligated to
3 provide services. Subject to conditions imposed by the ((office))
4 department, the person may submit a single plan for more than one
5 covered vessel.

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

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

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

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

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

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

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

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

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

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

37 (6) The ((office)) department shall approve a contingency plan only
38 if it determines that the plan meets the requirements of this section
39 and that, if implemented, the plan is capable, in terms of personnel,

1 materials, and equipment, of removing oil promptly and properly and
2 minimizing any damage to the environment.

3 (7) The approval of the contingency plan shall be valid for five
4 years. Upon approval of a contingency plan, the ((office)) department
5 shall provide to the person submitting the plan a statement indicating
6 that the plan has been approved, the vessels covered by the plan, and
7 other information the ((office)) department determines should be
8 included.

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

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

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

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

24 (1) The provisions of prevention plans and contingency plans
25 approved by the ((office)) department pursuant to this chapter shall be
26 legally binding on those persons submitting them to the ((office))
27 department and on their successors, assigns, agents, and employees.
28 The superior court shall have jurisdiction to restrain a violation of,
29 compel specific performance of, or otherwise to enforce such plans upon
30 application by the ((office)) department. The ((office)) department
31 may issue an order pursuant to chapter 34.05 RCW requiring compliance
32 with a contingency plan or a prevention plan and may impose
33 administrative penalties for failure to comply with a plan.

34 (2) If the ((administrator)) director believes a person has
35 violated or is violating or creates a substantial potential to violate
36 the provisions of this chapter, the ((administrator)) director shall
37 notify the person of the ((administrator's)) director's determination
38 by registered mail. The determination shall not constitute an order or

1 directive under RCW 43.21B.310. Within thirty days from the receipt of
2 notice of the determination, the person shall file with the
3 ((administrator)) director a full report stating what steps have been
4 and are being taken to comply with the determination of the
5 ((administrator)) director. The ((administrator)) director shall issue
6 an order or directive, as the ((administrator)) director deems
7 appropriate under the circumstances, and shall notify the person by
8 registered mail.

9 (3) If the ((administrator)) director believes immediate action is
10 necessary to accomplish the purposes of this chapter, the
11 ((administrator)) director may issue an order or directive, as
12 appropriate under the circumstances, without first issuing a notice or
13 determination pursuant to subsection (2) of this section. An order or
14 directive issued pursuant to this subsection shall be served by
15 registered mail or personally upon any person to whom it is directed.

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

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

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

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

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

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

37 (3) A person may rely on a copy of the statement issued by the
38 ((office)) department pursuant to RCW 88.46.060 as evidence that a

1 vessel has an approved contingency plan and the statement issued
2 pursuant to RCW 88.46.040 that a vessel has an approved prevention
3 plan.

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

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

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

24 (2) Except as provided in subsection (4) of this section, it shall
25 be unlawful for a covered vessel to transfer oil to or from an onshore
26 or offshore facility that does not have an approved contingency plan
27 required under RCW 90.56.210, a spill prevention plan required by RCW
28 90.56.200, or financial responsibility in compliance with chapter 88.40
29 RCW and the federal oil pollution act of 1990.

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

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

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

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

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

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

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

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

28 (1) In order to assist the state in identifying areas of the
29 navigable waters of the state needing special attention, the owner or
30 operator of a covered vessel shall notify the coast guard within one
31 hour:

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

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

36 (2) The state military department and the ((office)) department
37 shall request the coast guard to notify the state military department
38 as soon as possible after the coast guard receives notice of a disabled

1 covered vessel or of a collision or near miss incident within twelve
2 miles of the shore of the state. The ((office)) department shall
3 negotiate an agreement with the coast guard governing procedures for
4 coast guard notification to the state regarding disabled covered
5 vessels and collisions and near miss incidents.

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

10 (4) For the purposes of this section:

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

13 (i) Any accidental or intentional grounding;

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

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

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

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

23 (i) The towing mechanism becomes disabled;

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

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

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

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

35 The ((office)) department may adopt rules including but not limited
36 to standards for spill response equipment to be maintained on tank
37 vessels. The standards adopted under this section shall be consistent

1 with spill response equipment standards adopted by the United States
2 coast guard.

3 **Sec. 12.** RCW 88.46.130 and 1991 c 200 s 426 are each amended to
4 read as follows:

5 An emergency response system for the Strait of Juan de Fuca shall
6 be established ~~((by July 1, 1992. In establishing the emergency
7 response system, the administrator))~~ and maintained by the department.
8 The department shall consider ~~((the))~~ recommendations ~~((of the regional
9 marine safety committees. The administrator shall also))~~ from and
10 consult with the province of British Columbia regarding its
11 participation in the emergency response system.

