

SB 5552 - S AMD 266

By Senator Rockefeller

1 Strike everything after the enacting clause and insert the
2 following:

3 "**Sec. 1.** RCW 43.21B.300 and 2004 c 204 s 4 are each amended to
4 read as follows:

5 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,
6 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
7 90.56.330 shall be imposed by a notice in writing, either by certified
8 mail with return receipt requested or by personal service, to the
9 person incurring the penalty from the department or the local air
10 authority, describing the violation with reasonable particularity.
11 Within thirty days after the notice is received, the person incurring
12 the penalty may apply in writing to the department or the authority for
13 the remission or mitigation of the penalty. Upon receipt of the
14 application, the department or authority may remit or mitigate the
15 penalty upon whatever terms the department or the authority in its
16 discretion deems proper. The department or the authority may ascertain
17 the facts regarding all such applications in such reasonable manner and
18 under such rules as it may deem proper and shall remit or mitigate the
19 penalty only upon a demonstration of extraordinary circumstances such
20 as the presence of information or factors not considered in setting the
21 original penalty.

22 (2) Any penalty imposed under this section may be appealed to the
23 pollution control hearings board in accordance with this chapter if the
24 appeal is filed with the hearings board and served on the department or
25 authority thirty days after the date of receipt by the person penalized
26 of the notice imposing the penalty or thirty days after the date of
27 receipt of the notice of disposition of the application for relief from
28 penalty.

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

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

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

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

5 (4) If the amount of any penalty is not paid to the department
6 within thirty days after it becomes due and payable, the attorney
7 general, upon request of the department, shall bring an action in the
8 name of the state of Washington in the superior court of Thurston
9 county, or of any county in which the violator does business, to
10 recover the penalty and interest, costs, and attorneys' fees. If the
11 amount of the penalty is not paid to the authority within thirty days
12 after it becomes due and payable, the authority may bring an action to
13 recover the penalty and interest, costs, and attorneys' fees in the
14 superior court of the county of the authority's main office or of any
15 county in which the violator does business. In these actions, the
16 procedures and rules of evidence shall be the same as in an ordinary
17 civil action for all issues arising after the penalty has become final.

18 (5) All penalties recovered shall be paid into the state treasury
19 and credited to the general fund except those penalties imposed
20 pursuant to RCW 18.104.155, which shall be credited to the reclamation
21 account as provided in RCW 18.104.155(7), RCW 70.94.431, the
22 disposition of which shall be governed by that provision, RCW
23 70.105.080, which shall be credited to the hazardous waste control and
24 elimination account, created by RCW 70.105.180, and RCW 90.56.330,
25 which shall be credited to the coastal protection fund created by RCW
26 90.48.390.

27 **Sec. 2.** RCW 88.40.011 and 2003 c 56 s 2 are each amended to read
28 as follows:

29 The definitions in this section apply throughout this chapter
30 unless the context clearly requires otherwise.

31 (1) "Barge" means a vessel that is not self-propelled.

32 (2) "Cargo vessel" means a self-propelled ship in commerce, other
33 than a tank vessel, fishing vessel, or a passenger vessel, of three
34 hundred or more gross tons.

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

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

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

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

5 (7)(a) "Facility" means any structure, group of structures,
6 equipment, pipeline, or device, other than a vessel, located on or near
7 the navigable waters of the state that transfers oil in bulk to or from
8 any vessel with an oil carrying capacity over two hundred fifty barrels
9 or pipeline, that is used for producing, storing, handling,
10 transferring, processing, or transporting 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) retail motor vehicle motor
14 fuel outlet; (iii) facility that is operated as part of an exempt
15 agricultural activity as provided in RCW 82.04.330; (iv) underground
16 storage tank regulated by the department or a local government under
17 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense
18 more than three thousand gallons of fuel to a ship that is not a
19 covered vessel, in a single transaction.

20 (8) "Fishing vessel" means a self-propelled commercial vessel of
21 three hundred or more gross tons that is used for catching or
22 processing fish.

23 (9) "Gross tons" means tonnage as determined by the United States
24 coast guard under 33 C.F.R. section 138.30.

