

---

HOUSE BILL 3020

---

State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Cooper, Rockefeller, Kagi, Sullivan, Chase, Simpson, G., Simpson, D., Lantz, Dickerson, Lovick and Upthegrove

Read first time 01/26/2004. Referred to Committee on Fisheries, Ecology & Parks.

1            AN ACT Relating to oil spill management; amending RCW 88.40.025,  
2 88.46.010, 90.56.010, 88.46.160, and 90.56.210; and adding a new  
3 section to chapter 88.46 RCW.

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

5            **Sec. 1.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to  
6 read as follows:

7            An onshore or offshore facility shall demonstrate financial  
8 responsibility in an amount determined by the department as necessary  
9 to compensate the state and affected counties and cities for damages  
10 that might occur during a reasonable worst case spill of oil from that  
11 facility into the navigable waters of the state. The department shall  
12 consider such matters as the amount of oil that could be spilled into  
13 the navigable waters from the facility, the cost of cleaning up the  
14 spilled oil, the frequency of operations at the facility, the damages  
15 that could result from the spill and the commercial availability and  
16 affordability of financial responsibility. This section shall not  
17 apply to an onshore or offshore facility owned or operated by the  
18 federal government or by the state or local government. The department  
19 shall adopt rules to implement this section by January 1, 2007.

1       **Sec. 2.** RCW 88.46.010 and 2000 c 69 s 1 are each amended to read  
2 as follows:

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

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

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

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

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

28       (5) "Covered vessel" means a tank vessel, cargo vessel, or  
29 passenger vessel.

30       (6) "Department" means the department of ecology.

31       (7) "Director" means the director of the department of ecology.

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

34       (9)(a) "Facility" means any structure, group of structures,  
35 equipment, pipeline, or device, other than a vessel, located on or near  
36 the navigable waters of the state that transfers oil in bulk to or from  
37 (~~(a tank)~~) any vessel with an oil carrying capacity over two hundred

1 fifty barrels or pipeline, that is used for producing, storing,  
2 handling, transferring, processing, or transporting oil in bulk.

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

12 (10) "Marine facility" means any facility used for tank vessel  
13 wharfage or anchorage, including any equipment used for the purpose of  
14 handling or transferring oil in bulk to or from a tank vessel.

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

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

29 (13) "Offshore facility" means any facility located in, on, or  
30 under any of the navigable waters of the state, but does not include a  
31 facility any part of which is located in, on, or under any land of the  
32 state, other than submerged land. "Offshore facility" does not include  
33 a marine facility.

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

1 (15)(a) "Owner or operator" means (i) in the case of a vessel, any  
2 person owning, operating, or chartering by demise, the vessel; (ii) in  
3 the case of an onshore or offshore facility, any person owning or  
4 operating the facility; and (iii) in the case of an abandoned vessel or  
5 onshore or offshore facility, the person who owned or operated the  
6 vessel or facility immediately before its abandonment.

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

10 (16) "Passenger vessel" means a ship of three hundred or more gross  
11 tons with a fuel capacity of at least six thousand gallons carrying  
12 passengers for compensation.

13 (17) "Person" means any political subdivision, government agency,  
14 municipality, industry, public or private corporation, copartnership,  
15 association, firm, individual, or any other entity whatsoever.

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

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

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

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

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

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

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

35 **Sec. 3.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read  
36 as follows:

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

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

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

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

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

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

27 (6) "Committee" means the preassessment screening committee  
28 established under RCW 90.48.368.

29 (7) "Covered vessel" means a tank vessel, cargo vessel, or  
30 passenger vessel.

31 (8) "Department" means the department of ecology.

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

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

35 (11)(a) "Facility" means any structure, group of structures,  
36 equipment, pipeline, or device, other than a vessel, located on or near  
37 the navigable waters of the state that transfers oil in bulk to or from

1 ((~~a tank~~)) any vessel with an oil carrying capacity over two hundred  
2 fifty barrels or pipeline, that is used for producing, storing,  
3 handling, transferring, processing, or transporting oil in bulk.

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

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

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

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

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

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

34 (17) "Oil" or "oils" means naturally occurring liquid hydrocarbons  
35 at atmospheric temperature and pressure coming from the earth,  
36 including condensate and natural gasoline, and any fractionation  
37 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
38 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes

1 other than dredged spoil. Oil does not include any substance listed in  
2 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
3 section 101(14) of the federal comprehensive environmental response,  
4 compensation, and liability act of 1980, as amended by P.L. 99-499.

