The American Waterways Operators

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Peter J. Schrappen, CAE
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Ms. Alex Colletti
Rulemaking Lead
Washington Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

RE: Rulemaking to Amend Washington Administrative Code Chapter 173-182, Oil Spill Contingency Plan

Dear Ms. Colletti:

The American Waterways Operators (AWO) is the tugboat, towboat and barge industry's advocate, resource and united voice for safe, sustainable and efficient transportation on America's waterways, oceans and coasts. As the largest segment of the nation's 45,000-vessel domestic maritime fleet, our industry plays a vital part of America's supply chain and national security, moving the nation's commerce on U.S. inland and intracoastal waterways, the Atlantic, Pacific and Gulf Coasts, and the Great Lakes. On behalf of our over 300 members, we appreciate the opportunity to comment on Washington Department of Ecology's (Ecology) rulemaking to amend the Washington Administrative Code (WAC), Chapter 173-182, concerning Oil Spill Contingency Plans (OSCP). AWO members are committed to protecting the environment by operating safely and responsibly while supporting the efficient movement of maritime commerce.

For decades, AWO has worked collaboratively with federal and state agencies to prevent spills, strengthen preparedness, and ensure a rapid response when incidents occur. We believe the most effective environmental regulations are those that both advance sustainability and reflect the operational realities of the maritime industry. In these comments, we outline our concerns with Ecology's proposed amendments to WAC 173-182 and offer recommendations informed by the experience of members operating in the regulated waters.

John Day Dam Staging Area

Ecology's draft language creates a new oil spill response staging area near John Day Dam. Operators of vessels or facilities serving this section of the Columbia River must now verify that spill response vessels, trained workers, safety equipment, boom, oil spill recovery capacity, and storage can reach the new staging area between river miles 190 and 270.

The proposed John Day Dam planning standard does not reflect the response resources currently available along this portion of the Columbia River. Operators in the area rely on a tiered coordination of company-owned equipment and contracted response resources. While contracted response resources provide substantial recovery capacity, the proposed temporary storage volumes cannot be met between hours 6 and 48. At river mile 190, one member-contracted company, the Marine Spill Response Corporation, projected storage deficits of 11,376 barrels at hour 6; 39,418 barrels at hour 12; 41,418 barrels at hour 24; and 1,218 barrels at hour 48.

While the proposed benchmarks assume that personnel and specialized equipment can be readily positioned throughout the planning area, this does not reflect operational realities. Available personnel cannot satisfy the proposed hours 2 through 4 deadlines, and the region currently lacks the staging site, workboat, boom, and qualifying skimming unit needed to meet the new benchmarks. MSRC concluded that a new site could address part of the requirement, but maintaining an unmanned facility solely for these early-hour thresholds would not be practical or sustainable.

Because this standard cannot be met by available response capabilities, operators may be left without coverage in the Middle Columbia River, which undermines the preparedness levels that Ecology seeks to achieve with these updates. Ecology should account for the conditions unique to the John Day area when determining appropriate thresholds and qualifying storage resources. Because using a barge for recovery and storage may be impractical on this stretch of the river, shore-based storage should be recognized as a practical and effective response and reflected in the draft language.

AWO urges Ecology to:

- Allow shore-based and other alternative storage methods to satisfy the storage requirement,
- Reevaluate storage thresholds based on available recovery capacity,
- Avoid requiring unmanned staging sites solely to satisfy the hours 2 through 4 standards,
- Allow more flexible response times where personnel and equipment are not readily available,
- Allow for more than a 12-month phase-in period for plan holders and contractors, and
- Disclose the analysis supporting the proposed timeframes and volumes for public comment.

Statewide Expansion of Aerial Surveillance

Expanding the aerial surveillance standard statewide would place the same response expectation on locations that may not be able to easily access necessary surveillance equipment. This is especially true for upriver and remote areas, where it will be difficult to secure the needed surveillance systems by hours 6 or 12, which could also impose additional costs on plan holders. Ecology should document the availability and cost of these services before finalizing the expansion zone. If statewide readiness cannot be demonstrated, the

agency should keep the existing geographic scope or adopt a regional phase-in corresponding to system availability in these areas.

60-Day Advance Notice and Broader Triggers

The proposed 60-day notice period does not distinguish between changes that substantially affect spill preparedness and routine operational decisions. Vessel assignments, equipment transfers, charters, and staffing arrangements frequently change in response to customer needs and may not be known 60 days in advance. Requiring notice for every personnel replacement would increase administrative reporting even when a plan holder's response capability remains unchanged. AWO recommends a 14-day notice period, with notifications due to personnel changes limited to changes that actually reduce capability. Additionally, we ask Ecology to clarify that routine events such as dry dockings, vessel sales, and charter changes do not count as significant events.

Added and Expanded Drill Requirements

AWO supports drills that meaningfully test response readiness, but the proposed additions will prove burdensome and could duplicate exercises already conducted through spill responses. Wildlife-deterrence exercises, nonfloating-oil deployments, testing of each category of dedicated equipment, and land-based tactics would require additional crew time, vessel downtime, and contractor responsibilities. Ecology should allow plan holders to combine newly required drills with existing drills whenever the same capabilities are tested, recognize experience gained through actual responses and other approved drill programs, and disclose the average expected cost of these additional drills for plan holders.

Penalties and Plan Revocation

Plan holders should be able to clearly determine from the rule the consequences of noncompliance and circumstances that could threaten plan approval. The proposed language replaces the stated penalty of up to $100,000 per day with references to several statutes, making potential financial exposure less transparent. The separate authority to revoke plan approval for an unreported change could result in severe consequences merely for an administrative lapse. AWO requests that Ecology clearly list the violations and their respective applicable penalties in the regulatory language, explain how enforcement will be carried out, and explain the significance of removing the prior statement that plan approval does not guarantee a plan is adequate or constitute a defense to liability.

Phase-In Timeline

The proposed John Day Dam planning phase-in deadlines in WAC 173-182-130 do not provide sufficient time for plan holders and primary response contractors to secure new equipment, contracts, staging locations, and personnel. The proposed standard and the statewide expansion of aerial surveillance depend on response-contractor capacity that cannot be secured within the proposed six- to twelve-month compliance period. AWO urges Ecology

to provide extended or staggered compliance deadlines for requirements that reflect contractor and operator realities.

Thank you for the opportunity to comment. AWO would be pleased to provide additional information as needed.

Sincerely,



Peter Schrappen
Vice President – Pacific Region