

# San Juan City Council, District 2

Dear Ms. Davis,

I ask Ecology to take every possible action in this rulemaking process to ensure that the funding will be in place to pay for all the costs and damages that result from Class 1 facilities' accidents and oil spills. The outcome of this rulemaking process is crucial to the health and vitality of San Juan County's community, economy, environment, and natural resources. I'm concerned that the draft rule to establish financial responsibility requirements for Class 1 facilities [1] is not sufficient to compensate San Juan County in addition to the state, tribes, cities, and all the other impacted counties for damages that might occur during a large oil spill. The proposed \$300 million maximum financial responsibility for Class 1 facilities is based on California's regulations which were established in 1995 and based on a 1993 study that used 1992 US dollar values to identify the cost of oil spill response and the damages that could result from a spill. This 30+ year-old study identified the oil spill response and damages costs at \$12,500 - \$18,900 per barrel. In today's dollars, those costs would range from \$27,916 - \$42,209 per barrel. [2] The \$18,900 per barrel cost was recommended for facilities given that "[n]atural resource damage claims are expected to rise in the future." [3] However, California based its 1995 regulations on the low range of \$12,500 per barrel. Ecology's comprehensive valuation of oil spill impacts is based on 2006 numbers: "a large spill could cost the state \$10.8 billion and 165,000 jobs." [4] In today's dollars the cost would be \$16.8 billion. [5] Ecology states that "this estimate was based on open-water spills significantly disrupting fishery activities (such as might occur from a large vessel) and impacts specific to an onshore facility spill may differ." [6] However, no analysis was conducted on the costs of a vessel's large oil spill as compared with an onshore facility's large oil spill. In Ecology's review of potential oil spill damages, the only Class 1 facility's oil spill included in the rulemaking analysis is the 1999 Olympic pipeline gasoline spill and explosion, concluding that "in today's dollars it could cost over \$404 million." [7] These costs are \$104 million above the proposed maximum financial responsibility requirement. In today's dollars, the total cost of a Class 1 facility's large oil spill could cost \$16.8 billion. The proposed \$300 million maximum financial responsibility requirement would cover less than 2%. In addition to the state's oil spill response account (RCW 90.56.500 ), [8] the federal Oil Spill Liability Trust Fund, can provide up to \$1 billion dollars per oil spill event for response and damage costs. [9] All of these funds combined would cover less than 8% of the potential costs of a large oil spill. The proposed \$300 million maximum financial responsibility requirement would cover only a small fraction of the total cost of a worst case spill from the four refineries that surround San Juan County: Phillips 66 Ferndale Refinery: 3.64% Marathon Anacortes Refinery: 4.00% BP Cherry Point Refinery: 4.82% HollyFrontier Sinclair Puget Sound Refinery: 7.97% The 2019 report San Juan County Oil Spill Risk Consequences Assessment (that used 2018 dollar values), estimated that oil spill damages in San Juan County only could range from \$84 million to \$510 million, which in today's dollars would be \$104.52 million to \$634.58 million. [10] This report did not address the impacts and costs to Tribes and Tribal Treaty Rights and did not evaluate the costs associated with oil spill impacts to marine transportation, science and education, endangered species (such as the Southern Resident killer whales), human health, social services and cultural values. The \$300 maximum financial responsibility requirement would not even cover one-half of the potential damage costs in San Juan County alone. Who would pay for the remaining costs if the Class 1 facility is bankrupt after covering just \$300 million of the total oil spill costs? San Juan County and its taxpayers and businesses as well as other Washington state taxpayers, state and local governments and Tribes and businesses should not have to pay for these costs.

In summary: The draft rule fails to identify a financial responsibility amount for Class 1 facilities necessary to compensate the San Juan County, the state, Tribes, cities, and other counties for damages that might occur

during a reasonable worst case spill of oil. The draft rule should be revised to address the higher spill response and damage costs for tar sands products. The basis for the financial responsibility requirement for Class 1 facilities that transfer, process or transport tar sands products should be increased to at least \$60,153 per barrel. The draft rule should be revised to remove the \$300 million limit and require Class 1 facilities to demonstrate their ability to pay their full worst case spill costs as currently calculated (with the outdated and low estimate of \$12,500 per barrel – see attached). Alternately and at the very least, Class 1 facilities’ financial responsibility requirement should be increased to \$1 billion. If this rulemaking process does not allow for the financial responsibility requirements for Class 1 facilities to be increased in the final rule, the requirement for an update to be completed within two years should be included in the final rule. The final rule should include a provision that directs Ecology to conduct reviews and updates to the financial responsibility requirements similar to 33 CFR § 138.240 - Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI-U) and statutory changes . Thank you for your consideration.

[1] Class 1 facilities are the state’s largest oil handling facilities that transfer, process, or transport oil on or near the navigable waters of the state. Class 1 facilities include refineries, pipelines, and other bulk oil handling facilities.

2 U.S. Bureau of Labor Statistics CPI Inflation Calculator: The value of \$12,500 from January 1992 to January 2024 = \$27,916.09; the value of \$18,900 from January 1992 to January 2024 = \$42,209.13. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) .

3 Mercer Management Consulting. June 1993. Analysis of Oil Spill Costs and Financial Responsibility Requirements . PDF page 37. [https://fortress.wa.gov/ecy/ezshare/sppr/preparedness/MercerStudy1993\\_CombinedFiles.pdf](https://fortress.wa.gov/ecy/ezshare/sppr/preparedness/MercerStudy1993_CombinedFiles.pdf) .

4 Ecology’s Spill Prevention, Preparedness, and Response Program webpage: <https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response> .

5 U.S. Bureau of Labor Statistics CPI Inflation Calculator: The value of \$10.8 billion from January 2006 to January 2024 = \$16,797,300,000. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) .

6 Ecology. January 2024. Preliminary Regulatory Analyses for Chapter 173-187 WAC Financial Responsibility. Page 36. <https://apps.ecology.wa.gov/publications/documents/2408001.pdf> .

7 Ibid .

8 The most recent State Oil Spill Response Fund cash balance available is in the Treasurer’s Report-Nov 2023 (Fund 223, page 13): \$6,459,388.45. [https://www.tre.wa.gov/wp-content/uploads/011\\_-November-2023-Monthly-Report-Web.pdf](https://www.tre.wa.gov/wp-content/uploads/011_-November-2023-Monthly-Report-Web.pdf) .

9 U.S. Environmental Protection Agency. Oil Spill Liability Trust Fund webpage: <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations/oil-spill-liability-trust-fund> .

10 U.S. Bureau of Labor Statistics CPI Inflation Calculator: The value of \$84 million from January 2018 to January 2024 = \$104.52 million; the value of \$510 million from January 2018 to January 2024 = \$634.58 million. [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) .