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During the September 17 Contingency Plan update hearing's Q&A, someone asked about the obligation of the responsible party regarding payment for the costs of a spill. I recommend that this question be clearly answered in the Regulatory Analyses, Likely Benefits of the Proposed Rule Amendments – or whatever section is appropriate. In response to the question, Sonja answered that the responsible party has to pay all costs associated with a spill. WA State law (RCW 90.56.360 and RCW 90.56.370), unlike federal law, includes unlimited liability for oil spill response costs and damages. However, the demonstration of financial responsibility is subject to specified limits (see <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills>). So, Sonja's answer is technically correct, but does not address the state's financial responsibility limits.

According to the 2011 report, IMPROVING OIL SPILL PREVENTION AND RESPONSE IN WASHINGTON STATE

(<https://test-fortress.wa.gov/ecy/publications/documents/1108002.pdf> - page 16):

Under Washington State law, unlike the federal government, liability for oil spill costs and damages is unlimited. Demonstration of financial responsibility, however, is subject to specified limits. Washington state law grants the Department of Ecology authority to administer state financial responsibility requirements by rule, if necessary.

While regulations for vessels have been established, financial responsibility regulations for facilities have not been set.

There is also a gap in verifying that vessel and facility operators meet state financial responsibility levels. Ecology relies upon the federal government (USCG) and the State of California's Office of Spill Prevention and Response (OSPR), whose financial responsibility levels are similar to this state's, to verify compliance and issue certificates.

Has Ecology established financial responsibility regulations for facilities and/or addressed the gap in verifying that vessel and facility operators meet state financial responsibility levels?

FYI here's a link to the current federal rulemaking, Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability-Vessels, Deepwater Ports and Onshore Facilities:

<https://www.federalregister.gov/documents/2019/08/13/2019-17234/consumer-price-index-adjustments-of-oil-pollution-act-of-1990-limits-of-liability-vessels-deepwater>.

To address the costs that exceed federal liability and state financial responsibility limits, the federal Oil Spill Liability Trust Fund can allocate up to \$1 billion per oil spill:

https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/About_NPFC/OSLTF/, and Washington State has an oil spill response tax and oil spill administration tax:

<https://dor.wa.gov/find-taxes-rates/other-taxes/oil-spill-response-tax-and-oil-spill-administration-tax> and also has funds available for oil spill restoration:

<https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Oil-spill-restoration-funding>.

What amount of state funds are available for oil spill response and oil spill restoration?

These additional funds may appear to be sufficient for the total costs of an oil spill's response, restoration, and damages, but that's not necessarily the case – especially with a nonfloating oil spill.

Page 40 of the rulemaking's Preliminary Regulatory Analyses talks about the \$1.2 billion cost of the 2010 Enbridge Kalamazoo River nonfloating oil spill. According to the EPA (<https://www.epa.gov/sites/production/files/2013-12/documents/enbridge-fs-20130624.pdf>) this was a spill of 843,000 gallons (or 20,071.43 barrels) of diluted bitumen. According to the Trans Mountain Pipeline Expansion Project application, the oil spill risk from the tankers transporting diluted bitumen through Washington State waters in the Salish Sea have a mean-case spill volume of 52,000 barrels and a credible worst-case spill volume of 104,000 barrels. (Note that this project application's definition of worst-case spill is not the same as WA State's definition.) If the cost of the 2010 Kalamazoo River spill (\$59,786.47 per barrel) is applied to these spill sizes, the 52,000 barrel spill would cost \$3,108,896,440 and the credible worst-case spill volume of 104,000 barrels would cost \$6,217,792,880. These costs don't include the difference in property values or the difference in spill response costs in the deep marine waters of the Salish Sea or the large Columbia River as compared with the response costs in the Talmadge Creek and the Kalamazoo River. In addition, the wildlife response and NRDA costs for a spill in the Salish Sea would also be substantially more than those costs in the Talmadge Creek and the Kalamazoo River.

Page 43 has information about Enbridge's purchase of 148 houses, 2 mobile homes, and 5 vacant parcels following the Kalamazoo oil spill, stating: "While a large company may be able to buy out impacted property owners, a smaller company or single vessel may not be able to do so." This should be updated with information on the cost of shoreline properties in Washington State cost, as compared with riverside properties along the Talmadge Creek and Kalamazoo River. (Note that another article states "154 properties:" <https://belmag.com/kalamazoo-river-line-6b-oil-spill/> - it would be great to get specific data on these properties and what Enbridge paid.)

Please update the Regulatory Analyses to thoroughly address the all the potential costs of a nonfloating oil spill in WA State, and include information on federal liability limits and state financial responsibility limits.

Thank you for your attention to these comments!

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