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HOUSE BILL 2440

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Fitzgibbon, Tharinger, Short, and Ryu; by request of Department of Ecology

Read first time 01/17/14. Referred to Committee on Environment.

1 AN ACT Relating to modifying the definition of "oil" or "oils";  
2 amending RCW 88.40.011 and 90.56.010; and reenacting and amending RCW  
3 88.46.010.

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

5 **Sec. 1.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to read  
6 as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

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

16 (4) "Covered vessel" means a tank vessel, cargo vessel, or  
17 passenger vessel.

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

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

1 (7)(a) "Facility" means any structure, group of structures,  
2 equipment, pipeline, or device, other than a vessel, located on or near  
3 the navigable waters of the state that transfers oil in bulk to or from  
4 any vessel with an oil carrying capacity over two hundred fifty barrels  
5 or pipeline, that is used for producing, storing, handling,  
6 transferring, processing, or transporting oil in bulk.

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

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

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

21 (10) "Hazardous substances" means any substance listed as of March  
22 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section  
23 (~~(101-14)~~) 102(a) of the federal comprehensive environmental response,  
24 compensation, and liability act of 1980, as amended by P.L. 99-499.  
25 The following are not hazardous substances for purposes of this  
26 chapter:

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

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

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

34 (12) "Oil" or "oils" means oil of any kind that is liquid at  
35 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one  
36 atmosphere of pressure and any fractionation thereof, including, but  
37 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
38 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological

1 oils and blends, oil sludge, oil refuse, and oil mixed with wastes  
2 other than dredged spoil. Oil does not include any substance listed as  
3 of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under  
4 section ((101(14))) 102(a) of the federal comprehensive environmental  
5 response, compensation, and liability act of 1980, as amended by P.L.  
6 99-499.

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

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

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

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

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

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

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

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

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

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

1 (20) "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 **Sec. 2.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and  
7 amended to read as follows:

8 The definitions in this section apply throughout this chapter  
9 unless the context clearly requires otherwise.

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

- 17 (a) The additional protection provided by the measures;
- 18 (b) The technological achievability of the measures; and
- 19 (c) The cost of the measures.

20 (2)(a) "Best achievable technology" means the technology that  
21 provides the greatest degree of protection taking into consideration:

- 22 (i) Processes that are being developed, or could feasibly be  
23 developed, given overall reasonable expenditures on research and  
24 development; and
- 25 (ii) Processes that are currently in use.

26 (b) In determining what is best achievable technology, the director  
27 shall consider the effectiveness, engineering feasibility, and  
28 commercial availability of the technology.

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

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

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

32 (13) "Oil" or "oils" means oil of any kind that is liquid at  
33 (~~(atmospheric temperature)~~) twenty-five degrees Celsius and one  
34 atmosphere of pressure and any fractionation thereof, including, but  
35 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
36 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological  
37 oils and blends, oil sludge, oil refuse, and oil mixed with wastes  
38 other than dredged spoil. Oil does not include any substance listed in

1 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
2 section ((101(14))) 102(a) of the federal comprehensive environmental  
3 response, compensation, and liability act of 1980, as amended by P.L.  
4 99-499.

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

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

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

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

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

25 (18) "Race Rocks light" means the nautical landmark located  
26 southwest of the city of Victoria, British Columbia.

27 (19) "Regional vessels of opportunity response group" means a group  
28 of nondedicated vessels participating in a vessels of opportunity  
29 response system to respond when needed and available to spills in a  
30 defined geographic area.

31 (20) "Severe weather conditions" means observed nautical conditions  
32 with sustained winds measured at forty knots and wave heights measured  
33 between twelve and eighteen feet.

34 (21) "Ship" means any boat, ship, vessel, barge, or other floating  
35 craft of any kind.

36 (22) "Spill" means an unauthorized discharge of oil into the waters  
37 of the state.

1 (23) "Strait of Juan de Fuca" means waters off the northern coast  
2 of the Olympic Peninsula seaward of a line drawn from New Dungeness  
3 light in Clallam county to Discovery Island light on Vancouver Island,  
4 British Columbia, Canada.

5 (24) "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 (25) "Umbrella plan holder" means a nonprofit corporation  
12 established consistent with this chapter for the purposes of providing  
13 oil spill response and contingency plan coverage.

14 (26) "Vessel emergency" means a substantial threat of pollution  
15 originating from a covered vessel, including loss or serious  
16 degradation of propulsion, steering, means of navigation, primary  
17 electrical generating capability, and seakeeping capability.

18 (27) "Vessels of opportunity response system" means nondedicated  
19 boats and operators, including fishing and other vessels, that are  
20 under contract with and equipped by contingency plan holders to assist  
21 with oil spill response activities, including on-water oil recovery in  
22 the near shore environment and the placement of oil spill containment  
23 booms to protect sensitive habitats.

24 (28) "Volunteer coordination system" means an oil spill response  
25 system that, before a spill occurs, prepares for the coordination of  
26 volunteers to assist with appropriate oil spill response activities,  
27 which may include shoreline protection and cleanup, wildlife recovery,  
28 field observation, light construction, facility maintenance, donations  
29 management, clerical support, and other aspects of a spill response.

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

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

1       **Sec. 3.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read  
2 as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires 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 oil of any kind that is liquid at  
35 (~~atmospheric temperature~~) twenty-five degrees Celsius and one  
36 atmosphere of pressure and any fractionation thereof, including, but  
37 not limited to, crude oil, bitumen, synthetic crude oil, natural gas  
38 well condensate, petroleum, gasoline, fuel oil, diesel oil, biological

1 oils and blends, oil sludge, oil refuse, and oil mixed with wastes  
2 other than dredged spoil. Oil does not include any substance listed in  
3 Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under  
4 section ((101(14))) 102(a) of the federal comprehensive environmental  
5 response, compensation, and liability act of 1980, as amended by P.L.  
6 99-499.

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

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

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

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

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

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

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

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

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

38 (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.

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