DEPARTMENT OF ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-186 WAC
Oil Spill Contingency Plan-Railroad

Summary of rulemaking and response to comments

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Publication and Contact Information

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Concise Explanatory Statement

Chapter 173-186 WAC
Oil Spill Contingency Plan-Railroad

Spill Prevention, Preparedness and Response
Washington State Department of Ecology
Olympia, Washington

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.
- This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Oil Spill Contingency Plan-Railroad
WAC Chapter(s):	173-186
Adopted date:	December 12, 2019
Effective date:	January 18, 2020

To see more information related to this rulemaking or other Ecology rulemakings please visit our website: https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking.

Reasons for Adopting the Rule

Chapter 90.56 RCW broadly authorizes rules on matters relating to oil spill planning, reporting, response, treatment, disposal, and equipment. Chapter 173-186 WAC –Oil Spill Contingency Plan-Railroad, requires railroads carrying oil in bulk as cargo to plan for oil spills to include how to make notifications and have the appropriate equipment and trained personnel to respond to spills that may occur. In 2017, legislative direction ESHB 1136 (RCW 90.56.210) directed Ecology to update oil spill contingency planning requirements for smaller railroads. In 2018, legislative direction from Engrossed Second Substitute Senate Bill (E2SSB) 6269 (RCW 90.56.210) passed in 2018 directed Ecology to update the rail contingency plan rule to address non-floating oils and other areas of the regulation.

This rulemaking will address both changes in statute by:

- Establish three types for railroad planning and streamline requirements according to RCW 90.56.210.
- Establish requirements for citing Spill Management Teams including entities providing wildlife rehabilitation and recovery services.
- Enhance requirements for readiness for spills of oils that may weather and sink.
- Update drill requirements to reflect legislative direction.
- Make other edits to address inconsistent or unclear direction in the rule.

Differences between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on June 5th, 2019 and the adopted rule filed on December 12th, 2019. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

Summary of Changes Described In a Bulleted List

In addition to small edits made throughout for clarity and consistency, the following changes were made:

- Throughout the rule, in all places where the term is used, replaced the words "wildlife response provider or WRP" with "wildlife response service provider or WRSP" in order to be consistent with similar regulatory standards applicable to other regulated oil handlers in Chapter 173-182 WAC.

- In Sections **WAC 173-186-210 and WAC 173-186-602 Binding Agreement** corrected the incorrect form number for the Binding Agreement to read form number ECY 070 612.

- In Section **WAC 173-186-510 Type and Frequency of Drills** changed the name of the "Multiplan holder deployment drill" to "Multiplan holder large scale equipment deployment drill" in order to be consistent with similar regulatory standards in Chapter 173-182 WAC.

List of Commenters and Response to Comments

Below is a list of the names of individuals and organizations that submitted comment on this proposed rulemaking. The full comment and response is listed below.

Commenter	Affiliation
Gary Smith	Individual
George Taylor	Individual
Jean Davis	Individual
Laurie Jackson	Individual

Commenter	Affiliation
George Taylor	Individual
Jon Lossing	Individual
Jennifer Cowen	Individual
Eco-Tec, Inc.	Business
Columbia Basin Railroad	Business
Washington State Short Line Railroad Association	Organization
Lake Pend Oreille Waterkeeper	Organization
The Lands Council	Organization
Amber Carter Government Relations, LLC.	Business
Laura Ackerman	Individual

Description of comments:

Ecology accepted comments from June 5, 2019 to July 26, 2019. This section provides the full text of comments that we received during the public comment period and Ecology's responses, as required by RCW 34.05.325(6)(a)(iii). Comments are listed by the order they were received and each comment is addressed separately.

I-1: Gary Smith, 6/20/19 11:26 AM PT

Comment I-1

Stop making new rules that are only going to make the cost of fuel higher. With the extreme taxes and regs we already have, costs in this state are already way beyond what a retired person can afford to pay.

Response to I-1

Thank you for your comment. Ecology must follow the legislative mandate when directed to update regulations. There are both environmental and economic benefits to oil spill planning. Good planning can even reduce the costs of responding to spills by avoiding inevitable damages from spills. One part of the rulemaking process includes a rigorous economic review to ensure the least burdensome impact on Washington's public and businesses. Those documents are available for your review.