12 **Sec. 13.** RCW 88.46.160 and 1991 c 200 s 438 are each amended to
13 read as follows:

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

33 **Sec. 14.** RCW 88.46.170 and 1993 c 162 s 1 are each amended to read
34 as follows:

35 (1) The ~~((office))~~ department shall establish a field operations
36 program to enforce the provisions of this chapter. The field

1 operations program shall include, but is not limited to, the following
2 elements:

3 (a) Education and public outreach;

4 (b) Review of lightering and bunkering operations to prevent oil
5 spills;

6 (c) Evaluation and boarding of tank vessels for compliance with
7 prevention plans prepared pursuant to this chapter;

8 (d) Evaluation and boarding of covered vessels that may pose a
9 substantial risk to the public health, safety, and the environment;

10 (e) Evaluation and boarding of covered vessels for compliance with
11 rules adopted by the ((office)) department to implement recommendations
12 of regional marine safety committees; and

13 (f) Collection of vessel information to assist in identifying
14 vessels which pose a substantial risk to the public health, safety, and
15 the environment.

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

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

30 **Sec. 15.** RCW 88.46.200 and 1994 sp.s. c 9 s 854 are each amended
31 to read as follows:

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

1 to implement the recommendations, the ((office)) department may
2 petition the appropriate agency or the congress.

3 **Sec. 16.** RCW 90.56.010 and 1992 c 73 s 31 are each amended to read
4 as follows:

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

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

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

18 ((3)) (2) "Best achievable technology" means the technology that
19 provides the greatest degree of protection taking into consideration
20 (a) processes that are being developed, or could feasibly be developed,
21 given overall reasonable expenditures on research and development, and
22 (b) processes that are currently in use. In determining what is best
23 achievable technology, the director shall consider the effectiveness,
24 engineering feasibility, and commercial availability of the technology.

25 ((4)) (3) "Board" means the pollution control hearings board.

26 ((5)) (4) "Cargo vessel" means a self-propelled ship in commerce,
27 other than a tank vessel or a passenger vessel, three hundred or more
28 gross tons, including but not limited to, commercial fish processing
29 vessels and freighters.

30 ((6)) (5) "Bulk" means material that is stored or transported in
31 a loose, unpackaged liquid, powder, or granular form capable of being
32 conveyed by a pipe, bucket, chute, or belt system.

33 ((7)) (6) "Committee" means the preassessment screening committee
34 established under RCW 90.48.368.

35 ((8)) (7) "Covered vessel" means a tank vessel, cargo vessel, or
36 passenger vessel.

37 ((9)) (8) "Department" means the department of ecology.

1 (~~(10)~~) (9) "Director" means the director of the department of
2 ecology.

3 (~~(11)~~) (10) "Discharge" means any spilling, leaking, pumping,
4 pouring, emitting, emptying, or dumping.

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

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

20 (~~(13)~~) (12) "Fund" means the state coastal protection fund as
21 provided in RCW 90.48.390 and 90.48.400.

22 (~~(14)~~) (13) "Having control over oil" shall include but not be
23 limited to any person using, storing, or transporting oil immediately
24 prior to entry of such oil into the waters of the state, and shall
25 specifically include carriers and bailees of such oil.

26 (~~(15)~~) (14) "Marine facility" means any facility used for tank
27 vessel wharfage or anchorage, including any equipment used for the
28 purpose of handling or transferring oil in bulk to or from a tank
29 vessel.

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

35 (~~(17)~~) (16) "Necessary expenses" means the expenses incurred by
36 the department and assisting state agencies for (a) investigating the
37 source of the discharge; (b) investigating the extent of the
38 environmental damage caused by the discharge; (c) conducting actions
39 necessary to clean up the discharge; (d) conducting predamage and

1 damage assessment studies; and (e) enforcing the provisions of this
2 chapter and collecting for damages caused by a discharge.

3 ~~((18))~~ (17) "Oil" or "oils" means naturally occurring liquid
4 hydrocarbons at atmospheric temperature and pressure coming from the
5 earth, including condensate and natural gasoline, and any fractionation
6 thereof, including, but not limited to, crude oil, petroleum, gasoline,
7 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes
8 other than dredged spoil. Oil does not include any substance listed in
9 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under
10 section 101(14) of the federal comprehensive environmental response,
11 compensation, and liability act of 1980, as amended by P.L. 99-499.

