DEPARTMENT OF ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-182 WAC Oil Spill Contingency Plan

Summary of rulemaking and response to comments

December 2019
Publication no. 19-08-027

Publication and Contact Information

This report is available on the Department of Ecology's website at
https://fortress.wa.gov/ecy/publications/SummaryPages/1908027.html

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Concise Explanatory Statement

Chapter 173-182 WAC
Oil Spill Contingency Plan

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

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Table of Contents

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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
WAC Chapter(s):	173-182
Adopted date:	December 18, 2019
Effective date:	January 18, 2020, 31 days after Ecology files the rule with the Code Reviser.

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

Ecology is adopting an update to Chapter 173-182 WAC, Oil Spill Contingency Plan rule. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur.

Legislative direction from Engrossed Second Substitute Senate Bill (E2SSB) 6269 passed in 2018 and codified as RCW 88.46.0601, RCW 88.46.060, RCW 88.46.220, RCW 90.56.2101, RCW 90.56.210, RCW 90.56.240, and RCW 90.56.569, directed Ecology to update our contingency plan rule. In order to meet the legislative deadline of December 31, 2019, we conducted a focused rulemaking and adopted rule changes which align closely with the legislative direction.

This rulemaking:

- Establishes requirements for review and approval of spill management teams including entities providing wildlife rehabilitation and recovery services.
- Enhances requirements for readiness for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink.
- Updates drill requirements to reflect legislative direction.
- Updates planning standards to align vessel and facility requirements and ensure best achievable protection is maintained in contingency plans.
- Enhances planning standards for oiled wildlife response.
- Makes other edits to address inconsistent or unclear direction in the rule, or other administrative edits.

Differences Between the Proposed Rule and the 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 August 7, 2019 and the adopted rule filed on December 18, 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.

The following content summarizes the changes between the rule proposal language and the adopted language and provides Ecology's reasons for making them.

WAC 173-182-030 Definitions – in response to comments received, a definition of non-floating oils was included in the rule as adopted.

WAC 173-182-130 Phase-in language for vessel and facility plan holders - In response to comments received, the phase-in timeline for the wildlife planning standard (WAC 173-182-540) was shortened and the language was updated to clarify when contracting and personnel requirements for the wildlife planning standard are required. This change ensures that significant contracting and rehabilitation facility enhancements in wildlife response capability phase-in within 12 months of the rule effective date. Additionally, in response to comments received, the phase-in requirements for including benthic and seafloor resources at risk from non-floating oils in contingency plans was updated to reflect that plan holders have thirty days from the date the Geographic Response Plan is published to update their plans.

WAC 173-182-240 Field Document – In response to comments received, the standard was amended to clarify that in addition to the requirement to list procedures to detect, assess, and document the size of the spill, the equipment required to conduct the assessment must also be detailed. This equipment may be air monitoring equipment, personal protective equipment, or other equipment and technologies that support assessment.

WAC 173-182-323 Planning standards for spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink – in response to comments received this section was amended to clarify the requirement to have both personnel and equipment within the specified timeframes. The standard was also strengthened through the identification of additional resources necessary for a rapid, aggressive, and well-coordinated response to potentially non-floating oils.

WAC 173-182-330 Planning standards for in situ burning – In response to comments received, the standard specifically requires plan holders to identify the locations of personal protective equipment necessary to protect worker safety during in situ burning operations.

WAC 173-182-540 Planning standards for wildlife response – In response to comments received, a statement was added to clarify that all wildlife response actions shall be conducted in accordance with applicable federal and state regulations and the Northwest Area Contingency Plan. Commenters identified concerns with planning for wildlife response actions, including deterrents, which cannot be conducted without federal and state permits, authorities, and approvals. The planning standard establishes requirements for enhanced wildlife response capacity in the region through contracts, and investments in equipment and training of key personnel. The process for vetting and equipping vessels to conduct hazing of whales, including southern resident killer whales, will be further detailed in the rule implementation plan. The language was also updated to reflect comments that all whales at risk during an oil spill would be deterred to the maximum extent practicable, not just southern resident killer whales.

WAC 173-182-621 Oil spill contingency plan best achievable protection five-year review cycle – Updates were made to clarify that the Best Achievable Protection (BAP) cycle will be used to evaluate the processes for improving equipment, training, and techniques associated with oiled wildlife response.

WAC 173-182-710 Type and frequency of drills – In response to comments received, the new requirement to test equipment and personnel to conduct monitoring and deterrence operations is no longer limited to southern resident killer whales. The requirement has been updated to reflect the deployment drill will be used to demonstrate readiness for deterrence operations for whales that may be at risk from oil spills.

WAC 173-182-850 Significant changes in spill management team (SMT) or wildlife response service provider (WRSP) applications require notification – In response to comments received, the requirement to notify ecology about the modification or discontinuing of any mutual aid, letter of intent, or contract agreement was updated to also include permits. The change was made to ensure that state approved wildlife response service providers (WRSPs) maintain all necessary permits and make ecology aware of any change in their permit status within 24 hours of awareness.

List of Commenters and Responses to Comments

Ecology opened a formal public comment period on the rule proposal from August 7, 2019 through October 6, 2019. During the sixty day public comment period formal comments were accepted by mail, through our online public comment tool, in person at the public hearings or via the webinar. We held four public hearings on this rule proposal in Everett, Spokane, Vancouver (with webinar), and a webinar only option.

We received 1,040 comment submissions. Each submission included several comments. Several of the comment submissions were submitted on behalf of multiple individuals or organizations. Many of the comment letters are in support of the proposed changes under the rule.

The majority of the comments received focused on a few key areas of the rule:

- Ensuring adequate planning for potentially non-floating oil spills, such as diluted bitumen
- Enhancing the wildlife response planning standards
- Responder health and safety and community air monitoring
- Resources at risk from non-floating oil spills

Several requests for changes were outside the scope of the current rulemaking:

- Oil movement and the risks of oil spills from railroads
- Vessel transit speeds and waterway management risks
- The Transmountain Pipeline expansion project
- Proposed new oil handling facilities
- The proposed methanol terminal in Kalama
- Financial responsibility
- The methodology used to evaluate oil spill contingency plans known as Effective Daily Recovery Capacity (EDRC)

Organization of Comments and Responses

During the formal public comment period, we received 106 unique comments from individuals, organizations, tribes and agencies. Below is a table depicting the commenter affiliation, commenter name, comment topics, and associated comment number. The comments are included verbatim below the table in order of comment number. Each individual response to the comment is included below the comment.

We also received 934 duplicate comments from individual commenters. Over 800 of these comments were exact duplicate comments. The comments that were not exact duplicates were not substantially different than the duplicate comment. The summarized comment received a single response. The comment, response, and a list of names of individual commenters can be found in Appendix A of this document. To review the original comments received by each of the commenters, the comments can be accessed from our online public comment tool.

Table 1: Individual

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
“ ”	,	Railroad Rulemaking and Risks	I-17-1
“ ”	Ackerman, Laura	Unclassified	I-1006-1
“ ”	alder, john	Public Concerns	I-880-1
“ ”	Angell, JL	Public Concerns	I-15-1
“ ”	Angell, Kirsten	Public Concerns	I-583-1
“ ”	Armon, Caroline	Response Times	I-29-1
“ ”	Attemann, Rein	Unclassified	I-994-1
“ ”	B, Jennifer	Non-floating Oil Spills	I-7-1
“ ”	Bachhuber, Stephen	Railroad Rulemaking and Risks	I-19-1
“ ”	Bard, Brenda	Unclassified	I-577-1
“ ”	Barker, April	Wildlife Response	I-24-1
“ ”	berger, david	Railroad Rulemaking and Risks	I-25-1
“ ”	Boreen, Jai	Public Concerns	I-4-1
“ ”	BURNS, CATHLEEN	Unclassified	I-9-1
“ ”	Burns, Cathleen	Public Concerns	I-31-1
“ ”	Calvert, Jennifer	Unclassified	I-1004-1
“ ”	Carroll, Linda	Unclassified	I-1007-1
“ ”	Chudy, Cathryn	Unclassified	I-1016-1
“ ”	Clark, ChristineE	Non-floating Oil Spills	I-23-1
“ ”	Cornett, Sarah	Unclassified	I-998-1
“ ”	Cox, Enid	Unclassified	I-1017-1
“ ”	Creamer, Robert	Unclassified	I-993-1
“ ”	Davidson, Robert	Response Times	I-965-1
“ ”	Doty, Anna	Unclassified	I-999-1
“ ”	Druffel, Pauline	Unclassified	I-1008-1
“ ”	Edmark, Kristin	Unclassified	I-1014-1
“ ”	Edmark, Kristin	Other	I-987-1
“ ”	Farbstein, Sarah	Unclassified	I-997-1

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
“ ”	Ferm, Mary	Non-floating Oil Spills	I-8-1
“ ”	Flynn, Brendan	Other	I-989-1
“ ”	Garner, John	Railroad Rulemaking and Risks	I-887-1
“ ”	Gasdick, MaryJane	Unclassified	I-5-2
		Response Times	I-5-1
“ ”	Hanson, Sarah	Response Times	I-12-1
“ ”	Hendricks, Dana	Railroad Rulemaking and Risks	I-18-1
“ ”	Hubbard, Shaun	Unclassified	I-964-1
“ ”	Hunt, David	Other	I-988-1
“ ”	Jacobson, Don	Public Concerns	I-14-1
“ ”	James, Miranda	Public Concerns	I-22-1
“ ”	Janison, Debra	Unclassified	I-867-1
“ ”	Kaczmarek, Polly	Public Concerns	I-963-1
“ ”	Keefe , George	Public Concerns	I-26-1
“ ”	Keely , Mark	Public Concerns	I-28-1
“ ”	LaBrant, Eric	Unclassified	I-1018-1
“ ”	Lechtenberg , Kim	Public Concerns	I-686-1
“ ”	Leistman, Victoria	Unclassified	I-1000-1
“ ”	Leonard, Linda	Other	I-986-1
“ ”	Littlewood, Ann	Unclassified	I-1020-1
“ ”	Mallahan, Joe	Unclassified	I-996-1
“ ”	Olson, Carl	Public Concerns	I-642-1
“ ”	Oswalt, Sharon	Unclassified	I-312-1
“ ”	Parks, Carrie	Unclassified	I-1019-1
“ ”	Parsons, Tom	Public Concerns	I-3-1
“ ”	Perk, David	Unclassified	I-1021-1
“ ”	Polychronis, Jan	Non-floating Oil Spills	I-21-1
“ ”	Pratt, Lovel	Unclassified	I-991-1
“ ”	Pratt, Lovel	Unclassified	I-1011-1
“ ”	Pratt, Lovel	Unclassified	I-1022-1
“ ”	Prima, Stephanie	Response Times	I-27-1
“ ”	Rall, Ben	Response Times	I-495-1
“ ”	Ramel, Alex	Unclassified	I-1001-1
“ ”	Randall, David	Unclassified	I-1003-1
“ ”	revier, stephan	Public Concerns	I-30-1
“ ”	Rittenhouse, Ryan	Unclassified	I-1015-1
“ ”	Sampson, Bill	Unclassified	I-992-1
“ ”	Smith, Dawson	Public Concerns	I-640-1
“ ”	Smith, Winston	Public Concerns	I-1-1
“ ”	Smith, Winston	Public Concerns	I-2-1
“ ”	Sobieralski, William	Unclassified	I-6-1
“ ”	Steinke, Alona	Unclassified	I-1013-1
“ ”	Steinke, Don	Unclassified	I-1012-1
“ ”	Steinke, Don	Response Times	I-836-1
“ ”	Stillman, Don	Public Concerns	I-10-1
“ ”	STRANGE, BRENDA	Non-floating Oil Spills	I-540-1
“ ”	Talcott, Jack	Unclassified	I-1010-1

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
“ ”	Taylor, George	Unclassified	I-1009-1
“ ”	Todd, Judy	Railroad Rulemaking and Risks	I-16-1
“ ”	Turnoy, David	Wildlife Response	I-13-1
“ ”	Vandenberg, Nancy	Unclassified	I-995-1
“ ”	Walworth, Janet	Unclassified	I-348-1
“ ”	warren, alicelia	Unclassified	I-551-1
“ ”	Wenger, Barry	Non-floating Oil Spills	I-20-1
“ ”	West, Ryan	Public Concerns	I-641-1
“ ”	Witte, Jonathan	Unclassified	I-1002-1
“ ”	Wolcott, James	Non-floating Oil Spills	I-521-1
“ ”	Wolcott, James	Non-floating Oil Spills	I-530-1
“ ”	Woodbridge, Jennifer	Response Times	I-11-1
“ ”	Yugar, Johan	Unclassified	I-1005-1
Maritime Fire & Safety Association	Robinson, Holly	Other	I-990-1

Table 2: Agency

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Thirteenth Coast Guard District	McFarland, Robert	Other	A-1-1

Table 3: Organization

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Friends of the Earth US	Wilson, Verner	Unclassified	O-8-1
Friends of the San Juans	Pratt, Lovel	Other	O-2-1
Orca Salmon Alliance	Attemann, Rein	Other	O-7-1
Pierce County LEPC	Kilpatrick, Todd	Other	O-11-1
San Juan County	,	Unclassified	O-3-1
San Juan Islands Visitors Bureau	Nesler, Amy	Public Concerns	O-1-1
Snohomish County	Somers, Dave	Other	O-5-1
Stand Up To Oil	Attemann, Rein	Unclassified	O-6-1
Stand.earth	Ramel, Alex	Other	O-9-1

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Stand.earth et. al.	Ramel, Alex	Other	O-10-1
Western States Petroleum Associatio	Spiegel, Jessica	Other	O-4-1

Table 4: Tribal Government/ Agency

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Makah Tribe Office of Marine Affairs	Bowechop, Chad	Other	T-2-1
Suquamish Tribe	Mohan, Maryanne	Other	T-1-1

Table 5: Other

Affiliation	Commenter Name	Topics where comments were assigned	Associated Comment numbers
Friends of the San Juans	Pratt, Lovel	Other	OTH-1-1
members of Puget Sound Environmental Caucus	Attemann, Rein	Other	OTH-3-1
on behalf of local elected officials	Attemann, Rein	Other	OTH-2-1

I-1: Winston Smith

Comment I-1-1
hello

Response to I-1-1
Thank you for your comment.

I-2: Winston Smith

Comment I-2-1
Thank you

Response to I-2-1
Thank you for your comment.

I-3: Tom Parsons

Comment I-3-1
Thank you for having a comment period for this crucial issue.

Response to I-3-1
Thank you for your comment.

I-4: Jai Boreen

Comment I-4-1
I am particularly concerned with increased tanker traffic near my home on San Juan Island and the inevitability of a spill in the future. Also, smaller spills are bound to happen where oil is transferred from pipeline to tanker.

Response to I-4-1
Thank you for your comment. The rule amendment strengthens oil spill contingency planning requirements. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. Contingency planning is also referred to as preparedness, which includes the actions companies take to be prepared to mount a rapid, aggressive and well-coordinated response to any spill that occurs. Prevention refers to the activities that prevent petroleum products from being spilled to the environment. It includes training, technologies, equipment, alarms, and procedures. Response is the actual response to an oil spill, such as stopping the flow, containing the oil, and removing the spilled product from the environment. In Washington State we are planning for prevention, preparedness, and response through a comprehensive statewide program. Details about the program can be accessed at https://ecology.wa.gov/Spills-Cleanup/Spills.

I-5: MaryJane Gasdick

Comment I-5-1
Improving oil spill response time is the most important tactic to limit the impacts of a non-floating oil spill.

Response to I-5-1
Thank you for your comment. We agree that a rapid, aggressive, and well-coordinated response is critical to minimizing impacts from oil spills. To address this issue we enhanced our facility and vessel contingency planning standards. Further, we enhanced our planning standards for spills of oils with the potential to sink. The standard starts with an assessment of the potential for the oil to sink within one hour of spill awareness. The standard provides additional specifics for when key equipment must plan to arrive on-scene.

Comment I-5-2
Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region. Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink.

Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities. 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. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges.

The draft update requires additional but unquantified resources and equipment to detect, contain and collect nonfloating oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will be sufficient to respond to a worst-case 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.

Wildlife response operations require additional detail and capacity. The wildlife response operations need to include pre-emptive capture and relocation as well as the removal of oiled wildlife carcasses in addition to the identified operations of impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation.

Updates to the wildlife response sections also need to specifically address response operations for the water column and benthic species that could be impacted by a nonfloating oil spill. 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. In addition, the draft update doesn't fully address the water column and benthic species that could be adversely 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 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 increase in tanker traffic transporting nonfloating oils increases the risk of 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.

Response to I-5-2

Thank you for your comment. The rule amendment strengthens oil spill contingency planning requirements. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. Contingency planning is also referred to as preparedness, which includes the actions companies take to be prepared to mount a rapid, aggressive and well-coordinated response to any spill that occurs. Prevention refers to the activities that prevent petroleum products from being spilled to the environment. It includes training, technologies, equipment, alarms, and procedures. Response is the actual response to an oil spill, such as stopping the flow, containing the oil, and removing the spilled product from the environment. In Washington State we are planning for prevention, preparedness, and response through a comprehensive statewide program. Details about the program can be accessed at https://ecology.wa.gov/Spills-Cleanup/Spills.

Response Evaluation Methodology

Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to the short deadline for the current rulemaking effort, an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

Non-Floating Oils

We agree that coordination and preparedness for oils that are potentially non-floating is key to mitigating their impacts. The proposed enhanced non-floating oils planning standard and the planned updates to our regional Geographic Response Plans (GRPs) support this effort.

We do not agree that Canadian Tar Sands crude oils are the only types of oils that may potentially sink. Through this update we have expanded the types of potentially non floating oils we are planning for to ensure a rapid, aggressive, and well-coordinated response. The timeframes in the draft rule align with the key steps in a potentially non-floating oil spill response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. We updated the rule to clearly state that, with the equipment,

trained and capable personnel must also plan to arrive. Additionally, in response to public comments, we added a definition of non-floating oils to the rule.

Responder Health and Safety
We agree that responder health and safety and community health and safety is paramount in a spill response. One way we are ensuring planning for this key aspect of response is by requiring the community air monitoring planning standard apply to all plan holders types. Previously this standard applied only to pipelines.

Wildlife
As described in the Northwest Area Contingency Plan (NWACP), all activities related to a wildlife response must occur under the direction of the Wildlife Branch led by either Washington Department of Fish and Wildlife (WDFW) or United States Fish and Wildlife (USFWS) personnel within the incident command system. The contingency planning efforts, as described by this rule, must be consistent with the NWACP. In addition, the rule language requires that contracts are established with wildlife response service providers that have the appropriate skills and permits necessary to conduct successful wildlife operations.

Pre-emptive capture
The pre-emptive capture and relocation of healthy wildlife is not usually considered to be a viable action in the early stages of a response. By definition, these are wild animals, and non-impacted wildlife can be very difficult to safely capture. Pre-emptive capture may be considered if the action would significantly minimize health risks to wildlife and can be conducted safely by response personnel.

Carcass collection
Oiled carcass collection is considered a normal activity of a spill response and would be conducted under the direction of the Wildlife Branch. Carcass collection and any subsequent storage require a spill-specific authorization from the USFWS and must be conducted in accordance with their specific direction.

Deterrence activity
Deterrence operations are another response activity that falls under the responsibility of the Wildlife Branch. This option is routinely evaluated by Branch personnel during a response. Indiscriminate deterrence actions can potentially cause more harm than good, however, and so require deliberate and thoughtful planning. The deterrence of certain types of wildlife requires specialized permits from State and Federal agencies and must be done in accordance with their direction.

The rule requires that deterrence equipment appropriate for the types of wildlife likely to be found in the area(s) covered by the contingency plan and must have the ability to arrive on-scene within 12 hours of spill notification for use by the Wildlife Branch if it is deemed appropriate during an incident.

San Juan County Response Capacity Evaluation

The majority of the recommendations of the San Juan County Oil Spill Response Capacity Evaluation are outside the scope of the current rulemaking. Where possible and appropriate they were considered and incorporated.

I-6: William Sobieralski

Comment I-6-1

I'm commenting on the proposed rulemaking as a life long resident of Washington and as a landowner on San Juan Island. Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region. Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill. Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities. 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. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect nonfloating oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will be sufficient to respond to a worst-case 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. Wildlife response operations require additional detail and capacity. The wildlife response operations need to include pre-emptive capture and relocation as well as the removal of oiled wildlife carcasses in addition to the identified operations of impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation. Updates to the wildlife response sections also need to specifically address response operations for the water column and benthic species that could be impacted by a nonfloating oil spill. 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. In addition, the draft update doesn't fully address the water column and benthic species that could be adversely 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 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 increase in tanker traffic transporting nonfloating oils increases the risk of 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 attending to these concerns. William Sobieralski

Response to I-6-1
See response to comment I-5-2

I-7: Jennifer B

Comment I-7-1
Ecology MUST require the strongest possible protections from oil spill impacts by doing the following:

Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of nonfloating oil.

Wildlife response operations require additional detail and capacity. The wildlife response operations need to include pre-emptive capture and relocation as well as the removal of oiled wildlife carcasses in addition to the identified operations of impact assessment, reconnaissance, deterrence, capture, stabilization, and rehabilitation. Updates to the wildlife response sections also need to specifically address response operations for the water column and benthic species that could be impacted by a nonfloating oil spill.

Response to I-7-1
The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. To address your comment, additional detail was added to the standard about the necessary personnel and types of equipment that must be available within the timeframes.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation

of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

The Northwest Area Contingency Plan (NWACP) describes wildlife response activities in detail and contingency planning efforts, as described by this rule, must be consistent with the NWACP. The activities listed in the rule are not intended to be inclusive of all wildlife related operations that may occur during a response. Wildlife response activities are scenario specific and will be evaluated at the time of a response. Finally, WAC 173-182-510 requires contingency plans to identify benthic and seafloor habitats and the species potentially at risk from non-floating oils.

I-8: Mary Ferm

Comment I-8-1
Improving oil spill response is the most important strategy in limiting impacts of a non-floating spill, however, Washington State's oil spill response has not kept up with the latest science. More equipment and personnel must be ready to quickly respond before non-floating oil begins to submerge and sink. Ecology needs a more robust and realistic method for evaluating oil spill response abilities. Improved response to non-floating oil spills would have drastically reduced cost for the Enbridge Kalamazoo cleanup. The table in WAC 173-182-324(2) needs to be updated to accelerate time-frames and needs to include details on the resources and equipment needed to respond to worst-case scenario of non-floating oil. Canadian Tar Sands crude oil needs to be regulated in a way that can deal with their unique risks and cleanup challenges. The draft update does not quantify additional resources, and the time frames given are not soon enough to deal with these non-floating oils. WAC 173-182-030 (48) requires that sufficient resources and equipment be available to respond to a worst-case spill.

Response to I-8-1
See response to I-7-1

I-9: CATHLEEN BURNS

Comment I-9-1
Improving oil spill response time is the most important tactic to limit the impacts of a non-floating oil spill. The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update oil spill contingency plans to specifically address the unique characteristics and risks of non-floating oils. However, Washington’s oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks non-floating oils pose to our region. Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of non-floating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of non-

floating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities. Ecology's own Preliminary Regulatory Analyses for this update 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. Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of non-floating oil. The non-floating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect non-floating oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will 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)(c)). Current draft update of table in WAC 173-182-324 (2): 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. 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. 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. (In WAC 173-182-540 (2)(c)(ii)) the monitoring and deterrence operations to prevent Southern Resident Killer Whales from encountering spilled oil should be required for all whales, and, if necessary, priority given to Southern Resident Killer Whales. Washington State lists all the Killer Whales (Southern Resident, Northern Resident, Offshore, and Transient) as endangered. Humpback Whales (N. Pacific) and Fin Whales are also listed as endangered in Washington State. 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. 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 non-floating 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 non-floating oil spill. The 2015 San Juan County Oil Spill Response Capacity Evaluation includes important findings and recommendations that address deficiencies in 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 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 increase in tanker traffic transporting non-floating oils increases the risk of non-floating 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 non-floating oil spills and effective wildlife deterrence operations are especially significant in this biologically rich oasis of the State.

Response to I-9-1
See response to comment I-5-2

I-10: Don Stillman

Comment I-10-1
Close your eyes and imagine for a moment. You retired from the WA Department of Ecology in 2025. Now you're sitting on the deck of your small cabin on Orcas Island. Your grandkids love to visit in the summer and play on the beach, where they build forts out of driftwood.

Years ago, you participated in Earth Day events at college and shifted your major to marine biology in hopes you could make a small but real contribution toward protecting and improving the environment.

Over time, you did good things, even as you experienced the real-world politics revealing the limits on what government can do. You saw first-hand how powerful special interests pressured elected officials and regulators to weaken environmental rules that would benefit the broader public.

Today, on that deck looking out at the Salish Sea, your screen beeps. You glance down at the scrolling news: a major oil spill has occurred at Stuart Island near the Turn Point Lighthouse. A huge tanker ship, carrying diluted bitumen from Canada to China, ran aground. The tanker was spilling both the fuel that powers it as well as its cargo of non-floating oil (dilbit) made from Alberta tar sands that will sink quickly to the sea bottom.

It's a massive disaster that likely will damage severely the Salish Sea and the San Juan Islands for decades. And it's a disaster that the advocates of the Trans Mountain Pipeline expansion

repeatedly promised could never happen.

Your heart sinks. You think back to 2019 when you were still working at the Department of Ecology considering draft rules to update oil spill contingency plans. You wanted tougher rules that would mean faster, more comprehensive responses to oil spill emergencies.

But even with elected leaders broadly supporting environmental progress, other powerful forces argued that budgets were tight. They said the state just couldn't afford the cost of the equipment and personnel to provide the right response to oil spills.

As you sit on that Orcas porch reading about the many thousands of gallons of dilbit spilled by the Trans Mountain Pipeline tanker, you remember reading comments filed on the draft oil spill contingency plans. They spelled out how Washington's oil spill response had not kept up with the latest science and also did not provide for early, aggressive containment and collection of non-floating oil.

The commenters, many from Friends of the San Juans and San Juan Islanders for Safe Shipping, urged Ecology to adopted rules with accelerated time frames and called for expanded resources and equipment to respond to a worst-case spill of non-floating oil. They also pushed for effective wildlife deterrence operations.

They said non-floating Canadian tar sands crude oils should be regulated commensurate with their unique risks and spill response challenges. But fossil fuel companies, shippers, the Canadian government under Trudeau, and Republican legislators all fought those tougher spill response rules. They said a spill was extremely unlikely and all the extra funding for a comprehensive response could not be justified.

You disagreed. But you went along.

Today, years later, you wish you would have fought harder to win the oil spill response rules you knew the people of Washington state and the world deserved.

And, as the rain drove you inside from your Orcas deck, you wondered how you'd explain the Trans Mountain oil spill disaster to your grandchildren.

Response to I-10-1
Thank you for your comment. In Washington, current spill prevention and preparedness tactics and plans focus on oil spills that float on the surface of the water. However, some oils, such as diluted bitumen derived from Canadian tar sands and heavy bunker oils, may float at first and then sink or submerge in water, depending on the type of oil spilled and the environmental conditions. Enhancing preparedness for potentially non-floating oils has been a major focus of this rulemaking which applies to regulated vessels, facilities, and pipelines operating in Washington waters. Vessels transiting from Canada to China, without stopping in a US port are not subject to Washington state contingency planning rules.

In 2018, Washington State passed the Strengthening Oil Transportation Safety Act, which

required the state Department of Ecology Spills Program to coordinate with British Columbia and Canada to establish the Salish Sea Shared Waters Forum. The purpose of the Forum is to exchange information to enhance oil spill prevention, preparedness, and response, with the goal of minimizing risks and impacts of spills from vessel traffic in the Salish Sea. The Forum serves as a platform for open dialogue for all levels of government from both sides of the border, including Transport Canada, the U.S. and Canadian Coast Guards, Tribes and First Nations, environmental groups, and industry. It addresses issues such as navigational safety, data sharing, and the impacts of spills on the environment, tribal and First Nation resources, the economy, and public health.

The Salish Sea Shared Waters Forum is one of the ways our state is engaged in spill prevention, preparedness, and response activities to address risk and champion our environment.

I-11: Jennifer Woodbridge

Comment I-11-1
Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.

The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update oil spill contingency plans to specifically address the unique characteristics and risks of nonfloating oils. However, Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities.

Ecology's own Preliminary Regulatory Analyses for this update 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.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of nonfloating oil. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect nonfloating

oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will 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)(c)).

Current draft update of table in WAC 173-182-324 (2):
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.

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.

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.

(In WAC 173-182-540 (2)(c)(ii)) the monitoring and deterrence operations to prevent Southern Resident Killer Whales from encountering spilled oil should be required for all killer whales, and, if necessary and only if personnel with killer whale identification expertise are required, priority should be given to Southern Resident Killer Whales, which are listed as endangered by Washington State and the federal Endangered Species Act. 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. To provide certainty that Southern Resident Killer Whales are deterred from entering an oil spill, which could cause their death and the extinction of the species, this rulemaking should require monitoring and deterrence operations for all 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.

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. 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 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 increase in tanker traffic transporting nonfloating oils increases the risk of 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.

Response to I-11-1
See also response to I-5-2

I-12: Sarah Hanson

Comment I-12-1
I would like to see:
Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.
Wildlife response operations require additional detail and capacity - there are not enough personnel involved in responding to a spill that impacts wildlife. The San Juan Islands require heightened oil spill response capacity. We are in the middle of major shipping traffic and have several T & E species in peril without additional shipping traffic, which continues to be a threat.

Response to I-12-1
Thank you for your comment. Please see response to comment I-7-1.

I-13: David Turnoy

Comment I-13-1
Wildlife response operations require additional detail and capacity.

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.

(In WAC 173-182-540 (2)(c)(ii)) the monitoring and deterrence operations to prevent Southern Resident Killer Whales from encountering spilled oil should be required for all killer whales, and, if necessary and only if personnel with killer whale identification expertise are required, priority should be given to Southern Resident Killer Whales, which are listed as endangered by Washington State and the federal Endangered Species Act. 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. To provide certainty that Southern Resident Killer Whales are deterred from entering an oil spill, which could cause their death and the extinction of the species, this rulemaking should require monitoring and deterrence operations for all 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.

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. 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"

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 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 increase in tanker traffic transporting nonfloating oils increases the risk of 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.

Response to I-13-1
See response to Response to I-5-2

I-14: Don Jacobson

Comment I-14-1
In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to shoreline communities and vulnerable aquatic ecosystems. An oil spill in the Gorge is difficult enough to clean up, a tar sands spill would be virtually impossible.

Washington waters and the Scenic Area are exposed to the risk of oil spills every day. This risk threatens jobs, livelihoods, and wildlife, including the endangered Southern Resident orcas in the Salish Sea and salmon in the Columbia River. With so many current and proposed fossil fuel projects in our region, Ecology must establish the strongest possible protection from oil spills.

Response to I-14-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our heavy oils planning standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. To address your comment, additional detail was added to the standard about the necessary personnel and types of equipment that must be available within the timeframes described in the rule. Please also see the response to comment I-4-1.

I-15: JL Angell

Comment I-15-1
Please protect the Columbia River Gorge and Washington's communities from oil spills. The risks are too great and the Gorge deserves better.

In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to shoreline communities and vulnerable aquatic ecosystems. An oil spill in the Gorge is difficult enough to clean up, a tar sands spill would be virtually impossible.

Washington waters and the Scenic Area are exposed to the risk of oil spills every day. This risk threatens jobs, livelihoods, and wildlife, including the endangered Southern Resident orcas in the Salish Sea and salmon in the Columbia River. With so many current and proposed fossil fuel projects in our region, Ecology must establish the strongest possible protection from oil spills.

Thank you.

Response to I-15-1
Thank you for your comment. See response to comment I-14-1

I-16: Judy Todd

Comment I-16-1
I understand the Dept of Ecology considers a "worst-case spill" as less than 20% of the average oil train. This does not address a rapid and complete response to a worst case spill of more than 20% , or worse, the entire trainload of oil. Oil spill plans should prepare true worst-case spills of an entire train.

It is not clear that there is a proven plan being employed for a quick and aggressive, well-coordinated response to contain and recover tar sands crude oils before they submerge and sink. The best available science must be used to adjust all plans for a large spill, and for quick mitigation of tar sands in the case of a spill of any size.

Response to I-16-1
The rulemaking updated Chapter 173-182, the Oil Spill Contingency Plan Rule. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. This rule update does not apply to railroads. Chapter 173-186 WAC includes the railroad oil spill contingency plan requirements. This rule was also updated this year to enhance the preparedness of railroads operating in Washington State. Comments about railroad worst case spill volume calculations are outside the scope of this rulemaking.

I-17:

Comment I-17-1
Good morning. The law allows Ecology to base its clean-up plans on the spill of an ENTIRE oil train. The '20% plan' is unacceptable--as is ANY tar sands oil in the Columbia River Gorge.
If I were Queen of Everything, there would be no oil trains in the Gorge. I ask you to create your plans not on 20% spill, but on the spill of an entire oil train.
We have to protect the last beautiful places on the planet.

Response to I-17-1
See response to I-16-1 and response to I-577-1.