I-2: George Taylor, 7/23/19 7:34 PM PT

Comment I-2

My concern as a citizen of Spokane living within the "blast zone" of a potential oil spill from the over 20,000 oil cars that pass through downtown Spokane each year are the following: 1) Yet unknown dangers from the chemical "Dilbit" materials contained in the Baaken crude and other petroleum products carried on these oil cars. 2) Spokane Firefighters Union #29 cliams they have no emergency plan adequate to combat a major oil spill from occurring and would just have to "let the fire burn out of its own accord." George Taylor, citizen

Response to I-2

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. These proposed rules will

require crude oil railroad plan holders to have access to equipment to respond to non-floating oils, identify in their plan the oils that have the potential to sink or submerge and include data on benthic and seafloor resources at risk from non-floating oil spills. The enabling legislation for this rulemaking has directed Ecology to improve the readiness of the state to respond to potentially non-floating oil spills.

In addition, and concerning assistance to local first responders, the Legislature established an equipment and training grant program to assist emergency responders in preparing for and responding to spills and rail incidents (information can be found at www.ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Equipment-cache-grants).

I-3: Jean Davis, 7/23/19 8:38 PM PT

Comment I-3

We know that from Jan through March of this year, 23,147 crude oil rail cars came through Spokane County. We, the public, don't know the origin or the destination. Oil sands oil is often shipped in the form of diluted bitumen or Dilbit. It's considered a sinking oil. Fresh water is very vulnerable to Dilbit spills for many reasons. The factors are numerous and varying and there will be damage. We really need more prevention and more protection.

I would like a quicker response time than 6 hours for an oil spill. Safety has to be first so it may be that if a fire occurs, a spill clean-up will not likely happen within 6 hours. Railroads must have wildlife rehab on retainer. People who rescue and rehab oiled wildlife have a tough job and they need assurances.

Response to I-3

Thank you for your comment. When spills occur, immediate action is taken to initiate a response. Notification is required immediately and assessment and consultation begins at that point. Response equipment is called out, and the Geographic Response Plans are implemented. The 6 hour assessment for non-floating oil is a planning standard that allows both the spiller and the responding agencies to assess the properties of the spilled oil as well as the characteristics of the water body to begin to make judgements about the potential for oil to remain floating, begin to submerge or sink. The 6 hour requirement for an Incident Commander to have arrived in-state is a planning standard that should not be construed to mean that response is delayed until arrival. Response is not delayed while this assessment and consultation is made.
We appreciate the comment about oiled wildlife response. The proposed rulemaking will require plan holders to demonstrate access to a Wildlife Response Service Provider in their oil spill contingency plans. This means that for the first time, wildlife providers will have contracts or retainers with plan holders to help build and retain their capacity. This is an important improvement to the state's overall preparedness program and our ability to respond to major oil spills.

I-4: Laurie Jackson, 7/24/19 11:25 AM PT

Comment I-4

Spokane and vicinity are unique as they sit over one of the largest sole source glacial gravel aquifers in the country. Our top priority should be protecting this precious irreplaceable resource,

not cashing in on big fossil fuel magnates exploiting it and continuing their acceleration of global warming. As the climate warms, the water cycle that fills the aquifer could change or diminish substantially. We should be conserving it, not polluting it. Not only does the BNSF fuel depot leak over the aquifer, we have coal and oil trains threatening the aquifer, lakes, and rivers every day, all day. When a bitumen train blows up Sacred Heart's Campus and half of downtown, perhaps this will convince WADOE that oil and coal trains were a BAD IDEA. Not $ure why we let these train$ roll through here AT ALL.

Response to I-4

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. Concerning assistance to local first responders, the Legislature established an equipment and training grant program to assist emergency responders in preparing for and responding to spills and rail incidents (information can be found at www.ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Equipment-cache-grants).

I-5: George Taylor, 7/24/19 5:46 PM PT

Comment I-5

As a citizen living in Spokane, Washington I am concerned about the safety of the oil and coal trains running through downtown Spokane at the rate of over 20,000 cars per year. I live in the "blast zone" of a potential de-railment of such RR cars. Last week a train de-railed in nearby Spokane Valley. The Spokane Fire Department has reported in public testimony that they do not have the proper equipment to fight a derailment involving oil or coal trains that would catch on fire in the blast zone running through downtown Spokane and would just have to "let the fire burn out on its own." That is not an acceptable risk to take, with schools, residences and two hospitals in the blast zone. The Rail companies themselves, BNSF and Union Pacific have yet to produce effective emergency plans of their own to combat such a derailment and potential fire and explosion that would result. Much more planning and research has to go into fire and explosion abatement in the event of such a disaster in Spokane.