12 ~~((19))~~ (18) "Offshore facility" means any facility located in,
13 on, or under any of the navigable waters of the state, but does not
14 include a facility any part of which is located in, on, or under any
15 land of the state, other than submerged land.

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

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

31 ~~((22))~~ (21) "Passenger vessel" means a ship of three hundred or
32 more gross tons with a fuel capacity of at least six thousand gallons
33 carrying passengers for compensation.

34 ~~((23))~~ (22) "Person" means any political subdivision, government
35 agency, municipality, industry, public or private corporation,
36 copartnership, association, firm, individual, or any other entity
37 whatsoever.

38 ~~((24))~~ (23) "Ship" means any boat, ship, vessel, barge, or other
39 floating craft of any kind.

1 (~~(25)~~) (24) "Spill" means an unauthorized discharge of oil or
2 hazardous substances into the waters of the state.

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

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

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

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

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

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

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

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

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

1 (b) State the respective responsibilities as established by
2 relevant statutes and rules of each of the following in the prevention
3 of and the assessment, containment, and cleanup of a worst case spill
4 of oil or hazardous substances into the environment of the state: (i)
5 State agencies; (ii) local governments; (iii) appropriate federal
6 agencies; (iv) facility operators; (v) property owners whose land or
7 other property may be affected by the oil or hazardous substance spill;
8 and (vi) other parties identified by the department as having an
9 interest in or the resources to assist in the containment and cleanup
10 of an oil or hazardous substance spill;

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

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

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

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

19 (3) In preparing and updating the state master plan, the department
20 shall:

21 (a) Consult with federal, provincial, municipal, and community
22 officials, other state agencies, the state of Oregon, and with
23 representatives of affected regional organizations;

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

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

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

31 **Sec. 18.** RCW 90.56.080 and 1991 c 200 s 109 are each amended to
32 read as follows:

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

- 1 (1) Adopt rules necessary to implement the program;
- 2 (2) (~~Establish a~~) Maintain and update the training and education
3 (~~program by developing the~~) curriculum (~~to be~~) used in the program
4 in colleges, academies, and other educational institutions;
- 5 (3) Provide training to local oil and hazardous materials emergency
6 response personnel; and
- 7 (4) Establish and collect admission fees and other fees that may be
8 necessary to the program.

9 **Sec. 19.** RCW 90.56.100 and 1998 c 245 s 175 are each amended to
10 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **Sec. 20.** RCW 90.56.200 and 1991 c 200 s 201 are each amended to
29 read as follows:

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

1 chapter. The department, by rule, shall establish standards for spill
2 prevention plans. (~~The rules shall be adopted not later than July 1,~~
3 ~~1992.~~)

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

6 (a) Establish compliance with the federal oil pollution act of
7 1990, if applicable, and financial responsibility requirements under
8 federal and state law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **Sec. 21.** RCW 90.56.210 and 1992 c 73 s 33 are each amended to read
24 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (ii) Offshore facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **Sec. 22.** RCW 90.56.370 and 1990 c 116 s 18 are each amended to
9 read as follows:

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

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

19 (a) An act of war or sabotage;

20 (b) An act of God;

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

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

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

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

34 **Sec. 23.** RCW 90.56.510 and 1999 sp.s. c 7 s 2 are each amended to
35 read as follows:

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

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

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

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

1 **Sec. 24.** RCW 90.56.540 and 1991 c 200 s 605 are each amended to
2 read as follows:

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

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

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

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

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

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

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

22 **Sec. 25.** RCW 90.56.560 and 1991 c 200 s 607 are each amended to
23 read as follows:

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

34 **Sec. 26.** RCW 82.23B.020 and 1999 sp.s. c 7 s 1 are each amended to
35 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 27.** The section 18(2), chapter 116, Laws of
8 1990 changes requiring the defenses in that subsection to be the sole
9 causes of the discharge, and the text of section 18(2)(b), chapter 116,
10 Laws of 1990 shall apply prospectively and not retroactively after June
11 7, 1990.

12 NEW SECTION. **Sec. 28.** RCW 88.46.150 (Tow boat standards--Study)
13 is decodified.

14 NEW SECTION. **Sec. 29.** The following acts or parts of acts are
15 each repealed:

16 (1) RCW 88.46.140 (Unified and consistent planning) and 1991 c 200
17 s 428; and

18 (2) RCW 90.56.903 (Report on implementation) and 1991 c 200 s 1109.

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