25 (10) "Hazardous substances" means any substance listed as of March
26 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section
27 101(14) of the federal comprehensive environmental response,
28 compensation, and liability act of 1980, as amended by P.L. 99-499.
29 The following are not hazardous substances for purposes of this
30 chapter:

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

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

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

1 (12) "Oil" or "oils" means oil of any (~~naturally occurring~~) kind
2 that is liquid (~~hydrocarbons~~) at atmospheric temperature and pressure
3 (~~coming from the earth, including condensate and natural gasoline,~~)
4 and any fractionation thereof, including, but not limited to, crude
5 oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse,
6 biological oils and blends, and oil mixed with wastes other than
7 dredged spoil. Oil does not include any substance listed as of March
8 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section
9 101(14) of the federal comprehensive environmental response,
10 compensation, and liability act of 1980, as amended by P.L. 99-499.

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

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

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

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

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

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

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

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

- 1 (a) Operates on the waters of the state; or
2 (b) Transfers oil in a port or place subject to the jurisdiction of
3 this state.
4 (20) "Waters of the state" includes lakes, rivers, ponds, streams,
5 inland waters, underground water, salt waters, estuaries, tidal flats,
6 beaches and lands adjoining the seacoast of the state, sewers, and all
7 other surface waters and watercourses within the jurisdiction of the
8 state of Washington.

9 **Sec. 3.** RCW 88.46.010 and 2000 c 69 s 1 are each amended to read
10 as follows:

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

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

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

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

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

36 (5) "Covered vessel" means a tank vessel, cargo vessel, or
37 passenger vessel.

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

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

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

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

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

19 (10) "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 (11) "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 (12) "Oil" or "oils" means oil of any ((naturally occurring)) kind
28 that is liquid ((hydrocarbons)) at atmospheric temperature and pressure
29 ((coming from the earth, including condensate and natural gasoline,))
30 and any fractionation thereof, including, but not limited to, crude
31 oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse,
32 biological oils and blends, and oil mixed with wastes other than
33 dredged spoil. Oil does not include any substance listed in Table
34 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section
35 101(14) of the federal comprehensive environmental response,
36 compensation, and liability act of 1980, as amended by P.L. 99-499.

37 (13) "Offshore facility" means any facility located in, on, or
38 under any of the navigable waters of the state, but does not include a

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

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

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

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

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

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

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

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

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

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

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

34 (21) "Waters of the state" includes lakes, rivers, ponds, streams,
35 inland waters, underground water, salt waters, estuaries, tidal flats,
36 beaches and lands adjoining the seacoast of the state, sewers, and all
37 other surface waters and watercourses within the jurisdiction of the
38 state of Washington.

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

5 **Sec. 4.** RCW 90.48.144 and 1995 c 403 s 636 are each amended to
6 read as follows:

7 Except as provided in RCW 43.05.060 through 43.05.080 and
8 43.05.150, every person who:

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

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

14 (3) Violates the provisions of RCW 90.48.080, or other sections of
15 this chapter or chapter 90.56 RCW, except for RCW 90.56.320, or rules
16 or orders adopted or issued pursuant to either of those chapters,
17 except those concerning RCW 90.56.320, shall incur, in addition to any
18 other penalty as provided by law, a penalty in an amount of up to ten
19 thousand dollars a day for every such violation. Each and every such
20 violation shall be a separate and distinct offense, and in case of a
21 continuing violation, every day's continuance shall be and be deemed to
22 be a separate and distinct violation. Every act of commission or
23 omission which procures, aids or abets in the violation shall be
24 considered a violation under the provisions of this section and subject
25 to the penalty herein provided for. The penalty amount shall be set in
26 consideration of the previous history of the violator and the severity
27 of the violation's impact on public health and/or the environment in
28 addition to other relevant factors. The penalty herein provided for
29 shall be imposed pursuant to the procedures set forth in RCW
30 43.21B.300.

31 **Sec. 5.** RCW 90.48.366 and 1994 sp.s. c 9 s 855 are each amended to
32 read as follows:

33 By July 1, 1991, the department, in consultation with the
34 departments of (~~fisheries,~~) fish and wildlife(~~(-)~~) and natural
35 resources, and the parks and recreation commission, shall adopt rules
36 establishing a compensation schedule for the discharge of oil in

1 violation of this chapter and chapter 90.56 RCW. The amount of
2 compensation assessed under this schedule shall be no less than one
3 dollar per gallon of oil spilled and no greater than ~~((fifty))~~ one
4 hundred dollars per gallon of oil spilled, and beginning on January 1,
5 2008, the maximum per gallon compensation assessment shall increase
6 annually by the fiscal growth factor calculated by the office of
7 financial management under RCW 43.135.025. The compensation schedule
8 shall reflect adequate compensation for unquantifiable damages or for
9 damages not quantifiable at reasonable cost for any adverse
10 environmental, recreational, aesthetic, or other effects caused by the
11 spill and shall take into account:

