

Oct. 6, 2019

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Submitted via email to sonja.larson@ecy.wa.gov and Ecology's public comment portal: <http://cs.ecology.commentinput.com/?id=V6ATc>

RE: Rulemaking to update Chapter 173-182 WAC, Oil Spill Contingency Plan

Dear Mr. Larson,

Thank you for the opportunity to provide on Department of Ecology's (Ecology) draft update to Chapter 173-182 WAC, the Oil Spill Contingency Plan.

I have lived in the San Juan Islands for my entire life, and professionally, have commercially salmon fished using reef and gill nets in Puget Sound for more than 25 years. I am intimately familiar with the ecosystem of the Salish Sea and rely on it for both my quality of life and income. The impacts that an uncontained and inadequately addressed oil spill would have in these waters would be catastrophic and would, I believe, negatively impact the marine environment for decades to come. I am in strong support of the below updates for the Department of Ecology's Chapter 173-182 WAC.

Several years ago, Department of Ecology conducted a study to determine what the economic impacts of a major spill might be. At that time, they concluded that a major spill would cost 165,000 jobs and 10.8 billion dollars in economic impacts alone. This does not include individual claims or environmental impacts. Over \$20 billion in economic activities each year are at risk, including the fishing and shellfish industry. The recreational & non-treaty commercial fishing industry contributes over \$1.66 billion to Washington State's economy annually. It supports more than 16,000 jobs and \$540 million in salaries and wages. Washington is the largest producer of farmed shellfish in the United States – with increasing demands due to the Gulf shellfish industry oil spill losses. The average annual commercial value of the Puget Sound shellfish industry is \$59.3 million.

Our livelihoods depend upon the health and vitality of Washington State's marine environment, 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 concerned that Ecology's proposed rule does not meet its legislative directive to address the

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existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity and for wildlife response requirements.

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 given that any further dredging would cause significant adverse impacts to the river.¹ “The riverbed will never be fully cleansed of bitumen.”² 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.

Through the passage of [2018 Strengthening Oil Transportation Safety Act](#) the legislature directed the 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, this draft rule is insufficient to protect Washington’s waters and communities.

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.
- Initiate an assessment of the oil spill within one hour could take place remotely which means someone in New Orleans could do the initial assessment from hundreds miles away. 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

¹ 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.

² 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.

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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.
- 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.

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

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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,

Brendan Flynn

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