Response to I-5

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. Concerning assistance to local first responders, the Legislature established an equipment and training grant program to assist emergency responders in preparing for and responding to spills and rail incidents (information can be found at www.ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Equipment-cache-grants).

I-6: Jon Lossing, 7/26/19 10:25 AM PT

Comment I-6

I agree with these statements:

One is dealing with requirements for readiness for spills of oils that may weather and sink. AKA sinking oils or sometimes called non-floating oils. We are seeing more of that oil from the

Canadian Tar or Oil Sands. Canada's Crude by Rail traffic jumps 40 percent. 6.25.19.
We know that in Spokane County, from Jan through March of this year, 23,147 crude oil rail cars came through Spokane County. We, the public, don't know the origin or the destination. Oil sands oil is often shipped in the form of diluted bitumen or Dilbit. Dilbit can be chemically analyzed of course, and what is used is a seasonal variation. The formula is also proprietary. It's considered a sinking oil. I have been reading several studies on the impacts of Dilbit on amphibians and fish.

Fresh water is very vulnerable to Dilbit spills for many reasons. See this quick powerpoint http://nas-sites.org/dilbit/files/2015/03/2_Peter-Hodson_freshwater-marine-comparison.pdf presentation by Dr. Peter Hodson, Professor Emeritus of Queen's University. I am really worried about a Dilbit Spill near Spokane. The factors are numerous and varying and there will be damage. We really need more prevention and more protection.
Two is the requirement for having Spill Management Teams and entities for wildlife rehab and recovery services. The latter will cost the Type A RR! (DOE uses Type A , Type B and Type C in this state for the planning standards). Type A is UP, BNSF and Tacoma Rail.

I would like a quicker response time than 6 hours for an oil spill. Safety has to be first so it may be that if a fire occurs, a spill clean-up will not likely happen within 6 hours. Other safety factors could delay a clean up. Even with an equipment cache nearby it would surprise me if it happens within 6 hours. I would prefer an Incident Commander to be in state within 3 hours.
DOE really needs support in making RR have wildlife rehab services on retainer! It will cost the RR so they may balk at this. But people who rescue and rehab oiled wildlife have a tough job and they need assurances that their services are valuable.

Response to I-6

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. These proposed rules will require crude oil railroad plan holders to have access to equipment to respond to non-floating oils, identify in their plan the oils that have the potential to sink or submerge and include data on benthic and seafloor resources at risk from non-floating oil spills. The enabling legislation for this rulemaking has directed Ecology to improve the readiness of the state to respond to potentially non-floating oil spills.

We appreciate the comment about oiled wildlife response. The proposed rulemaking will require plan holders to demonstrate access to a Wildlife Response Service Provider in their oil spill contingency plans. This means that for the first time, wildlife providers will have contracts or retainers with plan holders to help build and retain their capacity. This is an important improvement to the state's overall preparedness program and our ability to respond to major oil spills.

When spills occur, immediate action is taken to initiate a response. Notification is required immediately and assessment and consultation begins at that point. Response equipment is called out, and the Geographic Response Plans are implemented. The 6 hour assessment for non-floating oil is a planning standard that allows both the spiller and the responding agencies to assess the properties of the spilled oil as well as the characteristics of the water body to begin to make judgements about the potential for oil to remain floating, begin to submerge, or sink. The

6 hour requirement for an Incident Commander to have arrived in-state is a planning standard that should not be construed to mean that response is delayed until arrival. Response is not delayed while this assessment and consultation is made.

I-7: Jennifer Cowen, 7/28/19 4:28 AM PT

Comment I-7

In an effort to support proper oil spill response, there are a few critical areas that can be addressed with regards to managing and preparing for oil spills caused by rail.
A critical point in the effectiveness of oil spill response and clean-up is the time it takes to contain the oil before it spreads and in order to clean it up. Legislation from 2017, ESHB 1136, states that there must be proper demonstration of arriving at the spill site with equipment in 6, 12, 24, and 48 hours depending on the type of spill. When oil spills into inland waterways (spills often caused by rail), even 6 hours can be too late. The oil quickly moves downstream, can hit shorelines, spreads into small modules, and is absorbed into the water column. The longer it takes to respond, the more difficult the spill is to clean-up and the more damage it causes.

