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CELEBRATING 40 YEARS

September 17, 2019

Sonja Larson, Rulemaking Lead
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PO Box 47600
Olympia, WA 98504-7600

Submitted at the public hearing at the Courtyard Seattle-Everett Downtown

RE: Rulemaking to update Chapter 173-182 WAC, Oil Spill Contingency Plan

Dear Ms. Larson,
Thank you for the opportunity to travel to Everett for today's hearing and to provide these additional comments on Ecology's draft update to Chapter 173-182 WAC, the Oil Spill Contingency Plan. While I appreciate the public access Ecology has provided through webinar hearings, it is a major omission that Ecology did not schedule any hearings in the Salish Sea communities most impacted by the transport of nonfloating oils.

The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update the Oil Spill Contingency Plan to specifically address the unique characteristics and risks of nonfloating oil spills, and to reduce the significant environmental and economic impacts that could result from a nonfloating oil spill.

Of particular concern are the nonfloating Canadian Tar Sands crude oils, also known as diluted bitumen or dilbit, which should be regulated commensurate with their unique risks and spill response challenges. This update to the Oil Spill Contingency Plan is critical given the current and increasing exports of Canadian Tar Sands crude oils through Washington State's waters in both the Salish Sea and the Columbia River, and the corresponding increase in the risk of Canadian Tar Sands crude oil spills. Canada's expansion of the Trans Mountain Pipeline would significantly increase tanker traffic transporting diluted bitumen in the lower Georgia Strait, Boundary Pass, Haro Strait, and Strait of Juan de Fuca– the Designated Critical Habitat for Southern Resident Killer Whales.[1] In addition, the intent to expand the Puget Sound Pipeline spur would increase the transport of nonfloating diluted bitumen to Washington State's four northern refineries.

[1] NOAA Fisheries, Northwest Region. November, 2006. Designated Critical Habitat for Southern Resident Killer Whales. https://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/killer_whales/SRKW-CH-Map.jpg. Accessed September 16, 2019.

There is consensus that the most effective response strategy for nonfloating oil spills is a rapid and aggressive deployment of equipment and personnel in order to contain and collect the spill of nonfloating oil before it begins to submerge and sink. Ecology agrees. Ecology's own Preliminary Regulatory Analyses for this rulemaking states (on page 40):

> **Non-floating oil impacts**
> Additional coordination and preparedness for dealing with spills of potentially non-floating oils reduce the likelihood that oils will weather and sink before they are addressed. Improved preparedness for potentially sinking oils could have helped reduce damages and ultimate cleanup costs from the Enbridge Kalamazoo spill that cost $1.2 billion to clean up.

Note that "clean up" is an inaccurate term regarding the response to this 2010 nonfloating oil spill. As of June 2013, the EPA determined that 162,000-168,000 gallons of submerged Canadian Tar Sands crude oil would remain in the river bottom given that any further dredging would cause significant adverse impacts to the river.[2] "The riverbed will never be fully cleansed of bitumen."[3]

Friends of the San Juans respectfully requests the following changes to the draft update of the Oil Spill Contingency Plan.

Define "nonfloating oil."
Nonfloating oil is omitted in WAC 173-182-030 Definitions.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on "capability," including personnel, that is necessary to effectively respond to a worst-case spill of nonfloating oil.
The draft update requires additional but unquantified "capability" – the resources and equipment to detect, contain, and collect nonfloating oils to arrive within 6-12 and 12-24 hours. These timeframes do not ensure that containment and collection could occur before the nonfloating oil submerges and sinks. There is also no mention of personnel requirements and no details on the amount and type of resources and equipment to ensure that the "capability" would be sufficient to respond to a worst-case spill (as is required by WAC 173-182-030 (48) and see also WAC 173-182-030 (70)).

Following lessons learned from the Kalamazoo River oil spill, additional requirements for respiratory protection as well as air quality monitoring need to be established to protect oil spill responders. There should also be requirements for notifying shoreline residents and businesses and providing public health and safety in the early hours of an oil spill.

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[2] United States Environmental Protection Agency. June 2013. Oil Cleanup Continues On Kalamazoo River Enbridge Oil Spill, Marshall, Michigan. https://www.epa.gov/sites/production/files/2013-12/documents/enbridge-fs-20130624.pdf. Accessed September 16, 2019.

[3] Joseph Riesterer. BELT magazine. July 12, 2019. The Enduring Legacy of the 2010 Kalamazoo River Oil Spill: Nearly a decade after one of the largest inland oil spills in U.S. history, the landscape has changed. https://beltmag.com/kalamazoo-river-line-6b-oil-spill/. Accessed September 16, 2019.

In comparison, other sections of the existing Oil Spill Contingency Plan provide detailed requirements that offer some assurance that the equipment and personnel capacity are capable of effective response in the event of an oi spill. For example, WAC 173-182-522 (Covered vessel planning standards for shoreline cleanup) requires contingency plan holders to have

- contracted access to one hundred trained shoreline clean-up workers with appropriate safety and Hazwoper training and who will not be counted towards other planning standards;
- contracted access to trained shoreline clean-up supervisors with a ratio of 1:10 supervisors to clean-up workers, with training that include safety, Hazwoper, and relevant ICS courses and who will not be counted towards other planning standards;
- access to adequate equipment for passive recovery for three miles of shoreline on three tide lines; and
- access to a shoreline clean-up mobile storage cache that can support eighty to one hundred shoreline clean-up workers with personal protective equipment, hand tools, and other logistical support for three to five days.

