Concise Explanatory Statement Chapter 173-187 WAC, Financial Responsibility

Summary of Rulemaking and Response to Comments

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[1] http://www.ecology.wa.gov/contact

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Concise Explanatory Statement

Chapter 173-187 WAC
Financial Responsibility

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

June 2024 | Publication 24-08-007

DEPARTMENT OF
ECOLOGY
State of Washington

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Introduction

The purpose of a Concise Explanatory Statement is to:

- Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
- Provide reasons for adopting the rule.
- Describe any differences between the proposed rule and the adopted rule.
- Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Financial Responsibility
WAC Chapter(s):	173-187
Adopted date:	June 14, 2024
Effective date:	July 15, 2024

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 a new chapter of rule, Chapter 173-187 WAC Financial Responsibility and repealing the existing Chapter 317-50 WAC Financial Responsibility for Small Tank Barges and Oil Spill Response Barges.

The adopted rule implements updates to Chapter 88.40 RCW Transport of Petroleum Products – Financial Responsibility, as required under Engrossed Second Substitute House Bill (E2SHB) 1691. The adopted rule ensures that vessel and facility owners and operators have adequate financial resources to pay cleanup and damage costs arising from an oil spill. Additionally, the existing Chapter 318-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges has been incorporated into the new rule and has been repealed.

Engrossed Second Substitute House Bill (E2SHB) 1691, codified in Chapter 88.40 RCW, directs Ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels. This new chapter establishes a process to ensure regulated entities meet financial responsibility requirements and establishes a process for requesting a Washington state certificate of financial responsibility (COFR). Regulated entities must demonstrate financial responsibility for response cleanup costs and, as necessary, compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a spill.

Chapter 88.40 RCW outlines the amount of financial responsibility a vessel must demonstrate and provides authorization to establish a process for verification of protection & indemnity (P&I) club membership. P&I clubs are mutual insurance associations that serve the vessel community and that provide risk pooling for their members. They provide insurance type protection for oil pollution risk, as well as other risks that are common for the vessel industry. The adopted rule establishes financial responsibility requirements for regulated facilities and vessels. The law directs consideration of the worst-case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan approved under Chapter 90.56 RCW, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility. The adopted rule also outlines a phase-in schedule for vessels and facilities and ongoing compliance timelines to meet the requirements in the rule.

The adopted rule:

- Defines the entities subject to financial responsibility requirements.
- Establishes required levels of financial responsibility for oil handling facilities and pipelines.
- Specifies the procedures and timelines for obtaining or renewing a COFR
- Establishes requirements for acceptable evidence of financial responsibility, including self-insurance.
- Outlines the process for ensuring timely updates to changes in financial status.
- Defines the processes governing the suspension, revocation, and re-issuance of certificates of financial responsibility considering potential liabilities incurred by a covered entity after an oil spill or other incident.
- Incorporates and update financial responsibility requirements currently included in Chapter 317-50 WAC – Financial Responsibility for Small Tank Barges and Oil Spill Response Barges
- Repeals Chapter 317-50 WAC

Differences Between the Proposed Rule and Adopted Rule

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

There are some differences between the proposed rule filed on January 19, 2024 and the adopted rule filed on June 14, 2024. 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 describes the changes and Ecology's reasons for making them.

Minor grammatical edits were made throughout the chapter to improve clarity.

WAC 173-187-040 Definitions

- The word "discharge" was replaced with "spill" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-100 Financial responsibility amounts for vessels

- The word "rule" was replaced with "chapter" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-110 Financial responsibility amounts for facilities

- The word "rule" was replaced with "chapter" for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-120 Request for an alternative financial responsibility calculation

- The word "calendar" has been added to clarify the number of days an alternate financial responsibility calculation must be submitted before submitting a request for a COFR and the number of days in which Ecology will approve or disapprove the alternate financial responsibility calculation request.
- A new subsection was added to clarify that a new COFR will be required if the alternate financial responsibility calculation is revoked.

WAC 173-187-200 Demonstrating financial responsibility

- The phrase "An owner or operator of more than one vessel or facility subject to financial responsibility..." was replaced by "An owner or operator of more than one vessel or facility that is required to obtain a Washington COFR", to add clarity, based on a comment that was received. This is appropriate as all covered vessels are subject to financial responsibility, but those that are members of P&I clubs are not required to obtain a Washington COFR and are not affected by this section of rule.