We are requesting that the state consider shortening the necessary response times specifically for spills caused by rail to 1-2 hours. We offer a portable containment boom that enables anyone nearby (does not have to be a trained crew), to deploy into the water. Each 82 foot boom is only 50 lbs and is kept in cartridges the size of a large suitcase. Each cartridge with the 82 feet can be connected during deployment extending the boom to unlimited lengths.
For shorelines and across the width of rivers, the boom has been tested and can be deployed in 5-15 minutes either by hand or with a small boat. It can be kept onsite or transported by pick up truck or ATV.

With technology such as this available, the state should consider shortening response time requirements for necessary stakeholders in order ensure less damage. This is a solution to the comprehensive oil spill response preparedness and the state could greatly benefit from demanding quicker containment so that spills have a significantly lesser impact on the environment and neighboring communities.

Additionally, we would ask that you implement a requirement to consider the best available technology for the equipment used in oil spill response for spills caused by rail. We understand that the state is not interested in endorsements or favoring a particular business but we are upfront about informing you that there is a better and faster way to handle oil spills, at least the first response to them. And because of this, the state should consider making necessary revisions in its contingency plan, equipment, and response time requirements.

Response to I-7

Thank you for your comment.

B-1: Eco-Tec, Inc., 6/12/19 2:44 PM PT

Comment B-1

I have attached a photo of our ADsorb-it Fabric being used between the rails in a rail yard to successfully capture oil leaks and drips while allowing water to flow through the fabric. ADsorb-it does not noticeably degrade in sunlight so it can remain deployed indefinitely. This deployment of ADsorb-it prevents oils from migrating into the surrounding environment. More information regarding the ADsorb-it Fabric / Products can be found at www.eco-tec-inc.com. Please contact me directly if any questions arise.

Response to B-1

Thank you for your comment.

B-2: Columbia Basin Railroad, 7/22/19 1:36 PM PT

Comment B-2

Columbia Basin Railroad (CBRW) is in compliance with the previous interpretation of this law and continues to work with the DOE regarding implementing the latest iteration.
CBRW's concern is that additional SMT and Wildlife Response Contractor's written commitment will not be achievable without an actual contract with such providers. Much the same as the Letter of Intent for a PRC was intended not to require a retainer or contract; when in fact no PRC would commit without a contract.

The additional ICS positions and alternates to fulfill the response team has been increased from 16 positions (which CBRW has filled) to 29 Positions. This in effect will force CBRW to use a 3rd party SMT. The NWACP does not even suggest this level of coverage. There is an option to list people twice, but how does this increase preparedness? We suggest leaving the original 16 person roster as this seems more than sufficient.

Response to B-2

Thank you for your comment. The Legislature defined three types of railroad operators and directed Ecology in its rulemaking to scale requirements according to the type and volume of oil carried. Type B railroads are required to have comprehensive plans, conduct a basic oil spill drill once every three years and are not required to have contracts to access equipment and people. Ecology will work with plan holders after the rule becomes effective to ensure that notification information for equipment owners (contractors), Spill Management Teams and Wildlife Response Service Providers can be cited in plans without needing a contract, in order to meet the legislative direction.

We believe the requirement to list out a conceptual spill response organization is sound and an important measure of a plan holder’s ability to respond to a worst case spill. The rule allows a plan holder to list a Spill Management Team in positions where the company is unable or unlikely to fill. Ecology will work closely with plan holders after the rule becomes effective to implement these requirements.

O-1: Washington State Short Line Railroad Association, 7/22/19 5:14 PM PT

Comment O-1

The Washington State Short Line Railroad Coalition is concerned regarding how the Dept. of Ecology is implementing the Oil Spill Contingency Planning Regulations, as they relate to smaller railroads (i.e...small short line railroads).

In particular, the Dept. of Ecology is now requiring that smaller railroads fill 29 positions for potential spills, instead of 16 positions. Additionally, Ecology is also requiring that smaller railroads have a Primary Response Coordinator (PRC), and also a third party Spill Management Team (SMT).

Even though Ecology is indicating that smaller railroads do not have to contract with SMT's and PRC's, no contractor (either a SMT or PRC) will let their employees be listed on an oil spill contingency plan without a retainer or contract, which adds significant additional unnecessary costs.

In addition to the above, Ecology is requiring small railroads to list a state qualified Wildlife Response Service Provider (WRSP). Same issue - the provider will not let a small railroad list them without a contract or retainer.

