

Diana Davis
Department of Ecology, Northwest Regional Office
Spill Prevention, Preparedness, and Response Program
P.O. Box 330316
Shoreline, WA 98133-9716

Dear Ms. Davis,

Skagit Land Trust is deeply concerned that the \$300 million maximum financial responsibility requirement for class 1 facilities in your proposed new rule chapter 173-187 WAC Financial Responsibility is woefully inadequate.

Skagit Land Trust (SLT) with over 1500 members was formed in 1992 to conserve wildlife habitat, agricultural and forest lands, scenic open space, wetlands, and shorelines for the benefit of our community and as a legacy for future generations of people and wildlife.

Marine shoreline habitats protected by SLT either by acquisition and/or conservation easements include the Fidalgo Bay Aquatic Reserve, the Fidalgo Bay Carstens Conservation Area, the March Point Conservation Area, and the Samish Island Conservation Area. These highly sensitive marine shoreline habitats could be catastrophically impacted by an oil spill from the Class 1 facilities in the area, including the Marathon refinery (Anacortes), HP Sinclair Puget Sound refinery, and the Puget Sound spur of Canada's nearly completed Trans Mountain Pipeline expansion.

Pacific Great Blue Herons are a unique nonmigratory subspecies found only along the coast, rivers, and tributaries of the Salish Sea. The largest nesting colony of Pacific Great Blue Heron (*Ardea erodias fannini*) in the Salish Sea, the March Point Heronry, is part of SLT's March Point Conservation Area. With almost 600 nests, the March Point Heronry is considered the primary breeding center for Pacific Great Blue Herons in the Salish Sea. The sheer number of herons breeding, nesting, and rearing their young at March Point, provide the genetic diversity necessary to sustain a thriving population of Pacific Great Blue Herons in the Salish Sea.

The March Point herons have a bird's eye view of the Marathon (Anacortes) and HP Sinclair Puget Sound refineries, and of Padilla and Fidalgo Bays. The herons nest here because Padilla Bay's 8,000-acre eel grass bed, the second largest eel grass bed on the Pacific Coast of North America, functions as a nursery for juvenile salmon, crab, and herring, and as a home for forage fish whose high caloric content provides the nutrition needed by nesting Pacific Great Blue Heron and their rapidly growing young. Foraging studies have documented the use of Padilla Bay, Fidalgo Bay, and Samish Bay by Pacific Great Blue Herons for feeding during the nesting season. An oil spill into these waters would have a disastrous effect on the Pacific Great Blue Heron population.

Since 1999, Skagit Land Trust has played a key role in the protection of Fidalgo Bay, acquiring and placing conservation easements on over 500 acres of tidal property in south Fidalgo Bay before donating the tidelands to the state for the Department of Natural Resources (DNR) to manage as part of the Fidalgo Bay Aquatic Reserve. Our conservation easements ensure the preservation of these unique tidal flats, salt marshes, sand and gravel beaches, and expansive native eelgrass beds-- habitats vital to the reproductive, foraging and rearing success of many fish and bird species. SLT continues to support the aquatic reserve through the protection and restoration of additional Fidalgo Bay shoreline and streams that flow into the Bay.

Fidalgo Bay Aquatic Reserve provides critical Pacific herring spawning habitat. Surf smelt and sandlance are found here. Restored native Olympia oysters are thriving here. Along with Great Blue Herons, many migratory birds, Dungeness crab, and federally designated endangered species like bald eagles, peregrine falcons, and Puget Sound Chinook salmon feed here.

Skagit Land Trust's Samish Island Conservation Area protects 1,600 feet of natural shoreline on Padilla and Samish Bays which, along with the bays' eelgrass beds, provide nesting and or foraging habitat for many species, including rare, gray-bellied Brant.

An oil spill of any size from the Marathon (Anacortes) refinery, the HP Sinclair Puget Sound refinery, or the Puget Sound spur of Canada's Trans Mountain Pipeline could have an irrevocable, devastating impact on the extraordinary unique and sensitive marine ecosystems of Padilla Bay, Fidalgo Bay, and Samish Bay.

Oil spill response, cleanup and compensatory damage costs are not cheap, and when tar sands crude oil is involved in a spill the costs are even greater as tar sands sink rather than float in water. DOE's proposed maximum financial responsibility (FR) requirement does not take into account the greater costs associated with tar sand spills. The cost of the spill response and damage costs for the 2010 tar sands crude oil spill into the Kalamazoo River was \$1,208,000,000 or \$60,153 per barrel, an amount significantly higher than the \$12,500 per barrel cost DOE has assigned in the proposed rule.

Washington State law RCW 88.40 requires that when determining the maximum financial responsibility of a Class 1 facility for an oil spill caused by the facility, DOE must look at how much the cleanup of the spilled oil would cost in today's dollars, how frequently operations that could result in a spill take place at the facility, and the current day cost of damages that could result from the spill. DOE has not done this. Instead, DOE has chosen to model its proposed rule on California's Certificate of Financial Responsibility Rule.

Based on the California regulation, DOE's proposed FR rule puts the worst-case spill cost for WA State Class 1 facilities at \$12,500 per barrel, a figure California established in 1995 based on a 1993 study of 1992 oil spill cleanup costs. Applying that figure to the 600,000 barrels in a worst-case spill scenario at Marathon's Anacortes refinery, the volume of the largest above ground storage tank at that refinery, the cost for containment, cleanup and damages would come to \$7,500,000,000. DOE's proposed \$300 million maximum financial responsibility requirement would cover only 4% of that total cost.

The chances of a worst scenario oil spill happening are very small, but when one does occur, Skagit Land Trust believes the financial responsibility requirement for the offending facility should cover the total actual cost based on today's dollars, not on dollars based on 30-year-old data. If DOE persists in establishing a woefully inadequate maximum financial responsibility requirement for Class 1 facilities, it will have failed to carry out its stated mission, "To protect, preserve, and enhance Washington's environment for current and future generations".

Washington State has no limit on the amount the responsible party is required to pay for damages caused by an oil spill. RCW 88.40 requires regulated entities to demonstrate financial responsibility for oil response cleanup costs and, as necessary, to compensate the State and affected recognized Indian tribes, counties and cities for damages that might occur during a spill.

However, the numbers tell us DOE's proposed \$300 million FR requirement is far too low. Since the cost of a major spill cleanup could easily exceed that amount, such a low FR requirement would allow a Class 1 facility with inadequate resources to declare bankruptcy before all costs are paid, leaving an unfair and unjust monetary burden on WA taxpayers, state and local governments and tribes.

DOE justifies lowballing the FR amount for Washington Class 1 facilities because RCW 88.40 requires DOE to consider availability and affordability when determining financial responsibility requirements. But DOE should recognize and acknowledge that Class 1 facilities could join together in protection and indemnity clubs or mutual insurance associations thereby enabling themselves to meet adequate financial responsibility requirements, just as tank vessels and barges now do to reach their \$1 billion financial responsibility requirement.

In summary, the proposed \$300 million maximum financial responsibility requirement for Class 1 facilities is not nearly enough. At the very least, a \$1 billion financial responsibility requirement should be established for each Class 1 facility.

Additionally, DOE must take into account the significantly higher costs of cleaning up and paying for damages caused by a tar sands oil spill. Canada's Trans Mountain Pipeline (Puget Sound) should have a financial responsibility requirement based on these higher costs. DOE should establish the per barrel amount cost for a Trans Mountain Pipeline spill to at least \$60,153 per barrel.

Thank you for your careful and thoughtful consideration of our comments.

Molly Doran
Executive Director, Skagit Land Trust