

October 6, 2019

Dale Jensen, Director  
Spills Prevention, Preparedness and Response 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 Mr. Jensen,

We the undersigned members of the *Puget Sound Environmental Caucus*, thank you for the opportunity to provide comments to the Department of Ecology (Ecology) on the Oil Spill Contingency Plan rule update, Chapter 173-182 WAC. Through the passage of 2018 Strengthening Oil Transportation Safety Act, the legislature directed Ecology to use this year's update to develop new rules and protections that address the specific risk of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil.

We are concerned that 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existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity and for wildlife response requirements. We urge Ecology 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 specifically concerned about impacts on the Southern Resident orcas, which are at serious risk of extinction. One giant threat to the existence of this highly endangered species whose numbers are precarious low is the risk of an oil spill in the Salish Sea. According to NOAA's 2008 recovery plan for the Southern Resident orcas, "major oil spills are potentially catastrophic to killer whales".<sup>1</sup> A report from National Marine Fisheries service states, "Their small population size and social structure also puts them at risk for a catastrophic event, such as an oil spill, that could impact the entire population."<sup>2</sup> Such was the case with the AT1 orca population or the Chugach Transients, in Prince William Sound after the catastrophic 1989 Exxon Valdez oil spill. Thirty years later, that orca population is functionally extinct.<sup>3</sup>

---

<sup>1</sup> National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.

<sup>2</sup> National Marine Fisheries Service. *Southern Resident Killer Whales (Orcinus orca) 5-Year Review: Summary and Evaluation*. (National Marine Fisheries Service West Coast Region, Seattle, 2016)

[http://www.westcoast.fisheries.noaa.gov/publications/status\\_reviews/marine\\_mammals/kw-review-2016.pdf](http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/marine_mammals/kw-review-2016.pdf).

<sup>3</sup> Esler et al., 2017. Timelines and mechanisms of wildlife population recovery following the Exxon Valdez oil spill. *Deep Sea Research Part II: Topical Studies in Oceanography* Volume 147, January 2018, Pages 36-42, [10.1016/j.dsr2.2017.04.007](https://doi.org/10.1016/j.dsr2.2017.04.007)

[Type here]

The shortcomings of the current draft rule include:

- The draft rule, while requiring a faster timeframe for the initial assessment of a spill, fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils *before* they submerge and sink.
- Within the first hour of the oil spill, the initial assessment could take place remotely which means someone from 1,000 miles away could do the initial assessment. While basic conditions of weather, tides, and currents can be assessed remotely, so many site specific local factors, such as wave activity, wind, ecological sensitive areas, docks, piers, wildlife, etc., can dictate the fate and behavior of the spilled non-floating oil from sinking or not, are better assessed on site.
- 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. There is also no mention of personnel requirements and no details on the amount and type of resources and equipment to ensure that the “capability” would be sufficient to respond to a worst-case spill (as required by WAC 173-182-030 (48); see also WAC 173-182-030).
- 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 requires 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.
- The proposed Plan update requires equipment and personnel to conduct monitoring and deterrence operations to prevent Southern Resident orcas from encountering spilled oil. However, it does not require that experts who can distinguish Southern Resident orcas from transient orcas be an integral part of these operations, thus meaning that there is no assurance that if only some orcas were deterred from encountering a spill, that those whales would be the Southern Resident orcas.

To address these shortcomings, we urge Ecology to:

- Update the table in WAC 173-182-324(2) 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. The timelines must be shortened and additional personnel deployed in the first few hours, especially for non-floating oils and diluted bitumen which can sink quickly, harm wildlife, and damage underwater habitats.
- The one-hour initial assessment requirement should be required to be done on site.

[Type here]

- Further distinguish between all 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. Define “non-floating oil” as non-floating oil is omitted in WAS 173-182-030 definitions.
- Commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as new information becomes available through, for example, ongoing federal modeling studies.
- Enhance planning standards for wildlife response in the event of a spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill, even if experts who are able to identify Southern Resident orcas are not present.

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 to terminals including to Port Westward which 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. Furthermore, 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.

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. The cost associated with this spill exceeds \$1.2 billion and as of June 2013, the EPA determined that 162,000-168,000 gallons of submerged Canadian Tar Sands crude oil would remain in the river bottom because any further dredging would cause significant adverse impacts to the river.<sup>4</sup> “The riverbed will never be fully cleansed of bitumen.”<sup>5</sup>

To provide adequate protections, Washington’s rule should require more rapid response for companies transporting these oils to respond to spills before they submerge and sink.

---

<sup>4</sup> United States Environmental Protection Agency. June 2013. Oil Cleanup Continues On Kalamazoo River Enbridge Oil Spill, Marshall, Michigan. <https://www.epa.gov/sites/production/files/2013-12/documents/enbridge-fs-20130624.pdf>. Accessed September 16, 2019.

<sup>5</sup> Joseph Riesterer. BELT magazine. July 12, 2019. The Enduring Legacy of the 2010 Kalamazoo River Oil Spill:

Nearly a decade after one of the largest inland oil spills in U.S. history, the landscape has changed. <https://beltmag.com/kalamazoo-river-line-6b-oil-spill/>. Accessed September 16, 2019.

[Type here]

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills. We 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, and to improve wildlife response capacity and timelines as well as protections specifically for the Southern Resident orcas.

Sincerely,

Rein Attemann  
Puget Sound Campaign Manager  
Washington Environmental Council

Gus Gates  
Washington Policy Director  
Surfrider Foundation

Ellen K. Southard, Hon. AIA  
Puget Sound Manager  
Salmon-Safe

Joshua Morris  
Urban Conservation Manager  
Seattle Audubon

Darlene Schanfald  
Executive Director  
Olympic Environmental Council

Blair Englebrecht  
Boating Programs Manager  
Puget Soundkeeper Alliance

Lunell Haught  
President  
League of Women Voters of Washington

Shannon Wright, Executive Director  
RE Sources for Sustainable Communities

Amy Carey  
Executive Director  
Sound Action

Eleanor Hines, North Sound Baykeeper &  
Lead Scientist  
RE Sources for Sustainable Communities

[Type here]