Furthermore, it appears by requiring an increase from 16 to 29 positions, Ecology is more or less inadvertently forcing smaller railroads to contract out with the above entities. Ecology is apparently worried about smaller railroads' ability to respond (with 16 positions) and as a result, Ecology is pushing small railroads to contract with SMT's, PRC's and other contractor entities (to get to 29 positions), even though most smaller railroads in Washington State haul little or no crude oil or hazardous materials.

Moreover, all the PRC's, SMT's and WRSP's have to be state certified approved contractors, but Ecology does not have an approved list yet. The hope is that there may be some contractors that can fulfill all 3 roles, but that so has not been the case.
Unfortunately, as a result of how Ecology is implementing the above, smaller railroads may now to evaluate whether to ship certain types of oils (and other chemicals), and provide different mitigation if any of the oils/chemicals meet that the most stringent classification (Class A). In particular, it appears that if a smaller railroad ships even 1 car of crude oil car, it will be put into a Class A category, the same as a very large railroad

In our opinion, the way that this rule is being implemented is not what was agreed upon when the bill was being negotiated a couple of years ago. In other words, we don't think that this was the intent of the legislators who worked this legislation, as it related to small railroads.

In summary, we would strongly urge Ecology to stay with a 16 person roster for small railroads, as opposed to requiring a 29 person roster for small railroads which then causes an adverse chain

reaction of unnecessary costly contracting-out with SMT's, PRC's and WRSP's, which doesn't provides any benefit in regards to what Ecology and the legislature were trying accomplish with this rule.

Response to O-1

Thank you for your comment. The Legislature defined three types of railroad operators and directed Ecology in its rulemaking to scale requirements according to the type and volume of oil carried. The Legislature defined three types of railroad operators and directed Ecology in its rulemaking to scale requirements according to the type and volume of oil carried. This regulation follows the direction set by the Legislature to define three types of plan holders and scale the requirements accordingly. Type B railroads are required to have comprehensive plans, conduct a basic oil spill drill once every three years and are not required to have contracts to access equipment and people. Ecology will work with plan holders after the rule becomes effective to ensure that notification information for equipment owners (contractors), Spill Management Teams and Wildlife Response Service Providers can be cited in plans without needing a contract, in order to meet the legislative direction.

Type C railroads are required to have a basic plan and the law is explicit about the contents of these plans. The rule follow the legislative direction.

We believe the requirement to list out a conceptual spill response organization is sound, an important measure of a plan holder's ability to respond to a worst case spill. The rule allows a plan holder to list a Spill Management Team in positions where the company is unable or unlikely to fill. Ecology will work closely with plan holders after the rule becomes effective to implement these requirements.

O-2: Lake Pend Oreille Waterkeeper, 7/26/19 5:06 PM PT

Comment O-2

Please accept the attached comments on behalf of Lake Pend Oreille Waterkeeper: Comments on June 5, 2019 Amending (Chapter 173-186) of the Rulemaking Proposal on Oil Spill Contingency Plan-Railroad Railroad companies carry fossil fuels and other hazardous substances across and adjacent to Lake Pend Oreille and the Pend Oreille River. As you may know, Burlington Northern Santa Fe recently proposed construction of an additional bridge across Lake Pend Oreille, which would enable rail traffic volume increases in our region. Hazardous substances including crude oil and potentially, diluted bitumen, are carried across the state line from Idaho into Washington over the Spokane Valley-Rathdrum-Prairie aquifer, which provides sole source drinking water to thousands of residents among our two states. Lake Pend Oreille contributes to recharge of this aquifer at its southernmost point. The potential for an accident to occur during transport is concerning for a number of reasons; most notably, the potential for surface water or groundwater contamination. Considering these possible outcomes, the need for more rapid response is of primary importance. Please consider requiring a more stringent response time from that which is currently proposed. Thank you for your consideration. Sincerely, Chantilly Higbee Lake Pend Oreille Waterkeeper

Response to O-2

Thank you for your comment. When spills occur, immediate action is taken to initiate a response. Notification is required immediately and assessment and consultation begins at that

point. The response time requirements specified in this rule should not be construed to mean that response is delayed until a required resource arrives on-scene.

Additionally, plans are required to pre-identify resources at risk from potential oil spills including natural, cultural and economic resources. Tactics are pre-identified to ensure an immediate response that mitigates or avoids damages to these resources. For example, Geographic Response Plans are developed by the response community as annexes to the Northwest Area Contingency Plan (NWACP) and can support the identification of booming strategies to minimize impacts to sensitive resources to meet this purpose.