I-18: Dana Hendricks

Comment I-18-1
As a resident of the Columbia Gorge raising my family less than a quarter mile from the train tracks, I implore the Department of Ecology to be as strict as possible with this rulemaking.

Why would a "worst-case spill" be considered less than 20% of the average oil train. The law gives you authority to plan for a true worst case spill of the entire trainload of oil. Oil spill plans should prepare true worst-case spills of an entire train.

Ecology should require a fast, aggressive, and well-coordinated response to contain and recover tar sands crude oils before they submerge and sink. Ecology should base all planning requirements on the best available science.

Response to I-18-1
See response to I-16-1 and response to I-577-1.

I-19: Stephen Bachhuber

Comment I-19-1
Let's be real. An oil spill contingency plan must plan for what can actually happen. 20% of an oil train could derail, it is just as likely that 30% could derail, or even all of it could derail. If the railroads and oil companies insist on shipping heavy oil in a volatile mixture as their right under interstate commerce regulations, it is our right to demand that they prepare to clean up the inevitable mess completely. All human systems eventually fail. We must be fully prepared. Contingency planning must account for every barrel of oil being shipped. Keep them accountable.

Response to I-19-1
See response to I-16-1

I-20: Barry Wenger

Comment I-20-1
Dear Ms Larson: I regret missing the Sept 17th Everett hearing due to illness however I have a number of questions and comments that I'd like to have addressed. To summarize:

1) Group 5 oils (G5) are unique materials that behave very differently than those of Groups 2-4 (and Group 1, of course). As an example, G5 oil such as Alberta tar-sands materials are exceptionally heavy and viscous which in some instances requires solvents to be added to thin them enough to pump in pipelines or into vessels including barges. In fact, Alberta's tar-sands materials are known to be the heaviest on earth averaging 60% asphaltene in-situ compared to 2-4 % for historical Alaskan crude. Think of barely soft asphalt which requires heat and up to an addition of 30% by volume of solvents (toluene, benzene, etc) coming from natural gas production by-products to extract and make it capable of pumping. No significant processing is done prior to transporting via pipeline of vessel. This results in the worst case scenario for spill response - the heavy toxic fractions sink while the flammable solvents volatize at the surface making it dangerous and impossible to boom or clean up. So, here are a few preliminary questions:

a. With a mixed material of solvents/sinking toxic constituents, how long under best/worst scenarios do the volatized solvents take to be considered safe for the clean-up crews to be able to work on-site and what is the concurrent best/worst scenarios for the sinking heavy constituents?

b. What is the fate of the heavy sinking constituents i.e. how much, predicted areal extent, and chemical composition of what ends up on the bottom versus for the less dense sinking component that binds to particles and forms a submerged mobile mass? Where and when has the fate of such material been documented in-situ? What are the related environmental impacts?

c. How are the spill components in a & b above captured and cleaned up, to what extent can they be cleaned up, and when and where has these activities been documented in-situ? What are the

related environmental impacts?

d. What are the techniques employed in c above and what is the ultimate disposal of such materials?

e. Given that usual Alaskan crude leaches toxic components for, on average 35 years, after a spill (e.g.Exxon Valdez) especially in the tidal areas, and that tar-sands materials are known to leach toxic constituents for 90-150 years, how has this characteristic been taken into account in long-term impacts and how will it be mitigated?

f) Barges of tar-sands materials are currently being transported from Vancouver BC to Tacoma, Wa - how are these being monitored, regulated and what is the clean-up protocol in place?

Response to I-20-1
Regarding your questions about the fate and effects of a non-floating oil spill. The fate and effects vary by product type, method of spill, and location of spill. Additionally, spilled volume, seasonality, and sensitivity of species in the area are all relevant to the cleanup methods and effectiveness.

To address your questions I recommend familiarizing yourself with our Northwest Area Contingency Plan Non-floating Oils Spill Response Tool accessible at https://www.rrt10nwac.com/Files/NWACP/2019/Section%209412%20v20.pdf.

The implementation of this rule will result in updates to plan holder contingency plans, the Northwest Area Contingency Plan and location specific Geographic Response Plans. All of the documents updated to address the new regulations will have formal public review and comment periods.

I-21: Jan Polychronis

Comment I-21-1
Washington is unprepared for the risks that tar sands crude oils pose to our waters, local communities, and Southern Resident Orcas

Washington is already at risk from tar sands oil moving through our state. Tar sand crude oil (diluted bitumen) is already moving through Washington by vessel, train, and pipeline and our protections have not kept up with the changing risks these oils pose. In addition to being one of the most climate-polluting fossil fuels, tar sands oils can sink when spilled and are virtually impossible to clean up, causing
irreparable damage to shoreline communities and vulnerable ecosystems. Washington's rule should require more rapid response for companies transporting these oils to respond to spills before they submerge and sink. The unique risks of tar sands oil require more stringent protections. Ecology must send a clear signal to industry transporting tar sands crude oil that the unique risks it poses will be taken seriously, it will be regulated more stringently than

conventional crude oils, and that planning requirements will be made based on the best available science.

Ecology must act now to increase protections for nonfloating oils, like tar sands oils, with more stringent response time and equipment requirements. To protect our waters and communities, Ecology should require a fast, aggressive, and well-coordinated response to contain and recover tar sands crude oils before they submerge and sink. Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. The draft rule is right to require a faster timeframe for the initial assessment of a spill; however, the rule provides no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill. This rule does not establish the protections we need. The scope is too narrow to update all our needed protections and it fails to establish stronger response requirements for tar sands crude oil. Ecology received a clear directive from the legislature to use this rule update to enhance our protections for nonfloating oils. This rule does not go far enough to protect our freshwater, marine ecosystems, and shoreline communities, by using outdated models that overestimate our response capacity and by delaying needed improvements.

The risk of a catastrophic sinking oil spill in our waters and communities is too great. We appreciate Ecology's work to update this rule and urge that they establish the protections that Washington deserves.

Response to I-21-1
Thank you for your comment. Response to comment I-577-1.

I-22: Miranda James

Comment I-22-1
I live in Oregon, but am commenting because I believe that the Columbia River Gorge is one of the most precious natural resources we have in this entire country, not just our two states. Creating stronger protections for the Gorge from oil spills is essential and I urge you to do everything possible to put the strongest measures in place to prevent and prepare for any oil spill disasters.

Response to I-22-1
Thank you for your comment. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. These protections support rapid, aggressive, and well-coordinated responses to spills that may occur in the Columbia River Gorge. See also the response to comment I-4-1 and I-577-1.

I-23: ChristineE Clark

Comment I-23-1

For Washington State's Rapid Remediation of Oil Spill rule changes, please obtain research grants for a study of the environmental impact of TAR SAND CRUDE OIL spilled on land and water and air and the cost of effective rapid removal of the defined contamination of TAR SAND CRUDE OIL from land, water, and air before allowing interstate transport of TAR SAND CRUDE OIL within Washington State.

Response to I-23-1
Thank you for your comment. Establishing a process to obtain research grants for a study of the environmental impacts of tar sands crude oil is outside the scope of this rulemaking. However, the existing rule includes a process for continuous improvement of our contingency planning standards. This process is called the best achievable protection five year review cycle. We define Best Achievable Protection (BAP) as training procedures, operational methods, and response technologies that are critical to successful oil spill responses. We review response tools and technologies and update our regulatory standards to ensure the maintenance of the highest standards of preparedness over time. We are required to update the oil spill contingency plan rules to ensure Washington achieves the highest standards of oil spill preparedness by requiring spill response technology, staffing levels, training procedures, and operational methods in oil spill contingency plans.

We coordinate and share research and development information related to oil spill preparedness and contingency planning efforts with facilities, vessels, railroads, and pipelines that are required to have oil spill contingency plans in Washington. To see our current areas of focus visit our webpage at https://ecology.wa.gov/Regulations-Permits/Plans-policies/Contingency-planning-for-oil-industry/Best-Achievable-Protection.

I-24: April Barker

Comment I-24-1
Thank you for your work and the opportunity to comment. My constituency has shared with me the urgency and commitment to protecting our Bay, ensuring policies discourage the use of fossil fuels as well, banning unsafe transport of those fuels and ensuring efficient, appropriate and detailed clean up when spills occur. Please strengthen the spill response requirements to address the unique risk that non-floating oils such as diluted bitumen poses to waters in Washington State and the Salish Sea.
Please establish more stringent requirements for non-floating and update models to ensure we will have appropriate response capacity.
Suggestions-

- Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non floating oils before they submerge and sink.
- require time frames that will ensure and be sufficient to respond to a worst-case spill.
- Update modeling that overestimates our response capabilities.

Suggestions for the wildlife response operations:

- consider accelerated time frames and details on the amounts and types of resources and equipment needed to respond to a worst case spill of non-floating oil.
- distinguish in the policy all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines.
- add commitments to promptly and continually updating overall response capacity modeling tools and requirements.
- enhance planning standards for wildlife response in the event of a spill. Specify deterrence actions that keep wildlife from entering a spill are critical to have underway immediately after a spill.

  I appreciate your work!

Response to I-24-1
Thank you for your comments. See response to comment I-5-2.

I-25: david berger

Comment I-25-1
Emergency evacuation plans for explosions, & fires resultant from spills need to be created for all population concentrations in the area of the tracks.

Response to I-25-1
See response to I-16-1. We agree that responder health and safety and community health and safety is paramount during a spill response. One way we are ensuring planning for this key response task is by requiring the community air monitoring planning standard apply to all plan holders types. Previously this standard applied only to pipelines. This planning requirement includes details about protecting population centers and evacuating at risk public. For more information about how we would manage community air monitoring please see our regional plan https://www.rrt10nwac.com/NWACP/Default.aspx.

I-26: George Keefe

Comment I-26-1
Our iconic, but critically endangered Southern Resident Killer Whales must be saved. Thirty years ago, after only a single oil spill by the Exxon Valdez in Prince William Sound, two pods of very different killer whale groups crashed suddenly and simultaneously after only one obvious disturbance to their environment. For further specifics, I invite your attention to NOAA Office of Response and Restoration, "More Than Two Decades Later, Have Killer Whales Recovered from the Exxon Valdez Spill?" issued March 23, 2012. Ecology must strengthen the contingency plan. We must have a fast, aggressive, and complete recovery. I respectfully urge you to craft a plan which assures the sustainability of our Southern Resident Killer Whales. We must not be content with a lax plan which drives our iconic orcas to extinction.

Response to I-26-1
We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrent operations for whales, including southern resident killer whales. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

I-27: Stephanie Prima

Comment I-27-1
Thank you for reviewing Chapter 173-182 Oil Spill Contingency Plan. Please consider these ideas:

Improving oil spill response time is the most important tactic to limit the impacts of a non-floating oil spill.

The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update oil spill contingency plans to specifically address the unique characteristics and risks of non-floating oils. However, Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of non-floating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of non-floating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities.

Ecology's own Preliminary Regulatory Analyses for this update 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.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of nonfloating oil. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect non-floating

oils to arrive within 6-12 and 12-24 hours. These time frames are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will 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)(c)).

Current draft update of table in WAC 173-182-324 (2):

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.

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.

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.[1] 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."[2] 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.

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 non-floating 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 non-floating oil spill.

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

[2] 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.

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 increase in tanker traffic transporting non-floating oils increases the risk of non-floating 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 non-floating oil spills and effective wildlife deterrence operations are especially significant in this biologically rich oasis of the State.

Response to I-27-1
See response to I-5-2

I-28: Mark Keely

Comment I-28-1
Why not have better spill prevention in the first place ?
I'm hoping ecology will base all planning requirements on the best available science to date. A more rapid response system needs to be in place for companies transporting oils that spill before they submerge and sink. There is not enough protection of our waters, marine ecosystems, and shoreline communities. The outdated systems in place overestimate response capacity & delay needed improvements. If the costs are too high to ensure safety and protections from oil contamination, then get rid of the problems altogether by not allowing oil transportation. Protection of of people & environment should be the number one mission. Does ecology protect people and environment ? Standards should be set highest possible level because to much damage from oil spills have taken place and not properly addressed.

Response to I-28-1
Thank you for your comment. This rule strengthens oil spill contingency planning requirements. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. Contingency planning is also referred to as preparedness, which includes the actions companies take to be prepared to mount a rapid, aggressive and well-coordinated response to any spill that occurs. Prevention refers to the activities that prevent petroleum products from being spilled to the environment. It includes training, technologies, equipment, alarms, and procedures. Response is the actual response to an oil spill, such as stopping the flow, containing the oil, and removing the spilled product from the environment. In Washington State we are planning for prevention, preparedness, and response through a comprehensive statewide program. Details about the program can be accessed at https://ecology.wa.gov/Spills-Cleanup/Spills.

I-29: Caroline Armon

Comment I-29-1
Improving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.
Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities.

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 cImproving oil spill response time is the most important tactic to limit the impacts of a nonfloating oil spill.

The 2018 Strengthen Oil Transportation Safety Act (E2SSB 6269) gave Ecology the authority and a clear directive to update oil spill contingency plans to specifically address the unique characteristics and risks of nonfloating oils. However, Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks nonfloating oils pose to our region.

Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of nonfloating oil — before it begins to submerge and sink. Ecology must act now to establish the strongest possible protection from spills of nonfloating oils. This can only occur if Ecology uses a more robust, quantitative and realistic methodology to evaluate oil spill response capabilities.

Ecology's own Preliminary Regulatory Analyses for this update states (on page 40):
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.

Update the table in WAC 173-182-324 (2) to include accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of nonfloating oil. The nonfloating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect nonfloating

oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will 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)(c)).

Current draft update of table in WAC 173-182-324 (2):
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.

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.

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.[1] 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."[2] 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.
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.

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

[2] 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.

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 increase in tanker traffic transporting nonfloating oils increases the risk of 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.

Response to I-29-1
See response to I-5-2

I-30: stephan revier

Comment I-30-1
All protections of the most strict forms , are needed to protect horrible oil spills
and pollution ! Our Planet is on fire ! We are Warming up from Global Warming and Climate Change !
Our Earth is slowly dying ! Yes we defiantly need these protections ! Stephan Revier with Green Peace USA 1

Response to I-30-1
Thank you for your comment. Please see response to comment I-4-1.

I-31: Cathleen Burns

Comment I-31-1
We all know we can't effectively 'clean up' an oil spill, especially sinking oils, like tar sands oil. I want Washington to stop the transportation of these oils through our state, but especially through the Salish Sea. Prevention is the only way to protect our fragile ecosystem and the endangered whales and salmon. Don't bring the oil in and there won't be an oil spill to try and clean up. An oil response vessel needs to be stationed at Neah Bay also.

Response to I-31-1
Thank you for your comment. See response to comment I-4-1. Stopping the transportation of oil products through Washington and spill prevention are outside the scope of this rulemaking.

I-312: Sharon Oswalt

Comment I-312-1
9785

Response to I-312-1
Thank you for your comment. Please review the response to comment I-577-1.

I-348: Janet Walworth

Comment I-348-1
0919

Response to I-348-1
Thank you for your comment. Please review the response to comment I-577-1.

I-495: Ben Rall

Comment I-495-1
Ecology must act now to increase protections for non-floating oils, like tar sands oils, with more stringent response time and equipment requirements for a fast, aggressive, and well-coordinated response to contain and recover tar sands oils before they submerge and sink.

Response to I-495-1
Thank you for your comment. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our heavy oil standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

The timeframes in the draft rule align with the key steps in a potentially non-floating oils response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. We updated the rule to clearly state that, with the equipment, trained and capable personnel must also plan to arrive.

I-521: James Wolcott

Comment I-521-1
Right now, Ecology is updating the rules that require companies moving oil to have detailed spill response plans that address the specific threats of tar sands oil. Unfortunately, the updated plans

are inadequate and leave us at risk of a catastrophic oil spill. Ecology must act now to increase protections for non-floating oils, like tar sands oils, with more stringent response time and equipment requirements for a fast, aggressive, and well-coordinated response to contain and recover tar sands oils before they submerge and sink.

Response to I-521-1
Thank you for your comments. Please see response to comment I-495-1.

I-530: James Wolcott

Comment I-530-1
Right now, Ecology is updating the rules that require companies moving oil to have detailed spill response plans that address the specific threats of tar sands oil. Unfortunately, the updated plans are inadequate and leave us at risk of a catastrophic oil spill. Ecology must act now to increase protections for non-floating oils, like tar sands oils, with more stringent response time and equipment requirements for a fast, aggressive, and well-coordinated response to contain and recover tar sands oils before they submerge and sink.

Response to I-530-1
See response to I-495-1

I-540: BRENDA STRANGE

Comment I-540-1
Right now, Ecology is updating the rules that require companies moving oil to have detailed spill response plans that address the specific threats of tar sands oil. Unfortunately, the updated plans are inadequate and leave us at risk of a catastrophic oil spill. Ecology must act now to increase protections for non-floating oils, like tar sands oils, with more stringent response time and equipment requirements for a fast, aggressive, and well-coordinated response to contain and recover tar sands oils before they submerge and sink.

Please protect our lands, bodies of water, wildlife and people!!!

Thank you.

Response to I-540-1
See response to I-495-1

I-551: alicelia warren

Comment I-551-1
As a Washington resident, I urge the Department of Ecology to increase protections for our waterways and WA State's environment by tightening the current proposal's in the Oil Spill

Contingeny Plan Rule. If oil companies want an outlet for tar sands crude oil, they need to prevent disastrous spills by paying for a requirement that all railcars carrying this product be reinforced to the highest standard possible as well as requiring a coordinated, thorough rapid response spelled out in detail in the proposed changes. The timeframe must be specific and must require that products that sink quickly have the most stringent requirements. The Department of Ecology needs to use its full regulatory power to prevent disastrous, irreversible damage from tar sands spills. Our bottom line needs to be to protect WA citizens, the environment, and wildlife on land and in the waterways rather than allowing the oil sands and rail companies to make a profit at our expense. I appreciate the work Ecology has already done to prepare for spills, but I'm urging you be the most powerful agent of regulations that prevent damage that you can be. Thank you. Alicelia Warren

Response to I-551-1
Thank you for your comments. See response to I-495-1

I-577: Brenda Bard

Comment I-577-1
As a Washington resident, I am concerned about the risks that tar sands crude oil poses to my community and communities across the state. I appreciate the work that the Department of Ecology has done thus far to improve oil spill prevention, preparedness, and response measures over the last several years, but am concerned that the proposed updates to Washingtons Oil Spill Contingency Plan Rule does not go far enough to protect us from a worst case scenario spill of tar sands crude oil. Communities across Washington are already at risk from the existing transport of tar sands crude oil and we unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River, by barge across Puget Sound, and through the Puget Sound Pipeline across Whatcom and Skagit Counties. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks and increase the likelihood of a catastrophic oil spill of diluted bitumen. In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to our economy, communities, and endangered orcas and vulnerable ecosystems. To address these risks, Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. The timeframes required in the draft rule provide no assurance that the current response times and capability will be sufficient to respond to a worst-case spill. Ecology should distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements. If it is funding that creates these limitations, then pass the cost back to the companies bringing this hazardous material to our state. Let them know that we the people of Washington State place a high priority on our natural places and the wildlife that occupy these places. We place a high value on our communities and the people and families who live there and need protections too. We are people who recreate and take pleasure in our natural areas. We place a high value on clean air and water and land. We do not want to be subordinate to someone elses profits and needs. If they insist in traveling through Washington State then they MUST be responsible for any error or accidents, totally and

completely and not based on some statistical probability. The responsibility MUST be born by the company or companies transporting this material and the response be operational to the 100% rate of possibility at all times. Finally, I urge Ecology to enhance planning standards for wildlife response in the event of an oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill.I urge Ecology to exercise its full regulatory authority and establish stronger protections from tar sands oil that Washington needs and deserves.

Response to I-577-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The updated standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink we added a definition of potentially non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

We agree that the Plan must require that the monitoring and deterrence operations apply to all

whales not just southern resident killer whales. The standard has been updated to reflect this request.

I-583: Kirsten Angell

Comment I-583-1
Please act now to improve protections for Spokane and other communities that are at great risk of tar sands oil spills and contamination, let alone the possibility of a catastrophic fire or oil spill! We are counting on you to protect the residents of this community. Please act efficiently. It's not a matter of if... it's a matter of when.

Response to I-583-1
Thank you for your comments. See response to I-495-1.

I-640: Dawson Smith

Comment I-640-1
We need to be sure that if spills occur there are plans in place to clean them up as efficiently as possible. We need to move beyond oil, but until we do we must take every precaution to make sure we can clean spills up thoroughly and thoughtfully and minimize the impact. Companies that profit from the transportation of oil should be responsible for all costs.

Response to I-640-1
Thank you for your comments. See response to I-495-1

I-641: Ryan West

Comment I-641-1
I urge the Department of Ecology to require tighter regulations and spill response plans for the tar sands oil being transported through our state. Our waterways and already under pressure from the increased temperatures in the summer. A disaster is inevitable if action is not taken so I urge you to require these companies gambling with our state's environment to require full safety contingencies to prevent spills. Thank you.

Response to I-641-1
Thank you for your comments. See response to comment I-495-1.

I-642: Carl Olson

Comment I-642-1
We need stronger protections than those being proposed in order to deal with tar sands crude. The health of future generations is at stake.

Response to I-642-1
Thank you for your comments. See response to I-495-1.

I-686: Kim Lechtenberg

Comment I-686-1
We only have one earth, and it is each individuals responsibility to protect it every day. As lawmakers it is your responsibility to make sure that the environment is taken care of now and for generations to come.

Please stand up to special interest for the environment.

Response to I-686-1
Thank you for your comments. See response I-495-1.

I-836: Don Steinke

Comment I-836-1
After your hearing in Vancouver last week, a River Captain told me that it is nearly impossible to apply the brakes on a ship until it slows to 9 knots.
By brakes, I mean reversing the engine.

Response to I-836-1
Thank you for your comment. Vessel speeds are outside the scope of this rulemaking.

I-867: Debra Janison

Comment I-867-1
As a Washington resident, I am concerned about the risks that tar sands crude oil poses to my community and communities across the state. I appreciate the work that the Department of Ecology has done thus far to improve oil spill prevention, preparedness, and response measures over the last several years, but am concerned that the proposed updates to Washingtons Oil Spill Contingency Plan Rule does not go far enough to protect us from a worst case scenario spill of tar sands crude oil.

Response to I-867-1
Thank you for your comments. See response to I-577-1.

I-880: john alder

Comment I-880-1
stop oil drilling , time to go electric or walk or ride a bike

Response to I-880-1
Thank you for your comment. Please see the response to comment I-4-1. Oil drilling and conservation are outside the scope of this rulemaking.

I-887: John Garner

Comment I-887-1
As a resident of Tacoma I watch daily as trains laden with oil pass literally along the shores of Puget Sound. It seems to to be a question of not if but when a derailment will occur.

I urge you to take the utmost precautions to protect our families, our environment and the wildlife that lives there from such a calamity that these tar sands pose when they are spilled and released. The nature of these heavy tar sand oils demand special regulation.

Thank you.

Response to I-887-1
Thank you for your comment. Please see response to comment I-577-1.

I-963: Polly Kaczmarek

Comment I-963-1
Then oil spill contingency plan is simply common sense.

Response to I-963-1
Thank you for your comment. Please see the response to comment I-4-1.

I-964: Shaun Hubbard

Comment I-964-1
Comments on Rulemaking - Chapter 173-182 Oil spill contingency plan Submitted to the Washington State Department of Ecology via on-line portal: http://cs.ecology.commentinput.com/?id=V6ATc I live in the San Juan Islands, which are both a critical habitat for forage fish, salmon, and Southern Resident Killer Whales and a critical habitat continually at risk due to the increasing shipping activity in the surrounding major shipping lanes. These shipping corridors are made up of narrow channels whose edges are home to not only endangered sea life, but shoreline residences and businesses as well. They need the utmost protection. That is why I am writing to you regarding the draft of the oil spill contingency plan. It does not do enough to provide these needed protections. The increase in tanker traffic transporting non-floating oils (especially from the looming Trans Mountain pipeline expansion project) increases the risk of non-floating oil spills. Given the swift currents and depths of our San Juan Islands' waterways, oil spill response operations would be especially challenging. The

importance of early and aggressive containment and collection of non-floating oil spills and effective wildlife deterrence operations are crucial to protecting this environmentally valuable corner of our State. We need to have tough, rigorous, completely-funded and -staffed disaster response plans. Washington's oil spill response program has not kept up with the latest science associated with realistically calculating oil spill response effectiveness as well as the growing and changing risks non-floating oils pose to our region. Additional equipment and personnel must be prepared to be deployed more quickly to contain and collect the spill of non-floating oil — before it begins to submerge and sink. The non-floating Canadian Tar Sands crude oils should be regulated commensurate with their unique risks and spill response challenges. The draft update requires additional but unquantified resources and equipment to detect, contain and collect non-floating oils to arrive within 6-12 and 12-24 hours. These timeframes are not soon enough and the draft update provides no assurance that the amount and type of resources and equipment will be sufficient to respond to a worst-case spill. This must be remedied in the final plan. The plan should include requirements for notifying shoreline residents and businesses and providing public health and safety in the early hours of an oil spill. Additional requirements for respiratory protection as well as air quality monitoring need to be established to protect oil spill responders. 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. Only 2 responders within 12 hours is not good enough! The plan must require experts who can identify Southern Resident Killer Whales. SRKWs were listed as Endangered under the federal Endangered Species Act, in part, because of concerns about potential oil spill impacts. We all know how fragile this population currently is. 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. The update should have included the 2015 San Juan County Oil Spill Response Capacity Evaluation which has important findings and recommendations that address deficiencies on the current oil spill contingency plan. Please include this information in the final plan. We need a fully-funded and -staffed, tougher oil spill response plan than is presently drafted. Please do your utmost to ensure that the final plan provides ultimate protection for our State's waters, shorelines, and sea life. Thank you.

Response to I-964-1
See response to I-5-2.

I-965: Robert Davidson

Comment I-965-1
We are glad to see that the Washington Department of Ecology is updating Chapter 173-182 (Oil Spill Contingency Plan) to improve efficiencies in spill management and reduce the severity of impacts, but we believe steps should be taken to further strengthen this important policy.
The proposed rule must establish more stringent spill response requirements to address the risk that diluted bitumen poses to waters in the Salish Sea. Further, it must keep up with the best science and the changing types of oils and associated risks.
Please see the attached letter for our specific comments.

Response to I-965-1
Thank you for your comments. See response to I-577-1.

I-986: Linda Leonard

Comment I-986-1
Department of Ecology

I live in Kalama, Washington and have concerns regarding the risks of a methanol spill on the Columbia River and estuary if the world's largest fracked gas to methanol refinery is built on the shoreline.

A large methanol spill would deplete the surface water of oxygen required to sustain aquatic life.

The worst-case scenario is a 300,000 gallon spill into the Columbia River waterway but the tankers being shipped to China would actually hold 14 million gallons, scheduled for up to 6 per month, increasing the chances of a disastrous spill.

The shoreline permits for Northwest Innovation Works' must be denied.

Sincerely,

Linda Leonard
217 Pebble Lane
Kalama, Washington 98625

Response to I-986-1
Thank you for your comment. The proposed methanol facility is outside the scope of this rulemaking.

I-987: Kristin Edmark

Comment I-987-1
September 25, 2019

Kristin Edmark MPH RD
7611 NE 296th Way
Battle Ground, WA 98604

Sonja Larson
Department of Ecology Spills Program
PO Box 47600
Olympia, WA 96504-7600

Dear Ms Larson:

Thank you for your informative presentation and the opportunity to ask questions at the 9/24 Public hearing in Vancouver, WA. I am thankful Washington is dealing with this real present threat. I am glad to hear about the coordinated effort, checks, planning and preparedness including subcontractor drills.

I am writing to ask you to take the Washington State Legislature mandate seriously and demand carriers of non- floating fossil fuels to plan for immediate clean up before much product sinks. As vou said sometimes the clean-up causes more harm like in the case of dredging. We know total restoration is impossible, that deoxygenation, leaching, etc. begin immediately but please demand the ability to recover a significant amount before sinking. Please make the standards as high as you feel are practical.

Not directly related to this program I would also like to make a few suggestions. The Department of Ecology has the ability to look at the big picture and if a project would greatly complicate the Spill Recovery program that program can coordinate with other parts of Ecology to limit permitting. Prevention of the threat is the best prevention of spills. I agree with others that non-floating fossil fuels have no place on or near our waterways; but, since they are there, we can coordinate to prevent increase of these very problematic substances. All new fossil fuel facilities increase the risk,

Please consider mandated third party pipeline and rail car inspection. Self-inspection is too risky with some carriers and some substances. LNG pipeline self-inspection is especially worrisome because of the growing evidence of the greenhouse effects of fugitive methane.

The Department of Ecology should pressure the State of Washington to coordinate spill prevention with Canada and permitting With Canada. Likewise, the department should pressure for coordination With Oregon.

The Department of Ecology should consider mandating insurance for clean-up for all companies from extraction through transport which cannot demonstrate adequate capital to pay clean up contractors. For example, the executives for the proposed methanol refinery in Kalama have a history of bankruptcy in Pocatello, ID leaving massive unpaid obligations. That company would try to claim they have no liability for LNG flowing to the refinery or methanol from the refinery. Earnings would be realized by the parent Chinese companies and unavailable.

Thank you for all that you do to keep our environment and ecosystems as safe as possible.

Sincerely,

Kristin Edmark

7611 NE 296th Way
Battle Ground, WA 98604
kristinedmark@hotmail.com

Response to I-987-1
Thank you for your comments. See response to comment I-10-1 and I-577-1.

The proposed methanol facility, financial responsibility, and spill prevention efforts are outside the scope of the rulemaking. For additional details about the costs of spills and financial responsibility please review our website at https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills.

I-988: David Hunt

Comment I-988-1
WA Oil Spill Contingency Plan
Rule Update Hearing
Spokane, September 19, 2019

My name is David Hunt, and I live in Spokane.

Thank you for welcoming public input on the update of our Oil Spill Contingency Plan.

Washington is not adequately prepared for the risks and potential hazards that tar sands crude oil poses to our communities, our waters, and to both human and aquatic life. As you, who work in this field know, there is a significant difference between RISK and HAZARD. The oil industry, and the oil transport industry regularly refer to the "RISK" of oil spills. However, it is the catastrophic HAZARDS which HAVE and WILL again occur involving crude oil, including tar sands crude, which necessitates improving this plan, rule, and regulations.

Many oil spills have occurred. Period! Oil spills WILL continue to happen. Period. We MUST be prepared, and the responsibility for adequate preparation must be Required by Ecology and paid for by those who profit from oil and oil transportation.

The unique characteristics of tar sands crude - especially the fact that it can and does sink, rather than float - requires more stringent response time and response protocol and equipment regulations.

The state legislature gave Ecology a directive to utilize this rule update to improve protections for this non floating oil. I respect and appreciate Ecology's work in Washington State, and I encourage you to USE this directive to do more.

The Kalamazoo River spill in Michigan demonstrates both the unique risks and hazards and the catastrophic results of being inadequately prepared, as we in Washington State are. The loss of 47 lives and massive destruction from the Lac-Mégantic oil train disaster speaks to the importance and urgency of your job.

We must not postpone, prolong, or compromise any longer on improving the plan, especially

while oil trains and pipelines continue to rumble through our communities and waterways, posing catastrophic risks and hazards.

Thank you,
David Hunt, Spokane, WA
davidjameshunt@hotmail.com
208-660-8498

Response to I-988-1
Thank you for your comment. See response to I-577-1.

I-989: Brendan Flynn

Comment I-989-1
Oct. 6, 2019

Dale Jensen
Director, Spills Prevention, Preparedness and Response Program
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Submitted via email to sonia.larson@ecv.wa.qov and Ecology's public comment portal:
http://cs.ecoloqv.commentinput.com/?id=V6ATc

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

Dear Mr. Larson,

Thank you for the opportunity to provide on Department of Ecology's (Ecology) draft update to Chapter 173-182 WAC, the Oil Spill Contingency Plan.

I have lived in the San Juan Islands for my entire life, and professionally, have commercially salmon fished using reef and gill nets in Puget Sound for more than 25 years. I am intimately familiar with the ecosystem of the Salish Sea and rely on it for both my quality of life and income. The impacts that an uncontained and inadequately addressed oil spill would have in these waters would be catastrophic and would, I believe, negatively impact the marine environment for decades to come. I am in strong support of the below updates for the Department of Chapter 173-182 WAC.

Several years ago, Department of Ecology conducted a study to determine what the economic impacts of a major spill might be. At that time, they concluded that a major spill would cost 165,000 jobs and 10.8 billion dollars in economic impacts alone. This does not include individual claims or environmental impacts. Over $20 billion in economic activities each year are at risk, including the fishing and shellfish industry. The recreational & non-treaty commercial

fishing industry contributes over $1.66 billion to Washington State's economy annually. It supports more than 16,000 jobs and $540 million in salaries and wages. Washington is the largest producer of farmed shellfish in the United States — with increasing demands due to the Gulf shellfish industry oil spill losses. The average annual commercial value of the Puget Sound shellfish industry is $59.3 million.