5 (18) "Offshore facility" means any facility located in, on, or  
6 under any of the navigable waters of the state, but does not include a  
7 facility any part of which is located in, on, or under any land of the  
8 state, other than submerged land.

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

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

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

23 (21) "Passenger vessel" means a ship of three hundred or more gross  
24 tons with a fuel capacity of at least six thousand gallons carrying  
25 passengers for compensation.

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

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

31 (24) "Spill" means an unauthorized discharge of oil or hazardous  
32 substances into the waters of the state.

33 (25) "Tank vessel" means a ship that is constructed or adapted to  
34 carry, or that carries, oil in bulk as cargo or cargo residue, and  
35 that:

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

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

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

6 (27) "Worst case spill" means: (a) In the case of a vessel, a  
7 spill of the entire cargo and fuel of the vessel complicated by adverse  
8 weather conditions; and (b) in the case of an onshore or offshore  
9 facility, the largest foreseeable spill in adverse weather conditions.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW  
11 to read as follows:

12 The owner or operator of a tank vessel may not contract or agree to  
13 transfer oil to or from an onshore or offshore facility, or a vessel  
14 with a capacity over two hundred fifty barrels in Washington waters  
15 unless:

16 (1) A person in charge of the operation who meets the  
17 qualifications required by 33 C.F.R. Sec. 155.710, as amended, conducts  
18 and oversees the operation on the barge; and

19 (2) At least one other person who meets the qualifications of a  
20 tankerman-assistant under 46 C.F.R. part 13, as amended, is on board to  
21 maintain an oil spill watch during the transfer.

22 **Sec. 5.** RCW 88.46.160 and 2000 c 69 s 12 are each amended to read  
23 as follows:

24 (1) Any person or facility conducting ship refueling and bunkering  
25 operations, or the lightering of petroleum products, and any person or  
26 facility transferring oil between an onshore or offshore facility and  
27 a (~~tank~~) covered vessel shall:

28 (a) Deploy a boom prior to a transfer of oil to a vessel with an  
29 oil capacity over two hundred fifty barrels that provides a completely  
30 contained area around the vessel that meets standards adopted by the  
31 department by rule; and

32 (b) Have containment and recovery equipment readily available for  
33 deployment in the event of the discharge of oil into the waters of the  
34 state and shall deploy the containment and recovery equipment in  
35 accordance with standards adopted by the department.



1       (2) All persons conducting refueling, bunkering, or lightering  
2 operations, or oil transfer operations shall be trained in the use and  
3 deployment of oil spill containment and recovery equipment.

4       (3) The department shall adopt rules as necessary to carry out the  
5 provisions of this section. The rules shall include standards for the  
6 circumstances under which containment equipment should be deployed.

7       (4) An onshore or offshore facility shall include the procedures  
8 used to contain and recover discharges in the facility's contingency  
9 plan. It is the responsibility of the person providing bunkering,  
10 refueling, or lightering services to provide any containment or  
11 recovery equipment required under this section.

12       (5) This section does not apply to a person operating a ship for  
13 personal pleasure or for recreational purposes.

14       **Sec. 6.** RCW 90.56.210 and 2000 c 69 s 20 are each amended to read  
15 as follows:

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

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

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

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

34       (d) Provide procedures for early detection of oil spills and timely  
35 notification of such spills to appropriate federal, state, and local  
36 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. The description of archaeologically  
14 sensitive areas shall not be required to be included in a contingency  
15 plan until it is reviewed and updated pursuant to subsection (9) of  
16 this section;

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

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

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

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

29 (l) (~~Until a spill prevention plan has been submitted pursuant to~~  
30 ~~RCW 90.56.200,~~) State the measures that have been taken to reduce the  
31 likelihood that a spill will occur during the transfer of oil,  
32 including but not limited to, design and operation of a facility,  
33 training of personnel, number of personnel, the use of spill prevention  
34 and detection equipment, the time of the day, weather and current  
35 conditions, vessel type and safety record, the amount of oil or  
36 hazardous substances being transferred, and backup systems designed to  
37 prevent a spill;

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

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

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

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

14 (ii) Offshore facilities.

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

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

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

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

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

37 (a) The adequacy of containment and cleanup equipment, personnel,  
38 communications equipment, notification procedures and call down lists,

1 response time, and logistical arrangements for coordination and  
2 implementation of response efforts to remove oil spills promptly and  
3 properly and to protect the environment;

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

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

8 (d) The existence of navigational hazards within the area covered  
9 by the plan;

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

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

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

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

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

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

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

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

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

--- END ---