Over the next 18 months, Ecology will work to expand the spatial scope of GRPs to include the water column and benthic species at risk from non-floating oil spills. We will continue to reach out to stakeholders and expand our tribal engagement in GRP development and updates across the state.

O-3: The Lands Council, 7/26/19 6:51 PM PT

Comment O-3

Thank you on behalf of the undersigned groups for the opportunity to comment on the above-mentioned ruling, and for holding the public hearings on the rulemaking.
As Ecology knows, industry is attempting to increase its volume of oil or tar sands oil from Alberta, which transports through our state. Railroads have become increasingly important because they have the flexibility to ship oil in that they already exist as a mode of transportation. Crude by rail traffic from Canada has jumped 40% (Canada's crude by rail traffic jumps 40 percent) according to the National Energy Board. Heavy oil demand from the United States has also increased because of sanctions on Venezuela by the United States. The Province of Alberta is working on a process to divest its crude-by-rail program to the private sector. Until and if a pipeline is built, a rail capacity of at least 400,000 bbls/d will be needed for the Western Canada Sedimentary Basin (https://www.jwnenergy.com/article/2019/6/cibc-oversee-highly-confidential-transition-alberta-rail-contracts-industry/). Ninety nine percent of Canadian oil exports, which are bitumen, go to the United States:
https://www.sciencedaily.com/releases/2018/10/181029084100.htm (As Canadian oil exports increase; research explores effects of crude oil on native salmon).
We are particularly concerned with tar or oil sands oil and diluting it with when transported. In the references on the Preliminary Regulatory Analyses, June 2019, of the rulemaking, Ecology cites a presentation by Dr. Peter Hodson to the National Academy of Sciences on Dilbit Spills in Freshwater:
http://nas-sites.org/dilbit/files/2015/03/2_Peter-Hodson_freshwater-marine-comparison.pdf
As you know, but worth reiterating from the presentation, oil spill impacts in freshwater are often worse than they are in marine waters for several reasons:

- Clean-up is expensive and it can be a destructive process to the freshwater shorelines. Shorelines are at a higher ratio to a lake or river.
- Several types of habitats and density of species occur in freshwater.
- dilution and dispersal are often lower in freshwater

- Bottom sediments are more quickly contaminated because the water is shallow and interacts more easily with the sediment, oil in freshwater sinks more readily than in marine environments.

- Turbidity is higher in rivers due to time of year, dams, and flooding (which will strand oil in riparian areas and on land)

- Oil initially spilled on land will have soil in it if it reaches water

- Degradation and weathering can cause oil to gather in thick layers

Dr. Hodson also co-authored a study (in the Bulletin of Environmental Contamination and Toxicology) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5775368/ with Ftoon Alsaadi and Valerie S. Langlois dated Dec. 14, 2017 entitled An Embryonic Field of Study: The Aquatic Fate and Toxicity of Diluted Bitumen. Among the findings:

- Dilbit blends are not well assessed. In part, because the additives are proprietary. In addition, the blends are seasonal

- Dilbit adheres to shorelines and structures because it has persistent residues that are adhesive

- Weathering greatly influences the behavior of Dilbit. Weathering begins right after a spill occurs and can increase sinking rapidly and the quick loss of dilutant can create a fire hazard.

- Dilbit toxicity studies have looked at fish embryos but the full life-cycle of the fish needs to be examined

- Ecological timing of a spill is a major factor in terms of impacts

We appreciate that Ecology is looking more and more at non-floating oils, and that they are addressing it in the WACS. We are also seeing the enhanced response to non-floating oils in the GRPs and the NWACP. Thank you specifically for:

1. Including the water column and benthic species at risk from non-floating oils, and the increased need to monitor risks of this oil on waterway depths, density and so on. Pg. 12 of the WACs.

2. Requiring a form to document spill notification procedures when noted, in the field document. Pg. 13.

3. The specification for information of sensitive areas like natural, cultural, animal species, water intakes and private and public wells, to name a few examples. Pg. 23.

4. The increased attention to wildlife needs during an oil spill and the rehabilitation requirements for oiled wildlife. Pg. 14

We would like to see improvements in the document in this manner:

1. Incident Commanders should live in the state. Exceptions for a spill in the Columbia where the IC could live in Portland or along the Oregon side of the Columbia River could be considered. Portland has a major airport. However, we think it is better they are in the state within three hours instead of six hours. We realize that modern communication technology means that IC can communicate with those at the spill. With non-floating oils, it is more crucial to get to a spill quicker, and we need the IC to be on the job.