WAC 173-187-210 Procedures for vessels to be verified as a member of an international protection and indemnity (P&I) club

- The word “international” was deleted as it is redundant. The definition of P&I club and the title of this subsection include the word “international”, so it does not need to be repeated throughout the subsection.
- The words “or operator” were added for clarity and to use consistent terminology throughout the chapter.

WAC 173-187-220 Procedures for applying for a Washington certification of financial responsibility (COFR)

- The adopted rule was updated to provide information about how to access Ecology forms but no longer requires use of these forms as they have not been subject to the public review and comment process. Forms that may be used to support proof of financial responsibility have been created, published, and are available on Ecology’s Financial Responsibility webpage, for use at the discretion of the applicant. The rule provides information about these forms but does not require the use of any specific form.Additional language was added to denote:
    - Published form ECY 070-751 may be used to document an owner’s or operator’s attestation that their COFR application is accurate and complete.
    - Published form ECY 070-758 may be used to document an owner’s or operator’s delegation of authority to an authorized representative.
    - The requirement to complete and attach the certificate of insurance agreement that is available on the financial responsibility website has been removed. Published form ECY 070-752 may be used to document a certificate of insurance agreement.
    - Published form ECY 070-754 may be used to document a surety bond agreement.
    - The requirement to complete and attach the standby trust agreement that is available on the COFR website when proving financial responsibility with a surety bond, guarantee, or letter of credit has been removed. Published form ECY 070-753 may be used to document the establishment of a standby trust fund. The requirement to fund the standby trust fund in accordance with ecology’s instructions has been removed. All requirements for funding the standby trust fund must be included in the surety bond, guarantee, letter of credit or certificate of deposit agreement.
    - Published form ECY 070-757 may be used to document a guarantee agreement.
    - Published form ECY 070-756 may be used to document a letter of credit agreement. When using a certificate of deposit to prove financial responsibility, the applicant will be required to establish a standby trust fund to receive all funds if the certificate of deposit is liquidated.
    - The requirement to complete and attach the self-insurance letter that is available on the COFR website when proving financial responsibility with self-insurance has been removed.Published form ECY 070-755 may be used to document the self-insurance calculations and agreement.

WAC 173-187-230 Phase-in schedule for vessels and facilities.

- Deleted the redundant word “Class”.

WAC 173-187-250 Issuance of Washington COFRs

- Deleted the option to submit a COFR application through US mail. All COFR applications must be submitted via Ecology's web based application, which will ensure all required information is provided, improve the quality of applications, and improve processing timeliness.

WAC 173-187-300 Significant changes to Washington COFRs require notification

- A minor revision to improve plain talk readability was made.
- The word "facility" was added to clarify that if a facility name is changed a new COFR will be required.
- The sentence "The holder of a Washington COFR for more than one vessel or facility must notify ecology within 10 calendar days if it experiences a spill or spill from a vessel or facility in another jurisdiction …" was replaced with "The holder of a Washington COFR must also notify ecology within 10 calendar days if it experiences a spill in Washington or in another jurisdiction…" to improve clarity and to use plain talk to describe this notification requirement.
- The unnecessary word "covered" was removed.
- The word "calendar" has been added to clarify to the number of days after which a COFR may be suspended or revoked due to Ecology's determination that the COFR holder is likely to no longer have the financial resources to comply with the financial responsibility requirements.
- The word "international" was deleted as it is redundant. The definition of P&I club and the title of this subsection include the word "international", so it does not need to be repeated throughout the subsection.

List of Commenters and Response to Comments

Ecology accepted comments from January 19, 2024, to March 8, 2024. Comments were accepted by mail, through our online public comment tool, and verbally at three public hearings that were held via webinar.

We received 246 comment submissions during the 50 day formal public comment period. Of these, we received 76 unique comments from individuals, organizations, businesses, and agencies. Some of the comment submissions received included several comments. Several of the comment submissions were submitted on behalf of multiple individuals or organizations.

Below is a table depicting the commenter name, affiliation, and associated comment number. The comments are included verbatim below the table in order of comment number. Each unique comment is addressed separately, and the individual response to the comment is included below the comment. Comments that were submitted as letter attachments are included in Appendix B and referenced in the text below.

