

15 non-governmental organizations

Attached are comments from Friends of the San Juans, Washington Conservation Action, Puget Soundkeeper, San Juan Preservation Trust, RE Sources, Communities for a Healthy Bay, Seattle Aquarium, Earth Ministry/Washington Interfaith Power & Light, Citizens for a Clean Harbor, 350 Tacoma, San Juan Islanders for Safe Shipping, 350 Seattle, Washington Physicians for Social Responsibility, Friends of the Earth, and Evergreen Islands.

**Friends of the San Juans • Washington Conservation Action • Puget Soundkeeper
San Juan Preservation Trust • RE Sources • Communities for a Healthy Bay
Seattle Aquarium • Earth Ministry/Washington Interfaith Power & Light
Citizens for a Clean Harbor • 350 Tacoma • San Juan Islanders for Safe Shipping • 350 Seattle
Washington Physicians for Social Responsibility • Friends of the Earth • Evergreen Islands**

March 3, 2023

Brittany Flittner
Project Specialist
Department of Ecology
Spill Prevention, Preparedness, and Response Program

Submitted via public comment form: <https://sppr.ecology.commentinput.com/?id=6Mx2s>

Dear Ms. Flittner,

Thank you for the opportunity to submit comments on Ecology’s draft [rule](#) to amend [Chapter 173-180 WAC, Facility Oil Handling Standards](#) and [Chapter 173-184 WAC, Vessel Oil Transfer Advance Notice and Containment Requirements](#). These rules were established in 2006 for refueling, bunkering, or lightering operations and the availability and use of containment and recovery equipment and are now being updated. According to the Department of Ecology, each year in Washington State there are “more than 10 billion gallons of oil moved through over 12,000 oil transfers. These activities create a risk for oil spills that are toxic and pose a significant risk to Washington’s environment, economy, public health, and historical and cultural resources.”¹

The undersigned represent 15 organizations that work on environmental and conservation issues in Washington State which include protecting the Salish Sea watershed, wildlife, conservation values, human health, and public safety. We support the draft rule’s new decommissioning requirements for out of service oil storage tanks and oil transfer pipelines, and the updates that mitigate the impacts of spills from oil transfer operations. However, the draft rule does not fulfill the legislative intent and does not adequately implement ESHB 1578 *Reducing threats to southern resident killer whales by improving the safety of oil transportation*. The draft rule should be revised to also:

¹ 2023-25 Budget Request — Operating, page 12, request #32. (2022). Washington State Department of Ecology. <https://ecology.wa.gov/DOE/files/76/76341e14-904a-405b-a fb1-ee0a8a3489a4.pdf>.

1) Require all secondary containment systems to withstand seismic forces.

We support the draft rule's requirement for additional seismic protection measures for oil storage tanks and transfer pipelines to help prevent oil spills during earthquakes. The draft rule states (in WAC 173-180-340 (3) and WAC 173-180-330 (2)) that pipelines and storage tanks "constructed before the effective date of this rule must include protective measures that are designed, installed, and maintained to reduce risk from seismic events;" however, (in WAC 173-180-320 (9)(b)) only secondary containment systems constructed after May 1994 "must be designed to withstand seismic forces." According to Ecology, almost all of the Class 1 facilities' secondary containment systems were constructed before May 1994, and all of Washington State's refineries' secondary containment systems were constructed before May 1994.

There is an important distinction in the draft rule's intent for all storage tanks and pipelines "to reduce risk from seismic events" as compared with secondary containment systems built after May 1994 to "withstand seismic forces." While pipelines and storage tanks, at best, can reduce the risk from seismic events, secondary containment systems that withstand seismic forces are essential in preventing oil spills from reaching the waters of the state, including marine waters as needed to reduce threats to Southern Resident killer whales.

Requiring all secondary containment structures, including those constructed before May 1994, to withstand seismic forces, is necessary to comply with [WAC 173-180-025](#) (32):

"Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

Given that earthquakes will happen, secondary containment systems built before May 1994 that are not required to be updated and maintained to withstand seismic forces cannot be relied upon to prevent the discharge of oil from reaching the waters of the state. The state knows what's needed for earthquake preparedness and that should be required for all refinery and bulk oil handling facilities' secondary containment systems.

2) Require all oil transfer operations to be pre-boomed (when safe and effective to do so) and eliminate the Rate B loophole that allows oil transfers at 500 gallons per minute or less to occur without pre-booming.

