

October 6, 2019

Sonja Larson, Rulemaking Lead
Spills Program, Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update, Chapter 173-182
WAC

Dear Ms. Larson,

As local elected leaders working to protect the health and safety of our communities from the safety risks of oil transportation, we urge you to strengthen spill response requirements to address the unique risk that diluted bitumen (dilbit) poses to waters in Washington State and the Salish Sea. We are concerned that Department of Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity.

In recent years, Washington State has made significant gains in improving the safety of oil transport by rail and vessel. The 2015 Oil Transportation Safety Act, the 2018 Strengthening Oil Transportation Safety Act, most recently the 2019 Oil Spill Prevention Act increase transparency, preparedness, prevention measures and requirements, and funding.

Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed the Department of Ecology to use this year's update to develop new rules and protections that address the unique characteristics and risks of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil. Unfortunately, the draft rule is insufficient to protect Washington's waters and communities.

The shortcomings of the current draft rule:

- Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils *before* they submerge and sink. The draft rule is right to require a faster timeframe for the initial assessment of a spill; however, it still fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses.
- The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill.

- The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities.
- The wildlife response operations are unclear as to what “capture” entails and only require two wildlife response personnel to arrive within 12 hours of a spill to conduct wildlife response operations (with an additional 7 personnel to arrive within 48 hours). An unspecified amount and type of deterrent equipment is also required to arrive on the scene within 12 hours.

To address these shortcomings, we urge Ecology to:

- Immediately address existing risks by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of non-floating oil.
- Further distinguish between potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines.
- Commit to updating overall response capacity modeling tools and requirements, including the EDRC, immediately as new information becomes available (e.g. through ongoing federal modeling studies).
- Enhance planning standards for wildlife response in the event of a spill. This includes requirements for monitoring and deterrence operations to keep whales, including Southern Resident Killer Whales, away from a spill. This is critical as the Southern Resident Killer Whales could become extinct if they suffer the consequences of an oil spill. The orca pod in Prince William Sound is functionally extinct thirty years after the catastrophic Exxon Valdez oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. In particular, deterrence actions that keep wildlife from entering a spill are critical to have underway immediately after a spill.

Communities across Washington are at risk from the existing transport of tar sands crude oil and we are unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River. For example, Port Westward has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly US Oil) refinery receives weekly shipments of dilbit by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom Counties, the Puget Sound Pipeline supplies Washington’s four northern refineries with dilbit. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Dale Jensen
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Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. To provide adequate protections, Washington's rule should require more rapid response for companies transporting these oils to address spills before they submerge and sink.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills and urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking.

Sincerely,

Robert Gelder, County Commissioner
Kitsap County

Derek M. Young, Councilmember
Pierce County

Ryan N. Mello, Councilmember
City of Tacoma

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