Our livelihoods depend upon the health and vitality of Washington State's marine environment, we urge Ecology to strengthen spill response requirements to address the unique risk that diluted bitumen (dilbit) poses to waters in Washington State and the Salish Sea. We are concerned that Ecology's proposed rule does not meet its legislative directive to address the [Type here] existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity and for wildlife response requirements.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. The cost associated with this spill exceeds $1.2 billion and 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.l "The riverbed will never be fully cleansed of bitumen." 2 To provide adequate protections, Washington's rule should require more rapid response for companies transporting these oils to respond to spills submerge and sink.

Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed the Ecology to use this year's update to develop new rules and protections that address the unique characteristics and risks of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil. Unfortunately, this draft rule is insufficient to protect Washington's waters and communities.

The shortcomings of the current draft rule include:

-The draft rule, while requiring a faster timeframe for the initial assessment of a spill, fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink.

-Initiate an assessment of the oil spill within one hour could take place remotely which means someone in New Orleans could do the initial assessment from hundreds miles away. While basic conditions of weather, tides, and currents can be assessed remotely, so many site specific local factors, such as wave activity, wind, ecological sensitive areas, docks, piers, wildlife, etc., can dictate the fate and behavior of the spilled non-floating oil from sinking or not, are better assessed on site.

-The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill. 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 required by WAC 173-182-030 (48); see also WAC 173-182-030).

-The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities.

-The wildlife response operations are unclear as to what "capture" entails and 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 the scene within 12 hours.

-The proposed Plan update requires equipment and personnel to conduct monitoring and deterrence operations to prevent Southern Resident orcas from encountering spilled oil. However, it does not require that experts who can distinguish Southern Resident orcas from transient orcas be an integral part of these operations, thus meaning that there is no assurance that if only some orcas were deterred from encountering a spill, that those whales would be the Southern Resident orcas.

To address these shortcomings, we urge Ecology to:

-Update the table in WAC 173-182-324(2) to immediately address existing risks by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst case spill of non-floating oil. The timelines must be shortened and additional personnel deployed in the first few hours, especially for non-floating oils and diluted bitumen which can sink quickly, harm wildlife, and damage underwater habitats.

-The one-hour initial assessment requirement should be required to be done on site.

-Further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines. Define "non-floating oil" as non-floating oil is omitted in WAS 173-182-030 definitions.

-Commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as new information becomes available through, for example, ongoing federal modeling studies.

-Enhance planning standards for wildlife response in the event of a spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill, even if experts who are able to identify Southern Resident orcas are not present.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills and urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking.

Sincerely,

Brendan Flynn

Response to I-989-1
Thank you for your comments. Please see response to comment I-5-2.

I-990: Maritime Fire & Safety Association,

Comment I-990-1
MARITIME FIRE & SAFETY ASSOCIATION

October 1, 2019

Sonja Larson
Washington State Department Of Ecology
300 Desmond Dr. SE
Lacey WA 98503

Sonja,

The Maritime Fire & Safety Association (MFSA) appreciates the opportunity to participate in the rulemaking process regarding the update to the vessel contingency plan requirements. The collaborative process seemed to work well, and we were pleased to have earlier recommendations incorporated in the proposed rule.

The one area of the proposed update that we feel still needs addressed is in regards to identifying resources-at-risk for potentially non-floating oils in plans. Although the rule states that plan holders can use Geographic Response Plans (GRPs) identified in the Northwest Area Contingency Plan (NWACP) to meet this requirement, it still leaves the responsibility for compliance on plan holders even if Ecology is unable to perform these updates in the prescribed time. It is not fair or realistic to put this burden on plan holders.

FROM PROPOSED WAC 173-182-510
(2) (B) (i) Identification Of sensitive resources will not be limited to surface and shoreline species at risk from floating Oil spills but also consider water column and benthic species at risk from sunken, submerged, or non- floating oil spiIIs.

(i i) Additional non-floating oils considerations include identification of waterway depths, water

density, sediment load, Sea floor or river bottom types, and response options based on those factors.

(3) The GRPs have been developed to meet these requirements and plans may refer to the NWACP to meet these requirements. If approved GRPs do not exist in the NWACP, plan holders will work with ecology to determine alternative sensitive areas to protect .

FROM PHASE IN LANGUAGE
(6) Within 18 months from rule effective date include details about benthic and seafloor resources at risk from non- floating oil spills in accordance with requirements for response and protection strategies under WAC 173-182-510. This update will be met through planned updates to the Geographic Response Plans which are developed as annexes to the Northwest Area Contingency Plan.

Although the intention is clearly for this requirement Of the legislature to be met through Ecology's development of additional GRP components, the regulations are written putting the onus on plan holders. A sentence should be added to the end of the phase in language stating that:
"plan holders shall have thirty (30) days from the date updated GRPs are issued to be in compliance with WAC 173-182-510 (2) (b)(i)."

Also, if through the development of additional GRP components, if the strategies detailed require any new equipment, technical skill or specific operations that are not already part Of a plan holders' PRCs approved application, more time should be allowed:
"Plan holders shall have six (6) months from the date updated GRPs with new tactical equipment, skills or operations are issued to be in compliance with WAC 173-182-510 (2) (b) (i)."

I am available and happy to discuss these concerns and recommendations with you at your convenience.

Sincerely,

Holly Robinson
General Manager
Maritime Fire & Safety Association

Response to I-990-1
Thank you for your comments regarding the phase in of key new requirements in the rule proposal. The phase in language has been amended to address your concerns.

I-991: Lovel Pratt

Comment I-991-1

Public testimony provided 9/17/19.

Is this on? Can people hear me okay? Great. So my name is Lovel Pratt. I'm the marine protection program director at Friends of the San Juans. Thank you for the opportunity travel to Everett today and provide this testimony. I'll also be submitting some written comments at this time and we'll do [indiscernible] work in the future.

So first of all, I just want to talk about our concerns about Canadian tar-sands crude oil or diluted bitumen or dilbit. And our concerns about spills of that oil in our waters. There is existing risk of spills due to the current transport of that oil through our waters and now transport is going to increase and increase the risk of accidents and oil spills. And there is consensus that the best way to respond to these nonfloating oils is fast and aggressive response to contain and collect the spilled oil before it begins to submerge and sink.

And this is something that Ecology agrees with. I'm going to read from your own preliminary regulatory analyses for this rulemaking, and this is on page 40 of the cost-benefit and least burdensome alternative analysis. Nonfloating oil impacts, additional coordination, and preparedness for dealing with spills and potentially nonfloating oils, reduce the likelihood of 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.

And I just want to say here that "clean up" is an inaccurate term. So as of 2013 the EPA determined that between 162,000 and 168,000 gallons of submerged Canadian tar-sands -- tar-sands crude oil would remain in the river bottom because it was dredging, further -- dredging would be more environmentally damaging than just leaving it. So the river bed will never be fully cleansed of bitumen.

So a couple of suggestions for improvements to the current draft rule. Define nonfloating oils. There's nonfloating oils is omitted in WAC 173-182-030 Definitions. So the table in WAC 173-182-324(2) I think there needs to be more detail on capability, and that I would assume includes personnel in addition to what I see as a suggested list of response equipment suitable for nonfloating oil spills.

I just want to point out -- and this – you know, that the capability be for a worse case spill volume as required in WAC 173-182-030(48) and then see also 173-182-030(70c). So, I want to just point out as an example of a section of the current oil spill contingency plan regulations that do provide specificity and give the public assurances that the capability is there to do an effective response.

So in WAC 173-182-522, and this refers to shoreline cleanup operations. The plan holders are required to have contract -- contracted access to 100 trained shoreline cleanup workers and training appropriate for every ten shoreline cleanup workers, one supervisor. And all the appropriate HAZWOPER and ICS courses, all of that. And adequate equipment for passive recovery for three miles of shoreline on three tide lines, and access to clean up mobile storage cache that can support 80 to 100 shoreline cleanup workers with personal protective equipment,

hand tools, and other logistical support for three to five days.

So that kind of specificity I think gives the public assurance that for shoreline cleanup in that section of the regulations that currently exist there is some detail that gives us assurance that the response capacity is going to be available, on scene, and responding to a spill. And in the -- in the table under WAC 173182-324(2) there isn't that specificity and the way I read it is that it's an outline. It's a good outline, but it also appears to be a suggested outline.

There doesn't appear to be language that says you will have these types of equipment and you will have it -- there is no specificity on the quantity and nothing about personnel. In terms of the wildlife response sections, it's great that you're updating that. It definitely is needed. And there is a good start here. But again, there is a lack of specificity. You've got a requirement for a minimum of two wildlife response personnel to arrive within 12 hours and then another seven to arrive within 48 hours. And that's just not enough to deal with all the different wildlife response operations that you've identified.

Again, more specificity to ensure that there is sufficient wildlife response personnel and equipment to perform all the operations that you've identified. And I'll submit this for the record too. Thank you.

Response to I-991-1
Thank you for your comments. Please see response to comment I-5-2.

I-992: Bill Sampson

Comment I-992-1
Public testimony provided 9/17/19.

Hi. My name is Bill Sampson, and I volunteer with various environmental groups in Seattle. Thank you for giving the opportunity to testify today and the -- I learned a lot from the Q&A and the presentation. I think I'm not an expert on these kinds of things, but I have learned and studied some emergency, you know, responses to various oil spills and other, you know, natural disasters have happened in the U.S. and your plan on paper, I think, as far as I can tell there's, you know, in terms of the timeline seem good, but I'm concerned that the fossil fuel industry has a long history of poorly communicating and being dishonest with the public and government agencies, and it seems like there is a potential big problem if, you know, there is a spill and conditions aren't ideal and if, you know, the person who spilled the oil poorly communicates or isn't totally honest about what's happening, that that could greatly hamper the efforts to prevent devastating damage.

And the, you know, the oil spills when they get to a certain point they become impossible to clean up if you miss certain benchmarks and timelines. And there is so many species in Washington State especially the salmon and the orca that are already, you know, critically endangered without an oil spill and, so that's, those are my main concerns about, you know, what happens if there is a worst-case scenario and the impacts of that. Thank you.

Response to I-992-1
Thank you for your comment. Please also see the response to comment I-963-1. Contingency plans describe the plan holder's ability to respond to oil spills. Plans include information on spill response procedures, equipment, safety, communications, and training. Each company is required to develop, maintain, and test their contingency plan. We test the plans through realistic drills. We review and approve plans on a five-year cycle. The oil spill contingency plan rule requires a 30-day public review and comment period for plan updates.

I-993: Robert Creamer

Comment I-993-1
Public testimony provided 9-17-19.

My name is Robert Joseph Creamer. I live at 2616 Baker Avenue here in Everett, Washington 98201. My emails are creamer1@frontier.com. Even though I'm here as an observer for the League of Women Voters of Snohomish County, I'm here to talk on my own behalf. I would like to thank the Department of Ecology for holding this public hearing regarding updating the oil spill contingent plan.

As most of us know, oil is -- we've learned over the past few years that oil is a very complex commodity, and it requires different approaches depending on what type of oil it is. So I applaud the Department of Ecology for adding the new type of -- talking about oils that goes in the water and are they floating, are they submerged. It's added like you guys did with the oil trains to your spill contingency plan so I applaud that. It's not if we're going to have an oil spill, it's where and when it's going to happen. And what can we do about it?

And what you guys are doing is providing enough information that the first responders who I feel will be your first people that would see the spill would have enough information to provide back to the appropriate agencies on what is going on, what's happening, and possibly we would make sure we have the right plan. Because as was stated earlier, sometimes the right plan or the plan that was put in place was not the right plan for that particular area and we need to make sure that we have enough information.

As we all know, knowledge is power. And I appreciate what the Department of Ecology is doing trying to give enough information about what you guys know about the oil and where it's coming from and what's containment so that first responders and those others who are going to work with the spill will have enough knowledge and for you guys providing the training and cache that we can get people -- first responders to have the right equipment and to have enough knowledge about where all the oil containment equipment is so that we have great resource.

Not depending on the company who spilled the oil but relying on those proper people who do the best for the public. Thank you.

Response to I-993-1

Thank you for your comments. Please see response to comment I-577-1.

I-994: Rein Attemann

Comment I-994-1
Public testimony provided 9-17-19.

Good afternoon. My name is Rein Attemann. I work At Washington Environmental Council and we appreciate Ecology's work updating the oil spill contingency plan and hint oil spill preparedness and response for nonfloating crude oil. We certainly echo Lovel Pratt's comments earlier. And we thank you for this forum because I think the Q&A was a really informative way of engaging the public today.

Washington is already at risk of tar-sands crude oil or diluted bitumen moving through our state by vessel, train, and pipeline. Unfortunately, our protections have not kept up with the changing risks these oils pose. Tar-sands oil can sink when spilled and are virtually impossible to clean up, causing irreparable damage to shoreline communities and ecosystems. Spills of these oils in other states such as Kalamazoo River in Michigan have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. And at a tune of $1,300,000,000.

And according to NOAA's recovery plan for the southern resident orca population, major oil spills are potentially catastrophic to killer whales as witnessed with Exxon Valdez accident in 1989. 30 years later, that orca pod in Prince William Sound is functionally extinct because of that spill. So it is essential that strong wildlife response standards and requirements from oil spills, especially tar-sands, must be enhanced. Similar to what Lovel Pratt outlined earlier.

Ecology received a clear directive from the legislature in nineteen -- or 2018 to use this rule update to enhance our protections for nonfloating oils. However, this rule is too narrow in scope and does not establish the protections we need from these types of oils. The draft rule is right to require a faster timeframe from the initial assessment of the oil spill. However, the rule provides no assurance that the current response times and capability will be sufficient to respond to the worse case tar-sands oil spill.

The draft rule continues to use outdated models that overestimate our response capacity and by delaying needed improvements. Ecology needs to update the current model being used sooner versus later. Ecology should require a fast, aggressive, and well-coordinated response to contain and recover tar-sands crude oils before they submerge and sink. And lastly, as stated in the Q&A, we are dismayed and irked by the time of day the three public hearings are being held. Public hearings must be accessible to the public and most importantly the community most impacted like the San Juan's and Puget Sound. One p.m. time during the middle of the week in the middle of the weekday is contrary to this process. And thankfully, there were hearings in eastern Washington and Vancouver, both areas that are impacted by oil -- crude oil movement and transportation. So thank you for that. And that's it. Thank you.

Response to I-994-1
Thank you for your comments. Please see response to I-5-2 and I-577-1. The plan updates will be tested through a comprehensive drill and exercise program to validate the plan.

I-995: Nancy Vandenberg

Comment I-995-1
Public testimony provided 9-17-19.

Hi. I'm Nancy Vandenberg. Can you hear me okay? My -- I'm speaking as a citizen. I'm an environmentalist, but definitely not an expert. But my main concern is that tar-sands are kind of a new thing and also there is so much increased vessel traffic that's predicted. I was very encouraged to hear that Washington is a leader in oil spill prevention and all the things you're doing, and I think that's wonderful. But it seems that we have so many more risks coming with all this increased traffic and with the type of oil that -- I guess my feeling is that we need to have the absolute strongest possible regulations that we can possibly get away with without, you know, I don't know, causing any -- too many other problems.

I feel like every time I pick up the paper there is an oil spill somewhere and they don't seem to all be taken care of. The cleanup isn't complete and the companies don't seem to take full responsibility. So I guess my biggest concern is that the companies that these regulations need to be written so that they are very -- it's very certain that they are taking full responsibility that they have the financial backing to be allowed to be in our waterways. And that before they can transport things, we need to know that they know what they're doing so we can prevent, and also if there is a spill they're fully capable of not evading their responsibility. So that would be my biggest concern. Thank you.

Response to I-995-1
Thank you for your comment. Please review the response to comment I-577-1. Financial responsibility refers to the proof or demonstration that a responsible party is able to pay for the costs and damages of a spill up to a specified amount. Typically, financial responsibility is evidenced by an insurance policy or Pollution and Indemnity (P&I) club documents, but also may involve surety bonds, guarantees, letters of credit, or qualification for self-insurance.

Washington has financial responsibility requirements based on type of vessel and total capacity for storage or transfer of product. Washington does not have its own certification program for financial responsibility. Instead, we rely on federal and other state programs to certify vessels for financial responsibility. There is currently no program to certify financial responsibility for onshore oil handling facilities. Establishing new financial responsibility requirements is outside the scope of this rulemaking. For additional details about financial responsibility visit https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills.

I-996: Joe Mallahan

Comment I-996-1
Public testimony provided 9-17-19.

Hi. I'm Joe Mallahan. I'm a business person. I live in Seattle. I'm a regular boater in the north Puget Sound and have harvested shellfish and finfish from the north Puget Sound for over 50 years. My biggest concern, again, in your table in this section. I apologize. I don't have the section in front of me, where you list hours of response for nonfloating oils. There is really -- in an earlier discussion during Q&A there is really no sort of goal stated to retrieve as much of the oil as possible before a reasonable period in which you would consider it highly likely that it would sink.

Again, as you well know, the currents and the tides in the north Puget Sound are severe. And once that oil has left the surface, it can be broadly distributed and can be very, very hard to track. And the impact to sea bed creatures and obviously to the orca is so -- the risk is so severe that it seems to me rather than saying within twenty-four hours you should have equipment that is able to recover oil that's on the sea bed, it should be within 24 hours you captured all of the oil on the surface before it has a chance to fall.

And again, Q&A, we have -- I realize you're trying to construct language that is applicable statewide, but to me -- either you or the operator of the vessel should have a very clear understanding of what that material that he is carrying, how long it's going to be on the surface before it sinks. And if the answer is less than 24 hours, then the response should be to recover that oil from the surface within 24 hours.

Now, that may seem cost-prohibitive, and I understand you have a cost-benefit analysis responsibility, but we're talking about the San Juan Islands, the Strait of Juan de Fuca, the entire habitat for resident orca, and I think everyone understands a major spill where the oil actually is submerged has a massive threat to the orca in addition to all the other sea bed creatures. It's such an extraordinarily diverse and vibrant environment there, and there is really, I can't imagine how you mitigate that once it's on the sea bed at that depth and with that kind of movement of water. So, again, that's my statement. Thank you.

Response to I-996-1
Thank you for your comment. Please see response to comment I-577-1.

I-997: Sarah Farbstein

Comment I-997-1
Public testimony provided 9-17-19.

Hi there. My name is Sarah Farbstein. I'm a field organizer at Washington Environmental Council. Thank you for the opportunity to comment today. I just want to echo what others have said here. That this rule does not establish the protections that we need. The scope of this rule is too narrow to update all of our needed protections and it fails to establish stronger response

requirements for tar-sands crude oil. This rule does not go far enough to protect our freshwater marine ecosystems and shoreline communities by using outdated models that overestimate our response capacity and by delaying needed improvements.

Ecology must act now to increase these protections for nonfloating oils with more stringent response time and equipment requirements. The risk of a catastrophic sinking oil spill is too great to wait. Thank you.

Response to I-997-1
Thank you for your comment. Please see response to I-577-1 and I-5-2.

I-998: Sarah Cornett

Comment I-998-1
Public testimony provided 9-17-19.

Thank you for considering public comments and for your presentation. My name is Sarah Cornet here representing Washington Physicians for Social Responsibility. Our organization represents nearly one thousand medical professionals and health advocates and works to protect human health from our greatest challenges, including climate change and our reliance on harmful fossil fuels.

As a member of the Stand Up to Oil coalition, WPSR agrees with our partners and many previous commenters that this rule does not establish the protections we need from tar-sands oil. We are concerned that tar-sands oil is already moving through Washington in a variety of ways which each carry its own particular risk of spill, exposure, and other accidents. Whether transported via pipeline, train, or vessel, tar-sands crude oil particularly is concerning to us from a health perspective because of its properties and because it contains a high volume of chemical toxicants.

These chemicals include benzene and benzopyrene. These are both carcinogens with no level of safe exposure. Other chemicals found in crude oil including toluene, xylene, ethylbenzene -- These can be inhaled and enter the body through the skin in the event of a spill. A report summarizing the long-term effects of cleanup workers -- on cleanup workers, excuse me -- and community residents who are exposed to these chemicals in an oil spill a few years ago found exposure was linked to respiratory ailments, neurological disorders, and side effects that were later associated with birth defects in harmed or pregnant mothers. The elderly and children are also particularly vulnerable.

With the gravity of these risks, it's clear that we must do all we can do ensure that Washington communities are as protected as possible. Ecology has received a clear mandate from the legislature to use this rule update as an opportunity to improve our protections for nonfloating oils, and again, we believe that this rule's scope is too narrow. It fails to establish the response requirements we need for tar-sands oil.

Failing to do so renders Washington waters and communities vulnerable to serious health impacts of an accident or a spill. Thank you very much.

Response to I-998-1
Thank you for your comments. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our heavy oils planning standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.
The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

We agree that responder health and safety and community health and safety are paramount. One way we are ensuring planning for this key response tasks is by requiring the community air monitoring planning standard apply to all plan holders types, previously this standard applied only to pipelines. There are several areas of the rule that addressed required training, personal protective equipment, and site assessment which further address responder safety. To familiarize yourself with our area planning for community health and safety please refer to our Northwest Area Contingency Plan https://www.rrt10nwac.com/NWACP/Default.aspx.

I-999: Anna Doty

Comment I-999-1
Public testimony provided 9-17-19.

Hi. Good afternoon. My name is Anna Doty. I'm the director of the Stand Up to Oil Coalition which is a diverse coalition of organizations across the Pacific Northwest working to improve the safe transportation of oil already in our communities. Thank you for being here today and for your presentation and for all your work leading up to today on this rule update.

In the last several years, thanks to concerned activists and community leaders and to Washington's Spills program, Washington has made significant gains in improving the safety of oil transportation in our communities and waterways. However, these gains were also in response to growing and changing risks of new and new types of oil being transported through our state and our protections and response requirements are still catching up to those changing risks.

The 2018 Strengthening Oil Transportation Safety Act gave Ecology a clear directive to address one of these risks, which is the possibility of a catastrophic oil spill of potentially nonfloating tar-sands crude oil. As you know, tar-sands are already being transported and stored throughout

Washington, through eastern Washington, along the Columbia River, particularly in newly converted facilities that are creating new risk, as well as biweekly barge to Tacoma after the recently acquired Par Pacific refinery that has stated an intent to likely expand in the near future, and by pipeline to our northern refineries.

And even as those thoughts are already here, there is also the looming threat of the Transmountain pipeline which could create additional risk in our communities and in our waterways. This draft rule does not go far enough. It does make important incremental change. I appreciate all the work that you've done in improving the wildlife protection requirements and also improving the response times -- or excuse me, the assessment times to determine whether a spill may become potentially nonfloating.

However, there needs to be faster response time requirements for a nonfloating oil spill. As many people before me have already said, to protect our waters and communities, we need scientifically sound planning requirements that will result in containment and recovery of tar-sands crude oil before it submerges and sinks and becomes impossible to fully recover.

This rule doesn't provide the insurances that we need that the response times and equipment requirements are sufficient to respond to a worst-case scenario spill. And even as we wait for federal studies to be completed to improve our modeling requirements, we can still make sound estimations that a worst-case scenario spill is not currently being planned for with the response time requirements that are in the draft rule.

The scope and the ambition for this rule is still too narrow. And I appreciate all the work that Ecology has done to work with our community and our member organizations to adjust the scope of the rule. I look forward to continuing to work with you to understand what an exploratory rulemaking might look like and how to establish a new rule update in advance of the five-year rule update. Exploratory study is not sufficient to create new protections that we need as requirements for oil handlers in our state.

So thank you for your work thus far. Looking forward to continuing to work with you.

Response to I-999-1
Thank you for your comments. See response to comment I-5-2 and I-577-1.

I-1000: Victoria Leistman

Comment I-1000-1
Public testimony provided 9-17-19.

Hello. My name is Victoria Leistman. I'm a field organizer on the Dirty Fuels campaign with the Sierra Club and we're also a member of the Stand Up to Oil coalition. I don't have very much to add that a lot of my colleagues haven't already stated, but I would like to say that Sierra Club agrees that the draft rule is right to require a faster time frame for the initial assessment of a spill, however, the rule provides no assurance that the current response times and capability will be

sufficient to respond to a worse case spill.

So we do not think that this rule goes far enough just to echo what my colleague, Anna, was just saying. This rule doesn't protect our fresh water and marine ecosystems and shoreline communities because it uses those outdated models to overestimate our response capacity and delaying needed improvements. And especially, you know, Sierra Club is particularly concerned about the Transmountain pipeline expansion project. The Puget Sound pipeline already feeds our Washington state refineries, and, of course, there is already that tar-sands risk as is, but with the looming increase potential for 700% more tankers moving through the really narrow areas of the San Juan Islands and the northern Salish Sea and down to the southern Salish Sea and down to what's currently happening -- being fed into Tacoma. And we cannot wait until 2021 or after to expand this rulemaking. And I agree that we would like a further commitment than just what an exploratory rulemaking looks like, but that this will be updated before the next five-year requirement. And I also just want to echo that we really appreciate all of the work that has been done so far and that there is a recognition that sinking tar-sands are a huge threat and that we need to be doing everything that we can to evaluate what a worst-case scenario looks like in all those different models. So thank you so much for your time.

Response to I-1000-1
Thank you for your comment. See response to comment I-577-1 and response to comment I-5-2.

I-1001: Alex Ramel

Comment I-1001-1
Public testimony provided 9-17-19.

Afternoon. Alex Ramel, field director with Stand dot Earth. Sonja mentioned earlier that there have been a number of letters and communications back and forth between us, the environmental community and the Department of Ecology over more and a year and a half on this issue. And it feels to me like we've been talking past each other in a number of ways and I want to use the couple of minutes that I have here to do my best to bridge some of that divide. And the best way that I know to do that is to start off by acknowledging what I've heard you say and where we appreciate it. Where I think we agree.

The draft rule has improved provisions for observation and identification of sinking oils. Has significant improvements in terms of wildlife response, wildlife clean up. Better rules for modeling the risk of sinking oils in the geographic response plans. That's great work, and I appreciate it if we see it. On a conference call last week I also heard Dale talk about the amount of change in the rules and regulations around oil spill prevention and response over the last decade. And I want to acknowledge that that change has been significant. If we're looking at where things were in 2010 versus where they are now, the rules we have now are significant improvement and have been improved almost every year. And that's meaningful.

And unfortunately, the only thing that has changed in the intervening period isn't the rules and regulations. It's also the industry's practices. And watched an industry that's dramatically increase

the risks that they're willing to take in our spaces. We've watched oil trains increase dramatically and the added risks to our community those have presented. Similarly, we've watched a rise in the use of articulated tug barges and barges to, from where I sit circumnavigate rules that are designed to make tanker traffic safe.

We've had to respond to those things. And we're now watching dramatic increases in the risk associated with tar-sands. And the -- in particular, the sinking oils. And those changes happened in many cases since the start of this rulemaking. We've watched the Tacoma -- the refinery in Tacoma was sold. And we've learned as a community that one the selling points on that refinery was that's it could be used as a tar-sands transshipment point.

We've watched, despite Washington's best efforts, we've watched the utilization of the Columbia River as an export corridor for tar-sands. And we've watched our neighbors to the north take significant steps in increasing the tar-sands tanker traffic through the Salish Sea by seven-fold. And so I guess what I want to say is thank you for the work that's being done to improve the rules so that we can respond to those threats and a lot more still has to be done. And so what I'm asking for, what I think we're all asking for here is a commitment in this rule that this is not the last step, and that's it's not going to be another five years.

It's not going to be until 2021 to start the next evaluation of whether the models can be improved. We would love to see the end of this rulemaking begin the start of an emergency rulemaking that responds to the emergency that's being caused by an industry that's willing to take risks that are unacceptable in our region. That's what we are asking for. Thank you.

Response to I-1001-1
Thank you for your comments. The scope of the rulemaking was narrow in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to the short deadline for the current rulemaking effort to address non-floating oil risks, spill management teams, and drills, an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

I-1002: Jonathan Witte

Comment I-1002-1
Public testimony provided 9-17-19.

Good afternoon. My name is Dr. Jonathan Witte [ph]. I live right here in Everett, and I practiced medicine right up the street here for over 30 years until retiring several years ago. I've also been a long-time member of Washington Physicians for Social Responsibility which is a non-profit, nonpartisan organization which is concerned about various issues that pose threats to public health including those related to the environment.

As mentioned by others, tar-sands oil is heavier than conventional crude oil and as a result, has a capacity to sink in water when spilled, making effective clean up response extremely difficult if not impossible. I agree with previous speakers that Washington's current oil spill contingency plan rule does not adequately address this issue and more stringent protections are required to protect our state from the unique risks posed by the transport and storage of this type of oil.

As a healthcare provider, I am particularly concerned about the multiple adverse health effects that can result from oil spills. Some of these effects are due directly to the acute injury sustained as a result of such things as fires and explosions. While others involve acute and chronic health problems caused by exposure to the toxic chemicals in the oil itself and other effects due to -- present in the water included from the spills.

Crude oil is a complex mixture of thousands of chemical compounds. Many of which are toxic to human health and the environment. These include but are not limited to things such as benzene, ethylbenzene, toluene, xylene, polycyclic aromatic hydrocarbons, cadmium, and mercury. Some of these compounds are quite volatile and readily enter the atmosphere where they can easily be inhaled while others can be absorbed directly through the skin and still others enter the body indirectly as the result of the ingestion of contaminated water and seafood.

Once in the body, they may be stored in fat where they can remain there for years. They can also dissolve in cell membranes and enter the mitochondria and cell nuclei where they have the potential to cause damage to various organ systems. These include but are not limited to problems with the endocrine disruption, acute and chronic respiratory disease, a variety of cancers and birth defects just to mention a few.

While the adverse effects to physical health from oil spills are multiple and diverse, they also affect mental health, causing problems such as acute and chronic anxiety, post-traumatic stress disorder, and depression. So because of the unique problem posed by the spills of tar-sands oil due to its ability to sink and submerge in water, more stringent cleanup protocols are required.

Prompt and aggressive responses to such spills are needed to make sure that any released oil is captured soon after it occurs. If this does not happen, there is a likely to be very difficult if not impossible to prevent the adverse health consequences caused by the spills. Water pollution may last for years with the potential of long-term contamination of drinking water along the Columbia River and disruption of various food sources including fishes, shellfish from the Columbia River, and the Washington coastlines.

I, therefore, urge you to enact more stringent requirements for dealing with potential spills of tar-sands oil to protect the health in the residents of our state. Thank you for your consideration.

Response to I-1002-1
Thank you for your comments. Please refer to response I-998-1.

I-1003: David Randall

Comment I-1003-1
Public testimony provided 9-19-19. Okay. Well, there is a couple of comments I'd like to make. One, I hope or I would demand that the supremacy rule, article six of the Constitution of the United States be followed in that any treaty signed by the United States Government is supreme law of the land. So if there is any treaties that this would infringe on as far as the indigenous people's rights, those treaties must be followed. There can be no rule that would right around those treaties. It's against the Constitution. I'd also insist that if any public resources are affected or responsibility for mitigation, then the cost must be borne by the shipping or oil companies. If water is polluted, not only clean up but replenishment of water is the responsibility of the shipping -- that all responsible parties must provide proof of financial resources not only for the cleanup but for the replacement and the restoration of damage. And must provide for liability of loss of life or whatever [bell ringing]. And then I'll get back to the -- my point on liquid natural gas. I think the distinction between oil and liquid natural gas is an arbitrary one. I believe there is no contingency plan possible for a liquid -- an explosion of a liquid natural gas either at the point of departure, shipping, or storage. If a vessel is to have liquid natural gas, one spark could create an explosion that would be greater than the nuclear bomb that killed Hiroshima or Nagasaki. So I believe that because there is no -- absolutely no possible contingency plan, shipping liquid natural gas should be banned.

Response to I-1003-1
Thank you for your comments. When an oil spill occurs, there are very clear rules about who pays for the direct response activities, the cost of assessing environmental damages, and implementing the necessary restoration. State and federal laws require that those responsible for the pollution pay all costs associated with the cleanup operations.
In addition to paying for cleanup costs and claims from third parties, Washington state may require you or your company to pay a natural resource damage assessment, reimbursement of the state’s expenses to respond, assess, and investigate the incident, and a penalty for violation of the state’s law or rule. For more information on each of these costs, review our webpage https://ecology.wa.gov/Regulations-Permits/Reporting-requirements/Spills-If-you-spill.

Please also see comment I-995-1 and I-1020-1.