12 (1) Characteristics of any oil spilled, such as toxicity,
13 dispersibility, solubility, and persistence, that may affect the
14 severity of the effects on the receiving environment, living organisms,
15 and recreational and aesthetic resources;

16 (2) The sensitivity of the affected area as determined by such
17 factors as: (a) The location of the spill; (b) habitat and living
18 resource sensitivity; (c) seasonal distribution or sensitivity of
19 living resources; (d) areas of recreational use or aesthetic
20 importance; (e) the proximity of the spill to important habitats for
21 birds, aquatic mammals, fish, or to species listed as threatened or
22 endangered under state or federal law; (f) significant archaeological
23 resources as determined by the ~~((office))~~ department of archaeology and
24 historic preservation; and (g) other areas of special ecological or
25 recreational importance, as determined by the department ~~((.~~ ~~—If the~~
26 ~~department has adopted rules for a compensation table prior to July 1,~~
27 ~~1992, the sensitivity of significant archaeological resources shall~~
28 ~~only be included among factors to be used in the compensation table~~
29 ~~when the department revises the rules for the compensation table after~~
30 ~~July 1, 1992))~~; and

31 (3) Actions taken by the party who spilled oil or any party liable
32 for the spill that: (a) Demonstrate a recognition and affirmative
33 acceptance of responsibility for the spill, such as the immediate
34 removal of oil and the amount of oil removed from the environment; or
35 (b) enhance or impede the detection of the spill, the determination of
36 the quantity of oil spilled, or the extent of damage, including the
37 unauthorized removal of evidence such as injured fish or wildlife.

1 **Sec. 6.** RCW 90.48.367 and 1991 c 200 s 813 are each amended to
2 read as follows:

3 (1) After a spill or other incident causing damages to the natural
4 resources of the state, the department shall conduct a formal
5 preassessment screening as provided in RCW 90.48.368.

6 (2) The department shall use the compensation schedule established
7 under RCW 90.48.366 to determine the amount of damages if the
8 preassessment screening committee determines that: (a) Restoration or
9 enhancement of the injured resources is not technically feasible; (b)
10 damages are not quantifiable at a reasonable cost; and (c) the
11 restoration and enhancement projects or studies proposed by the liable
12 parties are insufficient to adequately compensate the people of the
13 state for damages.

14 (3) If the preassessment screening committee determines that the
15 compensation schedule should not be used, compensation shall be
16 assessed for the amount of money necessary to restore any damaged
17 resource to its condition before the injury, to the extent technically
18 feasible, and compensate for the lost value incurred during the period
19 between injury and restoration.

20 (4) Restoration shall include the cost to restock such waters,
21 replenish or replace such resources, and otherwise restore the stream,
22 lake, or other waters of the state, including any estuary, ocean area,
23 submerged lands, shoreline, bank, or other lands adjoining such waters
24 to its condition before the injury, as such condition is determined by
25 the department. The lost value of a damaged resource shall be equal to
26 the sum of consumptive, nonconsumptive, and indirect use values, as
27 well as lost taxation, leasing, and licensing revenues. Indirect use
28 values may include existence, bequest, option, and aesthetic values.
29 Damages shall be determined by generally accepted and cost-effective
30 procedures, including, but not limited to, contingent valuation method
31 studies.

32 (5) Compensation assessed under this section and interest, costs,
33 and attorneys' fees shall be recoverable in an action brought by the
34 attorney general on behalf of the people of the state of Washington and
35 affected counties and cities in the superior court of Thurston county
36 or any county in which damages occurred. Moneys recovered by the
37 attorney general under this section shall be deposited in the coastal

1 protection fund established under RCW 90.48.390, and shall only be used
2 for the purposes stated in RCW 90.48.400.

3 (6) Compensation assessed under this section shall preclude claims
4 under this chapter by local governments for compensation for damages to
5 publicly owned resources resulting from the same incident.

