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THE SUQUAMISH TRIBE
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October 1, 2019

Sonja Larson
Department of Ecology Spills Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: Proposed Amendments to Chapter 173-182 WAC, Oil Spill Contingency Plan Rule

Dear Ms. Larson:

This letter provides the Suquamish Tribe's (Tribe) comment concerning the proposed amendments to Chapter 173-182 WAC, the Washington State Department of Ecology's Oil Spill Contingency Plan rule. This is a critical time for the State to strengthen its oil spill contingency plan given the increase in exportation of oil through our waters from Canada.

I. INTRODUCTION

The Suquamish people have lived, gathered plants, collected ceremonial and spiritual items, hunted, and fished for thousands of years in western Washington State. The Suquamish Tribe is a federally recognized Indian Tribe and pursuant to the 1855 Treaty of Point Elliott, the Tribe reserved the right to fish and gather shellfish at its "usual and accustomed" (U&A) fishing grounds and stations in Puget Sound. The Tribe's U& A extends well beyond the Port Madison Indian Reservation boundaries and includes marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River in Canada, including Haro and Rosario Straits, the streams draining into the western side of Puget Sound and Hood Canal. These marine waters are the home territory to the Tribe and include the major shipping channels for both the United States and Canada.

Our tribal community understands how devastating an oil spill can be because we have had the misfortune of experiencing an oil spill first hand that landed at the Doe-Keg-Wats estuary and fouled a pristine cultural and spiritual location of importance to Suquamish tribal members located near Indianola, Washington. The Suquamish people have used the Doe-Keg-Wats marine estuary and wetlands since time immemorial for food and medicine. It is also one of the few pristine estuaries of its kind in Puget Sound and is located on the Port Madison Indian Reservation. On December 30, 2003, about 5,000 gallons of heavy bunker oil spilled into Puget

Sound from a Foss Barge in Shoreline, Washington. Because there were inadequate rules in place at the time, there was no protective containment boom placed around the vessel while the barge was loaded with oil while docked in Edmonds. The combination of winds and the tide pushed the oil southwest across Puget Sound where it washed it up on the Doe-Keg-Wats. The oil spill polluted estuarine marsh, beach, and other near shore habitats, including habitat used by herring and salmon, and damaged shellfish beds. This oil spill was devastating to the Tribe both culturally and environmentally. Sixteen years later, evidence of the oil spill still exists at Doe-Keg-Wats. The Tribe continues to monitor its effect.

Although this spill is not on the same scale as the Exxon Valdez oil spill, it demonstrates the implications of long-term effects to the Tribe's ability to engage in unadulterated cultural practices at its sacred places and long-term effects to the environment. An Exxon Valdez level spill in the Salish Sea or Puget Sound would be devastating to Tribal treaty rights throughout the Puget Sound and Salish Sea. Washington State Department of Ecology must implement the most protective oil spill contingency plan possible to safeguard the State's waters, marine natural resources, wildlife, and Tribal Treaty rights. Given the increase in amount of heavy oils transported through the State's waters, including the foreseeable monumental addition of oils that will be transported in State's waters arising from the Trans Mountain Pipeline expansion, we believe the draft oil spill contingency plan rule update is not protective enough. The State needs to adopt the best available science and technology to ensure swift and efficient response to oil spills.

II. ECOLOGY NEEDS TO ENHANCE SPEED AND CAPACITY

The current legislatively mandated five-year update to the State's oil spill contingency rule provides the State the opportunity to analyze the current situation and strengthen obligations for oil transporters to respond to a spill. Of particular concern to the State at this moment should be the Canadian government's decision to triple the capacity of the Trans Mountain Pipeline, which will increase oil exported by tanker through the Salish Sea. The oil coming out of the Alberta Tar Sands (diluted bitumen) is heavier and likely to sink when spilled. There are no demonstrated clean-up methods that are effect for removing diluted bitumen that sinks and laces the bottom and shorelines of State marine waters without causing additional environmental/habitat damage.

