
HOUSE BILL 3112

State of Washington

58th Legislature

2004 Regular Session

By Representatives Cooper and Simpson, D.

Read first time 01/28/2004. Referred to Committee on Fisheries,
Ecology & Parks.

1 AN ACT Relating to marine fuel facilities; and amending RCW
2 88.46.010 and 90.56.010.

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

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

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

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

17 (2) "Best achievable technology" means the technology that provides
18 the greatest degree of protection taking into consideration (a)
19 processes that are being developed, or could feasibly be developed,

1 given overall reasonable expenditures on research and development, and
2 (b) processes that are currently in use. In determining what is best
3 achievable technology, the director shall consider the effectiveness,
4 engineering feasibility, and commercial availability of the technology.

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

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

12 (5) "Covered vessel" means a tank vessel, cargo vessel, or
13 passenger vessel.

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

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

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

18 (9)(a) "Facility" means any structure, group of structures,
19 equipment, pipeline, or device, other than a vessel, located on or near
20 the navigable waters of the state that transfers oil in bulk to or from
21 ~~((a tank))~~ any vessel with an oil carrying capacity over two hundred
22 fifty barrels or pipeline, that is used for producing, storing,
23 handling, transferring, processing, or transporting oil in bulk.

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

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

36 (11) "Navigable waters of the state" means those waters of the
37 state, and their adjoining shorelines, that are subject to the ebb and

1 flow of the tide and/or are presently used, have been used in the past,
2 or may be susceptible for use to transport intrastate, interstate, or
3 foreign commerce.

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

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

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

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

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

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

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

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

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

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

- 8 (a) Operates on the waters of the state; or
- 9 (b) Transfers oil in a port or place subject to the jurisdiction of
10 this state.

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

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

20 **Sec. 2.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read
21 as follows:

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

24 (1) "Best achievable protection" means the highest level of
25 protection that can be achieved through the use of the best achievable
26 technology and those staffing levels, training procedures, and
27 operational methods that provide the greatest degree of protection
28 achievable. The director's determination of best achievable protection
29 shall be guided by the critical need to protect the state's natural
30 resources and waters, while considering (a) the additional protection
31 provided by the measures; (b) the technological achievability of the
32 measures; and (c) the cost of the measures.

33 (2) "Best achievable technology" means the technology that provides
34 the greatest degree of protection taking into consideration (a)
35 processes that are being developed, or could feasibly be developed,
36 given overall reasonable expenditures on research and development, and

1 (b) processes that are currently in use. In determining what is best
2 achievable technology, the director shall consider the effectiveness,
3 engineering feasibility, and commercial availability of the technology.

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

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

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

12 (6) "Committee" means the preassessment screening committee
13 established under RCW 90.48.368.

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

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

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

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

20 (11)(a) "Facility" means any structure, group of structures,
21 equipment, pipeline, or device, other than a vessel, located on or near
22 the navigable waters of the state that transfers oil in bulk to or from
23 ~~((a tank))~~ any vessel with an oil carrying capacity over two hundred
24 fifty barrels or pipeline, that is used for producing, storing,
25 handling, transferring, processing, or transporting oil in bulk.

26 (b) A facility does not include any: (i) Railroad car, motor
27 vehicle, or other rolling stock while transporting oil over the
28 highways or rail lines of this state; (ii) underground storage tank
29 regulated by the department or a local government under chapter 90.76
30 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is
31 operated as part of an exempt agricultural activity as provided in RCW
32 82.04.330; or (v) marine fuel outlet that does not dispense more than
33 three thousand gallons of fuel to a ship that is not a covered vessel,
34 in a single transaction.

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

37 (13) "Having control over oil" shall include but not be limited to

1 any person using, storing, or transporting oil immediately prior to
2 entry of such oil into the waters of the state, and shall specifically
3 include carriers and bailees of such oil.

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

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

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

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

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

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

37 (20)(a) "Owner or operator" means (i) in the case of a vessel, any
38 person owning, operating, or chartering by demise, the vessel; (ii) in

1 the case of an onshore or offshore facility, any person owning or
2 operating the facility; and (iii) in the case of an abandoned vessel or
3 onshore or offshore facility, the person who owned or operated the
4 vessel or facility immediately before its abandonment.

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

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

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

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

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

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

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

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

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

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

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