2. We are glad that the 12-hour standard for crude was replaced with a 6-hour capacity to initiate assessment of non-floating oils. However, we do not think this is enough time, particularly for inland waters. A fast response time is the single most important action to limit the damage from sinking oils.

3. We also understand that there are circumstances that may make the timeframe more difficult: (A) fire (B) first responder and rail crew safety. That should always come first. (C) A remote location (D. difficult terrain. (E) Not enough equipment caches.

4. Some circumstances cannot be controlled, however (A) We can have more equipment caches. (B) We can learn and share more of the BAP with surveys, reviews, inquires, in LEPCs, in specials meeting in which the public is invited. (C) While not exactly in the scope of these amendments, we can put more emphasis on the specific needs and conditions of the GRPs. In addition, we should emphasize that in the C- Plans especially for RRs that travel along a river, which most of them do. For example, as a suggestion, the Spokane River needs some special attention to note that it has seven dams that are relatively close together. It runs through a major city. It has a sole source drinking aquifer that is EPA designated. The aquifer and river mix in places. It has legacy-mining metals. Spokane River will have agricultural runoff. The river also contains PCBs and flame-retardants. PCBs are on beaches and how would Dilbit interact with those PCBs on the shorelines? We need to note what needs to be studied. Some studies could be commissioned on particularly vulnerable areas similar to the one done in 2016 for the Lower Columbia.

5. We strongly agree that RRs need to have a retainer for wildlife response providers. It is a tough job, and those who respond to saving wild life need to be assured their services are valuable. Having a retainer is a response action that can be controlled, it is identifiable and measurable, and will save the lives of wildlife. In addition, retainers will likely increase the quality of wildlife response services and rehabilitators. We need to emphasize all wild life of course but anadromous fish and amphibians, because of their lifecycles, could better inform us of biological data on oil spills in fresh water. We would like to be able to participate with DOE and WDFW in any meetings regarding data learned from oil spill response.

6. We would like DOE to always request data from waste disposal records during spill clean ups. Page 23 of WACs. That shall be shared with the public.

7. Furthermore, a scientific need exists to put into place a protocol for studying a spill in an inland body of water. Some suggestions of a study are. (a) Test for toxicity of the oil from the surface, water column and the riverbed, and especially the shoreline, after a

spill. (b) Test the waste disposal. (c) Look for evidence of effects where oil is deposited. What does the shoreline look like before and after clean up.

8. Any actual spill or drill, if there are revisions to the C- Plan or something significantly learned shall be made public via the list serve and comments accepted from the public. Those comment periods shall extend at least 30 days. The follow up of lessons learned from a spill, and how they are implemented are crucial for C- Plans to be effective and have merit. That is why public input is so important. We think that should be made clearer as to the protocol of that happening

9. Plan deficiencies that have been identified by Ecology in C- Plans shall also be made public via the list serve so the public can comment. Again, comment periods shall extend at least 30 days.

Thank you again for this opportunity to comment. We will be sending some studies on some new technology for oil-spill clean-up technology. We will always need that technology. However, we cannot, as you know, use that as the primary means in dealing with oil spills. Prevention is the best technology.
We will also be sending more studies on the nature of various types of oil spill and experiments.

Response to O-3

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. These proposed rules will require crude oil railroad plan holders to have access to equipment to respond to non-floating oils, identify in their plan the oils that have the potential to sink or submerge and include data on benthic and seafloor resources at risk from non-floating oil spills. The enabling legislation for this rulemaking has directed Ecology to improve the readiness of the state to respond to potentially non-floating oil spills.

We appreciate the comment about oiled wildlife response. The proposed rulemaking will require plan holders to demonstrate access to a Wildlife Response Service Provider in their oil spill contingency plans. This means that for the first time, wildlife providers will have contracts or retainers with plan holders to help build and retain their capacity. This is an important improvement to the state's overall preparedness program and our ability to respond to major oil spills.

When spills occur, immediate action is taken to initiate a response. Notification is required immediately, and assessment and consultation begins at that point. Response equipment is called out, and the Geographic Response Plans are implemented. The 6 hour assessment for non-floating oil is a planning standard that allows both the spiller and the responding agencies to assess the properties of the spilled oil as well as the characteristics of the water body to begin to make judgements about the potential for oil to remain floating, begin to submerge or sink. The 6 hour requirement for an Incident Commander to have arrived in-state is a planning standard that should not be construed to mean that response is delayed until arrival. Response is not delayed while this assessment and consultation is made.