We also received 465 duplicate comments from an individual commenter. Some of these duplicate comments received were not exactly identical, but did not differ substantially. These duplicate comments received a single response. In addition, we received two identical comments from one commenter, three identical comments from another commenter, three identical comments from three individual commenters, seven identical comments from another commenter, and a petition letter that was signed by 597 individuals. These comments, responses, and 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. List of commenters

Name	Affiliaton	Comment Number
Ackerman, Laura	Individual	I-239-1
Albert, Donna	Individual	I-211-1
Albert, Donna	Individual	I-238-1
Alderton, Janet	Individual	I-13-1
Armon, Caroline	Individual	I-7-1
Attemann, Rein	Individual	I-224-1
I-224-1 included 458 individual comment letters. Six of these are unique letters and are included here by page number. The remaining can be found in Appendix A.	Claus-McGahan, Elly	Page 373
	DeGrasse, Ellen	Page 408
	Ketterick, Catherine	Page 418
	Runnels, Tyson	Page 355
	Stair, Ruchi	Page 443
	Wier, Joyce	Page 98
Attemann, Rein	Individual	O-5-1
Bailey, Grant	Individual	I-46-1
Battalia, John	Individual	I-240-1

Budelsky, Rachel	Individual	I-86-1
Burke, Janet	Individual	I-213-1
Burke, Sharon	Individual	I-60-1
Carpenter, Julie	Individual	I-138-1
Doherty, Mike	Individual	I-200-1
Donnelly, Nathan	Individual	I-59-1
Doran, Molly	Individual	I-58-1
Eggerth, Rick	Individual	I-227-1
Ellis, Carol	Individual	I-35-1
Farrell, Phyllis	Individual	I-37-1
Ferm, Mary	Individual	I-17-1
Fort, Joetta	Individual	I-2-1
Gale, Maradel	Individual	I-8-1
Greenheron, Joe	Individual	I-218-1
Harnish, Leah	Individual	I-195-1
Hedgepath, Janet	Individual	I-236-1
Hendrick, Glenn	Individual	I-61-1
Holder, Mary	Individual	I-181-1
Howe, Colleen	Individual	I-66-1
Hubbard, Shaun	Individual	I-53-1
Johnson, Maile	Individual	I-6-1
Johnston, Jennifer	Individual	I-40-1
Kaye, Nancy	Individual	I-216-1
Keller, Barbara	Individual	I-12-1
Kennell, Kay	Individual	I-64-1
Knowles, Annesa	Individual	I-56-1
Krause, Fayette	Individual	I-20-1
Le, Nina	Individual	I-65-1
Lombard, Jim	Individual	I-107-1
Lorence-Flanagan, Kathleen	Individual	I-38-1
Michaelson, Elizabeth	Individual	I-231-1

Moore, Rebecca	Individual	I-16-1
Needham, Theresa	Individual	I-51-1
Nicholson, Heather	Individual	I-27-1
Nollman, Kathryn	Individual	I-26-1
Pavelchek, David	Individual	I-220-1
Phipps, William	Individual	I-3-1
Poliak, Carol	Individual	I-5-1
Porter, Sydney	Individual	I-4-1
Pratt, Lovel	Organization	O-3-1
Reed, Jessica	Individual	I-1-1
Robinson, D	Individual	I-33-1
Roche, Daisy	Individual	I-44-1
Roomes, Joann	Individual	I-202-1
Sherman, Laurie	Individual	I-54-1
Smith, Kip	Individual	I-215-1
Smith, Steven	Individual	I-34-1
Stephanz, Nancy	Individual	I-36-1
Stillman, Don	Individual	I-22-1
Titus, Kady	Individual	I-19-1
Todd, Sophie	Business	I-225-1
Turnoy, David	Individual	I-47-1
Veirs, Val	Individual	I-62-1
Vermeeren, Dirk	Individual	I-39-1
Vermeeren, Dirk	Individual	I-42-1
Vermeeren, Dirk	Individual	I-43-1
Vermeeren, Dirk	Individual	I-237-1
Wentworth, Clifford	Individual	I-63-1
Wolf, Cindy	Other	OTH-1-1
Zirinsky, Ken	Organization	O-2-1
Zirinsky, Kenneth	Individual	I-21-1

I-1: Jessica Reed

Comment I-1-1

I am strongly for this new rule. Oil companies and operations make so much money off of resources that already should belong to the people, not individuals, and should be held accountable when those operations damage and contaminate other public resources. These damages are usually long lasting and difficult and expensive to recover. These companies should have no issue proving they are able to be financially responsible for the cleanup of their mistakes.

Response to I-1-1

Thank you for your comment. As oil spill risk continues to change and new risks emerge, Washington State is committed to ensuring we establish regulations and processes to protect the state's natural resources now and for future generations. An integral part of this is having assurance that a vessel or oil handling facility that handles oil in bulk in or near or our waters can pay for the cleanup and damage costs related to a spill prior to an actual spill.