I-1004: Jennifer Calvert

Comment I-1004-1
Public testimony provided 9-19-19. My name is Jennifer Calvert, and I want to thank you for traveling to my part of the state to gather opinions from eastern Washington residents on your work to update the rule regarding oil spills on and offshore our wonderful state. Washington has a pretty good reputation for caring about the environment and about protecting our resources, and I see this desire to make sure that our rules regarding oil spills are as stringent as possible to prevent the horrible effects that will result when an oil spill happens. Please notice that I said, "when," and not if. I do realize that businesses that handle the transportation of oil are doing everything they think they can to avoid a spill. Of course, they are. No one wants such a terrible event to occur. I'm sure the chances are very small, but the chance is not zero. I'm a math teacher,

and I try to help my students see the implications of the word "probability." Chance of rain, 30%. Does that mean it won't rain? Should I take my umbrella or not? We need to look at the very dire consequences of allowing tar sands crude oil to be transported through our waters and our local communities such as Spokane. A spill of such oil would be very possibly catastrophic in ways that would take literally years to recover from. Our downtown is very vulnerable due to the railroad running smack dab through it. And our Spokane drinking water could be ruined forever by such a spill affecting our precious aquifer. You might be gathering that I oppose the idea of transporting tar sands crude oil through my city and my state and the waters off of our shores, and you would be right. Maybe I can't stop that from happening, but you can diminish the possibility and effects of such a calamity by showing that you are acknowledging the unique risks involved and are updating the rule regarding the transportation of tar sands crude oil so that the industry understands that we Washingtonians take this situation very seriously. We will regulate them more stringently than conventional crude oils and that we demand that they provide plans for oil spill contingency based on the best possible science. We need assurance that the response times and the capability of response resources will be sufficient to respond to the worse case spill. Please insist by means of your rule update that we get the protections from the catastrophic oil spill that Washington deserves. Thank you.

Response to I-1004-1
Thank you for your comment. See response to comment I-577-1.

I-1005: Johan Yugar

Comment I-1005-1
Public testimony provided 9-19-19. Good afternoon. My name is Johan Yugar. I am a fellow of the community solutions program of the U.S. State Department, and I am here on behalf of the Lands Council. Dilbit needs special regulations, diluted bitumen commonly known as dilbit is already moving through Washington state by vessel, train, and pipelines. And the protections and regulations are not suited to deal with the change increase of these kinds of oil. Diluted bitumen has unique properties widely different from those of other kinds of crude oil. Those properties affect greatly the behavior of diluted bitumen in the case of a spill. These differences in behavior make many of the contingency plans generally designed for other crude oils insufficient to effectively mitigate the damages derived from a spill of dilbit. The chemical and physical changes that diluted bitumen and their cause during the water are of great importance and their understanding of these changes is still very limited. As stated in the study spills of diluted bitumen from pipelines, a comparative study of environmental fate, effects, and response published by the National Academy of Sciences, engineering, and medicine in 2016, I quote, "a more comprehensive and focused approach to diluted bitumen across the industry and the relevant federal and state agencies is necessary to improve preparedness for spills of diluted bitumen and to [indiscernible] more effective clean up and mitigation measures when these spills occur. We need more transparency. The recommendations of the previously cited study state importance of having complete information readily available and as much as possible publicly accessible. We subscribe some of these recommendations. First, require the plan to identify all of the transported crude oils using industry-standard names such as cold lake blend. And to include safety data sheets for each of the named crude oils. Both the plans and the associated safety data

sheet should include the spill relevant properties and considerations. Second, require that plans adequately describe the areas more sensitive to the effects of a diluted bitumen spill. Including the water bodies potentially at risk. Third, require that plans describe in sufficient detail response activities and resources to mitigate the impact of the spills of diluted bitumen including capabilities for detection, containment, and recovery of submerged and sunken oils. The methodology for elevating a spill response capacity should be replaced. A very significant problem with this rule update is that Ecology has not updated the methodology used to evaluate the ability of contingency plan holders to respond to another spill. Effective daily recovery capacity or EDRC is a measure of a skimmer's ability to recover oil in open water. It does not include real-world limitations such as visibility, sea state, storage, et cetera. EDRC is an outdated tool and should be no longer used as predictor of the oil spill recovery capacity of the required plans. There are several alternatives which offer a better and more effective approach to estimate the oil spills recovery capacity of the plans. Notably, as stated in August 2016 press statement from the Bureau of State and Environmental Enforcement considers the estimated recovery system potential calculator as a system-based approach that is a significant improvement over the existing effective daily recovery capacity. We command ecology to use this rule update to implement these or some other state of the art methodology. We ask that the update to the wildlife response section address the full branch of wildlife response actions including, but not limited to, reconnaissance, deterrence, preemptive capture and relocation, recovery, stabilization, and rehabilitation, and the immediate removal of oil carcasses. The rule update should clearly state the mechanisms that the wildlife response service providers will use to coordinate with the state, federal, tribal, and other response partners. Thanks.

Response to I-1005-1
Thank you for your comments. Please see response to comment I-5-2.

I-1006: Laura Ackerman

Comment I-1006-1
Public testimony provided 9-19-19. Good afternoon. I'm Laura Ackerman. Thank you for coming to Spokane. I really appreciate that. I work for the Lands Council, but I'm here as a private citizen today. And I only have one comment. I'm going to make more technical comments and my single biggest concern is that we're not responding quick enough to oil sands or oils that, you know, that don't float for a long time. And this is how I liken it, and this is the analogy that I think is really important in our heads to keep in mind when we're doing this planning, is that in Spokane and in a lot of cities in this country, when you have a medical emergency and you call 911, you want to get to a medical emergency in under five minutes. That's, like, pretty much the standard for response because being there quicker makes a big difference say in terms of a heart attack. If you have a heart attack, you want to have somebody there in five minutes. And non floating oils are the same way. They are kind of like the heart attacks of humans in the ocean and in bodies of water. If you don't get to them quick enough, it's just going to be too late because we have to contain them and then clean them up as soon as possible. So it's really imperative that we have stricter rules in terms of response times and that's it. Thank you.

Response to I-1006-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.
The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The updated standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink we added a definition of potentially non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

I-1007: Linda Carroll

Comment I-1007-1
Public testimony provided 9-19-19. Yes. My name is Linda Carroll, and first of all, let me say I was very impressed by how thoughtful and detailed the plans for the number of issues that you've taken into consideration. I think it's a very good beginning. Although there are folks who are obviously more expert than me who had some specific suggestions for improvement. I guess I would just want to go on record as urging that in the final plan of special attention be paid to monitoring so that spills, particularly I'm thinking more particularly pipelines, can be spotted as quickly as possible. A speed of response that Laura was mentioning. Ecological issues including sensitive species, unique habitats, lost income and livelihoods to humans, care to use cleaning methods that don't harm the environment, and ultimately providing the strongest possible protection to humans, animals, and plant species and ecological systems. And then I'd like to say something more addressed to fellow citizens and to you because it goes outside the scope. To me this is a little bit like you've done a really wonderful plan to rearrange the chairs on the Titanic because our fellow citizens are using so many petroleum products that, you know, I mean, you're sort of put in a position to sort of clean up the mess that all of the rest of us, in a sense, are making by our demands. And so I very much hope that we can move toward a clean energy that will not pose these problems. Thank you.

Response to I-1007-1

Thank you for your comments. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. Further updates to our Geographic Response Plans, planning documents for rapid, aggressive and well-coordinated responses, support your concerns about responding in such a way that we minimize harm to the environment. Through this rulemaking we will update our GRPs following a development process which will ensure public engagement in the identification of areas at risk of non-floating oils as well as the sensitive resources in those areas. We will ensure that plan holders address these risks in their plans. Additionally, we will rely on a public outreach process, which includes engagement with the public, to ensure risks and resource concerns are adequately addressed.

I-1008: Pauline Druffel

Comment I-1008-1
Public testimony provided 9-19-19. I thank you also for the opportunity to be here, and to speak with you today. So thank you for coming to Spokane. And my comments, in essence, are these. I wrote them before I realized that the contingency planning involves if an accident occurs rather than preventing an accident, but I'm going to go continue reading what I more or less what I wrote. I've always considered our Washington state waterways to be magnificent gems with amazing diverse ecosystems. But the presence of Canadian tar sands crude oil puts all that beauty and diversity at risk. I see that you, the Department of Ecology, have the responsibility to do all in your power to safeguard that magnificence. And I'm pleased to hear a lot of what you're arguing and that you work for it. Thank you. I wish we didn't have to deal with the very damaging Canadian crude oil that sinks as soon as it spills. But we do have to deal with it. And we depend on you to come up with the regulations and to enforce them. I understand that this is a contingency plan rather than a prevention plan, but I wish, I wish that you could require that the shipping entities show a department -- to show to a Department of Ecology inspector that each ship has with it the materials it would need to use for an immediate complete cleanup of a worst case spill. I don't know how feasible that is, but I wish that could be. And I would like that inspector to inspect each vessel before the vessel is allowed to carry the oil through our waters. I would like that. Our waterways with their fragile ecosystems are too important to us to not do all that we can to require that shipping entities take every precaution possible to prevent a spill and be ready to immediately clean up any spill that does happen. Thank you.

Response to I-1008-1
Thank you for your comments. See response to comment I-1007-1. The rulemaking enhances oil spill preparedness for regulated vessels, facilities, and pipelines operating in Washington state. State requirements ensure preparedness for worst case spills that may occur. Unfortunately, spill prevention is outside the scope of this rulemaking.

I-1009: George Taylor

Comment I-1009-1

Public testimony provided on 9-19-19. Thank you for coming to eastern Washington to hear testimony from us on the east side who sometimes we feel we get the short end from the west side. Then you can join us tomorrow in a very important climate action strike which is being held downtown that relates to this hearing indirectly. As you know, a young Swedish woman named Greta Thunberg has started a worldwide movement that will have a protest tomorrow in downtown Spokane which Governor Inslee is coming to hear in Spokane we learned today. And this -- what she's saying folds into our hearing today because she -- what she's saying and what I'm saying here on the record is that our house is on fire. That these fossil fuels that we've been talking about today that are being transported by rail which we're not really dealing with today but also by pipeline, by -- to end up in our terminals and on vessels which seems to be our focus today. The safety of our vessels and what happens if there is a spill and developing contingency. I'd like to echo what Jennifer said about it's not if a spill is going to happen, it's when it's going to happen. And how often. And spills have often occurred. We saw the Exxon Valdez example in Alaska and of course the incredible damage that was done in the gulf with the gulf oil spill some years ago. And what I liked in your presentation was how we've learned lessons from those incidents that will help us in the future. But there will be oil spills in the future and we've got to learn how better to deal with those. But even better than that, we should be keeping our fossil fuels in the ground where they belong and developing as fast as we can other sustainable forms of energy. Solar, wind, it warms my heart when I drive across the mountains over to Seattle and I see all those wind farms that are -- but we need more of that. We need more of sustainable energy. But what I think I'll focus on today because our hearing is focused on contingency plans for oil spills in our waterways and I think as Pauline so eloquently said, water and our waterways are our most precious human resource. And our Washington State Department of Ecology is charged with protecting our waters. Water is the one resource we cannot live without. We can live without food, we can live out fossil fuels, but we cannot live without water. That includes water that we use to drink from our waterways and the aquifers that are affected by oil spills. But I think I would conclude by saying the one thing I want to drive home in terms of our hearing today is this assessment time. When an oil spill occurs, and it will occur, how fast is your assessment going to do. And I'd like to piggyback on what Laura said. You're a five-minute time for a 911 response team. I heard you reference an hour ballpark is going to be the time that you're going to require some kind of assessment to be done. And that's great, I believe as a citizen it should be a shorter time than an hour. Certainly, the local responders could do it almost immediately. Those on the ship or on the pipeline can do an immediate assessment. You're saying we're going to make it an hour more or less. But I like the health analogy that Laura pointed out that when you have a stroke, they call it the golden hour. If you get the stroke victim to an emergency room within an hour, they can administer medication that will turn around that stroke. By analogy, if you get your response team to the site before an hour is gone and have local responders all up and down the state that can be there not only within the hour but within minutes to do that assessment so that these nonfloatable fossil fuels will not do the damage that is too late to mitigate. So learning the lessons from the Exxon Valdez, that huge oil spill, and the gulf and other disasters that you cited in your presentation. Let's have a more stringent more robust, not only assessment but cleanup effort to make it not the minimal regulation that the industry will except but the maximum regulation that the public demands. Thank you.

Response to I-1009-1

Thank you for your comment. Please see response to comment I-1008-1.

I-1010: Jack Talcott

Comment I-1010-1
Public testimony provided on 9-19-19. I do want to thank you as brilliant representatives. I thought you quickly educated me on the issues that I needed to see in order to contribute today -- feel like I can contribute today. And I've said it before, it's an unfortunate sign of our society when we have to continue to try and legislate fairness and morality. And it looks like that's what this is. And I thank you for the work to do so. Because a contingency plan when I as an employer, as a business am transporting hazardous materials through my neighbor's and citizen's nation, I should have plans in place. Common sense to me. And it sounds like this is legislation moving in that direction. And until we collectively eliminate the reliance of our nation and our citizens on the federal reserve, the power, and corruption that money provides and the subsequent reliance on our fossil fuel industries. Until we as Washington state decide we don't want fossil fuel reliant jobs in our state we can tell those job creators to find different jobs for this beautiful environment we've been blessed with. I'd also ask -- while I haven't heard any comments, and I just reinforced everything I've heard today, but anyone who speaks against common-sense legislation to require contingencies of employers in our state, please look inside. I can't find any reasons to oppose it as an employee, as an employer, as a citizen, or as a neighbor, so thanks again for this opportunity.

Response to I-1010-1
Thank you for your comments.

I-1011: Lovel Pratt

Comment I-1011-1
Public testimony provided on 9-24-19. Okay, my name is Lovel Pratt I'm the marine protections program director at Friends of the San Juans and thank you for providing access to today's hearing via webinar. I want to focus my comments on the wildlife response section of the draft update of the rule. However based on answers to questions at today's hearing and also last week in Everett I want to just touch on one point. I'd ask that the rule document fully address all the potential costs of a worst-case nonfloating oil spill and specifically address both the federal liability limits and Washington State's financial responsibility limits. The answers provided by staff today were technically correct, but I feel they didn't fully address Washington state's financial responsibility limits [indiscernible] the funds that are required under federal liability limits and Washington state's financial responsibility limits and the additional funds available in the event of a spill. While those amounts appear to be sufficient to address the cost of a worst-case spill, we do a comparison to the cost of a nonfloating oil spill that took place in 2010 in the Kalamazoo River and we compare that to worst-case spill volume for spills here in Washington state, I think we would find there is a significant gap between those funds available and what the cost could be of a nonfloating oil spill here in Washington. And I would hope that the final documents for the rulemaking fully address all of the information. So, moving on to the updates to the wildlife response section, I want to thank you for addressing that section of the rule. It's

very important that the section be updated. But I have some concerns with the current draft of the rule. I'm concerned that there's not enough detailed information and there's not a requirement for year-round available personnel and equipment as well as accelerated timeframe to ensure that oil spill contingency plan holders are prepared to effectively implement wildlife response operations in a worst case spill. In the current draft there is a requirement for two wildlife response personnel to arrive within 12 hours of a spill to conduct all the various wildlife response operations with an additional seven personnel to arrive within 48 hours. There is no correlation between what's listed as the spill in terms of personnel and equipment and ensuring to the public that this would be sufficient for an effective implementation of wildlife operations in the event of a spill. And then specifically under WAC 173-182-540 (2)(c)(ii), I think it is great that the draft update specifically addresses southern resident killer whales. They are critically endangered and we saw in the Exxon Valdez oil spill up in Alaska the orcas [indiscernible] who were in the vicinity of the spill were significantly impacted by the spill. One species of orca is effectively extinct with just a few remaining members and no increase in population since that spill 30 years ago. And so it is great that this current update includes deterrence operations. However, I'm concerned that again I think it is important that we look at identifying the vessels to conduct a deterrence operation throughout the state for example down there at the mouth of the Columbia River it is documented that killer whales will spend time there feeding on the Chinook coming out of the Columbia River [indiscernible]. So they are spending time throughout the state, not just within the Salish Sea right now the southern residents are down in Puget Sound. I think it is important to look at resources for deterrence operations throughout the state and also I would urge you to, unless you're going to require specifically trained professional whale scientists and naturalists who can identify southern resident killer whales, I think it is appropriate to require deterrence operations for all killer whales, just because if you don't have those specialists who can identify them you want to make sure that the [indiscernible] killer whales you are targeting are in fact southern residents as a whole, better than just to target all killer whales and then you are assured of also deterring some of the resident whales specifically.

Response to I-1011-1
Thank you for your comments. Based on your comments, the Final Regulatory Analyses (FRA) for the rulemaking was updated to reflect the costs of spills and financial responsibility requirements.

Updated wildlife response planning standard requires a contract for personnel and equipment to be available within specific timeframes. The contract ensures year round available personnel and equipment. Based on comments received, we changed the phase in language for the wildlife response planning standard. With the exception of the whale deterrents planning requirements, all contracts and equipment must be detailed in the plan within 12 months of the rule effective date.

I-1012: Don Steinke

Comment I-1012-1
Public testimony provided on 9-24-19. Hello, I am Don Steinke. I'm a retired physics teacher. I represent climate action of Southwest Washington, but we care about [indiscernible], the big

river also. Maybe we met before, on June 3 of 2016, Columbia River Keeper and I were at your first hearing in Vancouver regarding oil spill response. Around noon, River Keeper got a call that there was an oil train derailment and spill and fire in Mosier, Oregon. One oil terminal in Clatskanie Oregon now wants to ship heavy crude down the Columbia. Another oil terminal in Portland is already doing that. I believe some of those ships will be going to refineries in the Salish Sea. There are some things that river pilots cannot control such as loss of power, loss of steering, and lack of stern buoys. Three years ago, a large grain ship ran aground in the Columbia near Rainer Oregon and had a large boulder stuck inside a 20-foot gash. They probably needed a stern buoy. My friend who has waterfront property there said it's in my front yard. On March 20, 1984, a Mobil oil tanker was bringing oil up the river from Ferndale, up the Columbia. According to the United Press, the Columbia River Pilots Association reported that the tanker ran aground on the warrior reef after its steering gear broke. And 1000 barrels of oil spilled into the river near midnight. The spill response team said more booms would not have helped. The water was running too fast and the oil was too thin. Regarding thin, the Coast Guard reported seeing the oil 50 miles downstream forming tarballs and headed to the fragile estuaries. Another large ship lost its steering in the lower Columbia about 10 years ago and crashed into the docks at a lumber mill. Five years ago, Captain Scott Ferguson told us that the name of the game is prevention, preparation, and response. To prevent groundings maybe require tug escorts in the river. Stern buoys and steering gear inspections. Now there is another threat. According to Ashley Ahearn, reporting for Earth Fix, the Coast Guard asked Congress in 2011 to adopt stronger regulations to prevent oil spills whilst ships were loading. Three years later, nothing had been done. Consider using those recommendations for guidance. Astronaut Jim Lovell looked back on earth and reflected, people hope that they will go to paradise when they die. They don't realize they were born in paradise. There's no place in the solar system so nice. The tribes near the mouth of the Columbia thought they lived in paradise. So did the tribes in the Salish Sea. In 1850, the Salish Sea may have been the most beautiful place on earth. Now the two most polluted rivers in Puget Sound were and are the home of the Duwamish and the Puyallup tribe. The tribes just finished a three-day march from Puyallup River to your office in Lacey to protest the Tacoma LNG thing. The tribes do a better job at protecting our environment than our own government because our government is corrupted by industry and you guys are stuck in the middle. Use your full authority to protect what is left of paradise. Thank you.

Response to I-1012-1
Thank you for your comments. Please see response to comment I-4-1.

I-1013: Alona Steinke

Comment I-1013-1
Public testimony provided on 9-24-19. Good afternoon, my name is Alona Steinke. I'm a retired RN and I'm speaking today on behalf of Physicians for Social Responsibility and also as a member of Friends of the Columbia River Gorge. I'm asking that Ecology require the strongest protections to our waterways. This update of the rules does not adequately address the protections that we need. The scope is too narrow and it doesn't establish the greater response that is required for tar sands crude, which is unique. We are presently at risk to oil spills from tankers passing through the graveyard of the Pacific that is the Columbia River Bar. Tankers and

barges have already harmed our orcas is with their mere presence in the Salish Sea. The salmon that is their food source is being decimated by the effects of climate change. There are numerous pipelines that cross tributaries and wetlands, and now we are threatened by proposals that would vastly increase this activity. We currently receive about 1.3 million barrels of dilbit, heavy tar sands crude daily from Canada's tar sands region. Producers hope to quadruple that amount by 2025. The most infamous tar sands oil spill was the one that put more than 1 million gallons of oil into the Kalamazoo River in Michigan in 2010. Enbridge knew of the defects in the pipeline where the rupture occurred five years before. But they were able to delay making repairs without breaking the rules. Their leak detection system didn't work as advertised. They said it could detect and shutdown a leak within 10 minutes. It took the operators and Enbridge's Canadian control room 17 hours to realize the pipeline had ruptured. Leak detection problems are widespread. Oil spill data from federal regulators show that over a ten-year period, advanced leak detection systems identified only one out of 20 reported pipeline leaks. It is vitally important to have a sufficient number of trained personnel to respond to these spills. Responders have the added danger of dealing with hydrogen sulfide, which kills first one's sense of smell and then kills them. Responders must be prepared to wear full scuba respirators. The authority of a study by the National Academy of Sciences, sorry the authors of a study by the National Academy of Sciences have several policy recommendations. They say that the oil companies need to inform regulators which type of crude they are transporting in every pipeline segment before a spill occurs. Operators should design different spill response plans to fit the oil type. When a spill occurs, they must identify the oil type by industry name within six hours, and if requested, analyze the sample within 24 hours. Once they know it is dilbit it is likely sinking and too late to clean up. Earlier I mentioned our beloved southern resident orcas. The standards for wildlife response need to be elevated. It should be a requirement to monitor and keep whales, including the orcas, away from a spill. These amazing animals are already teetering on the brink and an oil spill could very well mean extinction for them. The Columbia Gorge is a precious national scenic area and the Columbia River, that vast international Highway for ships and barges, has been named among America's most endangered rivers, a river that is at the crossroads where key decisions will determine its fate. Please establish the strongest policies to protect our waters from these heavy oils. Require more equipment, more appropriately trained personnel and a way to deploy them more quickly. Thank you for updating this plan and for protecting Washington's waters and thus the lives and the jobs that depend on it.

Response to I-1013-1
Thank you for your comments. Please see response to comment I-577-1 and response to comment I-5-2.

I-1014: Kristin Edmark

Comment I-1014-1
Public testimony provided on 9-24-19. Kristin Edmark, Battleground, Washington. I decided to very much change my comments after Sonja's excellent presentation. But I do want to say a few things, and that is, please require quick response time and please make it very extensive. This is such a huge huge impact on our environment. And I know it is a different part of the

organization, but the best response is really prevention so if you can urge those parts of the Department of Ecology when they are doing permitting, permitting of new fossil fuel facilities and pipelines increases the risk of accidents and cleanup. Washington State Department of Ecology should keep these risks forefront when considering and permitting new fossil fuel projects. Feedstocks change over the decades. Companies can use existing permits to repurpose facilities. I know you are working hard to make sure you know what's going on with these facilities, but all fossil fuel facilities and pipelines pose a threat. So I urge you to work with other parts of Department of Ecology to limit new fossil fuel infrastructure, especially from Kalama, from Tacoma, all new fossil fuel facilities increase the risk. Thank you.

Response to I-1014-1
Thank you for your comments. The rulemaking enhances preparedness for vessels, facilities, and pipelines operating in Washington. The rule does not inform or prevent the development of new fossil fuel facilities.

I-1015: Ryan Rittenhouse

Comment I-1015-1
Public testimony provided on 9-24-19. My name is Ryan Rittenhouse. I work for Friends of the Columbia Gorge. Thanks for this opportunity to comment to you and speak with you today. Our number one concern at Friends I know is not the focus of this analysis and update, but it is of course the trains that transport oil by rail through the state of Washington. And we are very concerned primarily with the way in which it is interpreted in the way in which contingency planning is decided based on worst-case scenario and how that is defined and how that is used to set the standards for what the oil train transporters, carriers have to plan for. And it sounds like during the Q&A what was clarified a bit for us was that even though, and as we knew the Washington legislature sets worst-case as the entire trainload, there's some interpretation of that at the agency that incorporates with PHMSA and 24-hour response planning detailing that to be at only about 20% of an oil train. But we know of course that is not worst-case. Worst-case is of course a whole train as we saw with Lac-Megantic and the 24 hour timeframe is very concerning because as we even explored earlier in the day today, these newer sources of oil such as the tar sands have this big mixture of chemicals and other additives that can quickly separate out and create a much more difficult cleanup scenario, which can change dramatically in the first 24 hours. So I hope that the interpretation of the agency moving forward especially with trains and especially because probably most of the increase in oil transport through the state into the future is going to be on trains, we hope you will look at that and hold the transporters to the highest maximum standard possible. Not just in terms of what they have to plan for, but what they have to pay into contingency planning. Aside from that, in general I just want to address the idea of contingency spill response planning in general. And the way in which that normalizes us to the concept of fossil fuel use and fossil fuel spills psychologically. Normalization is a very tricky thing. We tend to think as humans, well, if we can just make a plan, if we can just get some things on paper and believe that we are ready to respond to a disaster, well then that makes us prepared for the disaster, but of course what we've seen when tankers spill, when oil trains derail, is that all of our planning is really mostly for nothing because typically what the first responders have to do in an oil train fire for example is just let it burn. In an oil tanker disaster, the

companies have some initial responses required by law, but then as you even said during the Q&A they often then just wash their hands of it and say well we can't clean this up anymore and then it is on the state's burden. And we have seen that with the worst disasters in history. The oil is never cleaned up and the people who are impacted are never properly compensated and of course the natural environment is never resuscitated and is never able to recover, at least not for decades if not centuries, if ever. So, first and foremost we need to recognize that the transport of these commodities, of these newer forms of fossil fuels, such as fracking, oil and tar sands oil is inherently unsafe and the only way to properly plan is to do everything we can to reduce transport of this commodity in general. And finally, I will wrap up just by saying that I'm trying to point out and see this from a different point of view, is that even under business as usual, even with the oil companies doing everything according to plan, they are still spilling into the environment. The entire industry is a plan to deliberate spill in contamination of our ecosystem, even if they never have an unplanned spill, their product is being transported to a facility where it is then refined, where products at the refinery are then dumped into the environment, into the water, into the land, into the air, and then even at the final stage where they are burned in a car or in a power plant those emissions are being dumped into the environment as well. So that's a spill. It's just a plan to spill and we pretend like that's okay because it's planned. Well, it's not okay and especially considering the fact that we are in the midst of the largest climate strike we have ever seen, which started on Friday with millions of schoolkids all around the world and this whole week we are continuing to see action going on [indiscernible] against climate change. We need to be doing more and agencies like yours need to be doing more to address this deliberate contamination of the environment and the deliberate warming of the planet through industrial emissions and CO2. Thank you.

Response to I-1015-1
Thank you for your comments. Please see response to comment I-4-1 and I-1003-1. Contingency planning requirements for railroads, financial responsibility, and the impacts of climate change are outside the scope of this rulemaking. Please see the final regulatory analysis for this rulemaking for additional details about financial responsibility for oil spills.

I-1016: Cathryn Chudy

Comment I-1016-1
Public testimony provided on 9-24-19. Good afternoon. I planned for two minutes, so I will just say at the beginning that I went to your website and could not find anything. Maybe I was just looking in the wrong place, but there was nothing that I could find on your homepage or when I went to oil spill prevention and all over there was a place that has events, but there was some things related to sewage or something but there was nothing that I could find about these hearings. And so if there isn't, that is, I think that is an oversight or that is a problem because people want to know about this and when they hear the Department of Ecology is doing hearings they, unless they have contacts the way I do, they would go to your website and not be able to find it. So. Anyway, my name is Catherine Chetty and I live in Vancouver Washington. So, having been to your website I see that it has extensive information about comprehensive oil spill prevention in our state. I am not reassured, however, because our region is now faced with an increase in oil by rail of tar sands crude oil. We face serious risks and challenges that are not

covered in the scope of your draft rule as written. Because tar sands crude is not a floating oil when spilled, response times and resource capability must be sufficient to respond before the oil submerges and sinks. Planning requirements must be based on the best available current science, not outdated and inadequate models that provide false reassurance by overestimating response capacity and putting off necessary improvements. Planning needs to encompass a worst-case spill of an entire train. When we were fighting the Tesaro Savage oil terminal proposal here at our port, BNSF railroad executives were in Vancouver assuring us that the highest safety measures would be applied. At the same time, they were in Washington DC lobbying to keep the latest safety braking systems from being required on trains carrying crude oil and they were successful. Those braking systems weren't put into effect. I recently talked to a BNSF employee who told me off the record that he and other employees recognized that BNSF rail are not safe for carrying this dangerous oil through our gorge and our community. I recently heard Director Maia Bellon speak in Washington DC about the federal assault on the EPA and Clean Water Act. I appreciate her concerns for our state and your agency's commitment to doing all you can to protect our freshwater marine ecosystems in shoreline communities. We do not want a Kalamazoo to happen anywhere in Washington. And you are our best hope to keep the catastrophic results that occurred in Michigan from happening here. That means you must protect us by employing stringent regulations that show companies transporting tar sands crude oil that you take the unique risks of this climate polluting toxic fossil fuel seriously. I believe keeping all fossil fuels in the ground is the right answer for our safety and well-being and I'm hoping your agency will say no to the shorelines permit for the proposed Kalama methanol refinery. That is just an aside. And because we remain a target for the fossil fuel industry, with its drive to get tar sands crude oil to markets we need you to strengthen your draft oil spill rule accordingly. Thank you.

Response to I-1016-1
Thank you for your comments. Please see the responses to comments I-4-1 and I-5-2. Contingency planning requirements for railroads are outside the scope of this rulemaking.

I-1017: Enid Cox

Comment I-1017-1
Public testimony provided on 9-24-19. Good afternoon. Thank you for coming here to Vancouver. We really appreciate that. When spills occur, more than just the water is contaminated. The air is also contaminated and I'm here representing myself but also all the other seniors, particularly those who use oxygen, but not in any official capacity. Clean air is important. It's a life-and-death situation. My granddaughter had cancer when she was 20 years old. She was pregnant. They kept her on a low dosage of chemotherapy until they took the baby early at eight months. Then they put her on full chemotherapy and radiation. It collapsed one lung. And she was on oxygen. Every particulate in the air is a really life death sentence to her. She passed away at 50 years old, due to the contamination in the air and not being able to get enough oxygen. So when you look at the plan, which I did not see, and you may find it, I did not see anything about reducing the contaminants that go into the air when you have spills, whether they go into the water or not. And I thank you for this opportunity to speak before you.

Response to I-1017-1
Thank you for your comment. Through this rulemaking we are enhancing the planning standard requirements to ensure that regulated vessels and facilities can conduct community air monitoring during spills to ensure that people and communities at risk during spills are provided with appropriate information about air quality, evacuations, and access to medical care.

I-1018: Eric LaBrant

Comment I-1018-1
Public testimony provided on 9-24-19. Good afternoon. I'm Eric LaBrant, I'm a commissioner at the Port of Vancouver but I'm here today on my own behalf and not in that capacity. I just wanted to share a couple of thoughts in terms of how aggressive and complete the plans are that are being required. I just want to point out oil from the Exxon Valdez is still being found. Also wanted to make sure to mention the air components, I think that has been touched on by a couple of previous commenters but the air impacts to potential spills whether that is from the spill itself which can give off hydrogen sulfide, volatile organic compounds, various carcinogenic compounds, those can have of course impacts to wildlife but also to human health for those who may be living nearby. Also of course we have seen a number of cases where oil spills do ignite. So that can change the composition of what is going into the air in those situations. Also I wanted to mention potential water and land impacts. You know we are focusing on, I've seen some focus on water, but groundwater, I know that's near and dear to Ecology's heart and certainly mine as well. I actually live on top of a groundwater cleanup site presently and so that's top of mind for me as a resident. And you know so I want to make sure that the response, whatever those responses are that in those plans they adequately respond to human health impacts. Also wanted to make sure that there's some thought given to, or some consideration given to the use of shipping lanes and you know, we use quite a bit of hydropower here in Washington. Those two uses in particular of our waterways are critical and 24-hour requirements for response need to take that into consideration, that we need to have access to shipping lanes and to our hydroelectric power as quickly as possible. There's some serious downstream impacts to any kind of delay in use of those. I would also like to see strong consideration given for response capacity in ecologically sensitive areas, certainly some locations where oil might spill are potentially more or less sensitive than others, so we want to make sure that gets built into any planning that gets done. Someone, a previous commentor mentioned the orcas as one example those would be especially sensitive to any potential negative impacts. So it would make sense to make sure that there is extra cleanup capacity quickly available to prevent those kind of impacts and finally, last but not least, I wanted to talk a little bit about the financial responsibility piece. During the Q&A we heard a little bit about PCB cleanup and how ultimately that ended up going back toward a state fund. Other oil spills we have seen where a company, an initial party may file bankruptcy, insurance companies that may try to file bankruptcy or sort of take a hands-off approach to their responsibility so whether that is in the form of a bond or some sort of prepaid approach what I would like to see as a taxpayer is to not have spill response ultimately the financial responsibility laid at the feet of the taxpayers. When entities go out of business, go bankrupt, walk away, whatever approach gets taken. I'm glad that Washington state has the capacity financially to try and address some of these things, but it doesn't seem appropriate for

the risk to be socialized unless the profits from these projects are also being socialized. Thank you.

Response to I-1018-1
Thank you for your comments. Please see response to comment I-4-1, I-5-2, I-1020-1, and O-10-1.