Pre-booming is a critical oil spill mitigation for over-water oil transfer operations. If a spill happens, it is contained and more easily collected before it can oil shorelines and cause extensive impacts. Rate A transfers (defined as greater than 500 gallons per minute) require pre-booming if it's "safe and effective" – a determination that's based on the current and weather conditions. Pre-booming is prohibited for highly volatile products, like gasoline, that are an explosion hazard when contained in boom. Pre-booming is not required for Rate B oil transfer operations (defined as a transfer rate of 500 gallons per minute or less).

The [Preliminary Regulatory Analyses](#) states in section 6.3.12 Universal prebooming when safe and effective:

Removing the categories of 'Rate A' and 'Rate B' transfers to have the same requirements for all transfer rates would likely increase the number of preboomed transfers. However, under RCW 88.46.165(1) Ecology must scale requirements to risk and has done so by having more stringent requirements for transfers at a rate of over 500 gallons per minute.

[RCW 88.46.165](#)(1) states:

The department's rules authorized under RCW [88.46.160](#) and this section shall be scaled to the risk posed to people and to the environment, and be categorized by type of transfer, volume of oil, frequency of transfers, and such other risk factors as identified by the department.

We question whether oil transfer operations at 500 gallons per minute (Rate B) are less risky than oil transfer operations greater than 500 gallons per minute if there are no restrictions on the volume of oil and/or the frequency of transfers.

Ecology staff present during the 2006 rulemaking stated that the intent was for all refueling, bunkering, or lightering operations to be Rate A transfers. Rate B transfers are not limited by the volume of oil or the frequency of transfers. Ecology staff also stated, "A Rate B transfer is scaled to the risk of an oil spill due to the lower volume of oil transferred and lower transfer rate... The types of entities transferring at a Rate B are different than a Rate A as well. They are usually smaller vessels, fixed, and mobile facilities." This analysis of Ecology's Advance Notice of Transfer (ANT) data through the third quarter of 2022 (ANT ID 1-232021) does not support these statements. Five percent of all oil transfer operations were Rate B transfers of 100,000 gallons or more.

	Total Number of Transfers	% of All Oil Transfers	% of all Rate B Transfers
Rate B Transfers From 2,500 - 5000 gallons	12,012	5%	8%
Rate B Transfers From 5,001 - 10,000 gallons	17,547	7%	12%
Rate B Transfers From 10,001 - 21,000 gallons	10,931	5%	7%
Rate B Transfers From 21,001 - 42,000 gallons	8,369	4%	6%
Rate B Transfers From 42,001 - 99,999 gallons	6,117	3%	4%
Rate B Transfers ≥ 100,000 gallons	11,331	5%	8%

If the intent of the 2006 rulemaking was for large volume oil transfer operations to be pre-boomed (when safe and effective to do so), regardless of the transfer rate, Rate B transfers should be limited by the volume of oil transferred.

Analyze risks from oil transfer operations that occur when it is not safe and effective to pre-boom

We are concerned about the oil transfer operations that occur in remote anchorage areas, and especially those oil transfer operations that occur without pre-booming. In particular, we are concerned by the increase in oil transfer operations and the associated increased oil spill risk

and impacts at the anchorage areas near Vendovi Island. The August 3, 2022, presentation, [Ecology Spill Prevention Pre-Booming Data July 1, 2021 – June 30, 2022](#), documents that in the five years from 2017-2022, the number of oil transfer operations and the total volume of oil transferred at the Vendovi anchorages has more than doubled.

In addition to the risk analyses needed on the volume of oil and the frequency of transfers, analyses are also needed to evaluate the risk posed to people and to the environment by transfer location. The location-specific risk analyses should include the potential location-specific impacts and evaluate the proximity and response time(s) of staged oil spill response resources (personnel and equipment) that would be needed if a spill occurs.

An analysis is also needed on the risks posed by the allowance of oil transfer operations when it is not safe and effective to pre-boom.

An example of the wind speed, wave height, and/or water current velocity that would determine that it would not be safe and effective to pre-boom can be found in WAC 173-184-115 Rate A prebooming and Rate A alternative measures requirements:

(2)(c) For a transfer at a location not covered by an approved safe and effective threshold determination report, the deliverer must use the following safe and effective threshold values:

- (i) Wind speed: Sustained 20 knots or gusts of 30 knots;
- (ii) Waves: Greater than three feet;
- (iii) Water current velocity: 1.5 knots or greater; and
- (iv) Any combination of the above that make deploying and retrieving boom and equipment at the transfer location unsafe.