6 **Sec. 7.** RCW 90.48.368 and 1994 c 264 s 92 are each amended to read
7 as follows:

8 (1) The department shall adopt rules establishing a formal process
9 for preassessment screening of damages resulting from spills to the
10 waters of the state causing the death of, or injury to, fish, animals,
11 vegetation, or other resources of the state. The rules shall specify
12 the conditions under which the department shall convene a preassessment
13 screening committee. The preassessment screening process shall occur
14 concurrently with reconnaissance activities. The committee shall use
15 information obtained from reconnaissance activities as well as any
16 other relevant resource and resource use information. For each
17 incident, the committee shall determine whether a damage assessment
18 investigation should be conducted, or, whether the compensation
19 schedule authorized under RCW 90.48.366 and 90.48.367 should be used to
20 assess damages. The committee may accept restoration or enhancement
21 projects or studies proposed by the liable parties in lieu of some or
22 all of: (a) The compensation schedule authorized under RCW 90.48.366
23 and 90.48.367; or (b) the claims from damage assessment studies
24 authorized under RCW 90.48.142.

25 (2) A preassessment screening committee may consist of
26 representatives of the departments of ecology, archaeology and historic
27 preservation, fish and wildlife, health, and natural resources,
28 (~~social and health services, and emergency management,~~) and the parks
29 and recreation commission, (~~the office of archaeology and historie~~
30 ~~preservation,~~) as well as other federal, state, and local agencies,
31 and tribal and local governments whose presence would enhance the
32 reconnaissance or damage assessment aspects of spill response. The
33 department shall chair the committee and determine which
34 representatives will be needed on a spill-by-spill basis.

35 (3) The committee shall consider the following factors when
36 determining whether a damage assessment study authorized under RCW
37 90.48.367 should be conducted: (a) Whether evidence from

1 reconnaissance investigations suggests that injury has occurred or is
2 likely to occur to publicly owned resources; (b) the potential loss in
3 services provided by resources injured or likely to be injured and the
4 expected value of the potential loss; (c) whether a restoration project
5 to return lost services is technically feasible; (d) the accuracy of
6 damage quantification methods that could be used and the anticipated
7 cost-effectiveness of applying each method; (e) the extent to which
8 likely injury to resources can be verified with available
9 quantification methods; and (f) whether the injury, once quantified,
10 can be translated into monetary values with sufficient precision or
11 accuracy.

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

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

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

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

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

1 **Sec. 8.** RCW 90.56.010 and 2000 c 69 s 15 are each amended to read
2 as follows:

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

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) "Board" means the pollution control hearings board.

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

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

29 (6) "Committee" means the preassessment screening committee
30 established under RCW 90.48.368.

31 (7) "Covered vessel" means a tank vessel, cargo vessel, or
32 passenger vessel.

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

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

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

37 (11)(a) "Facility" means any structure, group of structures,
38 equipment, pipeline, or device, other than a vessel, located on or near

1 the navigable waters of the state that transfers oil in bulk to or from
2 a tank vessel 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~~) oil of any kind
35 that is liquid (~~hydrocarbons~~) at atmospheric temperature and pressure
36 (~~coming from the earth, including condensate and natural gasoline,~~)
37 and any fractionation thereof, including, but not limited to, crude
38 oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **Sec. 9.** RCW 90.56.320 and 1990 c 116 s 17 are each amended to read
13 as follows:

14 (1) It shall be unlawful, except under the circumstances hereafter
15 described in this section, for oil to enter the waters of the state
16 from any ship or any fixed or mobile facility or installation located
17 offshore or onshore whether publicly or privately operated, regardless
18 of the cause of the entry or fault of the person having control over
19 the oil, or regardless of whether it be the result of intentional or
20 negligent conduct, accident or other cause. This section shall not
21 apply to discharges of oil in the following circumstances:

22 ~~((1))~~ (a) The person discharging was expressly authorized to do
23 so by the department prior to the entry of the oil into state waters;
24 or

25 ~~((2))~~ (b) The person discharging was authorized to do so by
26 operation of law as provided in RCW 90.48.200.

27 (2) Any person who violates this section shall incur a penalty of
28 up to fifty thousand dollars a day, in addition to any other penalties
29 provided by law. Each violation shall be a separate and distinct
30 offense, and in case of a continuing violation, every day's continuance
31 shall be a separate violation. Every act of commission or omission
32 that procures, aids, or abets in the violation shall be considered a
33 violation under the provisions of this section and is subject to the
34 foregoing penalty. The penalty shall be set in consideration of the
35 violator's previous history and the severity of the violation's impact
36 on public health and/or the environment in addition to other relevant

1 factors, including those specified in RCW 90.56.330. The penalty in
2 this section shall be imposed pursuant to the procedures in RCW
3 43.21B.300.