Diluted bitumen (dilbit) is composed of both heavy and light oils so when spilled, the light oil evaporates and the heavy oil sinks. This combination of heavy and light oils makes the response to a dilbit spill complicated and requires speed and efficiency in response. Unless, the response is to a spill is quick, the tidal exchanges of our waters coupled with swift currents would provide for a devastating combination that would oil to coat our shoreline.

The only way to address the increased export of dilbit through the waters is through increasing speed and coordination to contain and recover dilbit before it sinks. However, Ecology's planned update focuses on requiring diving and salvage operations after the oil has already sunk. Under WAC 173-182-621 Ecology "will review the planning at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst-case spill and provide for continuous operation of spill response activities to the maximum extent practicable and without

jeopardizing crew safety."

Ecology should include specific and significant reductions in response time to encircle the spill with booms designed specifically for swift currents. The only way to reduce the likelihood of oil spreading or sinking is to reduce the time responders have to mobilize and contain the oil. Improving response time is the most important tactic available to limit the impacts of an oil spill.

As part of increasing speed and capacity for recovery is the need for oil spill responders to have the latest and best technology to detect oil once it is submerged. Also critical is the need for oil spill equipment and trained responders to be located at high-risk locations like in the straits and near heavily transited corridors. Ecology should review all geographic response plans to ensure they adequately address the challenges posed by heavy oils, including dilbit.

III. ECOLOGY SHOULD ADOPT THE ERSP OVER THE EDRC

Ecology continues to rely on the Effective Daily Recovery Capacity (EDRC) formulation, which measures a skimmer's ability to recover oil on open water. Under the WAC, as part of the five-year review, includes "conducting or reviewing studies, inquiries, surveys, or analyses appropriate to the consideration of new technologies, plan evaluation methods including EDRC, or best operational practices." WAC 173-182-621 (4)(b). The main problem with the EDRC is that it does not include actual real world limitations including visibility, sea conditions, or storage within its measure. The 2012 Federal Bureau of Safety and Environmental Enforcement funded study found that "[a] strong and consistent theme identified by participants, was the limitations of the current EDRC and the need for an encounter-rate, performance based measure of daily recovery potential for skimming systems."[1] The EDRC system is limited to the capacity of the skimming device and removal pump and skimmers are ineffective for heavy sinking oil.

Because of the ERDC's significant limitation that fails to address sinking oil, the State needs to shift to the Estimated Recovery System Potential (ERSP) calculator, which addresses the entire system's ability to encounter, collect, contain, remove, store, and offload recovered oil and water. The ERSP system provides a more realistic oil spill recovery model. Shifting away from the EDRC to the ERSP would improve and strengthen the region's protection from oil spills based on the best available science.

IV. WILDLIFE RESPONSE

The current draft of the contingency plan update requires wildlife response in twelve hours of spill notification with the arrival of just two wildlife response personnel and the deterrent equipment to have arrived on the scene. The time for wildlife response should be reduced especially given the endangered status of the Southern Resident Killer Whales, Chinook salmon and other marine and shoreline species throughout the region the need for personnel on the scene

[1] https://www.genwest.com/wp-content/uploads/2017/04/Genwest_EDRC-Project_Final_Report.pdf at page 2.

and to engage in deterrence needs to be as soon as practically possible.

The Suquamish Tribe, as a co-manager with the State of Washington that manage and protect marine resources within the Tribe's U&A and State waters, urges the Department of Ecology to consider the Tribe's comment in a meaningful manner. There is no dispute that the marine waters, marine natural resources, and the shorelines of State waters are now beyond the tipping point due to both regulated and unregulated activities. Any future State regulatory actions need to move far beyond the status quo and provide strong and meaningful regulatory measures to protect Puget Sound and other State waters for the next seven generations. We look forward to strong and swift regulatory measures that reaches beyond bureaucratic status quo approaches. Time is of the essence.

Sincerely,

Leonard Forsman, Chairman