I-1019: Carrie Parks

Comment I-1019-1
Public testimony provided on 9-24-19. Hi, Carrie Parks, Vancouver, I'm sorry. I shouldn't have messed with it, Vancouver resident. Sitting here and listening to all of this I grew up on Puget Sound I boated a lot on the Salish Sea as a kid. Lived next to the Columbia River most of my life off and on. These are precious waterways and I realize how critical it is to keep them unpolluted. Our wildlife depend on them and so does our state economy, which is based largely on agriculture. We are already seeing massive animal extinctions and die offs. We had the sea stars that disappeared a few years ago. We've got the orcas, we've got the salmon. We know that those populations are under stress. So my question is why are we allowing transportation on our waterways at all. Especially of a heavy crude that sinks to the bottom and is difficult to clean up. I wanted to finish by just reading a little bit about the Columbia River bar, which is known as the graveyard of the Pacific. Because of, and it is considered widely to be the most dangerous river bar in the entire world. Why do we want to ship oil across something like that? So I want to read a little bit from a historian that writes for a local website called Offbeat Oregon and this has several stories about shipwrecks out there but he gives a really good description. His name is, he is a historian named Finn Johns. He says, I want to explain what it is that makes the Columbia River bar so deadly. Essentially it is three factors, shallow water, swift current and a steady strong wind that nearly always blows shoreward and toward the north side of the river. The shallowness means that big deep waves that have pulsed all the way across the Pacific Ocean start to get compressed into just a few feet of water, just like they do in surf on the beach. When they do, the current coming out of the river sort of pushes their feet out from under them, creating a sort of a circular swirl with the top moving forward and the bottom moving seaward. I'm going to skip around a little. When winter storms off the Columbia regularly generate hurricane class wind speeds and whip up waves to match, when seas get big and the river flows high and the tide is going out, you get some incredible breakers on the bar breaking all the way across the channel up to 70 feet tall. With a powerful undertow right in front of them. When a boat or a small ship is tackling one of these waves, what can happen is the undertow can grab the boat by the taft rail and pull the stern into the face of the wave while the top of the wave pushes the boat over. What sailors call a pitch pull or end over end flipping. The hydraulic pressure this puts on a boat or a ship is unbelievable especially if the water is shallow enough for one end of the vessel to dig into the sandy bottom as it goes over. Ships have been known to actually break in half. As waves come into the bar on a nice day, they form breakers in the shallows along each side of the channel. As the weather gets heavier the breakers spread further into the middle of the channel, so that less of the water in the bar is left unbroken. Ships, boats and ships alike have to heave to and wait for the weather to settle down again. I think that's probably the gist of it, but I think that description really gives you a picture of why that bar is dangerous and why we have no

business shipping oil across it. And I don't think we should be allowing that kind of transportation at all. That's what your rule ought to say. Thank you.

Response to I-1019-1
Thank you for your comments. Please see response to comment I-4-1. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. Alternative energy and efforts to decrease or discontinue the movement of bulk oil in Washington is outside the scope of this rulemaking.

I-1020: Ann Littlewood

Comment I-1020-1
Public testimony provided on 9-24-19. I'm Ann Littlewood from Portland Oregon, the other side of the Columbia. Thank you for your excellent presentation, your careful work, and what I took to be kind of a sense of optimism about your rulemaking. I hope you will hear and follow the suggestions to strengthen your plan. But I'd like to step outside your narrow lane just a bit here. We know spills will happen. We know the fossil fuel companies are untrustworthy and will evade financial and other responsibilities if they can. It has been pretty well demonstrated and no matter the booms, skimmers, detergents and birdwashers, we really can't clean up an oil spill completely. Or even perhaps in the majority. Much of these toxins will affect us and our environment for the indefinite future. It's a classic case of public loss, risk and expense for private profit. The only solution is keep these fuels in the ground and find, and move to a safer and wiser source of energy. I think we all know that. I just feel that it needs to be said at any hearing regarding the infrastructure and accoutrements of the fossil fuel industry. Thank you.

Response to I-1020-1
Thank you for your comments. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. Alternative energy and efforts to decrease or discontinue the movement of bulk oil in Washington is outside the scope of this rulemaking. Financial responsibility refers to the proof or demonstration that a responsible party is able to pay for the costs and damages of a spill up to a specified amount. Typically, financial responsibility is evidenced by an insurance policy or Pollution and Indemnity (P&I) club documents, but also may involve surety bonds, guarantees, letters of credit, or qualification for self-insurance. Washington has financial responsibility requirements based on type of vessel and total capacity for storage or transfer of product. Washington does not have its own certification program for financial responsibility. Instead, we rely on federal and other state programs to certify vessels for financial responsibility. There is currently no program to certify financial responsibility for onshore oil handling facilities. Establishing new financial responsibility requirements is outside the scope of this rulemaking. For additional details about financial responsibility visit https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills.

I-1021: David Perk

Comment I-1021-1
Public testimony provided on 9-26-19. Okay, great. My name is David Perk, P-E-R-K. My contact information is davidperk@comcast.net. I am a resident of Seattle. I am – I appreciate that Ecology is reaching out with a virtual seminar on this. I do regret that it is as abbreviated as it is. I do feel like I have some understanding, but I feel like I still have concerns. Those involve heavy sinking oils and I am recalling some of the testimony that I heard in the State Legislature about the need for staging response teams, virtually following along with the vessels carrying heavy oils. This was testimony in the context of the orca hearings. And the tugboat or vessel captains who testified indicated that a three-minute response time was crucial for being able to respond to heavy oils. I'm not sure whether that's part of the contingency planning here, it doesn't seem to be. I'm not sure whether that capability was included in the legislation that was passed this past session -- the three-minute response time. But I am concerned that currently there is heavy oil being moved by barge and while it's not within the scope of this hearing, I recognize that there may be quite a bit more oil that is moved in the future so it seems that that quick response time will be very crucial. Based on what I've learned tonight, I am reassured slightly that Ecology is going to be more effective and diverse in their response and will be considering more aspects of the response than previously and it sounds like more contractors will be vetted and approved to do various things, that's all great. I am concerned that the best way to deal with this issue would be to prevent it in the first place and I would submit that moving heavy oil by vessel really isn't something we want in our waters. I recognize that's outside of the scope of Ecology, but I feel like that's an intrinsic part of my perspective. I am very concerned that both rivers and shorelines be examined. The other aspect of this that concerns me slightly is that since heavy oil has already been moving through pipelines, over rivers or under rivers in the northern part of our state and being delivered to the Tacoma area, I'm wondering about establishing a baseline to determine what has already spilled and whether that has been done and I regret that I should have asked that as a question since I'm not going to get an answer in my testimony, but that seems like it might be something to do as a way of determining the status of the environment prior to any future event. Thank you very much for the opportunity to comment. I remain concerned that Ecology is not quite up to the challenge of all the junk that is moved by boat and pipeline, but I really appreciate your hard work. Thank you very much.

Response to I-1021-1
Thank you for your comments please see response to I-577-1 and response to comment I-1008-1.

I-1022: Lovel Pratt

Comment I-1022-1
During the September 17 Contingency Plan update hearing's Q&A, someone asked about the obligation of the responsible party regarding payment for the costs of a spill. I recommend that this question be clearly answered in the Regulatory Analyses, Likely Benefits of the Proposed Rule Amendments – or whatever section is appropriate.
In response to the question, Sonja answered that the responsible party has to pay all costs associated with a spill. WA State law (RCW 90.56.360 and RCW 90.56.370), unlike federal law, includes unlimited liability for oil spill response costs and damages. However, the demonstration of financial responsibility is subject to specified limits (see https://ecology.wa.gov/Regulations-

Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills). So, Sonja's answer is technically correct, but does not address the state's financial responsibility limits.
According to the 2011 report, IMPROVING OIL SPILL PREVENTION AND RESPONSE IN WASHINGTON STATE (https://test-fortress.wa.gov/ecy/publications/documents/1108002.pdf - page 16):
Under Washington State law, unlike the federal government, liability for oil spill costs and damages is unlimited. Demonstration of financial responsibility, however, is subject to specified limits. Washington state law grants the Department of Ecology authority to administer state financial responsibility requirements by rule, if necessary. While regulations for vessels have been established, financial responsibility regulations for facilities have not been set.
There is also a gap in verifying that vessel and facility operators meet state financial responsibility levels. Ecology relies upon the federal government (USCG) and the State of California's Office of Spill Prevention and Response (OSPR), whose financial responsibility levels are similar to this state's, to verify compliance and issue certificates.
Has Ecology established financial responsibility regulations for facilities and/or addressed the gap in verifying that vessel and facility operators meet state financial responsibility levels?
FYI here's a link to the current federal rulemaking, Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability-Vessels, Deepwater Ports and Onshore Facilities: https://www.federalregister.gov/documents/2019/08/13/2019-17234/consumer-price-index-adjustments-of-oil-pollution-act-of-1990-limits-of-liability-vessels-deepwater.
To address the costs that exceed federal liability and state financial responsibility limits, the federal Oil Spill Liability Trust Fund can allocate up to $1 billion per oil spill: https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/About_NPFC/OSLTF/, and Washington State has an oil spill response tax and oil spill administration tax: https://dor.wa.gov/find-taxes-rates/other-taxes/oil-spill-response-tax-and-oil-spill-administration-tax and also has funds available for oil spill restoration: https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Oil-spill-restoration-funding.
What amount of state funds are available for oil spill response and oil spill restoration?
These additional funds may appear to be sufficient for the total costs of an oil spill's response, restoration, and damages, but that's not necessarily the case – especially with a nonfloating oil spill.
Page 40 of the rulemaking's Preliminary Regulatory Analyses talks about the $1.2 billion cost of the 2010 Enbridge Kalamazoo River nonfloating oil spill. According to the EPA (https://www.epa.gov/sites/production/files/2013-12/documents/enbridge-fs-20130624.pdf) this was a spill of 843,000 gallons (or 20,071.43 barrels) of diluted bitumen. According to the Trans Mountain Pipeline Expansion Project application, the oil spill risk from the tankers transporting diluted bitumen through Washington State waters in the Salish Sea have a mean-case spill volume of 52,000 barrels and a credible worst-case spill volume of 104,000 barrels. (Note that this project application's definition of worst-case spill is not the same as WA State's definition.) If the cost of the 2010 Kalamazoo River spill ($59,786.47 per barrel) is applied to these spill sizes, the 52,000 barrel spill would cost $3,108,896,440 and the credible worst-case spill volume of 104,000 barrels would cost $6,217,792,880. These costs don't include the difference in property values or the difference in spill response costs in the deep marine waters of the Salish Sea or the large Columbia River as compared with the response costs in the Talmadge Creek and the Kalamazoo River. In addition, the wildlife response and NRDA costs for a spill in the Salish Sea would also be substantially more than those costs in the Talmadge Creek and the Kalamazoo

River.
Page 43 has information about Enbridge's purchase of 148 houses, 2 mobile homes, and 5 vacant parcels following the Kalamazoo oil spill, stating: "While a large company may be able to buy out impacted property owners, a smaller company or single vessel may not be able to do so." This should be updated with information on the cost of shoreline properties in Washington State cost, as compared with riverside properties along the Talmadge Creek and Kalamazoo River. (Note that another article states "154 properties:" https://beltmag.com/kalamazoo-river-line-6b-oil-spill/ - it would be great to get specific data on these properties and what Enbridge paid.)
Please update the Regulatory Analyses to thoroughly address the all the potential costs of a nonfloating oil spill in WA State, and include information on federal liability limits and state financial responsibility limits.
Thank you for your attention to these comments!
Lovel

Response to I-1022-1
Thank you for your comments. The Final Regulatory Analyses (FRA) for the rulemaking has been updated to include additional details about financial responsibility. Regarding non-floating oil spill costs, we have expanded the discussion of potential spill costs in the FRA to reflect per-barrel costs from the Kalamazoo spill, as applicable to Washington State. Regarding your comments about the purchase of private properties impacted by the Kalamazoo oil spill. Thank you for your suggestion. We have corrected the number of properties to match your beltmag.com source, as well as the Enbridge timeline for the spill (https://www.enbridge.com/marshall/marshall-release-timeline). We were not able to get individual purchase prices in a timely fashion, but have expanded the language in the FRA to address what is and is not included in those purchases, and to include local property owner concerns about the buyout.

A-1: Thirteenth Coast Guard District,

Comment A-1-1
While we appreciate the opportunity to comment, we are concerned that the Thirteenth Coast Guard District did not receive official notification of the proposed rule until September 16, 2019, less than three weeks before the due date for comments, Oct 6th. This is despite the fact that the proposed rule published August 7th. The USCG is the Federal lead on oil spill response and planning and our ability to meet this important role is supported by our state partners and our on-going collaboration and coordination. Our initial concern is the proposed WA state regulations may interfere with federal preemption in respect to ACP approval and development (ref: 40CFR300.210(c). The Coast Guard will do a thorough review of the proposal and will provide comments accordingly.

Response to A-1-1
Thank you for providing comments. Through our area planning process, we work diligently to plan for coordinated responses with members of the Regional Response Team and Northwest Area Committee. The potential for rulemaking was discussed during the legislative session. Details about the rulemaking and timeline were shared at the rule announcement phase in

January through multiple emails and listserv announcements. Several USCG staff participated in our rule development workshops. The rule is written to align with the Northwest Area Contingency Plan (NWACP) response posture and policies and ensures that contingency plans make reference to and are consistent with the NWACP.

This rule also represents a significant improvement in our ability to respond to non-floating oil spills and protect wildlife at risk from oil spills. As described in the Northwest Area Contingency Plan (NWACP), all activities related to a wildlife response must occur under the direction of the Wildlife Branch led by either Washington Department of Fish and Wildlife (WDFW) or United States Fish and Wildlife (USFWS) personnel within the incident command system. The contingency planning efforts, as described by this rule, must be consistent with the NWACP. In addition, the rule language requires that contracts are established with wildlife response service providers that have the appropriate skills and permits necessary to conduct successful wildlife operations.

O-1: San Juan Islands Visitors Bureau,

Comment O-1-1
The San Juan Islands Visitors Bureau (SJIVB) is writing in support of the update to Chapter 173-182. We are the Destination Marketing Agency for all of the San Juan Islands. Strengthening oil transportation safety in the Salish Sea is critical to San Juan County's tourism economy.
It will:
• Secure Stable and Reliable Funding for Oil Transportation Safety
• Improve Oil Spill Preventions and Implement Marine Protections
• Establish the Salish Sea Shared Waters Forum

Protection of the Salish Sea is the right thing to do for human health and the health of our ecosystem. AND, protection of the Salish Sea is also the right thing to do for our economy.

The outdoor industry in our corner of the Pacific Northwest supports thousands of jobs. This update would help ensure that our waters stay clean.

Conservation-minded tourists from around the world are the backbone of the San Juan Islands economy. As a world-renowned visitor destination, any kind of a toxic spill would be broadcast by media quickly throughout the world and devastate our economy. Who comes to our beautiful region to see beaches covered in bunker fuel and littered with dead seabirds?

While there are environment losses every day throughout the world, our region must chart a different course. We think it is particularly important to coordinate with our Canadian partners to address shared issues in the cross-boundary waterways between Washington state and British Columbia, including oil spill prevention. A Salish Sea Shared Waters Forum would accomplish this goal.

We urge you to champion our environment and our outdoor-dependent economy and update Chapter 173-182 with the proposed changes.

Response to O-1-1
Thank you for your comments. Please refer to response to comment I-4-1.

In 2018, Washington State passed the Strengthening Oil Transportation Safety Act, which required the state Department of Ecology Spills Program to coordinate with British Columbia and Canada to establish the Salish Sea Shared Waters Forum. The purpose of the Forum is to exchange information to enhance oil spill prevention, preparedness, and response, with the goal of minimizing risks and impacts of spills from vessel traffic in the Salish Sea. The Forum serves as a platform for open dialogue for all levels of government from both sides of the border, including Transport Canada, the U.S. and Canadian Coast Guards, Tribes and First Nations, environmental groups, and industry. It addresses issues such as navigational safety, data sharing, and the impacts of spills on the environment, tribal and First Nation resources, the economy, and public health.

The Salish Sea Shared Waters Forum is one of the ways our state is engaged in spill prevention, preparedness, and response activities to address risk and champion our environment.

O-2: Friends of the San Juans,

Comment O-2-1
Attached please find the comment letter submitted at the September 17, 2019 hearing in Everett from Friends of the San Juans.

Friends of the San Juans

Sonja Larson, Rulemaking Lead
Department of Ecology, Spills Program
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.l 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.

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."

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 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.

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) Capabilitv

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." 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.

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
Marine Protection Program Director

Response to O-2-1

See response to I-5-2.

O-3: San Juan County ,

Comment O-3-1
San Juan County Council 350 Court Street No. 1 Friday Harbor, WA 98250 (360) 378 - 2898 District 1, Bill Watson District 2, Rick Hughes District 3, Jamie Stephens

October l, 2019 Sonja Larson, Rulemaking Lead Department Of Ecology, Spills Program PO Box 47600 Olympia, WA 98504-7600

Submitted via email to sonio larson@ecv.wo.qov and Ecology's public comment portal:

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

Dear Ms. Larson,

Thank you for the opportunity to Ecology's draft update to Chapter 173-182 WAC, the Oil Spill Contingency plan.

In general, the County concurs with the Friends Of the San Juans detailed comment letter dated September 17, 2019 (submitted at the public hearing). In addition, San Juan County offers the following requested changes to the draft update Of the State's Oil Spill Contingency plan. These are necessary to enhance the State's preparedness for spills of nonfloating oils, as directed by the Legislature in E2SSB 6269.

1) Define "nonfloating Oil." Nonfloating Oil is omitted in WAC 173-182-030 Definitions.

As background justification, in 2016 the USCG released its latest guidelines for Oil Spill Response Organizations (OSRO) that added a new classification for nonfloating Oils. In these guidelines, the USCG recognized that nonfloating oils are broader than just Group V oils and include Other heavy oils that show other characteristics that may cause the Oils to submerge Or sink. Federal Regulations separate oils by groups, Group V is considered the heaviest. According to the USCG, the oil spill response capabilities required to detect and recover nonfloating oils differs significantly depending on the operating area, environmental conditions, and the type of oil spilled. Standard response methods- designed for floating oils- are inadequate and difficult to apply when most of the oil is submerged or sunk to the bottom.

Recent California legislation, CA AB 936, also addresses nonfloating oils whereas a nonfloating Oil means a Group V Oil as defined in Section 155.1020 Of Title 33 Of the Code Of Federal Regulations, including any Group V Oil that is diluted with a diluent for transport and any Other types Of Oil that are more likely to sink rapidly due to their composition. These types Of nonfloating Oils when spilled onto water are more likely to include components that either do not float on the surface of the water or become nonfloating over time. Furthermore, nonfloating Oil can pose heightened risks to safety and public health. While all oil spills create a health risk to first responders and the public, a spill Of nonfloating Oil may Create heightened and novel risks, different and greater than those associated with conventional oil spills. Accordingly, it is essential that communities and first responders be fully informed, in regarding transport of oil, and in particular, nonfloating oil, in their vicinity*

* https://trackbill.com/bill/california-assembIy-bill-936-0il-spills-response-and-contingency-

2) 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. San Juan County requires heightened nonfloating Oil spill response capacity.

The following points (noted as recommendations numbered in the Capacity Evaluation) should be included in this update, Or at the very least, thoroughly considered:
1. The waters adjacent to the San Juan Islands present a very difficult environment to contain and recover a major marine oil spill. This is primarily due to the high currents and rip tides that occur throughout the area on a daily basis.

5. In order to maximize potential recovery capacity, it is imperative to initiate recovery operations as soon as possible. This could be enhanced by stationing equipment in San Juan County.

8. Free-oil recovery operations as modeled utilized almost all available workboat resources leaving few for other concurrent phases of the response, such as shoreline protection.

3) An additional rulemaking to update Chapter 173-182 WAC, Oil Spill Contingency Plan is required before the next 5-year update to address long-standing concerns not considered for the scope Of the current rulemaking. These include points A and B below.

A) Estimated Daily Recovery Capacity is a poor metric for evaluating spill response capacity.

As demonstrated in Section 6.6, strike teams with equivalent maximum recovery potential can have vastly different EDRC ratings. Standards based On the delivery of boom, skimmers characterized only by EDRC, and on-water storage do not provide a true indication Of response capability. Strike teams should be designed to Optimize containment, collection, and storage capacity, then rated by their maximum recovery potential and operating environment. planning standards could then be based on those ratings.

The Department Of Interior's Bureau Of Safety and Environmental Enforcement funded a project by Genwest Systems, Inc., the company that developed the ROC, to examine EDRC and recommend an alternative approach. The Estimated Response System Potential calculator was developed (Genwest Systems, Inc., 2012b) and updated most recently in February 2015 to include feedback received from a National Academies of Science review and public comments solicited through the Federal Register (79 FR 151).

B) There is a high level Of concern about the potential for a large oil spill in San Juan County, but no clear forum for local government, tribes, and organizations to understand and inform oil spill preparedness efforts.

The process of working with the County and the parties they invited to provide input to this study made clear that there is a high level Of concern about the potential for a large oil spill in the marine waters adjacent to the County. Clearly, the citizens of San Juan County and local tribes would face severe negative impacts if a large spill of persistent oil were to occur in or near the San Juan Islands. Several members of the study group expressed frustration at the relative lack Of participation Of the response industry and Department of Ecology in sharing information or suggestions on the study design that would have benefitted this project. (A representative from the BP Cherry Point refinery did contribute to discussions of the project scope and research questions.)

While some planning-related information is available for public comment, there is no formal, sustained forum for the County and others to obtain information, ask questions, provide suggestions, Or share concerns about spill preparedness with regulators and regulated industry or

response contractors. Such a forum can also foster shared understanding Of issues and build trust. The two Regional Citizen's Advisory Councils in Alaska, mandated in federal law, provide one example of such a forum. The Puget Sound Partnership Oil Spill Work Group also sought to fill this role, but no longer meets.

4) Please consider clarifying the following in the preliminary Regulatory Analyses including Preliminary Cost-Benefit Analysis, July 2019, Publication no. 19-08-017

-Executive Summary: Benefits of proposed amendments Please add under the second bullet (p. ix) a sub-bullet of 'Marine transportation and infrastructure'.

-Section 4.3.2 Potential efficiencies in spill management In the second paragraph (p. 35-36) please add a bullet 'Marine transportation and infrastructure'.

-A spill near the San Juan Islands In the fourth paragraph (p. 38) please clarify that the estimated losses are limited to those within San Juan County. Suggest changing the two sentence to 'A recent hypothetical analysis of a 4 million gallon sinking oil spill at Turn point northwest of San Juan Island, with sea oiling potentially extending to Island, Jefferson, and Clallam counties and Vancouver island, estimates losses just to San Juan County of between $142.3 million and $509.9 million.18 In the same analysis, a 1 million gallon spill of heavy fuel Oil with a similar trajectory estimates to cost to just San Juan County Of between $84 million and $243 million.'

Also, please change the ecosystem services bullet (p. 39) to clarify the services evaluated, 'Ecosystem services (including water storage, water quality, carbon sequestration, and habitat services provided by tidal wetlands, eelgrass, and the marine water column)' ,

-Section 5.1 Summary of the costs and benefits Of the proposed rule amendments: Benefits Of proposed amendments Under the second bullet (p. 46-47), please add a sub-bullet of 'Marine transportation and infrastructure'.

Thank you for your attention to these comments.

Best regards,

COUNTY COUNCIL
SAN JUAN COUNTY, WASHINGTON

Bill Watson, Member District No. I
Rick Hughes,-Vice Chair District No. 2
Jamie Stephens, Chair District No. 3

Response to O-3-1
See response to comment I-5-2, I-577-1, and O-8-1.

O-4: Western States Petroleum Association,
Comment O-4-1
WSPA
Jessica Spiegel
Regional Director

Oct 4, 2019

Ms. Sonja Larson Rulemaking Lead
Department of Ecology, Spills Program
PO Box 47600 Olympia, WA 98504-7600

Re: Oil Spill Plan Rulemaking Comments

Dear Sonja,

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide the Department of Ecology comments as part of the Oil Spill Contingency Plan rulemaking public comment process. WSPA is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining transportation and marketing in the five western states, including Washington.

WSPA would like to comment on the August 7, 2019 proposed rule language for Chapter 173 182 WAC Oil spill Contingency Plan (OSCP).

Sensitive Resource Identification

-The proposed rule language requires plan holders to identify sensitive resources and response options in section 173-182-510_ In the absence of updated Geographical Response Plans, the plan holders will need to identify sensitive resources on their own. This may result in multiple plan holders located in or traversing through the same geographical area(s) identifying sensitive resources and response options differently.

-Vessel companies that transit several Geographic Response Plan Areas should be given the opportunity to update their plans with information as the GRP's are updated, to ensure consistency across all plans.

Wildlife Deterrence

-WSPA believes that requirement in section 173-182-540 that plan holders identify a list of vessels that are vetted, trained, and equipped to support activities while not having the current means of vetting, training, or equipping those vessels in an official capacity is problematic. WSPA understands the sense of urgency to develop a means for wildlife deterrence operations in Washington, however, plan holders are not able to comply with this portion of the proposed rule because requirements are outside of the plan holderS control WSPA believes that the rule should

better define "vetted, trained, and equipped" as well as the plan holders' role in meeting this requirement. Additionally, it is unreasonable to develop training for these vessels on how to properly deter a southern resident killer whale while this sensitive topic is still under development and conflict exists with Federal law which prohibits "hazing" or deterring marine mammals.

-The Vessel of Opportunity program took many years to grow and it is reasonable to expect that developing a vetted, trained and equipped Wildlife Deterrence fleet will also take some time.

Thank you for your consideration of WSPA's comments. We welcome any questions or comments you might have. Please contact Tery Lizarraga, project lead, at (510) 640-7875 or by email at tlizarraga@wspaorg.

Sincerely,

Jessica Spiegel
Director

Response to O-4-1
Thank you for your comments. In response to comments received, the phase in requirements for including benthic and seafloor resources at risk from non-floating oils in contingency plans was updated to reflect that plan holders have thirty days from the date the Geographic Response Plan (GRP) is published to update their plans. Updating the plans through the GRP process ensures that plan holders do not need to full fill this requirement on their own. The GRP process also supports public engagement in the identification of resources at risk and updates to the GRPs.

Regarding your concerns about planning for marine mammal deterrents. We updated the rule to reflect that any deterrent actions must be conducted in accordance with the Northwest Area Contingency Plan. Please also see response to comment I-5-2.

Additional Background Information about efforts to enhance marine mammal protections in Washington - On March 14, 2018, Governor Jay Inslee signed Executive Order 18-02 directing state agencies to take several immediate actions to benefit southern resident killer whales (SRKWs), and established a task force to develop a longer-term action plan for recovery and future sustainability of killer whales.

The Department of Ecology Spill Prevention, Preparedness, and Response Program created a curriculum to increase the number of trainings for people with vessels in the whale watching industry to volunteer and assist in the event of an oil spill. The term vessel of opportunity (VOO) describes an organized system to preregister volunteer boat operators who can be quickly activated after a spill occurs and tasked with specialized response actions that supplement the fleets of professional spill responders. Before a spill, the participants will have varying levels of involvement as a volunteer, but once a spill occurs and the VOOs are activated, the boat operators will be paid. Creating a curriculum to improve and increase the preregistration and the number of trainings is a fundamental step to ensure the long term recovery of SRKWs.

Over the next few years Ecology will work collaboratively with USFWS, NMFS, NOAA, WDFW, and regulated plan holders who operate or transit in areas that could impact whales, including southern resident killer whales, to develop a training program for VOO vessels to support marine mammal deterrent operations. Initially outreach will be targeted to whale watching vessels to support this key work but the program will be open to any interested vessel owners. Vessels will be encouraged to identify their interest in participating in the program via signing up at www.oilspills101.wa.gov. Once the pool of available vessels is identified, plan holders, or as applicable primary response contractors acting on behalf of plan holders, will vet the vessels and create a plan for contracting, call out, outfitting and training.

O-5: Snohomish County,

Comment O-5-1
Sonja Larson, Rulemaking Lead
Spills Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Department of Ecology Chapter 173-182 WAC, Oil Spill Contingency Plan Rule Update

Dear Ms. Larson:

Snohomish County would like to submit the attached letter providing comments on the proposed update to Chapter 173-182 WAC, Oil Spill Contingency Rule. Snohomish County faces multiple potential threats for oil spills in our county's waters due to increased transport of oil by both water and land. In light of those threats, I have worked with the Snohomish County Marine Resources Committee (MRC) to review the updates to the Oil Spill Contingency Rule.

Members of the MRC have expressed concerns about the safety of the oil transportation systems within our region and the increased risk of spills in the marine and nearshore environment, particularly in areas designated as 'Shorelines of Statewide Significance." The MRC has also expressed concern about the efficiency and effectiveness of the oil spill response plans that are currently in place. The MRC urges the Department of Ecology to establish and ensure enforcement of effective regulations that will minimize impacts from oil spills in our region. Specific recommendations from the MRC are outlined in the attached letter.

We appreciate your request for comments and look forward to an effective final rule.

Sincerely,

Dave Somers
Snohomish County Executive

Attachment

cc: Lacey Harper, Chief of Staff,
Gregg Farris, Surface Water Management Utility Director, GFarris@co.snohomish.wa.us
Kathleen Pozarycki, Surface Water Management MRC Staff,
Kathleen.pozarvcki@co.snohomish.wa.us

Dear Snohomish County Executive Dave Somers:

The Snohomish County Marine Resources Committee (MRC) is a broad-based citizen's advisory group appointed by Snohomish County Council made up of economic, environmental, tribal and conservation interests. The MRC is a team of citizen volunteers dedicated to promoting effective stewardship of Snohomish County's marine waters, habitats, species, and shorelines. Together, we seek out the best available scientific information and use it to evaluate, prioritize, and implement strategies for achieving and sustaining a healthy Puget Sound.

The MRC is writing this letter to provide Snohomish County a series of comments on the recent Washington Department of Ecology Oil Spill Contingency plan Update WAC 173- 182. As you are aware, multiple potential threats are present for large-scale Oil spills in Snohomish County waters. MRC Members have expressed concerns about the safety of the oil transportation systems within our region, and the increased risk of spills in the marine and nearshore environment, particularly in areas designated as Shorelines Of Statewide Significance. We are also concerned about the efficiency and effectiveness of the oil spill response plans that are currently in place. We urge that Ecology establish and ensure enforcement of the strongest regulations possible in order to minimize impacts from oil spills in our region. As part of Ecology's plan to update Chapter 173-182 WAC, Oil Spill Contingency Plan, we submit the following comments:

• It is strongly recommended that more definitive language be used throughout the proposed amendments, and less conditional language. The wording of the amendments need to clearly dictate what the Plan Holder must do, not should or shall do.

• Clearly define "sunken, submerged, non-floating Oils". Are the WAC 173-182 amendments using the same definitions that are used in the Northwest Area Contingency Plan? If so, this should be stated. Do the terms "sunken, submerged, or non-floating oils" used in the proposed amendments apply to the oil/product before being spilled or any portion of the oil/product after spillage when weathering or time in different environments, conditions, distance below the air-water interface occur? Due to the vagueness of these terms as now written in the proposed amendments, without clear definition, it could lead to ambiguity on what exactly the Plan Holder is being held accountable for and thus be used to argue their justification for non-compliance to the State's regulations.

• In order for the proposed amendments to "ensure the best achievable protection is maintained in contingency plans", We urge that Plan Holders be required to use the most current and up-to-date information for the resources at risk. We urge that Plan Holders be required to maintain a current list of relevant local contacts who would be involved in a spill response because of their knowledge and expertise. The Plan should be required to identify key stakeholders with

significant local interests in a response process. Additionally, key local stakeholders should be requested and allowed to participate in tabletop exercises and drills on a regular and routine basis. There needs to be a mechanism within the proposed amended regulations that requires the incorporation of knowledgeable personnel from outside the spill response community to pro-actively assist in the preparedness and planning phases of the spill response process. Language to this effect should be reflected in the proposed amendments, and Ecology should not approve a plan that excludes this important component.

It should be noted that many ecologically, culturally, and economically sensitive species at risk within the region have juvenile life history stages that occur in different aquatic zones than the adult stage. Thus, it is recommended that the Requirements and Protection strategies in section WAC173-182-510 be expanded to include "water column and benthic species at risk, as well as critical life history stages of species at risk, from sunken, submerged, or non-floating oils". The "additional non-floating oils considerations" in Section WAC173-182-510 (2)(b)(ii) should also include salinity and temperature stratification, and subsurface currents.

We recognize that drastically reducing petroleum transport over and adjacent to water in Puget Sound is not an option at this time. prevention Of a spill is paramount and ultimately optimum; preparing for a spill is the next best alternative. We appreciate the efforts of Ecology to reach out to the community of stakeholders to get input on this important rulemaking opportunity.