4 **Sec. 10.** RCW 90.56.330 and 1992 c 73 s 36 are each amended to read
5 as follows:

6 Except as otherwise provided in RCW 90.56.390, any person who
7 negligently discharges oil, or causes or permits the entry of the same,
8 shall incur, in addition to any other penalty as provided by law, a
9 penalty in an amount of up to (~~twenty~~) one hundred thousand dollars
10 for every such violation, and for each day the spill poses risks to the
11 environment as determined by the director. Any person who
12 intentionally or recklessly discharges or causes or permits the entry
13 of oil into the waters of the state shall incur, in addition to any
14 other penalty authorized by law, a penalty of up to (~~one~~) five
15 hundred thousand dollars for every such violation and for each day the
16 spill poses risks to the environment as determined by the director.
17 The amount of the penalty shall be determined by the director after
18 taking into consideration the size of the business of the violator, the
19 gravity of the violation, the previous record of the violator in
20 complying, or failing to comply, with the provisions of chapter 90.48
21 RCW, the speed and thoroughness of the collection and removal of the
22 oil, and such other considerations as the director deems appropriate.
23 Every act of commission or omission which procures, aids or abets in
24 the violation shall be considered a violation under the provisions of
25 this section and subject to the penalty herein provided for. The
26 penalty herein provided for shall be imposed pursuant to RCW
27 43.21B.300.

28 **Sec. 11.** RCW 90.56.400 and 1992 c 73 s 39 are each amended to read
29 as follows:

30 The department shall investigate each activity or project conducted
31 under RCW 90.56.350 to determine, if possible, the circumstances
32 surrounding the entry of oil into waters of the state and the person or
33 persons allowing said entry or responsible for the act or acts which
34 result in said entry. Whenever it appears to the department, after
35 investigation, that a specific person or persons are responsible for
36 the necessary expenses incurred by the state pertaining to a project or

1 activity as specified in RCW 90.56.360, the department shall notify
2 said person or persons by appropriate order. The department may not
3 issue an order pertaining to a project or activity which was completed
4 more than five years prior to the date of the proposed issuance of the
5 order. The order shall state the findings of the department, the
6 amount of necessary expenses incurred in conducting the project or
7 activity, and a notice that said amount is due and payable immediately
8 upon receipt of said order. The department may, upon application from
9 the recipient of an order received within thirty days from the receipt
10 of the order, reduce or set aside in its entirety the amount due and
11 payable, when it appears from the application, and from any further
12 investigation the department may desire to undertake, that a reduction
13 or setting aside is just and fair under all the circumstances. If the
14 amount specified in the order issued by the department notifying said
15 person or persons is not paid within thirty days after receipt of
16 notice imposing the same, or if an application has been made within
17 thirty days as herein provided and the amount provided in the order
18 issued by the department subsequent to such application is not paid
19 within fifteen days after receipt thereof, the attorney general, upon
20 request of the department, shall bring an action on behalf of the state
21 in the superior court of Thurston county or any county in which the
22 person to which the order is directed does business, or in any other
23 court of competent jurisdiction, to recover the amount specified in the
24 final order of the department and the interest, costs, and attorneys'
25 fees. No order issued under this section shall be construed as an
26 order within the meaning of RCW 43.21B.310 and shall not be appealable
27 to the hearings board. In any action to recover necessary expenses as
28 herein provided said person shall be relieved from liability for
29 necessary expenses if the person can prove that the oil to which the
30 necessary expenses relate entered the waters of the state by causes set
31 forth in RCW 90.56.370(2)."

1 On page 1, line 1 of the title, after "oil;" strike the remainder
2 of the title and insert "amending RCW 43.21B.300, 88.40.011, 88.46.010,
3 90.48.144, 90.48.366, 90.48.367, 90.48.368, 90.56.010, 90.56.320,
4 90.56.330, and 90.56.400; and prescribing penalties."

EFFECT: Adds provisions: (1) Revising definition of "oil" to conform to definition in Federal Oil Pollution Act of 1990, including biological oils and blends; (2) adding annual fiscal growth factor escalator for maximum per gallon oil spill damage assessment; (3) setting strict liability penalty of up to \$50,000 a day, increased from current penalty limit of \$10,000 a day; (4) authorizing Department of Ecology to recover interest, costs, and attorneys' fees, in addition to penalty, in action to collect penalty after 30 day appeal period ends; (5) clarifying that once penalty order becomes final such that it is "due and payable," violator cannot relitigate merits of underlying penalty order; and (6) making technical correction clarifying that natural resource damage assessment applies to all waters of the state, not just navigable waters.

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