



# San Juan County Council

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October 1, 2019

Sonja Larson, Rulemaking Lead  
Department of Ecology, Spills Program  
PO Box 47600  
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Submitted via email to [sonja.larson@ecy.wa.gov](mailto: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 Ms. Larson,

Thank you for the opportunity to Ecology's draft update to Chapter 173-182 WAC, the Oil Spill Contingency Plan.

In general, the County concurs with the Friends of the San Juans detailed comment letter dated September 17, 2019 (submitted at the public hearing). In addition, San Juan County offers the following requested changes to the draft update of the State's Oil Spill Contingency Plan. These are necessary to enhance the State's preparedness for spills of nonfloating oils, as directed by the Legislature in E2SSB 6269.

## 1) Define "nonfloating oil."

Nonfloating oil is omitted in WAC 173-182-030 Definitions.

As background justification, in 2016 the USCG released its latest guidelines for Oil Spill Response Organizations (OSRO) that added a new classification for nonfloating oils. In these guidelines, the USCG recognized that nonfloating oils are broader than just Group V oils and include other heavy oils that show other characteristics that may cause the oils to submerge or sink. Federal Regulations separate oils by groups, Group V is considered the heaviest. According to the USCG, the oil spill response capabilities required to detect and recover nonfloating oils differs significantly depending on the operating area, environmental conditions, and the type of oil spilled. Standard response methods- designed for floating oils- are inadequate and difficult to apply when most of the oil is submerged or sunk to the bottom.

Recent California legislation, CA AB 936, also addresses nonfloating oils whereas a nonfloating oil means a Group V oil as defined in Section 155.1020 of Title 33 of the Code of Federal

Regulations, including any Group V oil that is diluted with a diluent for transport and any other types of oil that are more likely to sink rapidly due to their composition. These types of nonfloating oils when spilled onto water are more likely to include components that either do not float on the surface of the water or become nonfloating over time. Furthermore, nonfloating oil can pose heightened risks to safety and public health. While all oil spills create a health risk to first responders and the public, a spill of nonfloating oil may create heightened and novel risks, different and greater than those associated with conventional oil spills. Accordingly, it is essential that communities and first responders be fully informed, in regarding transport of oil, and in particular, nonfloating oil, in their vicinity\*

\*<https://trackbill.com/bill/california-assembly-bill-936-oil-spills-response-and-contingency-planning/1697924/#/details=true>

- 2) The [2015 San Juan County Oil Spill Response Capacity Evaluation](#) includes important findings and recommendations that address deficiencies on the current oil spill contingency plan. San Juan County requires heightened nonfloating oil spill response capacity.

The following points (noted as recommendations numbered in the Capacity Evaluation) should be included in this update, or at the very least, thoroughly considered:

1. The waters adjacent to the San Juan Islands present a very difficult environment to contain and recover a major marine oil spill. This is primarily due to the high currents and rip tides that occur throughout the area on a daily basis.
  5. In order to maximize potential recovery capacity, it is imperative to initiate recovery operations as soon as possible. This could be enhanced by stationing equipment in San Juan County.
  8. Free-oil recovery operations as modeled utilized almost all available workboat resources leaving few for other concurrent phases of the response, such as shoreline protection.
- 3) An additional rulemaking to update Chapter 173-182 WAC, Oil Spill Contingency Plan is required before the next 5-year update to address long-standing concerns not considered for the scope of the current rulemaking. These include points A and B below.
- A) Estimated Daily Recovery Capacity is a poor metric for evaluating spill response capacity.

As demonstrated in Section 6.6, strike teams with equivalent maximum recovery potential can have vastly different EDRC ratings. Standards based on the delivery of boom, skimmers characterized only by EDRC, and on-water storage do not provide a true indication of response capability. Strike teams should be designed to optimize containment, collection, and storage capacity, then rated by their maximum recovery

potential and operating environment. Planning standards could then be based on those ratings.

The Department of Interior's Bureau of Safety and Environmental Enforcement funded a project by Genwest Systems, Inc., the company that developed the ROC, to examine EDRC and recommend an alternative approach. The Estimated Response System Potential calculator was developed (Genwest Systems, Inc., 2012b) and updated most recently in February 2015 to include feedback received from a National Academies of Science review and public comments solicited through the Federal Register (79 FR 151).

- B) There is a high level of concern about the potential for a large oil spill in San Juan County, but no clear forum for local government, tribes, and organizations to understand and inform oil spill preparedness efforts.

The process of working with the County and the parties they invited to provide input to this study made clear that there is a high level of concern about the potential for a large oil spill in the marine waters adjacent to the County. Clearly, the citizens of San Juan County and local tribes would face severe negative impacts if a large spill of persistent oil were to occur in or near the San Juan Islands. Several members of the study group expressed frustration at the relative lack of participation of the response industry and Department of Ecology in sharing information or suggestions on the study design that would have benefitted this project. (A representative from the BP Cherry Point refinery did contribute to discussions of the project scope and research questions.)

While some planning-related information is available for public comment, there is no formal, sustained forum for the County and others to obtain information, ask questions, provide suggestions, or share concerns about spill preparedness with regulators and regulated industry or response contractors. Such a forum can also foster shared understanding of issues and build trust. The two Regional Citizen's Advisory Councils in Alaska, mandated in federal law, provide one example of such a forum. The Puget Sound Partnership Oil Spill Work Group also sought to fill this role, but no longer meets.

**4) Please consider clarifying the following in the Preliminary Regulatory Analyses including Preliminary Cost-Benefit Analysis, July 2019, Publication no. 19-08-017**

- Executive Summary: Benefits of proposed amendments  
Please add under the second bullet (p. ix) a sub-bullet of 'Marine transportation and infrastructure'.
- Section 4.3.2 Potential efficiencies in spill management  
In the second paragraph (p. 35-36) please add a bullet 'Marine transportation and infrastructure'.
- A spill near the San Juan Islands  
In the fourth paragraph (p. 38) please clarify that the estimated losses are limited to those within San Juan County. Suggest changing the two sentence to 'A recent hypothetical analysis of a 4 million gallon sinking oil spill at Turn Point northwest of San

Juan Island, with sea oiling potentially extending to Island, Jefferson, and Clallam counties and Vancouver island, estimates losses just to San Juan County of between \$142.3 million and \$509.9 million.<sup>18</sup> In the same analysis, a 1 million gallon spill of heavy fuel oil with a similar trajectory estimates to cost to just San Juan County of between \$84 million and \$243 million.'

Also, please change the ecosystem services bullet (p. 39) to clarify the services evaluated, 'Ecosystem services (including water storage, water quality, carbon sequestration, and habitat services provided by tidal wetlands, eelgrass, and the marine water column)',

- Section 5.1 Summary of the costs and benefits of the proposed rule amendments: Benefits of proposed amendments  
Under the second bullet (p. 46-47), please add a sub-bullet of 'Marine transportation and infrastructure'.

Thank you for your attention to these comments.

Best regards,

**COUNTY COUNCIL  
SAN JUAN COUNTY, WASHINGTON**



Bill Watson, Member  
District No. 1



Rick Hughes, Vice Chair  
District No. 2



Jamie Stephens, Chair  
District No. 3