Sincerely,

Sarah Brown, Chair
Susan Tarpley, Oil Spill Subcommittee Chair

cc. Lacey Harper, Chief of Staff, Lacev.Harper@co.snohomish.wa.us
Gregg Farris, Surface Water Management Utility Director, GFarris@co.snohomish.wa.us

Response to O-5-1
Thank you for your comments. We recognize your interest in ensuring that wording of the amendments clearly dictates what the plan holder must do, not should or shall do. For the purposes of contingency planning, we establish planning standards which describe how a plan holder must plan to be able to respond. The planning standards do not constitute clean-up standards that must be met by the contingency plan holder. In a spill or drill, deployment of equipment and personnel is scenario specific, and guided by safety considerations. The responsible party must take all actions necessary and appropriate to immediately address the entire volume of a spill regardless of the planning standards.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. We added a definition of non-floating oils to address your concerns.

Under the updated rule, the GRP development process will ensure public engagement in the identification of areas at risk of non-floating oils as well as the sensitive resources in those areas.

Updates to the GRPs will look at seasonal variation in risk as well as variable risk to sensitive resources based on life stage. We will ensure that plan holders address these risks in their plans. Additionally, we will rely on a public outreach process, which includes engagement with Marine Resource Committees and others with local knowledge to ensure risks and resource concerns are adequately addressed.

O-6: Stand Up To Oil,

Comment O-6-1
Please accept 1,625 individual comments from the public that should be received and recorded as unique, individual comments. Thank you Rein Attemann

October 4, 2019

Sonja Larson, Rulemaking Lead
Spills Program, Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update Chapter 173-182 WAC

Dear Ms. Larson,

I am concerned about the risks that tar sands crude oil poses to my community and communities across Washington State. I appreciate the work that the Department of Ecology has done thus far to improve oil spill prevention, preparedness, and response measures over the last several years, but am concerned that the proposed updates to Washington's Oil Spill Contingency Plan Rule does not go far enough to protect us from a worst case scenario spill of tar sands crude oil.

Communities across Washington are already at risk from the existing transport of tar sands crude oil and we unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River, by barge across Puget Sound, and through the Puget Sound Pipeline across Whatcom and Skagit Counties. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks and increase the likelihood of a catastrophic oil spill of diluted bitumen. In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to our economy, communities, and endangered orcas and vulnerable ecosystems.

To address these risks, Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. The timeframes required in the draft rule provide no assurance that the current response times and capability will be sufficient to respond to a worst-case spill. Ecology should distinguish between all potentially nonfloating oils and diluted bitumen, which is likely to sink quickly and therefore

demands more stringent equipment and response time requirements.

Finally, I urge Ecology to enhance planning standards for wildlife response in the event of an oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill. I urge Ecology to exercise its full regulatory authority and establish stronger protections from tar sands oil that Washington needs and deserves.

Response to O-6-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The updated standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink we added a definition of potentially non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

We agree that the Plan must require that the monitoring and deterrence operations apply to all

whales not just southern resident killer whales. The standard has been updated to reflect this request.

O-7: Orca Salmon Alliance,

Comment O-7-1
On behalf of the Orca Salmon Alliance, please accept our comment letter on Oil Spill Contingency Plan rule update. Orca Salmon Alliance is a coalition of 17 local, state, and national organizations, working to highlight the connection between two iconic endangered species that need help:Southern Resident Killer Whales and Chinook salmon. Sincerely Rein Attemann

October 4, 2019

Sonja Larson, Rulemaking Lead
Spills Program, Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update

Dear Ms. Larson,

Thank you for the opportunity to provide comments to the Department of Ecology (Ecology) about the Oil Spill Contingency Plan rule update which requires large commercial vessels, oil handling facilities, and pipelines to have detailed plans for appropriate equipment and trained personnel to respond to oil spills.

The Orca Salmon Alliance, a coalition of 17 local, state, and national organizations, works to highlight the connection between two iconic endangered species that need help: Southern Resident Killer Whales and Chinook salmon. One giant threat to the existence of the endangered Southern Resident orcas is the risk of an oil spill in the Salish Sea. According to NOAA's 2005 recovery plan for the Southern Resident orca population, "major oil spills are potentially catastrophic to killer whales". 1 A report from 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 spoil, that could impact the entire population." 2 Such was the case with the AT1 orca population in Prince William Sound after the 1989 Exxon Valdez catastrophic oil spill. Thirty years later, that orca population is functionally extinct.3

Communities across Washington are at risk from the existing transport of tar sands crude oil and we are unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River to terminals including to Port Westward which has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly US Oil) refinery receives weekly shipments of diluted bitumen (dilbit) by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom

Counties, the Puget Sound Pipeline supplies Washington's four northern refineries with dilbit. Furthermore, the proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. The cost associated with this spill exceeds $1.2 billion and 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.4 "The riverbed will never be fully cleansed of bitumen."5

Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed the Department of Ecology to use this year's update to develop new rules and protections that address the unique characteristics and risks of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil. Unfortunately, this draft rule is insufficient to protect Washington's waters, marine ecosystems, orcas, and communities.

We are concerned that Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils, by failing to establish more stringent requirements for dilbit and using outdated models that overestimate our response capacity and for wildlife response requirements. Washington's rule should require more rapid response for companies transporting these oils to respond to spills before they submerge and sink. We urge Ecology to strengthen spill response requirements to address the unique risk that dilbit poses to waters in Washington State and the Salish Sea.

More specifically;

- The draft rule, while right to require a faster timeframe for the initial assessment of a spill, fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. We urge Ecology to require a fast, aggressive, and well-coordinated response to contain and recover potentially nonfloating oils before they submerge and sink by updating the table in WAC 173-182- 324(2) by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst case spill of non-floating oil. The timelines must be shortened and additional personnel deployed in the first few hours, especially for non-floating oils and diluted bitumen which can sink quickly, harm wildlife, and damage underwater habitats.

• Non-floating oil is omitted in WAC 173-182-030 definitions. We urge Ecology to further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines.

• Within the first hour of the oil spill, the initial assessment could take place remotely which means someone from 1,000 miles away could do the initial assessment. While basic conditions of weather, tides, and currents can be assessed remotely, so many site specific local factors, such

as wave activity, wind, ecological sensitive areas, docks, piers, wildlife, etc., can dictate the fate and behavior of the spilled non-floating oil from sinking or not, are better assessed on site. We urge Ecology to require that the onehour initial assessment be done at the spill location.

• The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill. 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) that defines "planning standards" and see also WAC 173-182-030 (70) that defines "worse case spill"). 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 oil spill (WAC 173-182-522 for covered vessel planning standards for shoreline cleanup). We urge Ecology to include accelerated timeframes and details on response "capability," including both equipment and personnel, to ensure that Oil Spill Contingency Plan holders will implement an effective response to a worst-case spill of non-floating oil.

• The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities. We urge Ecology to commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as new information becomes available through, for example, ongoing federal modeling studies.

• The wildlife operations plan 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 the scene within 12 hours. The draft rule provides no correlation between these minimal personnel requirements and their ability to effectively deploy wildlife operations for all impacted species. We urge Ecology to update WAC 173-182-540 (2)(c)(ii) to require vessels that have been vetted, trained, and equipped for deterrent operations to be available year-round (note that whale watching vessels are typically operated seasonally) and located in all the areas where whales are present.

• The proposed Plan update requires equipment and personnel to conduct monitoring and deterrence operations to prevent Southern Resident orcas from encountering spilled oil. Since personnel may not be able to distinguish between resident orcas from transient orcas, this requirement should apply to all killer whales. We urge Ecology to enhance planning standards for wildlife response in the event of a spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill, even if experts who are able to identify Southern Resident orcas are not present.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills. In recent years, Washington State has made significant gains in

improving the safety of oil transport by rail and vessel. The 2015 Oil Transportation Safety Act, the 2018 Strengthening Oil Transportation Safety Act, and most recently the 2019 Oil Spill Prevention Act increase transparency, preparedness, prevention measures and requirements, and funding.

We urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking, and to improve wildlife response capacity and timelines as well as protections specifically for the Southern Resident orcas.

Sincerely,

The Member Groups of the Orca Salmon Alliance:
Center for Biological Diversity
Defenders of Wildlife
Earthjustice
Friends of the San Juans
Natural Resources Defense Council
Oceana
Orca Network
Puget Soundkeeper Alliance
Save Our Wild Salmon
Seattle Aquarium
Sierra Club
Toxic-Free Future
Washington Environmental Council
Whale and Dolphin Conservation
Whale Scout

Response to O-7-1
Thank you for your comments. Please see response to comment OTH-3-1 and response to comment O-8-1.

O-8: Friends of the Earth US,

Comment O-8-1
On behalf of Friends of the Earth US Washington State members and activists, I am submitting 1,136 unique and individual comments attached, and that they need to be counted/considered as such. Thank you for considering these comments.

Dear Washington Department of Ecology,

As a Washington resident, I am concerned about the risks that tar sands crude oil poses to my community and communities across the state. I appreciate the work that the Department of Ecology has done thus far to improve oil spill prevention, preparedness, and response measures

over the last several years, but am concerned that the proposed updates to Washington's Oil Spill Contingency Plan Rule do not go far enough to protect us from a worst-case scenario spill of tar sands crude oil.

Communities across Washington are already at risk from the existing transport of tar sands crude oil and we unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River, by barge across Puget Sound, and through the Puget Sound Pipeline across Whatcom and Skagit Counties. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks and increase the likelihood of a catastrophic oil spill of diluted bitumen. In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to our economy, communities, and endangered orcas and vulnerable ecosystems.

To address these risks, Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. The timeframes required in the draft rule provide no assurance that the current response times and capability will be sufficient to respond to a worst-case spill. Ecology should distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements.

Finally, I urge Ecology to enhance planning standards for wildlife response in the event of an oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill. I urge Ecology to exercise its full regulatory authority and establish stronger protections from tar sands oil that Washington needs and deserves.

Response to O-8-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well

developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The updated standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink we added a definition of potentially non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

We agree that the Plan must require that the monitoring and deterrence operations apply to all whales not just southern resident killer whales. The standard has been updated to reflect this request.

O-9: Stand.earth,

Comment O-9-1
Attached are comments signed onto by 567 individuals. Please let me know if you have any questions. Alex Ramel, Alex@stand.earth

Dale Jensen, Director, Spills Program Manager
Sonja Larson, Response Technology Specialist
WA State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Sent via Ecology's public comment portal: http://cs.ecology.commentinput.com/?id=V6ATc

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

Mr. Jensen and Ms. Larson,

We are writing to emphasize our conviction that more must be done to protect our waters from the heightened risk presented by non-floating oils. Washington is increasingly threatened by projects that would bring these uniquely damaging products into our already crowded and endangered waterways, threatening treaty rights, fisheries, local economies, and critical ecosystems.

Tar sands and other potentially non-floating oils are different than most crude oil that has traversed our state historically. Disasters like the tar sands spill in the Kalamazoo River in Michigan prove that these products are more likely to sink, and more likely to sink quickly. And once it has sunk, cleanup operations become all but impossible.

The legislature and the public have repeatedly expressed these concerns. We have asked, and ask again today, that you hold companies that would profit by shipping tar sands and other potentially non-floating oils through or near our waterways to a much higher standard of spill response preparedness. This means updating the outdated systems for calculating response capacity, accelerating the response timeline, and requiring that significantly more spill response equipment be staged.

We ask that these rules be strengthened rapidly, either as a change to the current rulemaking, or as an emergency rulemaking initiated immediately. We cannot wait another five years to protect our water.

Thank you for your consideration of our comments.

Response to O-9-1
Thank you for your comments. Please see response to comment 1-577-1.

The scope of the rulemaking was narrow in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. At this time we cannot commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as new information becomes available through, for example, ongoing federal modeling studies.

Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to the short deadline for the current rulemaking effort to address non-floating oil risks, spill management teams, and drills, an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

O-10: Stand.earth et. al.,

Comment O-10-1
Please find attached coalition comments joined by Friends of the San Juans, Friends of the Earth, Stand.earth, The Lands Council, Washington Physicians for Social Responsibility, the Washington State Chapter of the Sierra Club, Washington Environmental Council, and RE Sources for Sustainable Communities.

Thank you for your time and attention.

Alex Ramel, Alex@stand.earth

Mr. Jensen and Ms. Larson,

As environmental and conservation organizations working to protect the health and safety of our communities from the safety risks of oil transportation, the undersigned 8 organizations urge you to strengthen spill response requirements to address the unique risks potentially non-floating oils pose to waters in Washington State and the Salish Sea. Of particular concern are the non-floating 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. Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed Ecology to use this year's update to develop new rules and protections that address these risks.

We are concerned that the Department of Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils by failing to establish more stringent requirements for plan holders transporting diluted bitumen and by using outdated models that overestimate response capacity. As written, this draft rule is insufficient to protect Washington's waters and communities.

The shortcomings of the current draft rule include:

● The draft rule is right to require a faster timeframe for the initial assessment of a spill; however, it still fails to require on site assessment and faster response times for diluted bitumen, despite acknowledging the heightened risks it poses.

● The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill.
● The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities.

To address these shortcomings, we urge Ecology to:

and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. These updates should focus on high risk and high consequence regions such as the San Juan Islands.
● Further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines. Due to the depths of many of the region's waterways, recovering meaningful volumes of oil after it has sunk would be all but impossible.
● Require that the one-hour initial assessment requirement be done on site.
● Commit to an aggressive timeline to update the modeling tool used to evaluate plan holders' oil spill response capacity by replacing assumptions that have been long-recognized to result in overestimates of recover rates of spilled oil.
● Enhance planning standards for wildlife response in the event of a spill, including adequate adequate personnel and equipment and immediate deterrence actions that keep wildlife from entering a spill. The Plan must require that the monitoring and deterrence operations apply to all

killer whales, which will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill.

Communities across Washington are at risk from the existing transport of tar sands crude oil and we are unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River to terminals, including to Port Westward which has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly US Oil) refinery receives weekly shipments of dilbit by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom Counties, the Puget Sound Pipeline supplies Washington's four northern refineries with dilbit. Furthermore, the proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. To provide adequate protections, Washington's rule should require more rapid response for companies transporting these oils to respond to spills before they submerge and sink.

We appreciate Ecology's oil spill prevention, preparedness, and response work to protect Washington's communities, natural resources, and economy and from the risk of oil spills and urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking.

Full Technical Comments on Draft Rule

Acknowledge Non-floating oil impacts.

Of particular concern to our organizations are the non-floating 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 transport 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.

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

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 non-floating 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] According to a July 12, 2019 magazine article, "The riverbed will never be fully cleansed of bitumen."[3] Unless Ecology can fully document that a response to a worst-case non-floating oil spill will result in a literal "clean up" of the spill, without any long-lasting and/or residual impacts, please replace "clean up" with "response" throughout the rule documents.

The following requested changes to the draft update of the State's Oil Spill Contingency Plan are necessary to enhance the State's preparedness for spills of non-floating oils, as directed by the Legislature in E2SSB 6269.

Provide additional and more detailed information in the Preliminary Regulatory Analyses.

In this rule, Ecology should fully address all the potential costs of a worst-case non-floating oil spill and specifically address both the federal liability limits and Washington State's financial responsibility limits.

During the Question and Answer portion of the September 17, 2019 hearing in Everett on the Oil Spill Contingency Plan update rulemaking, a member of the public asked about the obligation of the responsible party regarding payment for the costs of a spill. Please provide a thorough and clear answer to this question in the Regulatory Analyses, Likely Benefits of the Proposed Rule Amendments (or whatever Regulatory Analyses section is appropriate), and specifically address both the federal liability limits and Washington State's financial responsibility limits.

In response to the question on September 17, 2019, Ecology's spokesperson answered that the responsible party has to pay all costs associated with a spill. WA State law (RCW 90.56.360 and RCW 90.56.370), unlike federal law, includes unlimited liability for oil spill response costs and damages. However, the demonstration of financial responsibility is subject to specified limits.[4] Ecology's answer, while technically correct, did not address the state's financial responsibility limits.

According to the 2011 report, Improving Oil Spill Prevention and Response in Washington State: Lessons Learned from the BP Deepwater Horizon Oil Spill:[5]

Under Washington State law, unlike the federal government, liability for oil spill costs and damages is unlimited. Demonstration of financial responsibility, however, is subject to specified limits. Washington state law grants the Department of Ecology authority to administer state financial responsibility requirements by rule, if necessary. While regulations for vessels have been established, financial responsibility regulations for facilities have not been set.

There is also a gap in verifying that vessel and facility operators meet state financial responsibility levels. Ecology relies upon the federal government (USCG) and the State of California's Office of Spill Prevention and Response (OSPR), whose financial responsibility

levels are similar to this state's, to verify compliance and issue certificates.

Please provide specific answers to the following questions:

1. Has Ecology established financial responsibility regulations for facilities, and if so, what are they?
2. Has Ecology addressed the gap in verifying that vessel and facility operators meet state financial responsibility levels, and if so, how does Ecology verify that vessel and facility operators meet state financial responsibility levels?

To address the costs that exceed federal liability limits, the federal Oil Spill Liability Trust Fund can allocate up to $1 billion per oil spill and can only be opened at the discretion of the Coast Guard[6].Please provide detailed information on Washington State's oil spill response tax and oil spill administration tax, as well as funds available for oil spill restoration. Please provide details on the state funds that are available for oil spill response and oil spill restoration.

Given federal liability limits, Washington State's financial responsibility limits, and additional available federal and state, please include details on whether identified and available funds are sufficient to cover the financial costs of full costs of a worst-case spill of non-floating oil in Washington State.

Page 40 of the Preliminary Regulatory Analyses discusses the $1.2 billion cost of the 2010 Enbridge Kalamazoo River non-floating oil spill. According to the United States Environmental Protection Agency, this was a spill of 843,000 gallons (or 20,071 barrels) of diluted bitumen.[7] According to the Trans Mountain Pipeline Expansion Project application, the oil spill risk from the tankers transporting diluted bitumen through Washington State waters in the Salish Sea have a mean-case spill volume of 52,000 barrels and a credible worst-case spill volume of 104,000 barrels. (Note that this project application's definition of worst-case spill is not the same as WA State's definition.) If the cost of the 2010 Kalamazoo River spill ($59,786.47 per barrel) is applied to these spill sizes, the 52,000 barrel spill would cost $3,108,896,440 and the credible worst-case spill volume of 104,000 barrels would cost $6,217,792,880.

Please specifically address the differences in property values along the Kalamazoo River as compared with Washington State property values along the shores of the Salish Sea, the outer coast, and rivers. Please also address the difference in spill response costs in the deep marine waters of the Salish Sea and the Columbia River as compared with the response costs in the Kalamazoo River. Finally, please address the wildlife response and NRDA costs for a spill in the Salish Sea and Columbia River as compared with the 2010 Enbridge non-floating oil spill wildlife response and NRDA costs in the Kalamazoo River.

Page 43 of the Preliminary Regulatory Analyses has information about Enbridge's purchase of 148 houses, 2 mobile homes, and 5 vacant parcels following the 2010 Kalamazoo River non-floating oil spill, stating: "While a large company may be able to buy out impacted property owners, a smaller company or single vessel may not be able to do so." This should be updated to address both federal liability limits and Washington State's financial responsibility limits, and also information on the financial valueof shoreline properties in Washington State, as compared

with riverside properties along the Kalamazoo River.

Executive Summary (page x)

It appears that "Avoided ERTV drill costs" was intended to be included in the bullet list of avoided costs, directly beneath "Property values." Instead it is the first sentence in the paragraph following the bullet list. Please correct the typo.

Section 4.3.2 Value of immediate spill cleanup (page 36)

In the bullet list of Washington Waters, please add the omitted waterways surrounding the San Juan Islands:

- Haro Strait
- Boundary Pass
- Lower Georgia Strait
- Rosario Strait and adjacent waterways

Define "non-floating oil."

Non-floating oil is omitted in WAC 173-182-030 Definitions. While we appreciate that the Dept. of Ecology recognizes that many forms of crude oil have a propensity to sink under some circumstances, we insist that there is a difference in kind, not just degree, for the sinking risk of tar sands dilbit. Tar sands crude oil is both more certain to sink and more likely to sink quickly than other oils classified as type 4. The response strategy should be different and it should therefore be classified as different.

Ensure preparedness for non-floating oil spill response through unannounced drills.

The National Academy of Sciences' report includes Recommendation 6:

USEPA, USCG, PHMSA, and state and local agencies should increase coordination and share lessons learned to improve the area contingency planning process and to strengthen preparedness for spills of diluted bitumen. These agencies should jointly conduct announced and unannounced exercises for spills of diluted bitumen.[8]

Update the table in WAC 173-182-710 Type and frequency of drills. Ecology initiated unannounced worst case, equipment deployment drills should be conducted at least once every three years with input from federal, state and local agencies on the design and evaluation. No prior notice should be given to responders --not even providing general information such as the week a drill may occur (as is currently the case)-- if Ecology is going to be able to realistically assess the spill response preparedness in the region.

Require additional, detailed, year-round-available personnel and equipment as well as accelerated timeframes to ensure that Oil Spill Contingency Plan holders are prepared to effectively implement wildlife response operations in a worst-case spill.

See below for the example of detailed response capacity requirements, including equipment and personnel, in WAC 173-182-522.

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. The draft rule provides no correlation between these minimal personnel requirements and their ability to effectively deploy wildlife operations for all impacted species. 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. Additionally, the establishment and appropriate stocking of facilities needed for response to oiled wildlife needs to be initiated upon notice of a spill.

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 non-floating 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 non-floating oil spill in real time.

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.[9] 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."[10] Southern Resident Killer Whales are also 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.

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

Based on the areas the plan holder operates or transits, equipment and personnel to conduct

monitoring and deterrence operations to prevent southern resident killer whales from encountering spilled oil. The plan shall include contact information for a list of vessels, which may be whale watching vessels that have been vetted, trained, and equipped to support killer whale deterrent operations.

The plan should be updated to require vessels for deterrent operations to be available year-round (note that whale watching vessels are typically operated seasonally), and located in all the areas where whales are present which also varies seasonally.

Other whales listed as Washington State Endangered Species are Fin Whales, Sei Whales, Blue Whales, Humpback Whales, North Pacific Right Whales, and Sperm Whales.[11] The oil spill contingency plan should also require that these whales be monitored and deterred from encountering and being impacted by oil spills.

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 the pre-emptive capture, relocation and release of wildlife at risk of being oiled as well as 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."

Include accelerated timeframes and details on response "capability," including both equipment and personnel, to ensure that Oil Spill Contingency Plan holders will implement an effective response to a worst-case spill of non-floating oil.

After summarizing the behavior of diluted bitumen in a spill, the National Academy of Sciences report's recommendations state, "These challenges necessitate different response strategies, including immediate efforts to recover spilled diluted bitumen before significant weathering occurs and effective methods to identify, contain, and recover suspended and sunken oil."[12]

The draft update includes methods to identify, contain, and recover suspended and sunken oil, but fails to accelerate the timeframes for the containment and recovery of non-floating oil before it begins to submerge and sink.

The table in WAC 173-182-324 [Planning standards for ((Group 5 Oils)) spills of oils that, depending on their chemical properties, environmental factors (weathering), and method of discharge, may submerge or sink] (2) includes additional but unquantified "capability" – the resources and equipment to detect, contain, and collect non-floating oils – that "could have arrived" by 12 and 24 hours. These timeframes do not reference any data and/or provide any

assurance that containment and collection will occur before the non-floating oil begins to submerge and sink. There is also no mention of personnel requirements and no details on the amount and type of resources and equipment, including storage, to ensure that the "capability" would be sufficient to respond to a worst-case spill (as is required by WAC 173-182-030 (48) that defines "planning standards," and see also WAC 173-182-030 (70) that defines "worst case spill").

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.

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 oil 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.

Require the one-hour planning standard requirement to be conducted at the spill location.

The table in WAC 173-182-324 includes a one-hour requirement to "Initiate an assessment and consultation regarding the potential for the spilled oil to submerge or sink." At the September 17, 2019 hearing in Everett, Ecology's representative stated that this assessment could be conducted remotely.

Also at the September 17, 2019 Everett hearing, Ecology's representative said that she could not answer the multiple questions from members of the public regarding how long it takes before a non-floating oil spill begins to submerge and sink. Ecology's representative stated that she could not answer that question because there are so many variables given the wide range of specific environmental conditions that could occur at the spill location and affect the behavior of the spilled non-floating oil, such as, amounts and/or types of sedimentation or turbidity in the receiving waters. The very reasons that Ecology staff gave for why they could not answer the question 'how long before a non-floating oil spill will begin to submerge and sink?' are the same reasons why the one-hour initiation of the assessment of a non-floating oil spill should be required to take place at the scene of the spill. With so many variables, a remote assessment will almost certainly lack crucial details.

Update the Oil Spill Contingency Plan 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 non-floating oil spill with the response resources for both free-oil recovery operations and Geographic Response Plan deployment (shoreline protection) 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.

San Juan County is at unique risk and should receive heightened non-floating oil spill response capacity.

The 2015 San Juan County Oil Spill Response Capacity Evaluation includes important findings and recommendations that address deficiencies in the current Oil Spill Contingency Plan which should have been included in this update, or at the very least, thoroughly considered. The following findings state: [13]

1. The waters adjacent to the San Juan Islands present a very difficult environment to contain and recover a major marine oil spill. This is primarily due to the high currents and rip tides that occur throughout the area on a daily basis.

5. In order to maximize potential recovery capacity, it is imperative to initiate recovery operations as soon as possible. This could be enhanced by stationing equipment in San Juan County.

8. Free-oil recovery operations as modeled utilized almost all available workboat resources leaving few for other concurrent phases of the response, such as shoreline protection.

The San Juan Islands provide critical habitat for forage fish, salmon, and Southern Resident Killer Whales and are surrounded by major commercial 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 non-floating oils includes the current and increasing risk of accidents and non-floating 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 non-floating oil spills, effective wildlife deterrence operations, and the response resources for both free-oil recovery operations and Geographic Response Plan deployment (shoreline protection) operations are especially significant in this biologically rich oasis of the State.

An additional rulemaking to update Chapter 173-182 WAC, Oil Spill Contingency Plan, is required before the next 5-year update to address long-standing concerns not included in the scope of the current rulemaking.

We acknowledge that the scope of the current rulemaking has limited Ecology's ability to fully address the challenges and risks presented by industry's decision to introduce more and more tar sands into Washington State. None-the-less, these risks need to be urgently addressed. We therefore request that Ecology include a firm commitment for a timeline and procedural steps to address the outstanding issues related to the risks of non-floating oils. We cannot wait another five, or even 2 years, to begin.

Estimated Daily Recovery Capacity (EDRC) is a poor metric for evaluating spill response capacity. We urge you to commit to an aggressive timeline to update this long-obsolete model.

The continued use of the EDRC inaccurately estimates response capacity and recovery rates.

As demonstrated in Section 6.6, strike teams with equivalent maximum recovery potential can have vastly different EDRC ratings. Standards based on the delivery of EDRC, which relies primarily on the devalued capability of skimmers that that are assumed to operate continuously, do not provide a true indication of response capability. Strike teams should be designed to optimize containment, collection, and storage capacity, then rated by their maximum recovery potential and operating environment. Planning standards could then be based on those ratings.

The Department of Interior's Bureau of Safety and Environmental Enforcement funded a project by Genwest Systems, Inc., the company that developed the ROC, to examine EDRC and recommend an alternative approach. The Estimated Response System Potential calculator was developed (Genwest Systems, Inc., 2012b) and updated most recently in February 2015 to include feedback received from a National Academies of Science review and public comments solicited through the Federal Register (79 FR 151).

Department of Ecology needs to update its methodologies to include the response options calculator (ROC) as Ecology recently used to evaluate oil spill response capabilities in Grays Harbor (cute). The reliance on EDRC to evaluate oil recovery rate once equipment arrives, used in the current rule update relies too heavily on the calculation of devaluing the the pump capacity by 20% of a skimmer running 24 hours per day. In contrast, the Grays Harbor study, by utilizing the Response Options Calculator (ROC) includes far more variables that provide a far more realistic characterization of the spill response capacity in that region.

The executive summary of the Study Ecology funded in Grays Harbor succinctly distinguishes between the two approaches and the parameters considered:

The ROC is a simplified model of an oil spill response. It first models the spread and weathering of a hypothetical oil spill based on the oil type, winds, and water temperature. Then it applies a set of information about a recovery system (the combination of vessels, skimmer, boom, and primary storage used together to recover oil) to determine the maximum potential oil recovery of system when applied to that oil slick. The ROC incorporates the time a system arrives on scene, skimming capacity, type of skimmer, speed of advance, swath width captured by the boom, throughput and recovery efficiencies, decanting (when used), and primary storage volume. Calculations are then made to determine how long the system would need to stop skimming in order to transit to and offload at offload secondary storage, when full, before skimming can begin again. Each scenario in this analysis considers the simultaneous use of multiple recovery systems and presents a maximum potential recovery for the combined response forces from Washington and Oregon that may respond to a major spill in Grays Harbor.

The Grays Harbor study is illustrative of the type of improvements in analysis that need to be required as part of the current C-Plan update. The current spill risk in Washington requires urgent updates and Ecology should not wait until the next five-year update to improve its outdated methodology, and should instead update the plan as soon as relevant information becomes available.

The Preliminary Cost-Benefit Analysis Least-Burdensome Alternative Analysis (in the Preliminary Regulatory Analyses) concludes that the benefits of the proposed rule amendments are greater than the costs. The Preliminary Cost-Benefit Analysis Least-Burdensome Alternative Analysis' use of qualitative impacts demonstrate a substantial buffer between the costs associated with the current draft rule and the benefits of the proposed rule amendment, thus justifying the increased costs associated with these requested changes to the draft rule.

Conclusion

To summarize, we request that Ecology:

● Remove references to "cleaning up" non-floating oil spills which will almost certainly persist indefinitely.
● Clarify the financial responsibility regulations for facilities and vessels.
Fully assess the costs of a worst case spill of non-floating oils.
● Distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines. The depths of the glacially carved straits that characterize much of the region transited by commercial vessels render recovery of meaningful volumes of uncontained sunken oil all but impossible.
● Ensure preparedness for non-floating oil spill response through unannounced drills.
● Improve planning standards for wildlife response including increased personnel, and planning for species in the water column that could be impacted by submerged oils.
● Require deterrence operations for all killer whales (not just SRKW) and all other whales that are listed as endangered. ● Immediately address our existing risks by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond

to a worst-case spill of non-floating oil, especially in high risk and high consequence areas such as the San Juan Islands.
● Require that the one-hour incident assessment be conducted on-location and not just remotely.
● Improve response capacity in San Juan County which is uniquely at risk.
● Commit to using ROC, as was done for Grays Harbor, to update overall response capacity and requirements as calculated by EDRC which has been widely shown to overestimate response capacity. Further update this model as new information becomes available through, for example, ongoing federal modeling studies.

Thank you for the opportunity to provide these comments. If you have questions about these comments, please follow up via email with Alex Ramel (alex@stand.earth) and Anna Doty (anna@wecprotects.org).

Sincerely,

Stephanie Buffum
Executive Director
Friends of the San Juans

Fred Felleman
Northwest Consultant
Friends of the Earth

Alex Ramel
Field Director
Stand.earth

Laura Ackerman
Energy Program Director
The Lands Council

Max Savishinsky
Executive Director
Washington Physicians for Social Responsibility

Jesse Piedfort
Chapter Director
Washington State Chapter, Sierra Club

Anna Doty
Fossil Fuel Campaign Manager
Washington Environmental Council

Shannon Wright
Executive Director
RE Sources for Sustainable Communities

Response to O-10-1
Thank you for taking time to submit comments on the rule proposal. To address your comments we have taken the following actions:

- You recommended we remove references to "cleaning up" non-floating oil spills which will almost certainly persist indefinitely. This change was not made. Washington state laws and rules establish requirements for oil handlers to respond to the maximum extent practicable to clean up oil spills.

- You requested we clarify the financial responsibility regulations for facilities and vessels and fully assess the costs of a worst case spill of non-floating oils. Financial responsibility refers to the proof or demonstration that a responsible party is able to pay for the costs and damages of a spill up to a specified amount. Typically, financial responsibility is evidenced by an insurance policy or Pollution and Indemnity (P&I) club documents, but also may involve surety bonds, guarantees, letters of credit, or qualification for self-insurance. For additional details about financial responsibility visit https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Financial-responsibility-for-oil-spills. Several changes were made to the Final Regulatory Analysis for the rulemaking based on your comments. Please refer to the Final Regulatory Analysis for the rulemaking for additional details about costs of non-floating oil spills and financial responsibly.

- You request we distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines. Based on your comments we added a definition for non-floating oils. Previously, our non-floating oil planning standards limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. The equipment, personnel and capabilities called out in the enhanced planning standard apply across the state. This enhances response capability statewide, including San Juan County.
- Your request that we ensure preparedness for non-floating oil spill response through unannounced drills. The existing rule requires planned drills for non-floating oils and allows for the use of unannounced drills to test any aspect of the plan.
- You requested engagement on identification of resources at risk in the San Juan Islands. Under the updated rule, the Geographic Response Plan (GRP) development process will ensure public engagement in the identification of areas at risk of non-floating oils as well as the sensitive resources in those areas. Updates to the GRPs will look at seasonal variation in risk as well as variable risk to sensitive resources based on life stage. We

will ensure that plan holders address these risks in their plans. Additionally, we will rely on a public outreach process, which includes engagement with Marine Resource Committees and others with local knowledge to ensure risks and resource concerns are adequately addressed.