The Legislature directed Ecology to adopt rules regarding financial responsibility requirements for oil handling facilities and vessels. While the financial responsibility amounts were detailed in Chapter 88.40 RCW for vessels, Ecology established financial responsibility requirements for regulated facilities through this rulemaking process. We are proud to have established a financial responsibility rule for Washington state that is among the strongest in the nation. Thank you for your engagement and support during this rulemaking.

I-2: Joetta Fort

Comment I-2-1

I fully support Chapter 173-187 WAC. In the past WA has said the polluter pays, but there must be a system to assure they can, in fact, pay. Thank you for the opportunity to comment, and for bringing this into fruition. Our beautiful waterways and creatures need our help.

Response to I-2-1

See response to comment I-1-1.

I-3: William Phipps

Comment I-3-1

Im in favor of new rules for 173-187 WAC. thank you.

Response to I-3-1

See response to comment I-1-1.

I-4: Sydney Porter

Comment I-4-1

My dream for the near future is a realistic one, one in which all lives have access to clean water and nontoxic soils. As a young person born and raised in Western Washington, I echo the voices of decades of youth before me and my own generation in pleading for a reality in which there are no new oil projects. Before we get to that point, we need to know that polluters can pay up. An industry defined by wealth, power, and catastrophe must be held to fix their own mistakes. If I need a credit check to rent an apartment, a major oil corporation should need to show proof that they can clean their own messes. Tax dollars are meant to go towards advancing our region. Why should anyone but a polluter pay? We know the risks of pipeline

construction and oil rigs. The record speaks for itself. If they are going to operate, they need to prove financial responsibility over all private, public, and tribal lands that may be affected by the project.

Response to I-4-1

See response to comment I-1-1.

I-5: Carol Poliak

Comment I-5-1

Oil companies must be fully fiscally responsible for any oil spills. They have the funds for this and must be held to a high standard to prevent, and mitigate if necessary, spills. Thank you.

Response to I-5-1

See response to comment I-1-1.

I-6: MAILE JOHNSON

Comment I-6-1

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a per barrel fee that is based on the higher oil spill response and damage costs for spills of tar sands products. The per-barrel cost for the Trans Mountain Pipeline should be increased to at least $60,153 per barrel.

Response to I-6-1

Ecology acknowledges concerns that requiring the Class 1 facilities to prove financial responsibility at a maximum of $300 million may not be sufficient to cover all the clean-up costs and damages from a worst-case spill.

During the rule development process, Ecology considered factors when determining financial responsibility for onshore facilities. These factors, under RCW 88.40.025, include:

- the worst-case amount of oil that could be spilled
- the cost of cleaning up the spilled oil
- the frequency of operations at the facility
- the damages that could result from the spill, and
- the commercial availability and affordability of financial responsibility.

We considered the cost of cleaning up spilled oil and the damages that could result from a spill by reviewing the findings of the 2023 U.S. Coast Guard's "Oil Pollution Act Liability Limits in 2022" Report to Congress[2]. This report provided cost information gathered over the last 30 years. With respect to onshore

[2] U.S. Coast Guard. (2023). Oil Pollution Act Liability Limits in 2021.

facility incidents, "best available data indicate there were 5395 incidents" and that of this data set, 99.9% reported actual cleanup and damage costs of less than $300 million.

Ecology also considered information received from Tribes and stakeholders, which included subject matter experts in a variety of fields, such as insurance experts, attorneys, economists, P&I club administrators, and administrators of existing federal and state financial responsibility or financial assurance programs. Through conversations with surplus line insurance experts and the Washington State Insurance Commission, Ecology learned that today's insurance market provides coverage for oil pollution cleanup and damages to a maximum of about $200 million. This information was confirmed by administrators of similar COFR programs in adjacent states.

Ecology's Final Regulatory Analysis determined that requiring Class 1 facilitates to prove greater than $300 million, when the insurance market provides coverage of only $200 million, would potentially result in an inability for several facilities to comply with the rule. The Administrative Procedures Act, Chapter 34.05 RCW, requires Ecology to "determine, after considering alternative versions of the rule…that the rule being adopted is the least burdensome alternative for those required to comply". The availability of insurance is a constraint to requiring greater financial responsibility amounts. For the same reasons, raising the level of financial responsibility to at least $60,153 per barrel is not feasible as it does not consider the availability of obtainable financial responsibility in today's marketplace.

It is important to understand that these levels of financial responsibility in no way impact Washington's laws on unlimited liability for oil spills. RCWs 90.56.360 and 90.56.390 require that the responsible party of an oil spill is responsible for the costs of that spill. Ecology expects regulated industry to pay the full costs of any spill and will ensure that they do pay under current regulatory authority.