Ecology's presentation on pre-booming data also documented the Rate A pre-booming rates, excluding those product transfers that are not safe to pre-boom. The transfer operations that were not pre-boomed were presumably due to a safe and effective threshold determination where the wind speed, wave height, and/or water current velocity made it not safe and effective to pre-boom:

- All transfer locations: 16% not pre-boomed
- All anchorage areas: 17% not pre-boomed
- Vendovi anchorage areas: 29% not pre-boomed

An analysis is needed on the risks posed to people and to the environment from oil transfer operations that occur when it is not safe and effective to pre-boom due to the wind speed, wave height, and/or water current velocity.

3) Restrict all oil transfer operations to daylight hours or, at the very least, restrict all oil transfer operations to daylight hours when it's not safe and effective to pre-boom.

WA State's oil transfer regulations went into effect in 2007 in response to the 2003 Foss Barge – Point Wells oil spill. Just after midnight on December 30, 2003, approximately 5,000 gallons of

heavy fuel oil was spilled during an oil transfer operation in Edmonds. Because the delivering and receiving vessels were not pre-boomed (to contain the spilled oil) and also because the spill happened in the middle of the night such that hours elapsed before oil spill response containment and recovery could be initiated; in less than 24 hours of the spill, almost all the oil had moved ashore damaging 400 acres of the Suquamish Indian Reservation's prime cultural and environmental lands, including salt-water marsh, old growth timber, beaches, and clam beds.

The Seattle PI reported on January 21, 2004, in the article, [State considers adopting Navy strategies to avoid oil spills](#):

Today, the Navy requires every ship in this region to be "boomed" whenever it docks, even if no fuel transfer is going on. The boom remains in place until the ship leaves.

"This is where industry would complain about the cost," says Willie Robohn, the Navy's fuel department director at Manchester. But he added, "When you're talking millions for a spill, I don't understand that. ... Prebooming is the name of the game."

Daylight refueling is also a hard-and-fast rule for the Navy. Exceptions are made only for special purposes when they are critical to the success of a mission, and even then require the personal approval of the admiral overseeing the Northwest-based fleet.

For example, oil transfer operations that were not pre-boomed (both Rate A and Rate B) and that occurred in the dark at the anchorages near Vendovi Island increased from 30% in 2020 to 46% in 2021. An analysis is needed to evaluate the risk posed to people and to the environment by oil transfer operations that occur in the dark and, in particular, if the transfers occur without pre-booming.

Risk analyses are needed to support or re-evaluate the current and proposed requirements for refueling, bunkering, or lightering operations and the availability and use of containment and recovery equipment.

Restricting oil transfer operations to daylight hours or favorable weather conditions may be required when Ecology conditionally approves a facility to operate with specific precautionary measures until their operations manual is approved by Ecology. These precautionary measures should be required for all oil transfer operations until risk analyses have been confirmed or conducted on 1) the volume of oil transferred; 2) the frequency of transfers; 3) the transfer locations, including location-specific potential impacts and the proximity of staged oil spill response resources; 4) oil transfer operations that occur when it is not safe and effective to pre-boom; and 5) transfers that occur in the dark.

Thank you for addressing these comments as you amend Chapter 173-180 WAC, Facility Oil Handling Standards and Chapter 173-184 WAC, Vessel Oil Transfer Advance Notice and Containment Requirements.

Sincerely,

Lovel Pratt
Marine Protection and Policy Director
Friends of the San Juans

Rein Attemann
Puget Sound Campaigns Manager
Washington Conservation Action
(formerly Washington Environmental
Council/Washington Conservation Voters)

Emily Gonzalez
Director of Law and Policy
Puget Soundkeeper

Dean Dougherty
Director of Stewardship
San Juan Preservation Trust

Ander Russell
Program Director
RE Sources

Erin Dilworth
Deputy Director
Communities for a Healthy Bay

Nora Nickum
Senior Ocean Policy Manager
Seattle Aquarium

Rev. AC Churchill
Executive Director
Earth Ministry/Washington Interfaith
Power & Light

Tammy Domike
Community Organizer
Citizens for a Clean Harbor

Stacy Oaks
Organizer
350 Tacoma

Shaun Hubbard
Co-founder
San Juan Islanders for Safe Shipping

Shemona Moreno
Executive Director
350 Seattle

Riley Lynch
Climate & Health Program Manager
Washington Physicians for Social
Responsibility

Marcie Keever
Oceans & Vessels Program Director
Friends of the Earth

Marlene Finley
Board President
Evergreen Islands