The updates to both the nonfloating oil and the wildlife response sections of the Oil Spill Contingency Plan need to include detailed response capacity requirements, including equipment and personnel (as demonstrated in WAC 173-182-522) to ensure that Oil Spill Contingency Plan holders will be prepared to respond effectively to a nonfloating oil spill and to effectively implement all of the wildlife response operations.

As shown below, the current draft update of the table in WAC 173-182-324 (2) fails to provide the necessary details.

Time (hours)	Capability
1	Initiate an assessment and consultation regarding the potential for the spilled oil to submerge or sink.
6-12	Resources to detect and delineate the spilled oil such as side scan or multibeam sonar, divers, remotely operated vehicles, or other methods to locate the oil on the bottom or suspended in the water column could have arrived. Additionally, containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom could have arrived.
12-24	Resources and equipment, such as sampling equipment, necessary to assess the impact of the spilled oil on the environment oil could have arrived. Dredges, submersible pumps, or other equipment necessary to recover oil from the bottom and shoreline could have arrived.

Wildlife response operations require additional detail and capacity.

WAC 173-182-540 Planning standards for wildlife response

The draft update only requires two wildlife response personnel to arrive within 12 hours of a spill to conduct wildlife response operations, with an additional 7 personnel to arrive within 48 hours. An unspecified amount and type of deterrent equipment is also required to arrive on scene within 12 hours. It is essential that wildlife response actions are initiated as soon as possible. In particular, deterrence actions that keep wildlife from entering a spill are critical to have underway immediately following a spill.

WAC 173-182-540 (2)(c)(ii)

Southern Resident Killer Whales were listed as Endangered under the federal Endangered Species Act, in part, because of concerns about potential oil spill impacts.[4] A report from the National Marine Fisheries Service states, "Their small population size and social structure also puts them at risk for a catastrophic event, such as an oil spill, that could impact the entire population."[5] Southern Resident Killer Whales are the only killer whales listed as Washington State Endangered Species.

The monitoring and deterrence operations to prevent Southern Resident Killer Whales from encountering spilled oil should be required for all killer whales in order to provide certainty that Southern Resident Killer Whales are deterred from entering an oil spill. Whale scientists that specialize in Southern Resident Killer Whales and trained naturalists can identify individual whales and differentiate between the different killer whale species. However, unless the oil spill contingency plan is updated to require experts who can identify Southern Resident Killer Whales as an integral part of all whale monitoring and deterrence operations, there would be no assurance that if only some killer whales were deterred from encountering a spill, that those whales would be the Southern Resident Killer Whales.

Other whales listed as Washington State Endangered Species are Fin Whales, Sei Whales, Blue Whales, Humpback Whales, North Pacific Right Whales, and Sperm Whales. The oil spill contingency plan should also require that these whales be monitored and deterred from encountering and being impacted by oil spills.

[4] Endangered and Threatened Wildlife and Plants: Endangered Status for Southern Resident Killer Whales, Federal Register Vol. 70, No. 222 (November 18, 2005) 69903 – 69912

[5] National Marine Fisheries Service. *Southern Resident Killer Whales (Orcinus orca) 5-Year Review: Summary and Evaluation*. (National Marine Fisheries Service West Coast Region, Seattle, 2016) http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/marine_mammals/kw-review-2016.pdf.

WAC 173-182-030 Definitions (70), WAC 173-182-540 Planning standards for wildlife response, and WAC 173-182-840 Content submittal and review of spill management team (SMT) and wildlife response service provider (WRSP) applications

The wildlife response operations included in the draft update are unclear as to what "capture" entails. Wildlife response operations need to include both the pre-emptive capture and release of wildlife at risk of being oiled and the capture of oiled wildlife for stabilization and rehabilitation. Also, wildlife operations need to include the immediate removal of oiled carcasses. In all applicable sections of the draft rule, replace "wildlife impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation operations" with "wildlife impact assessment, reconnaissance, deterrence, pre-emptive capture and relocation of wildlife at risk of being oiled, capture of oiled wildlife, stabilization, and rehabilitation operations, and the immediate removal of oiled carcasses"

WAC 173-182-510 Requirements for response and protection strategies

It is not sufficient to merely require the identification of water column and benthic species at risk from sunken, submerged, or nonfloating oil spills. The Contingency Plan update should require the wildlife response operations needed to specifically address the water column and benthic species that could be impacted by a nonfloating oil spill.

The 2015 San Juan County Oil Spill Response Capacity Evaluation includes important findings and recommendations that address deficiencies on the current oil spill contingency plan. These recommendations should have been included in this update, or at the very least, thoroughly considered.

The San Juan Islands require heightened nonfloating oil spill response capacity.

The San Juan Islands provide critical habitat for forage fish, salmon, and Southern Resident Killer Whales and are surrounded by major shipping lanes that transit narrow channels and navigational challenges such as Turn Point, all of which are in close proximity to shoreline residences and businesses. The current and increasing tanker traffic transporting nonfloating oils is at risk of accidents and nonfloating oil spills. Oil spill response operations would be especially challenging given the swift currents and depths of the waterways. The importance of early and aggressive containment and collection of nonfloating oil spills and effective wildlife deterrence operations are especially significant in this biologically rich oasis of the State.

Thank you for your attention to these comments.

Sincerely,

Lovel Pratt

Lovel Pratt
Marine Protection Program Director