- We agree that responder health and safety as well as community health and safety is paramount. One way we are ensuring planning for this key response tactic is by requiring the community air monitoring planning standard apply to all plan holders types, previously this standard applied only to pipelines. There are also several areas of the rule that addressed required training, personal protective equipment, and site assessment which further address responder safety. To familiarize yourself with our area planning for community health and safety please refer to our Northwest Area Contingency Plan https://www.rrt10nwac.com/NWACP/Default.aspx.
- You requested we improve planning standards for wildlife response including increased personnel, and planning for species in the water column that could be impacted by submerged oils. We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.
- You requested we require deterrence operations for all killer whales (not just SRKW) and all other whales that are listed as endangered. The standard was updated to reflect this request.
- You requested we require that the one-hour non-floating oils assessment be conducted on-location and not just remotely. We disagree that the assessment must be conducted on-site. The assessment could be initiated on-site via the notification to key personnel with additional expertise and resources to evaluate the oil properties and the environmental conditions that may cause the oil to sink. No change was made to the rule to require that the initial assessment be conducted on-site.
- You requested that we improve response capacity in San Juan County. The planning enhancements to non-floating oils capability and our wildlife response capability, among others will improve response capacity in San Juan County.
- In this rulemaking, we worked to align response time requirements for vessels, facilities, and pipelines. Previously a facility had six hours to establish containment with boom at their dock. We are updating our planning standards and requiring facilities be capable with equipment and personnel of establishing containment within two hours of spill awareness. This addresses floating oils limiting their spread in the early hours of a spill. Our longstanding planning standard requirements have resulted in the strategic staging of response equipment appropriate for the operating environment throughout Washington Waters. A map of our planning standard areas and equipment caches are available online at http://waecy.maps.arcgis.com/apps/webappviewer/index.html?id=a83dbed7837742019584910546a5843e and https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills_sm.html?CustomMap=y&

BBox=-14059468,5380370,-12710507,6538544&Tab=nt7&Opacity=1&Basemap=esriLightGray.

- You requested we consider the recommendations of the San Juan County Response Capacity Evaluation. The majority of the recommendations of the San Juan County Oil Spill Response Capacity Evaluation are outside the scope of the current rulemaking. Where possible and appropriate they were considered and incorporated.
- You requested we commit to using ROC, as was done for Grays Harbor, to update overall response capacity and requirements as calculated by EDRC which has been widely shown to overestimate response capacity. Further update this model as new information becomes available through, for example, ongoing federal studies. Currently the rule requires the use of EDRC. The use of alternative methodologies such as ROC are outside the scope of the rulemaking.

O-11: Pierce County LEPC,

Comment O-11-1

• Include "non-floating oil" in the definitions section of Chapter 173-182 WAC.
• Require that the one-hour initial assessment should be performed on-site, at the location of the spill.
• Add greater detail and specifics on the on the amounts and types of resources and equipment needed to respond to a worst-case spill of non-floating oils.
• Shorten timelines for deploying additional personnel to within the first few hours of an oil spill, with particular emphasis for non-floating oils.
• Increase planning standards for wildlife response to include adding provisions for immediate initiation of wildlife response actions with adequate personnel and equipment; with a focus on deterrence actions that keep wildlife from entering the scene of the spill.

Response to O-11-1

Thank you for your comments. To address your concerns, a definition of “non-floating oils” was included in the definitions section. The new non-floating oils planning standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. We disagree that the assessment of the potential for an oil to sink must be conducted on-site. The assessment could be initiated on-site via the notification to key personnel with additional expertise to evaluate the other properties and the environmental conditions that may cause the oil to sink. No change was made to the rule to require that the initial assessment be conducted on-site.

The timeframes in the draft rule align with the key steps in a potentially non-floating oil response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. We updated the rule to clearly state that, with the equipment, trained and capable personnel must also plan to arrive.

In this rulemaking, we worked to align response time requirements for vessels, facilities, and pipelines. Previously a facility had six hours to establish containment with boom at their dock. We are updating our planning standards and requiring facilities be capable with equipment and personnel of establishing containment within two hours of spill awareness. This addresses floating oils limiting their spread in the early hours of a spill. Our longstanding planning standard requirements have resulted in the strategic staging of response equipment appropriate for the operating environment throughout Washington Waters. A map of our planning standard areas and equipment caches are available online at http://waecy.maps.arcgis.com/apps/webappviewer/index.html?id=a83dbed783774201958491054 6a5843e and https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills_sm.html?CustomMap=y&BBox=-14059468,5380370,-12710507,6538544&Tab=nt7&Opacity=1&Basemap=esriLightGray.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

T-1: Suquamish Tribe,

Comment T-1-1
RE: Proposed Amendments to Chapter 173-182 WAC, Oil Spill Contingency Plan Rule

Dear Ms. Larson:

This letter provides the Suquamish Tribe's (Tribe) comment concerning the proposed amendments to Chapter 173-182 WAC, the Washington State Department Of Ecology's Oil Spill Contingency Plan rule. This is a critical time for the State to strengthen its oil spill contingency plan given the increase in exportation of oil through our waters from Canada.

INTRODUCTION

The Suquamish people have lived, gathered plants, collected ceremonial and spiritual items, hunted, and fished for thousands of years in western Washington State. The Suquamish Tribe is a federally recognized Indian Tribe and pursuant to the 1855 of Point Elliott, the Tribe reserved the right to fish and gather shellfish at its "usual and accustomed" (U&A) fishing grounds and stations in Puget Sound. The Tribe's U& A extends well beyond the Port Madison Indian Reservation boundaries and includes marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River in Canada, including Haro and Rosario Straits, the streams draining into the western side of Puget Sound and Hood Canal. These marine waters are the home territory to the Tribe and include the major shipping channels for both the States and Canada.

Our tribal community understands how devastating an oil can be because we have had the misfortune of experiencing oil spill first hand that landed at the Doe-Keg-Wats estuary and fouled a pristine cultural and spiritual location of importance to Suquamish tribal members located near Indianola, Washington. Suquamish people have used the Doe-Keg-Wats marine estuary and wetlands since time immemorial for food and medicine. It is also one of the few pristine estuaries of its kind in Puget Sound and is located on the Port Madison Indian Reservation. On December 30, 2003, about 5,000 gallons of heavy bunker oil spilled into Puget Sound from a Foss Barge in Shoreline, Washingon. Because there were inadequate rules in place at the time, there was no protective containment boom around the vessel while the barge was loaded with oil while docked in Edmonds. The combination of winds and the tide pushed the oil southwest across Puget Sound where it washed it up on the Doe-Keg-Wats. The oil spill polluted estuarine marsh, beach, and other near shore habitats, including habitat used by herring and salmon, and damaged shellfish beds. This oil spill was devastating to the Tribe both culturally and environmentally. Sixteen years evidence of the oil spill still exists at Doe- Keg-Wats. The Tribe continues to monitor its effect.

Although this spill is not on the same scale as the Exxon Valdez oil spill, it demonstrates the implications of long-term effects to the Tribe's ability to engage in unadulterated cultural practices at its sacred places and long-term effects to the environment. An Exxon Valdez level spill in the Salish Sea or Puget Sound would be devastating to Tribal treaty rights throughout the Puget Sound and Salish Sea. Washington State Department of Ecology must implement the most protective oil spill contingency plan possible to safeguard the State's waters, marine natural resources, wildlife, and Tribal Treaty rights. Given the increase in amount of heavy oils transported through the State's waters, including the foreseeable monumental addition of oils that will transported in State's waters arising from the Trans Mountain Pipeline expansion, we believe the draft oil spill contingency plan rule is not protective enough. The State needs to adopt the best available science and technology to ensure swift and efficient response to oil spills.

ECOLOGY NEEDS TO ENHANCE SPEED AND CAPACITY

The current legislatively mandated five-year update to the State's oil spill contingency rule provides the State the opportunity to analyze the current situation and strengthen obligations for oil transporters to respond to a spill. Of particular concern to the State at this moment should be the Canadian government's decision to triple the capacity of the Trans Mountain Pipeline, which will increase oil exported by tanker through the Salish Sea. The oil coming out of the Alberta Tar Sands (diluted bitumen) is heavier and likely to sink when spilled There are no demonstrated clean-up methods that are effect for removing diluted bitumen that sinks and laces the bottom and shorelines of State marine waters without causing additional environmental/habitat damage.

Diluted bitumen (dilbit) is composed of both heavy and light oils so when spilled, the light oil evaporates and the heavy oil sinks. This combination of heavy and light oils makes the response to a dilbit spill complicated and requires speed and efficiency in response. Unless, the response is to a spill is quick, the tidal exchanges of our waters coupled with swift currents would provide for a devastating combination that would oil to coat our shoreline.

The only way to address the increased export of dilbit through the waters is increasing speed and

coordination to contain and recover dilbit before it sinks. However, Ecology's planned update focuses on requiring diving and salvage operations after the oil has already sunk. Under WAC 173-182-621 Ecology "will review the planning at five-year intervals to ensure the maintenance of best achievable protection to respond to a worst-case spill and provide for continuous operation of spill response activities to the maximum extent practicable and without jeopardizing crew safety."

Ecology should include specific and significant reductions in response time to encircle the spill with booms designed specifically for swift currents. The only way to reduce the likelihood of oil spreading or sinking is to reduce the time responders have to mobilize and contain the oil. Improving response time is the most important tactic available to limit the impacts of an oil spill.

As part of increasing speed and capacity for recovery is the need for oil spill responders to have the latest and best technology to detect oil once it is submerged. Also critical is the need for oil spill equipment and trained responders to be located at high-risk locations like in the straits and near heavily transited corridors. Ecology should review all geographic response plans to ensure they adequately address the challenges posted by heavy oils, including dilbit.

Ill. ECOLOGY SHOULD ADOPT THE ERSP OVER THE EDRC

Ecology continues to rely on the Effective Daily Capacity (EDRC) formulation, which measures a skimmer's ability to recover oil on open water. Under the WAC, as part of the five- year review, includes "conducting or reviewing studies, inquiries, surveys, or analyses appropriate to the consideration of new technologies, plan evaluation methods including EDRC, or best operational practices." WAC 173-182-621 (4)(b). The main problem with the EDRC is that it does not include actual real world limitations including visibility, sea conditions, or storage within its measure. The 2012 Federal Bureau of Safety and Environmental Enforcement funded study found that "[a] strong and consistent theme identified by participants, was the limitations of the current EDRC and the need for an encounter-rate, performance measure of daily potential for skimming systems."l The EDRC system is limited to the capacity of the skimming device and removal pump and skimmers are ineffective for heavy sinking oil.

Because of the ERDC's significant limitation that fails to address sinking oil, the State needs to shift to the Estimated Recovery System Potential (ERSP) calculator, which addresses the entire system's ability to collect, contain, remove, store, and offload recovered oil and water. The ERSP system provides a more realistic oil spill recovery model. Shifting away from the EDRC to the ERSP would improve and strengthen the region's protection from oil spills based on the best available science.

IV. WILDLIFE RESPONSE

The current draft of the contingency plan update requires wildlife response in twelve hours of spill notification with the arrival of just two wildlife response personnel and the deterrent equipment to have arrived on the scene. The time for wildlife response should be reduced especially given the endangered status of the Southern Resident Killer Whales, Chinook salmon and other marine and shoreline species throughout the region the need for personnel on the scene

and to engage in deterrence needs to be as soon as practically possible.

The Suquamish Tribe, as a co-manager with the State of Washington that manage and protect marine resources within the Tribe's U&A and State waters, urges the Department of Ecology to consider the Tribe's comment in a meaningful manner. There is no dispute that the marine waters, marine natural resources, and the shorelines of State waters are now beyond the tipping point due to both regulated and unregulated activities. Any future State regulatory actions need to move far beyond the status quo and provide strong and meaningful regulatory measures to protect Puget Sound and other State waters for the next seven generations. We look forward to strong and swift regulatory measures that reaches beyond bureaucratic status quo approaches. Time is of the essence.

Sincerely,

Leonard Forsman, Chairman

Response to T-1-1
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our planning standards for non-floating oils for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling equipment to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink we added a definition of potentially non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

Under the updated rule, the GRP development process will ensure public engagement in the identification of areas at risk of non-floating oils as well as the sensitive resources in those areas. Updates to the GRPs will look at seasonal variation in risk as well as variable risk to sensitive resources based on life stage. We will ensure that plan holders address these risks in their plans. Additionally, we will rely on a public outreach process, which includes engagement with tribes and others with local knowledge to ensure risks and resource concerns are adequately addressed.

In this rulemaking, we worked to align response time requirements for vessels, facilities, and pipelines. Previously a facility had six hours to establish containment with boom at their dock.

We are updating our planning standards and requiring facilities be capable with equipment and personnel of establishing containment within two hours of spill awareness. This addresses floating oils limiting their spread in the early hours of a spill. Our longstanding planning standard requirements have resulted in the strategic staging of response equipment appropriate for the operating environment throughout Washington Waters. A map of our planning standard areas and equipment caches are available online at http://waecy.maps.arcgis.com/apps/webappviewer/index.html?id=a83dbed783774201958491054 6a5843e and https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills_sm.html?CustomMap=y&BBox=-14059468,5380370,-12710507,6538544&Tab=nt7&Opacity=1&Basemap=esriLightGray.

The scope of the rulemaking was focused in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. Updating our response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), is outside the scope of this rulemaking.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife

T-2: Makah Tribe Office of Marine Affairs,

Comment T-2-1
Please see attached file for comments from the Makah Tribal Council Office of Marine Affairs

Re: Makah Tribal Council Office Of Marine Affairs comments on the Department Of 's Washington State Oil Spill Contingency Plan Rule-Making (WAC 173-182)

Dear Sonja Larson:

The Makah Indian Tribe's Office of Marine Affairs submits these comments in response to the public comment opportunity for the review of the Washington State Oil Spill Contingency Plan Rule-Making (WAC 173-182). While we are supportive of several of the proposed changes to the plan, we do have some concerns and observations which are described below. Furthermore, while we recognize that this process was limited in both scope and timeline by the legislative direction included in SB 6269, we have identified three planning opportunities that are critical for enhancing the response capacity of Washington State and continuing to build a world-class safety regime in Washington waters. We look forward to working with Ecology to address our concerns and develop a Contingency Plan which is more comprehensively aligned and protective of treaty rights and resources.

The Makah Tribe and the Office of Marine Affairs:

The Makah Tribe is a federally recognized Treaty Tribe in Neah Bay, Washington. The ancestral homeland of the Makah Indian Tribe, the "People of the Cape," is located at the Northwest point of the Olympic Peninsula in Washington State. The current reservation is 30,067 acres and our treaty protected area includes Usual and Accustomed Hunting and Fishing Stations (U&A) in waters of the United States that extend off the outer coastline encompassing approximately I,550 square miles of marine waters.

The existence and well-being Of the Makah people has always been fundamentally tied to our relationship with the environment, especially the ocean. The Makah people hold a spiritual reverence to the ocean and have a subsistence dependence to its bountiful natural resources that is all inclusive and comprehensive in nature. Current tribal members are charged by tradition with ensuring the continuation of our culture through the preservation of, and continued access to, our natural resources. The 1855 Treaty of Neah Bay reserves the inherent rights of the Makah to retain and exercise inherent sovereign authority over our treaty protected area and ownership of the resources therein ("Treaty Resources"). The Terms and Conditions of the 1855 Treaty of Neah Bay also created the special relationship that exists between the federal government and the Makah Tribe called 'Trust Responsibility." Federal Indian Trust Responsibility is one of the legal obligations under which the United States bases its means to begin to meet its moral and fiduciary obligations to uphold the highest responsibility and trust toward American Indian tribes.

As a resource trustee, owner and a co-manager of marine resources, the Makah Tribal Council fully recognizes the ocean and its resources to be at the foundation of our cultural and economic way of life and fully embraces the protection and sustainability of the ocean environment and its resources as an essential obligation within our Tribal Trust Responsibility to our Tribal membership.

Given this responsibility, we are keenly aware and concerned with the threat oil spills pose to our way of life. Our previous experience with oil spills has demonstrated that even though the probability of an oil spill is small, the potential consequences to our precious ocean resources are very high. Over I .5 million gallons of oil has been spilled in our treaty area since the early 1970s, and the Makah have witnessed firsthand the devastating effects of oil spilled by the General Mieggs, the Nesstucca barge and the Tenyo Maru. These experiences required the tribe to become more engaged in marine policy, vessel traffic safety, oil spill prevention, preparedness and response and natural resource damage assessment, in part through the creation of the Makah Tribe Office of Marine Affairs (OMA). The OMA addresses the tribe's oil pollution and vessel traffic safety treaty interests with our federal, state, tribal and industry partners through enhancing oil spill response capacity at the Makah Tribal level, the state and regional level, and the US/Canadian transboundary level. The Makah Tribal Council expresses its sovereign treaty status by participating in federal and state policy, legislative and rule-making processes that include representatives from industry and the general public, as a resource trustee based on our treaty status as a sovereign. The OMA participates in these forums in order to project our authorities, interests, and responsibilities to our membership in protecting our treaty resource interests at an adequately comprehensive geographic level because an oil spill does not recognize

geo-political boundaries. OMA representatives have participated in some of the pre-publication Ecology workshops regarding the development of these proposed changes. It is with this experience that we provide the following commentary on the proposed changes to the WA State Contingency Plan.

Spill Management Teams:
We are supportive of the additional regulation of spill management teams (SMTs) and believe that this will result in SMTs being held to a higher standard and increase predictability and reliability of response. However, we request that Ecology retain the requirement for the Incident Commander representative to arrive on scene (as opposed to in state) within six hours. For remote areas like Neah Bay and most of the Makah Reservation and U&A, an Incident Commander who is in state may still require several additional hours to arrive on scene. We feel that requiring plan holders to have their Incident Commander representative on scene as quickly as possible is protective of treaty trust resources and of communities in remote areas of WA State. Furthermore, while we recognize the importance of planholders having an Environmental Unit representative as part of their SMT, the Northwest Area Contingency Plan states that the Environmental Unit shall not be led by the Responsible Party. We therefore request clarity on the need for the SMTs to include an Environmental Unit Leader (as opposed to representative) and request that the plan reference the NWAC requirement. We rely on our federal agencies and state representatives with trust responsibility obligations (not industry) to support the protection of our treaty resources.

Sinking Oils:
We are supportive of the changes in the plan and the State's recognition of the new and growing threat that the transportation of sinking oils in our waters poses to the health of the people and ecosystems of WA State. We recommend Ecology to designate the planholders and/or oil types which require this additional planning requirements — instead of allowing the planholders themselves to make a determination of whether oil may sink. We feel that this is particularly important as many unknowns remain with regards to the behavior of heavy oils (especially diluted bitumen) and data about weathering is limited and exact chemical composition information is proprietary. We also recommend Ecology to continue to track — and incentivize where possible — the identification and development of better technologies for recovering non-floating oils. We are concerned that the response technology to recover sinking oils has not kept pace with the expansion of on-water transportation of these products and recommend the State to both strictly and objectively evaluate existing response capacity as well as be readily capable in adjusting regulations if and when improved technologies become available. In the absence of improved technology, we want to reiterate the importance of both continued advancements in prevention technology and robust, updated, and frequently tested GRPs which incorporate the potential for sinking oils. We recommend that all GRP updates be undertaken with extensive tribal engagement, as tribal staff have detailed local knowledge of resources and potential risks (more below).

Chemical Dispersants:
While we are supportive of expanded planning requirements in the Contingency Plan, we are concerned that chemical dispersants are becoming the de facto response method of choice — regardless of the NWAC Plan's requirement that mechanical recovery be the first-choice

response method in this region. We request assurances that this expanded planning requirement does not inadvertently incentivize the use of chemical dispersants in situations where they will be less effective or where other methods are possible. We strongly recommend Ecology as well as the Regional Response Team and the federal government to incentivize both the development and adoption of more effective mechanical alternatives to dispersants as well as the stockpiling of less-toxic and more effective dispersant types.

Documenting Compliance with Planning Standards:
We are concerned about the proposed change to allow training exercises and planned drills (as opposed to unannounced drills and actual incident responses) to satisfy planning standard requirements. We recommend Ecology to continue to rely — or primarily rely - on unplanned drills (and incident responses — however rare) to verify the planholders' compliance with planning standards as these types of drills most closely mimic the conditions of actual spills, which will not be announced in advance.

Transfer Sites & Facilities with Vessel Terminals:
We are supportive of the additional planning standards for transfer sites and supportive of additional planning standards for transfer sites and facilities with vessel terminals. We feel that the addition of the specific 4-hour planning standard for Current Buster (or similar) mechanical recovery technology is an important addition to our regional preparedness and response capacity. While there are not transfer sites in Neah Bay, this technology represents an important step forward - especially in areas like Neah Bay, the Strait of Juan de Fuca, and the Outer Coast, where weather conditions and ocean state may inhibit the use of less-robust and more traditional systems. However, we expect that Ecology will emphasize the need for additional response capacity to meet these standards — as opposed to the redistribution or re-accounting for existing response capacity. We also recognize the vital importance that regular training and exercising plays in ensuring effective response and recommend that Ecology incorporate the use of Current Buster technology into training, certification, and drill processes.

Requirements for Response and Protection Strategies:
We support the expanded spatial scope of Geographic Response Plans to include the water column and benthic species. We recommend that Ecology continue and expand their tribal engagement in GRP development and updates across the State. Tribes are uniquely qualified to contribute detailed local information about their lands, waters, and resources. We also urge Ecology to ensure that GRPs are tested and verified regularly. Again, Tribes are fishing, hunting, and gathering in the vicinity of their local GRP strategies year-round and can be an invaluable resource in understanding seasonal changes which may complicate GRP deployment and should be considered essential partners in ensuring that GRPs are successful and useful. We look forward to continuing to work with Ecology on updating the GRPs for the Strait of Juan de Fuca and the Outer Coast.

Planning Standards for Shoreline Cleanup and Air Monitoring:
We are supportive of the standardization of shoreline clean-up and air monitoring standards. We understand that much of the regulated community has already been adhering to these practices, and formalization through State authority is an important step in ensuring that these good practices continue and are adopted by any new actors in the response community.

Wildlife Response:
We are supportive of additional clarity on planning standard requirements and the focus on Southern Resident Killer Whale protection.

Drill Participation, Scheduling, Evaluation:
We recommend that Ecology include large-scale multi-plan holder drills on a regular basis that combine both the Incident Command System elements and the equipment deployment pieces to mirror real-time decision-making and deployment — as would occur in a real-world real-time spill.

The following section addresses the scope of the current rule-making and where we fully support Ecology taking some Of the ongoing discussions around Contingency Planning, Best Achievable Protections, and enhancing the collective planning, preparedness, and response capacity of Washington State in the future. We recognize that this process was limited by legislative directive in terms of both scope and timeline and look forward to continuing to contribute to more extensive and meaningful changes to the planning framework in a timeline which allows for robust scientific and legal review, tribal government to government interaction and consultation, and public process.

*Effective Daily Recovery Capacity (EDRC): We are concerned that the existing methodology used by the State to estimate recovery capacity is overestimating actual capacity and fails to take a systems approach to oil spill response. We feel strongly that EDRC methodology is the way forward, particularly given the introduction of additional vessels and petroleum products into the marine transportation system of our shared waters. We recognize that this would be a significant change requiring extensive process and input from the response community, the regulated community, tribal sovereigns, the environmental community, and other stakeholders. However, we feel that this is an imperative step towards protecting our treaty resources from the threat of oil spills. We look forward to working with Ecology to design a path forward to consider EDRC for Washington State, continuing the legacy of proactive and effective leadership in the oil spill response community.
*Mechanical Recovery Technology Improvements: While we are encouraged by the inclusion of specific references to current buster technology in the proposed update, research and development in mechanical recovery technology for Oil spill response has lagged. We urge Ecology to identify, facilitate, and encourage creative opportunities and mechanisms to incentivize the creation and adoption of new, effective and innovative mechanical recovery technology.
*Planning vs. Performance Standards: The Makah Office of Marine Affairs has long urged the response community at all scales (transboundary, federal, state, local) to transition from planning to performance standards for contingency planning. Planning standards do not guarantee the protection Of our treaty resources in an adequate manner. We recognize that the direction to shift from planning to performance standards may ultimately require federal action. However, we request that in demonstrating commitment to performance standards in WA State that Ecology assist the Makah Tribe in facilitating a drill which would serve as a tool to assess the reality of cascading response equipment and personnel to remote locations such as Neah Bay. This type of exercise is especially important for remote communities like Makah who intimately understand

the logistical and transportation challenges of quickly and safely traveling to remote locations in emergency situations.

In closing, we look forward to working with Ecology to address our concerns with some aspects of the Contingency Plan — and the implementation of those aspects we support. We respectfully request that Ecology contact the Office of Marine Affairs to discuss the issues we have raised which are outside the scope Of the current rule-making update. We look forward to continuing to work with the Department of Ecology and the response community to craft a world class vessel traffic safety and oil spill response regime that provides the highest level of protection for the lands, waters, and resources of the Makah Tribe and all Washingtonians.

Please contact the Manager of the Office of Marine Affairs, Chad Bowechop (chadbowechop@makah.com or (360) 640-0295) if you have any questions or would like additional information. Thank you for your time and consideration.

Respectfully submitted:

Chad Bowechop
Manager, Makah Office of Marine Affairs

Response to T-2-1
Thank you for taking time to submit comments. We appreciate your many comments in support of the rulemaking. Below are summary responses to your comments by topic area.

Spill Management Teams:
The enhanced Spill Management Team (SMT) requirements for contingency plan holders ensure greater depth in key Incident Command System positions. This standard ensures highly trained personnel are available to support spill response actions. The requirement to have an Incident Commander capable of arriving in state within six hours aligns with the Federal Government standard. Prior to the rule update, the requirement to arrive in state or at the command post was used inconsistently in the rule. The rule update reflects the need to be capable of arriving in state to support the response. This more closely aligns with the response posture. The Incident Commander (IC) may be enroute to a command post instead of the spill source. Allowing for the IC to arrive at a command post does not preclude primary response contractors or other key personnel from arriving at the spill and initiating site assessment, containment and recovery, as a command post is being established. Additionally, the requirement for the responsible party to identify a qualified Environmental Unit Leader as part of the SMT roster does not change the Northwest Area Contingency Plan environmental unit staffing policy. The unit will continue to be staffed by a trustee agency but this new requirement ensures capable responsible party representation will also be available to support work in the unit.

Sinking Oils/Response and Protection Strategies:
The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response. The GRP development process will ensure public engagement in the

identification of areas at risk of non-floating oils as well as the sensitive resources in those areas. We will ensure that plan holders address these risks in their plans. Additionally, we will rely on a public outreach process, which includes engagement with tribes to ensure risks and resource concerns are adequately addressed.

Chemical Dispersants:
The updated dispersant planning standard is a standalone standard. Planning for the use of dispersants does not alleviate or eliminate the plan holder responsibility to be able to conduct containment and recovery operations. The update more closely aligns with the Northwest Area Contingency Plan Policy. Any dispersant use decisions are scenario specific and will be pursued in accordance with the NWACP. Review of mechanical recovery and less toxic dispersants will be incorporated into our Best Achievable Protection (BAP) review cycle.

Drills and Exercises
The contingency planning regulations allow for unannounced drills to test any aspect of the plan. We agree that these types of drills provide valuable lessons learned and are important to the overall drill program. The large scale multiple plan holder deployment drill tests multiple tactics. We agree that some tabletop elements may work well within the drill design based on the specific objectives. We are interested in working with you and the applicable plan holders to design a drill to test the cascading response equipment and personnel to Neah Bay. Makah local knowledge of the logistical and transportation challenges of this type of event would be critical to the planning. We will reach out to you soon to further discuss this idea.

OTH-1: Friends of the San Juans,

Comment OTH-1-1
Attached are comments sent on May 24, 2019 from Friends of the San Juans, Friends of the Earth, Stand.earth, Oregon Physicians for Social Responsibility, The Lands Council, Citizens for a Healthy Bay, Friends of the Columbia Gorge, Tahoma Audubon Society, Columbia Riverkeeper, Sierra Club, RE Sources for Sustainable Communities, Washington Environmental Council, 350 Seattle, and Puget Soundkeeper.
Ecology staff have provided conflicting information regarding Ecology's intent to respond to these comments. At the Clean Pacific conference I was told that the comments sent May 24, 2019 would be responded to in Ecology's formal response to comments at the conclusion of the rulemaking process. Via email on September 26: "Any comments submitted before August 7th were submitted under the informal comment period. You need to resubmit them if you want them considered during the formal comment period and reflected in Ecology's formal response to comments."
The word document version of the attached PDF of the tracked changes to the draft rule (dated April 24, 2019) clearly show which tracked changes are being submitted as comments. Please refer to the word version of the attached PDF.

Response to OTH-1-1
Thank you for your comments. The rule amendment strengthens oil spill contingency planning requirements. The rule requires large commercial vessels, oil handling facilities, and pipelines to

have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. Contingency planning is also referred to as preparedness, which includes the actions companies take to be prepared to mount a rapid, aggressive and well-coordinated response to any spill that occurs. Prevention refers to the activities that prevent petroleum products from being spilled to the environment. It includes training, technologies, equipment, alarms, and procedures. Response is the actual response to an oil spill, such as stopping the flow, containing the oil, and removing the spilled product from the environment. In Washington State we are planning for prevention, preparedness, and response through a comprehensive statewide program. Details about the program can be accessed at https://ecology.wa.gov/Spills-Cleanup/Spills.

Previously, our heavy oil planning standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen and some crude oils that may initially float before weathering and some portion sinking. The enhanced response posture established by the updated rule will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

We disagree that the assessment must be conducted on-site. The assessment could be initiated on-site via the notification to key personnel with additional expertise to evaluate the oil properties and the environmental conditions that may cause the oil to sink. No change was made to the rule to require that the initial assessment be conducted on-site.

We do not agree that Canadian Tar Sands crude oils are the only types of oils that may potentially sink. Through this update we have expanded the types of potentially non floating oils we are planning for to ensure a rapid, aggressive, and well-coordinated response. The timeframes in the draft rule align with the key steps in a potentially non-floating oils response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. We updated the rule to clearly state that, with the equipment, trained and capable personnel must also plan to arrive. Additionally, in response to public comments, we added a definition of non-floating oils to the rule.

The scope of the rulemaking was narrow in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to

the short deadline for the current rulemaking effort an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The Northwest Area Contingency Plan (NWACP) describes wildlife response activities in detail and contingency planning efforts, as described by this rule, must be consistent with the NWACP. The activities listed in the draft rule are not intended to be inclusive of all wildlife related operations that may occur during a response. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes enhanced requirements for personnel and equipment to conduct reconnaissance, deterrence, and rehabilitation operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.
We agree that the Plan must require that the monitoring and deterrence operations apply to all whales. The standard has been updated to reflect this request.

Finally, the rule comments you submitted via the track changes document were not on the rule proposal language. Several of the comments and requests for changes were outside the scope of the rulemaking. No changes were made to the rule to address content which is outside of the scope of the rulemaking.

A summary of the changes based on your comments is provided below:

- Added a definition for non-floating oils to the definitions section.
- Did not include your requested definitions for benthic organisms or wildlife. These terms will be addressed in the Geographic Response Plan updates.
- No changes were made to the definition for Spill Management Team (SMT). The content requested is covered in the application requirements.
- Added clarity in the wildlife planning standard requirement to address your concerns about preparedness for all whales, not just southern resident killer whales.
- Added clarity to the non-floating oils planning standard requirement to clarify details about required personnel and additional equipment requirements.
- Added personal protective equipment considerations to the in-situ burn planning requirement and in several other areas requested where appropriate and within the scope of the rulemaking.

OTH-2: on behalf of local elected officials,

Comment OTH-2-1
Please accept this comment letter from 17 local elected officials in Washington State. I submit this letter on their behalf. If you should have any questions, please do not hesitate to contact me. Thank you.

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update, Chapter 173-182 WAC

Dear Ms. Larson,

As local elected leaders working to protect the health and safety of our communities from the safety risks of oil transportation, we urge you to strengthen spill response requirements to address the unique risk that diluted bitumen (dilbit) poses to waters in Washington State and the Salish Sea. We are concerned that Department of Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity.

In recent years, Washington State has made significant gains in improving the safety of oil transport by rail and vessel. The 2015 Oil Transportation Safety Act, the 2018 Strengthening Oil Transportation Safety Act, most recently the 2019 Oil Spill Prevention Act increase transparency, preparedness, prevention measures and requirements, and funding.

Through the passage of 2018 Strengthening Oil Transportation Safety Act the legislature directed the Department of Ecology to use this year's update to develop new rules and protections that address the unique characteristics and risks of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil. Unfortunately, the draft rule is insufficient to protect Washington's waters and communities.

The shortcomings of the current draft rule:

Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. The draft rule is right to require a faster timeframe for the initial assessment of a spill; however, it still fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses.

The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill.

The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities.

The wildlife response operations are unclear as to what "capture" entails and only require 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 the scene within 12 hours.

To address these shortcomings, we urge Ecology to:

Immediately address existing risks by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst-case spill of non-floating oil.

Further distinguish between potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines.

