

RCW 90.56.210 Contingency plans. (1) Each onshore and offshore facility shall have a contingency plan for the containment and cleanup of oil spills from the facility into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills. The department shall by rule adopt and periodically revise standards for the preparation of contingency plans. The department shall require contingency plans, at a minimum, to meet the following standards:

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

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

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

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

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

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

(g) Describe important features of the surrounding environment, including fish habitat, water column species and subsurface resources, wildlife habitat, shellfish beds, environmentally and archaeologically sensitive areas, and public facilities, that are: (i) Based on information documented in geographic response plans and area contingency plans, as required under RCW 90.56.210; or (ii) for areas without geographic response plans or area contingency plans, existing practices protecting these resources used for similar areas. The departments of ecology, fish and wildlife, and natural resources, and the department of archaeology and historic preservation, upon request, shall provide information that they have available to assist in preparing this description. The description of archaeologically sensitive areas shall not be required to be included in a contingency plan until it is reviewed and updated pursuant to subsection (9) of this section;

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

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

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

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

(l) Until a spill prevention plan has been submitted pursuant to RCW 90.56.200, state the measures that have been taken to reduce the likelihood that a spill will occur, including but not limited to,

design and operation of a facility, training of personnel, number of personnel, and backup systems designed to prevent a spill;

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

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

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

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

(ii) Offshore facilities.

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

(3) (a) The department by rule shall determine the contingency plan requirements for railroads transporting oil in bulk.

(b) For class III railroads transporting oil in bulk that is not crude oil in an amount of forty-nine or more tank carloads per year, the rules adopted under this subsection may not require contingency plans to include:

(i) Contracted access to oil spill response equipment; or

(ii) The completion of more than a total of one basic tabletop drill every three years to test the contingency plans.

(c) For class III railroads transporting oil in bulk that is not crude oil in an amount less than forty-nine tank carloads per year, rules adopted under this subsection may only require railroads to submit a basic contingency plan to the department. A basic contingency plan filed under this subsection (3) (c) must be limited to requiring the class III railroads to:

(i) Keep documentation of the basic contingency plan on file with the department at the plan holder's principal place of business and at dispatcher field offices of the railroad;

(ii) Identify and include contact information for the chain of command and other personnel, including employees or spill response contractors, who will be involved in the railroad's response in the event of a spill;

(iii) Include information related to the relevant accident insurance carried by the railroad and provide a certificate of insurance upon request;

(iv) Develop a field document for use by personnel involved in oil handling operations that includes time-critical information regarding basic contingency plan procedures to be used in the initial response to a spill or a threatened spill; and

(v) Annually review the plan for accuracy.

(d) Federal oil spill response plans created pursuant to 33 U.S.C. Sec. 1321 may be submitted in lieu of contingency plans by a class III railroad transporting oil in bulk that is not crude oil.

(e) For the purposes of this section, "class III railroad" has the same meaning as defined by the United States surface transportation board as of January 1, 2017.

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

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

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

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

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

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

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

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

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

(f) The sensitivity of fisheries, shellfish beds, and wildlife and other natural resources within the area covered by the plan;

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

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

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

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

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

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

(11) Approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under this chapter or other state law. [2018 c 262 § 301; 2017 c 239 § 1; 2015 c 274 § 5; 2005 c 78 § 1; 2000 c 69 § 20; 1992 c 73 § 33; 1991 c 200 § 202; 1990 c 116 § 3. Formerly RCW 90.48.371.]

Reviser's note: Chapter 226, Laws of 2004 (Substitute Senate Bill No. 6641) directed that: "If specific funding for the purposes of sections 5 and 6 of this act, referencing sections 5 and 6 of this act by bill or chapter or section number, is not provided by June 30, 2004, in the omnibus transportation appropriations act, sections 5 and 6 of this act are null and void." Substitute Senate Bill No. 6641 was referenced by bill number in chapter 276, Laws of 2004, the omnibus operating appropriations act, in section 301(9), however neither the bill nor the chapter number were mentioned in chapter 229, Laws of 2004, the omnibus transportation appropriations act. Therefore, the chapter 226, Laws of 2004 amendments to RCW 90.56.200 and 90.56.210, did not take effect.

Findings—Intent—Report—2018 c 262: See notes following RCW 82.23B.010.

Effective date—2015 c 274: See note following RCW 90.56.005.

Effective dates—1992 c 73: See RCW 82.23B.902.

Severability—1990 c 116: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 116 § 35.]