OTH-1: Amber Carter Government Relations, LLC, 7/25/19 10:52 AM PT

Comment OTH-1

Please accept the following comments on behalf of the Portland Vancouver Junction Railroad. PVJR was involved in the passage of HB 1136 during the 2017 legislative session and appreciates the stated intent of the rulemaking to implement the law verbatim.

PVJR is a "Type C" railroad and transports less than forty-nine tank carloads per year of oil in bulk that is not crude oil. HB 1136 provides that these types of railroads are only required to submit a basic contingency plan to the department that are limited to documentation, contact information, insurance coverage, a field document and annual review. However, the requirements on Page 5, Section (4) (a) and (b) states that Type C railroads with existing plans have 18 months to submit a letter that their plan is complete and meets requirements or to update their plan with missing required information without clearly stating their requirements under the new law. This appears in conflict with the intent of HB 1136.

Further, we appreciate the attempt to categorize the types of railroads by Type A, B and C and ask that the department improve the rule by creating a separate section for Type C railroads like the way separate sections are proposed for Type A and B railroads. This will ensure greater clarity, alignment with the law and prevent compliance confusion.

Finally, given the specific requirements found in HB 1136, it does not appear that public review and comment periods are necessary for a basic contingency plan as suggested by Page 5, Section (5).

Response to OTH-1

Thank you for your comment. We do not anticipate that Type C railroads with approved oil spill plans will need to change their plans based on this rulemaking. This is because the statute defines the content of a basic plan for Type C railroads and the rule merely clarifies process for submittal and approval. In addition, once the rule is effective we will work with plan holders to understand the phase-in and post another plan template on the Ecology website. We believe the public review of plans is important step in developing public confidence in the state's oil spill preparedness program.

PH-1: Laura Ackerman at the Spokane Public Hearing:

Comment:

"Right. [undiscernible] I'm Laura Ackerman, I'm testifying on behalf of the Lands Council here in Spokane, Washington where I am the Energy Program Director and my comments are very general and very brief and I will be making specific written comments by July 22nd. Just briefly I want to say that I am appreciative of the update especially regarding oil sands or tar sands, its certainly needed and also the increased attention to wildlife. Both are really important in this State as the increase in rail traffic, and probably will see more rail traffic, with oil on our tracks. My two big concerns are that we need to deal more with the fire issue. With an oil spill, I don't think that six, I think that six hours is too long of a response time for sinking oils, especially for Dilbit and I'm concerned that there is not enough equipment to be able to deal with sinking oils in the State. There is not enough caches of that in order to really recover that. I think we need to obviously learn a lot more science on it. We need to learn more and do more about oil spill recover and I would like to see the ESP or the EDRC when it comes to sinking oils. And that's I think all that I want to say right now, I will provide more comments in writing. Thank you."

Response to PH-1

Thank you for your comment. In recent years, a series of legislative actions have been taken in order to reduce the risk of oil transportation by rail, including the current legislative direction to address spills of diluted bitumen oil that led to this rulemaking. These proposed rules will require crude oil railroad plan holders to have access to equipment to respond to non-floating oils, identify in their plan the oils that have the potential to sink or submerge and include data on benthic and seafloor resources at risk from non-floating oil spills. The enabling legislation for this rulemaking has directed Ecology to improve the readiness of the state to respond to potentially non-floating oil spills.

When spills occur, immediate action is taken to initiate a response. Notification is required immediately and assessment and consultation begins at that point. Response equipment is called out, and the Geographic Response Plans are implemented. The 6 hour assessment for non-floating oil is a planning standard that allows both the spiller and the responding agencies to assess the properties of the spilled oil as well as the characteristics of the water body to begin to make judgements about the potential for oil to remain floating, begin to submerge or sink. The 6 hour requirement for an Incident Commander to have arrived in-state is a planning standard that should not be construed to mean that response is delayed until arrival. Response is not delayed while this assessment and consultation is made.

Over the next 18 months Ecology will work to expand the spatial scope of Geographic Response Plans (GRPs) to include the water column and benthic species at risk from non-floating oil spills. We will continue to reach out to stakeholders and expand our tribal engagement in GRP development and updates across the state. We recognize that there are several key local stakeholders, such as tribes, marine resource committees, and the public that live and work in the vicinity of their local GRP strategies year-round and can be invaluable resources in understanding seasonal changes which may complicate GRP deployment.