Commit to updating overall response capacity modeling tools and requirements, including the EDRC, immediately as new information becomes available (e.g. through ongoing federal modeling studies).

Enhance planning standards for wildlife response in the event of a spill. This includes requirements for monitoring and deterrence operations to keep whales, including Southern Resident Killer Whales, away from a spill. This is critical as the Southern Resident Killer Whales could become extinct if they suffer the consequences of an oil spill. The orca pod in Prince William Sound is functionally extinct thirty years after the catastrophic Exxon Valdez oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. In particular, deterrence actions that keep wildlife from entering a spill are critical to have underway immediately after a spill.

Communities across Washington are at risk from the existing transport of tar sands crude oil and we unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River. For example, Port Westward has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly US Oil) refinery receives weekly shipments of dilbit by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom Counties, the Puget Sound Pipeline supplies Washington's four northern refineries with dilbit. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results leading to years-long response efforts and limited recovery of sunken oils. To provide adequate protections, Washington's rule should require more rapid response for companies transporting these oils to address spills before they submerge and sink.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills and urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking.

Sincerely,

Robert Gelder, County Commissioner Kitsap County

Derek M. Young, Councilmember Pierce County
Ryan N. Mello, Councilmember City of Tacoma
Karen Guzak, Councilmember City of Snohomish
Crystal L. Dingler, Mayor City of Ocean Shores
Doris McConnell, Councilmember City of Shoreline
Dave Teitzel, Councilmember City of Edmonds
Jeanne Kohl-Welles, Councilmember City of Seattle
Breean Beggs, Councilmember City of Spokane
E.J. Zita, Port Commissioner City of Olympia
Daniel Hammill, Council President City of Bellingham
Adrienne Fraley Monillas, Council President City of Edmonds
Dennis Higgins, Councilmember City of Kent
Debora Juarez, Councilmember City of Seattle
M. Lorena Gonzalez, Councilmember City of Seattle
Will Hall, Mayor City of Shoreline
Kate Burke, Councilmember City of Spokane

Response to OTH-2-1
Thank you for your comments. The rule amendment strengthens oil spill contingency planning requirements. The rule requires large commercial vessels, oil handling facilities, and pipelines to have detailed contingency plans and contracts for appropriate equipment and trained personnel to respond to spills that may occur. Contingency planning is also referred to as preparedness, which includes the actions companies take to be prepared to mount a rapid, aggressive and well-coordinated response to any spill that occurs. Prevention refers to the activities that prevent petroleum products from being spilled to the environment. It includes training, technologies, equipment, alarms, and procedures. Response is the actual response to an oil spill, such as stopping the flow, containing the oil, and removing the spilled product from the environment. In Washington State we are planning for prevention, preparedness, and response through a comprehensive statewide program. Details about the program can be accessed at https://ecology.wa.gov/Spills-Cleanup/Spills.

Previously, our heavy oil planning standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen and some crude oils that may initially float before weathering and some portion sinking. The enhanced response posture established by the updated rule will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

We disagree that the assessment must be conducted on-site. The assessment could be initiated on-site via the notification to key personnel with additional expertise to evaluate the oil properties and the environmental conditions that may cause the oil to sink. No change was made to the rule to require that the initial assessment be conducted on-site.

We do not agree that Canadian Tar Sands crude oils are the only types of oils that may

potentially sink. Through this update we have expanded the types of potentially non floating oils we are planning for to ensure a rapid, aggressive, and well-coordinated response. The timeframes in the draft rule align with the key steps in a potentially non-floating oils response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. We updated the rule to clearly state that with the equipment, trained and capable personnel, must also plan to arrive. Additionally, in response to public comments, we added a definition of non-floating oils to the rule.

The scope of the rulemaking was narrow in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to the short deadline for the current rulemaking effort an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The Northwest Area Contingency Plan (NWACP) describes wildlife response activities in detail and contingency planning efforts, as described by this rule, must be consistent with the NWACP. The activities listed in the draft rule are not intended to be inclusive of all wildlife related operations that may occur during a response. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes enhanced requirements for personnel and equipment to conduct reconnaissance, deterrence, and rehabilitation operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

We agree that the Plan must require that the monitoring and deterrence operations apply to all whales. The standard has been updated to reflect this request.

OTH-3: members of Puget Sound Environmental Caucus,

Comment OTH-3-1

Please find attached official comments by members of the Puget Sound Environmental Caucus. Thank you

RE: Comments on Washington State Oil Spill Contingency Plan Rule Update, Chapter 173-182

WAC

Dear Mr. Jensen,

We the undersigned members of the Puget Sound Environmental Caucus, thank you for the opportunity to provide comments to the Department of Ecology (Ecology) on the Oil Spill Contingency Plan rule update, Chapter 173-182 WAC. Through the passage of 2018 Strengthening Oil Transportation Safety Act, the legislature directed Ecology to use this year's update to develop new rules and protections that address the specific risk of non-floating oils, such as diluted bitumen derived from Canadian tar sands oil.

We are concerned that Ecology's proposed rule does not meet its legislative directive to address the existing risks of non-floating oils, by failing to establish more stringent requirements for diluted bitumen and using outdated models that overestimate our response capacity and for wildlife response requirements. We urge Ecology to strengthen spill response requirements to address the unique risk that diluted bitumen (dilbit) poses to waters in Washington State and the Salish Sea.

We are specifically concerned about impacts on the Southern Resident orcas, which are at serious risk of extinction. One giant threat to the existence of this highly endangered species whose numbers are precarious low is the risk of an oil spill in the Salish Sea. According to NOAA's 2008 recovery plan for the Southern Resident orcas, "major oil spills are potentially catastrophic to killer whales" .1 A report from National Marine Fisheries service states, "Their small population size and social structure also puts them at risk for a catastrophic event, such as an oi spoil, that could impact the entire population." 2 Such was the case with the ATI orca population or the Chugach Transients, in Prince William Sound after the catastrophic 1989 Exxon Valdez oil spill. Thirty years later, that orca population is functionally extinct.3

The shortcomings of the current draft rule include:

The draft rule, while requiring a faster timeframe for the initial assessment of a spill, fails to establish faster response time requirements for diluted bitumen, despite acknowledging the heightened risks it poses. Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink.

Within the first hour of the oil spill, the initial assessment could take place remotely which means someone from 1,000 miles away could do the initial assessment. While basic conditions of weather, tides, and currents can be assessed remotely, so many site specific local factors, such as wave activity, wind, ecological sensitive areas, docks, piers, wildlife, etc,, can dictate the fate and behavior of the spilled non-floating oil from sinking or not, are better assessed on site.

The timeframes required in the draft rule provide no assurance that the current response times and capability (the amount and type of response resources) will be sufficient to respond to a worst-case spill. 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 required by WAC 173-182-030 (48); see also WAC 173-182-

030).

The scope of the rulemaking is overly limited and planning requirements in the rule continue to rely on outdated modeling that overestimates our response capabilities.

The wildlife response operations are unclear as to what "capture" entails and 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 the scene within 12 hours.

The proposed Plan update requires equipment and personnel to conduct monitoring and deterrence operations to prevent Southern Resident orcas from encountering spilled oil. However, it does not require that experts who can distinguish Southern Resident orcas from transient orcas be an integral part of these operations, thus meaning that there is no assurance that if only some orcas were deterred from encountering a spill, that those whales would be the Southern Resident orcas.

To address these shortcomings, we urge Ecology to:

Update the table in WAC 173-182-324(2) to immediately address existing risks by including accelerated timeframes and details on the amounts and types of resources and equipment needed to respond to a worst case spill of non-floating oil. The timelines must be shortened and additional personnel deployed in the first few hours, especially for non-floating oils and diluted bitumen which can sink quickly, harm wildlife, and damage underwater habitats.

The one-hour initial assessment requirement should be required to be done on site.

Further distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements to protect our communities, underwater habitats, and shorelines. Define "non-floating oil" as non-floating oil is omitted in WAS 173-182-030 definitions.

Commit to updating overall response capacity modeling tools and requirements, including the Effective Daily Recovery Capacity (EDRC), immediately as new information becomes available through, for example, ongoing federal modeling studies.

Enhance planning standards for wildlife response in the event of a spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill, even if experts who are able to identify Southern Resident orcas are not present.

Communities across Washington are at risk from the existing transport of tar sands crude oil and we unprepared to respond. Currently tar sands are transported by rail through Eastern

Washington and along the Columbia River to terminals including to Port Westward which has recently approved shipments of tar sands by rail to be received, stored, and shipped out of a facility permitted as a bio-refinery. In Tacoma, the Par Pacific (formerly LIS Oil) refinery receives weekly shipments of dilbit by barge across Puget Sound from the existing Trans Mountain pipeline terminal in Burnaby, BC. And in Skagit and Whatcom Counties, the Puget Sound Pipeline supplies Washington's four northern refineries with dilbit. Furthermore, the proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks, and has heightened public concern about the limitations of responding to a tar sands oil spill, especially once it sinks.

Spills of these oils in other states, such as on the Kalamazoo River in Michigan, have had catastrophic results, leading to years-long response efforts and limited recovery of sunken oils. The cost associated with this spill exceeds $1.2 billion and 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 because any further dredging would cause significant adverse impacts to the river. 4 "The riverbed will never be fully cleansed of bitumen." 5

To provide adequate protections, Washington's rule should require more rapid response for companies transporting these oils to respond to spills before they submerge and sink.

We appreciate your work to protect Washington's communities, natural resources, and economy and from the risk of oil spills. We urge Ecology to exercise its full regulatory authority to develop a robust rule establishing more stringent preparation and response requirements for the movement of diluted bitumen and other oils that have a high likelihood of sinking, and to improve wildlife response capacity and timelines as well as protections specifically for the Southern Resident orcas.

Sincerely,

Rein Attemann Puget Sound Campaign Manager Washington Environmental Council
Ellen K. Southard, Hon. AIA Puget Sound Manager Salmon-Safe
Darlene Schanfald Executive Director Olympic Environmental Council
Lunell Haught President League of Women Voters of Washington
Amy Carey Executive Director Sound Action
Gus Gates Washington Policy Director Surfrider Foundation
Joshua Morris Urban Conservation Manager Seattle Audubon
Blair Englebrecht Boating Programs Manager Puget Soundkeeper Alliance
Shannon Wright, Executive Director RE Sources for Sustainable Communities
Eleanor Hines, North Sound Baykeeper & Lead Scientist RE Sources for Sustainable Communities

Response to OTH-3-1
Thank you for your comments. The rulemaking enhances preparedness for regulated vessel, facility, and pipeline plan holders operating in Washington State. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils.

Previously, our heavy oils planning standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils, like diluted bitumen and some crude oils that may initially float before weathering and some portion sinking. The enhanced response posture established by the updated rule will drive effective communication about the spill risks as well as a rapid, aggressive, and well-coordinated response.

We disagree that the assessment must be conducted on-site. The assessment could be initiated on-site via the notification to key personnel with additional expertise to evaluate the oil properties and the environmental conditions that may cause the oil to sink. No change was made to the rule to require that the initial assessment be conducted on-site.

We do not agree that Canadian Tar Sands crude oils are the only types of oils that may potentially sink. Through this update we have expanded the types of potentially non floating oils we are planning for to ensure a rapid, aggressive, and well-coordinated response. The timeframes in the draft rule align with the key steps in a potentially non-floating oils response. Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. We updated the rule to clearly state that, with the equipment, trained and capable personnel must also plan to arrive. Additionally, in response to public comments, we added a definition of non-floating oils to the rule.

The scope of the rulemaking was narrow in order to ensure we would be able to meet our legislatively mandated deadline of December 31, 2019. Under our best achievable protection review process we have been evaluating the latest science and methods for realistically calculating oil spill response effectiveness. Additionally, we have reviewed studies and conducted studies to better understand local oil spill response capacities and challenges. Due to the short deadline for the current rulemaking effort, an update to our rules to establish an alternative to the current method of validating planning standards is outside the scope of this rulemaking.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning

focus of responding to the oiled wildlife. We agree that the Plan must require that the monitoring and deterrence operations apply to whales, including southern resident killer whales. The standard has been updated to reflect this request.

Appendix A: Summarized Comment Response

We received the summarized comment below from 934 individuals.
As a Washington resident, I am concerned about the risks that tar sands crude oil pose to my community and communities across the state. I appreciate the work that the Department of Ecology has done thus far to improve oil spill prevention, preparedness, and response measures over the last several years, but am concerned that the proposed updates to Washington's Oil Spill Contingency Plan Rule does not go far enough to protect us from a worst case scenario spill of tar sands crude oil.

Communities across Washington are already at risk from the existing transport of tar sands crude oil and we are unprepared to respond. Currently tar sands are transported by rail through Eastern Washington and along the Columbia River, by barge across Puget Sound, and through the Puget Sound Pipeline across Whatcom and Skagit Counties. The proposed expansion of the Canadian Trans Mountain Pipeline would exacerbate these existing risks and increase the likelihood of a catastrophic oil spill of diluted bitumen.

In addition to being one of the most climate-polluting fossil fuels on the planet, heavy tar sands crude oil sinks when spilled into the water and is virtually impossible to clean up, causing irreparable damage to our economy, communities, and endangered orcas and vulnerable ecosystems. To address these risks, Ecology should require a fast, aggressive, and well-coordinated response to contain and recover potentially non-floating oils before they submerge and sink. The timeframes required in the draft rule provide no assurance that the current response times and capability will be sufficient to respond to a worst-case spill. Ecology should distinguish between all potentially non-floating oils and diluted bitumen, which is likely to sink quickly and therefore demands more stringent equipment and response time requirements.

Finally, I urge Ecology to enhance planning standards for wildlife response in the event of an oil spill. It is essential that wildlife response actions are initiated as soon as possible with adequate personnel and equipment. Deterrence actions that keep wildlife from entering a spill must be underway immediately after a spill. The Plan must require that the monitoring and deterrence operations apply to all killer whales. This will provide greater certainty that Southern Resident orcas will be deterred from entering an oil spill. I urge Ecology to exercise its full regulatory authority and establish stronger protections from tar sands oil that Washington needs and deserves.

Response to comment:
Thank you for your comment. The legislature directed an update to our oil spill contingency planning rules to address planning for risks associated with potentially non-floating oils. Previously, our standards for vessels and facilities limited our planning to the heaviest type of oils, such as asphalt or decant, which are heavier than water and may sink very rapidly. These types of oils may sink more quickly than diluted bitumen.

The new standard expands the types of oils we consider as potentially non-floating. The standard directs a new response posture. This posture ensures that we are adequately planning for oils,

like diluted bitumen, that may initially float before weathering and some portion sinking. The response posture will drive effective communication about the risk as well as a rapid, aggressive, and well-coordinated response.

Spills of potentially non-floating (submerged or sinking) oils have well defined stages. Initially, the focus is responding to the oil while floating and containing the oil to minimize the spread. The planning standard requirements for containment and recovery of floating oils have been well developed. The new non-floating oils planning standard expands on those requirements. The enhancement ensures that plan holders are capable of initiating an assessment of the potential for the oil to sink and rapidly implementing containment of the floating oil. The updated standard also requires plan holders have access to equipment to detect and delineate the locations of oil that becomes sunken, sampling to identify the impact of the oil in the environment, and tools to recover the sunken oil. In order to provide additional clarity about the type of oils with the potential to sink, we added a definition of non-floating oils to the rule. The timeframes in the rule are aggressive and ensure availability of resources to quickly respond to the non-floating oil.

We agree that enhancing planning standards for wildlife response in the event of an oil spill is critical to our readiness. The wildlife rehabilitation standard previously focused on rehabilitation of oiled wildlife. The new standard requires a contract for wildlife response personnel to ensure that this critical response tactic is initiated early in the response. Additionally, the new standard establishes requirements for personnel to conduct reconnaissance and deterrence operations. These key actions support minimizing impacts to oiled wildlife, rather than the previous planning focus of responding to the oiled wildlife.

We agree that the Plan must require that the monitoring and deterrence operations apply to all whales not just southern resident killer whales. The standard has been updated to reflect this request.

List of commenters:

Abbott, Daniel
Acker, Mike
Adams, James
Adams, Catherine
Aegerter, Bob
Ahmed, Lesley
Aikens, Sonja
Alarcon, Russ
Albright, Gary
Alexander, Shawn
Alic, Margaret
Allen, Teresa
Allen, Kathleen
Allen, Teresa
Alonso, Chris
Alvarez, Cecilia
Andersen, Carlos
Anderson, Anthony
Anderson, Julie
Angell, Jimmye
Armstrong, retired
Atkins, Gail
Atwill, John
Atwood, April
Aughtry, Kym
Avinger, Linda
Aymond, Laura
B, Shary
B, Shary
Babcock, Craig
Bachleda, Phoebe
Backman, Lara
Bahr, Dennis
Bailey, Stephen
Bailey, David
Baker, Eldon
Baker, Norman
Ball, Linda
Bamford, Robert
Banks, Wesley
Banks, Wesley
Bannerman, Lynne
Barbee, Stephanie
Barnes, Noel
Barnett, Tod
Bartlett, James
Bartlett, James
Bates, James

Baum, M
Bauman, Sarah
Bechtholt, Susan
Beck, Kathryn
Beers, Bill
Belk-Krebs, Sharon
Bell, Bryan
Bell, Stephanie
Bembridge, Vivienne
Benedict, Derek
Bentzel, Jen
Berkowitz, Naomi
Berlow, David
Berntsen, Karen
Berolzheimer, Jean
betourne, Susan
Betz, Michael
Bhakti, Sara
Billik, Shoshana
Bishop, Scott
Blagg, Merna
Blair, Wendy
Blalack, Kristin
Blessing, Kate
Blitzer, Mark
Boatsman, Carolyn
Bogie, Art
Bogie, Art
Boguske, Matthew
Bonfield, Barbara
Bordelon, Tika
Boreen, Jai
Borer, Howard
Bowdish, Caroline
Bowman, Bill
Boyce, Mike
Bradley, Mark
Branchflower, Nancy
Branson, Bryan
Braun, Dave
Brender, Doug
Brenna, Elena
Brenneman, Don
Breyfogle, S
Brigham, Thomas
Britton, Lauren
Britton, Craig
Brix, Vicki
Brooks, Gary
Brown, Tina
Brown, Sheila
Brown, Christine
Brown, Jessica
Brown, Doug
Brown, Charlyne
Brunton, Beth
Bryant, Perry
Bulla, Jeanne
Bullman, Betsy
Burge, Marvel
Burgess, Sara
Burke, Sally
Burns, Cathleen
Burr, Eric
Burrows, John
Bush, Veronica
Butler, Roxanne
Butler, Peggy
Cadenas, Amber
Caldwell, Rick
Calkins, Jennifer
Calkins, Jennifer
Callaghan, Monica
Carman, Jean
Carone, Gary
Carrol, Michael
Carroll, Linda
Cassato, Candice
Castle, Victoria
Cathy, Bovey
Cavallaro, James
Chan, Guy
Chaney, David
Chapman, Linda
Chesick, Katherine
Chesnut, Joanna
Chiu, Kevin
Claassen, Sharon
Clark, Heinke
Clay, Teresa
cobo, sonia
Cochrane, Meg
Coffey, Patricia
cohen, judith
Colangelo, Annapoorne
Coleman-slack, Kelley
Collmer, Sarah
Colony, Stephanie
Compton, Pete
Conrad, Norm
Corkrum, Gordon
Cormier, Mary
Cosby, Wayne
Cosgrove, Eva
Cosman, David
couture, ray
Covert-Bowlds, Chris
Covington, Diana
Cowan, Keith
Cox, Lanie
Cox, Enid
Craighead, Tom
Crane, Kimberly
Creager, C
Crimbring, William
Critchlow, Lisa
Croasdale, Kathlene
Crowley, Marty
Cruso, Carolyn
Crystal, Lakota
Cunningham, Jan
Cutrera, Mary
Cyr, janis
Daggett, Johanna
Dahl, Peter
Dale, Felicia
Daniels-Lee, David
Davis, Candace
Davis, Christina
Davis, Virginia
Davis, Heather
Davis, Kevin
Dawn, April
dawson, ann
Day, Maggie
de la Rosa, Marco
Deardorff, Rebecca
DeLosSantos, Silvia

DeMaris, C
Demian, Dr
Denson, Walt
Devine, Tom
Dickinson, Amanda
DiLabio, Gena
DiMarco, Thrinley
Dirks, Gary
Ditzler, Mark
Dodge, Tiffany
Dominick, Gail
Dong, Diane
Doran, Patricia
dove, jan
Draheim, Daniel
Driscoll, Bill
Druffel, Pauline
druzianich, Dru
DuBois, Barbara
Durnell, Tim
Eames, Margaret
Eberle, Nancy
Edain, Marianne
Edison, John
Edmison, Sean
Edwards, Willie
Edwards, Susie
Efron, Deborah
eggers, j
eggers, j
Ehle, Lisa
Ehler, Noah
Eldred, Bethany
elle, p
Ellenberger, Charles
Elliott, Leonard
Elliott, Allen
Elohim, Shemayim
Enderlein, Andreas
Engelfried, Nick
Engh, Mary
England, Jennifer
Erbs, Lori
Erickson, Lynda
Erickson, Linda
Ericson, Hilarie
Ershig, Rally
Espe, Greg
Ethridge, Tina
Evans, Chad
Faber, Hilke
Faber, Hilke
Fairburn, D
Fairchild, Jennifer
Fairshon, Kevin
Falcon, Ruth
Falk, Diane
Fanestil, Abigail
Farer, Carol
Farhoud, Aisha
Faris, Leslie
Fasnacht, Sharon
Feit, James
Feldman, Maxwell
Feletar, Linda
Felix, Kristin
felts, terry
Ferguson, Brian
Ferkingstad, Donald
Ferm, Mary
Ferrari, Paul
Ferraris, Alfred
Fetter, Sharon
Feuerhelm, Jill
Finch, Suzann
Fink, Charles
Fischer, Kathleen
Fischer, Nancy
Fischer, Nancy
Fontenot, MaryJo
Forster, Martin
Fortier, Karen
Fosmark, Tami
Foss, Kay
France, Laureen
Francis, Deborah
FRANKO, GLENN
Franks, Larry
Fravel, Maris
Freels, Jeff
French, Nina
friedrick, stephen
Frisbie, Sasha
Fritchie, M
Fuller, Patricia
Futterman, Sanja
Gairaud-Hinkley, Victoria
Gallus, Megan
Gambol, Rhett
Gandolfo, Deborah
GARDNER, SANDRA
Garratt, Robert
Garttmeier, Mary
Gehri-Bergman, Sandra
Gentz, William
Gibbs, Linda
Gibbs, Diane
Gigliotti, Robert
Gile, Barrie
Gill, Gary
Gillespie, Bob
Gish, Edith
Glaser, Donna
Glass, Rebecca
gleim, nancy
Gogic, Laurie
Golding, William
Gordon, Eve
Gordon, Richard
graham, steve
graham, steve
Grajczyk, Joyce
Grassl, Richard
Gray, Pamela
Gray, Ellen
Gray, Patrick
Green, Catherine
Green, Stephen
Greene, Judy
Gregory, Barbara
Groepper, Cindy
Guard, Mary
Guillory, Chris
Gunn, Brian
Guren, David
H, Carole
Hackman, Rev
Haggin, Lindell

Haines, Lee
Hair, Ursula
Hait, Gordon
Hall, Carolyn
Hall, Dorothy
Halpern, Lisa
Ham, Michele
Ham, Michele
Hamilton, Aimee
Hance, Juth
Hand, David
Hannahs, Mechelle
Hansen, Nola
Hansen, Amy
Hansen, Amy
Hansen, Amy
Hansen, Jens
Hare, Ed
Harlow, Batya
Harms, Kara
harris, jeri
Hartman, Stacie
Hartman, Stacie
Harvey, Jo
Hayden, Marlene
heavyrunner, mia
Hedger, Lloyd
Hedman, Christie
Heffler, Les
HEIM, SHARON
Heller, Brent
Hemphill, Patricia
Hencken, Joel
HENRY, MARILEE
Heron, Carrie
Herzberg, Greg
Heyneman, Amy
Heywood, David
Hiatt, Carole
Hickey, Patrick
Highland, Patti
Hildreth, Michael
Hills, Jim
hipp, james
Hirsch, Barbara
Hirst, David
Hodson, Sally
Hoffer, William
Hokonson, Suzi
Holder, Lehman
Hollyfield, Jenifer
Holtzman, Julie
Holzworth, Phyllis
Hooper, Ruth
Houck-Clemente, Catheriene
Houghton, Abigail
Houston, Carol
Howe, Jared
Howerton, Martha
HUANG, VIRGINIA
Huddlestone, Laura
Hughes, Tom
Hughes, Kevin
Hungate, Eleanor
Hungerford, Chasity
Hunner, Walter
Hurst, Dianne
Hurt, Wesley
HURVITZ, RALPH
Hylton, Stephanie
Ierulli, Barbara
Ignelzi, Noreene
Iluna, Mana
Isley, Stan
IUyenishi, Steve
Jack, Janice
Jackson, Dean
Jacobs, Nancy
James, Virginia
Jamieson, Robert
Jamison, Vanessa
Jamison, Vanessa
Jarrard, Sue
Jensen, Judy
Jensen, Angela
Jeter, Randal
Johansen, Penelope
Johnson, Elizabeth
Johnson, Lorraine
Johnson, Richard
Johnson, Becky
Johnson, Steven
johnson, lawrence
Johnson, Patricia
Johnston, Tod
Johnston, Darlene
Jones, Ron
Jones, Kaija
Joy, Mark
Jung, Diana
Jurgensen, Amber
Jurus, Nicholas
Karlson, fred
Kaufman, Jeffrey
Kavas, Lisa
Kaye, Deborah
Keeble, John
Keefer, Kelly
KELLY, JOANNE
Kemp, Kindy
Kennedy, Cathy
Kenoyer, Melanie
Kerwin, Nancy
Kessinger, Jerry
Kikawa, K
Kildall, William
Kilgore, Susan
Kim, Ji-Young
Kim, Ji-Young
Kladnik, Julia
Klein, Darla
Klooster, Kristen
Knoll, Chris
Knoll, Chris
Knoten, John
Knoth, Lorrie
Kolstad, Patricia
Korn, Meryle
Kramer, Robin
Krantz, Marquam
Kreher, Leslie
Kritzman, Ellen
Kronenberg, Esther
Kunz, Cheri
Kunze, Donald
Kus, John
Kus, John

Kutter, Bob
Lague, Rich
Lamb, Peta
Lambert, John
Lambros, Kathryn
Landa, Penelope
lane, barbra
Lankford, Clayann
Larson, Gary
LaRue, Erik
Latoszek, Mira
Lavis-Brasher, Betty
Lazerwitz, Jay
Leavitt, Jane
lee, felix
LeFort, Andrew
LeValley, Lon
Levine, Sharon
Levine, Sharon
Levine, Adam
leviten, alisha
leviten, alisha
Lewis, Nancy
Lewis, Vicki
Libbey, Thomas
Lichtenberg, Lynn
Lindholm, Paul
Link-New, Virgene
Lockwood, George
Loeffler, Jonathan
Loehlein, Ken
Loeser, Karen
Long, Matthew
Lorey, Jeanene
Lovelace, Steve
Ludden, david
Lufkin, Thom
lund, John
Lundahl, Erika
Lundheim, Vanassa
Lyne, Jennifer
MacDonald, Jennifer
MacDonald, Susan
Macdonald, Alexis
Mace, Dennis
MacGuire, Mike
Mack, Rodney
Mack, Kim
maddux, margie
maddux, margie
Madsen, Ellen
Magana, Maria
Magner, Millie
Mallalieu, Kathy
Mallory, Jesse
Mangum, V
Manning, Joseph
Maris, Celeste
Markley, Shannon
Marquart, Frances
Martin, Paul
Martin, Gary
martin, melodie
Martinez, Priscilla
Mast, Candace
Masters, Mary
Matsui, Vicky
Maurer, Darlene
Maxwell, Jane
Maynard, Sharon
Mazuca, Jennifer
Mazza, Ronald
McCandless, Kenneth
McCarter, Earl
McClintock, Gloria
McClure, Daniel
McCluskey, Ian
McCutcheon, Diane
Mcgill, John
Mcgill, Wanda
McLaughlin, Kriss
McMahon, Nancy
McMinn, Paula
McNeil, Mona
McRae, Susan
Meade, Audrey
Meert, Rosemary
Mehemed, Sharleen
Meisenburg, Karen
Melusky, Jonathan
Mercer, C
Merryman, Marcia
Meyer, Marilee
michaels, Megan
Michaels, Brenda
MICHAELS, Peter
Miescher, Richard
miller, jerry
Miller, Travis
Miller, Claudia
Miller-Davis, charm
Mitchell, Barbara
Mizuki, Michelle
Moerman, Mark
Montacute, Susan
Moore, Kerry
Moore, Christopher
Moore, Larisa
Moore, Ben
Moore, Robin
Moore, Richard
Morgan, Tess
Morris, Eleanor
Morrison, Brian
Mortinson, Shelley
Mower, Amy
Mulcare, James
Mullein, Tui
Mumper, Cole
Murawski, Heather
Murphy, James
Murray, Susanne
Murti, Gudrun
Musgrave, Lee
Mynar, James
Myra, Ramos
Nagyfy, Desiree
Napier, J
Naylor, Brent
Nedeff, Elizabeth
Neese, Harvey
Nelson, Rusty
Nelson, Estrillita
Nelson, Katherine
nelson, Connie
Nemerever, David
Neubauer, Beverly
Newman-Henson, Bridgid

Nguyen, Binh
Nielsen, Diana
Nielsen, Peggy
Nolasco, Chris
Noonan, Dermot
Nordby, Pat
Norris, Gordon
Norvell, Chelsea
Noseworthy, Steve
Nowlis, David
Nussbaum, Berl
Nystrom, Bette
O'Halloran, Dr
O'Rorke, Kevin
odell, Brian
ODell, Sean
Olivier, Carol
Olsen, Carol
Olsen, Martha
Oman, Karla
Onufer, Jerome
Orr, Noel
Orren, Hanne
Osmun, Richard
Ostfeld, Jessica
Ostrander, Lucy
Oulman, Lynne
Page, Peggy
Papadakis, Lara
Pape, Robyn
Parhar, Pawiter
Parker, Deborah
Parker, Barry
parr, stacy
Parriott, Maureen
Parsley, Adina
Patterson, Roni
Paulsen, Julia
Pearson, David
Pearson, Anya
pechia, emily
Pederslie, Sharon
PEHA, DAVID
Penchoen, Gregory
Penhallegon, David
Pennington, Sharyn
Perkins, Sandra
perron, p
Persky, William
Peskind, Art
Petlock, Kyle
Pfeiffer, Ben
Phillips, Cheryldene
PHILLIPS, WILLIAM
Pierot, Dave
Pierson, Sherri
Plagemann, Sandy
Platt, Amy
Pletcher, Jennifer
Poirier, Jeanne
popoff, dave
Porter, Jennifer
potts, randall
Powers, Jessica
pratt, debbi
Price, Mara
Price, Carol
Provost, Lin
Quackenbush, Nancy
Quinn, Jenina
Quintus, Patsy
Rabenstein, Lynn
Radford, Kathy
Radford, Sally
Radmer, Elaine
Rall, Ben
Ramos, Debbie
Rasmussen, Nancy
Raspa, Doris
Ray, Rene
Raymond, Robert
Rees, Melissa
Reineke, Toni
Renner, Ethel
Renner, Ethel
Renner, Jeff
Reynolds, Adele
Richman, Dore
Rideout, Ryan
Rietz, Marguerite
Riordan, Janet
Ritter, Phil
Roberts, Paul
Roberts, Jim
Roberts, Melissa
Robertson, Suzan
Robertson, Evan
Robinson, Will
Robinson, Mallory
Robinson, Roger
Robinson, Margo
Rodgers, Sandra
Roehl, Timothy
Roemer, Bonnie
Rohrer, Rose
Rollis, Hope
Rooney, Nathaniel
Rooney, Sue
Rose, Diane
Rosenfeld, Daniel
ross, peter
Roth, Louis
Roth, John
Rothenberg, Florie
Rother, Olivia
Rousu, Dwight
Rudinsky, Jennifer
Rudisill, Amanda
Rueckel, James
Ruhl, Kathy
Rumiantseva, Elena
Ryan, Kathryn
S, John
S, Kay
S, Barb
Saarinen, Tamara
Salido, Saul
Sammons, Toni
Santangelo, Patricia
Santiago, Indira
Saupp, Janet
Schairer, Janet
Scherwood, Karen
Schneider, Dan
Schuch, Janice
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schuyler, linda

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Schwartz, Phebe
Schwartz, Ronlyn
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Smith, D
Smith, Courtenay
Smith, Dianna
Smith, Sandra
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soderstrom, lucy
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Spear, Debbie
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Tandoo, James
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Udovich, Adam
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unger, wanda
Uzuner, Selim
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valentine, jennifer
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Volbrecht, Rose
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von Christierson, Peter
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Weinstock, Jason
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WHITE, ELIZABETH
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Williams, James
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Williamson, Skye
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wood, r
Wood, Sylvia
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Zimdars, Eric
Zimmer, Cheryn
Zirinsky, Kenneth