The current insurance marketplace does not offer a mutual insurance product that provides protection for oil pollution, similar to P&I club insurance for vessels. Ecology does not have authority to mandate that regulated industry obtain a product that does not exist.

Ecology's $300 million maximum requirement establishes the highest financial responsibility requirements in the nation and meets the goals and intent of the authorizing statute.

I-7: Caroline Armon

Comment I-7-1

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a per barrel fee that is based on the higher oil spill response and damage costs for spills of tar sands products. The per-barrel cost for the Trans Mountain Pipeline should be increased to at least $60,153 per barrel. The draft financial responsibility requirements for Class 1 facilities are insufficient to cover oil spill response and damage costs. These measures are not just about protecting our natural environment—they're about safeguarding our communities and way of life. At risk are our environment, economy, and cultural resources; the vulnerable Southern Resident killer whales and their dwindling food source, chinook salmon; the forage fish that nurture the salmon and the eelgrass that provides refuge for the creatures that call the coastlines of the Salish Sea home. Thank you for your time and consideration.

Response to I-7-1

See response to comment I-6-1.

I-8: Maradel Gale

Comment I-8-1

Don't undercut the requirements that the polluters much pay for any damages they cause. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities should do the same.

Response to I-8-1

See response to comment I-6-1.

I-12: Barbara Keller

Comment I-12-1

I want to commend you for updating rule making for possible fossil fuel spills but I believe you do not go far enough. 1) Shipping is required to be insured for $1 billion per shop or barge to cover the real (or at least do-able) costs of environmental repair. Obviously no amount of money is going to totally undo the damage but the public should not have to bear the costs because industry is not adequately insured. If they cannot afford the insurance, they should not be in that business. 2) Tar sands transport should provide a similar level level of protection to the public purse. Tar sands are by their nature potentially even more problematic. The Canadian TransMountain Pipeline running through our Salish Sea area needs to be required to provide us with adequate protection. A financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. It has been suggested that the basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel leaked. This is a minimum in my mind. Again, no amount is going to really undo the damage of a leak or spill. Thank you for listening to my concerns. I hope in the future I can thank you for implementing them.

Response to I-12-1

See response to comment I-6-1.

I-13: Janet Alderton

Comment I-13-1

THE CURRENT DRAFT FINANCIAL RESPONSIBILITY REQUIREMENTS FOR CLASS 1 FACILITIES ARE INSUFFICIENT TO COVER OIL SPILL RESPONSE AND DAMAGE COSTS. I live on an island in the Salish Sea, an amazing bioregion of wonderful diversity and productivity. Ever since the Exxon Valdez tragedy, I have been deeply concerned that a devastating oil spill might occur in the Salish Sea. With the ever-greater expansion of shipping in the Salish Sea, a large-magnitude oil spill now may be inevitable. The Trans Mountain pipeline expansion and the expansion of the ports in the Fraser River Delta region will bring ever-greater risks as the volume of traffic expands. Who will pay the costs to address the impacts of a major marine oil spill? A rational approach would be to have the oil and shipping companies fund another "rescue tug", like the one stationed at Neah Bay. But this comment letter is about "Who Pays?" in the event of an oil spill. Will it be the checkout staffers at the local grocery store, or the school teachers, or the electricians installing energy-efficient heat pumps? They and Washingtonians like them work hard and pay taxes?and they will be the ones who foot the bill for most of the oil recovery efforts and damages after an oil spill. I cannot use the term, 'clean-up" in reference to an oil spill because fossil fuel spills are

never truly "cleaned up". At best, 20% of the spill is recovered. Damage to our environment can be massive and long-lasting. It is more rational that Big Oil cover those costs instead. The five biggest oil companies reported combined profits of $196.3 billion last year -more than the entire economic output of many countries. ExxonMobil, for example, raked in $36 billion for its shareholders. While price-gouging American consumers at the pump and elsewhere and contributing massively to our climate crisis, Big Oil has never been more profitable. We, as taxpayers, provide Big Oil with huge subsidies with the biggest being the license to pollute for free. Harvard researchers have found that pollutants from oil and gas combustion were responsible for 8.7 million premature deaths annually from heat and air pollution. The Office of Management and Budget reports that growing costs from intensifying disasters, such as wildfires, floods, droughts, and others due to Big Oil could cost the federal budget $2 trillion annually by the end of the century. The International Monetary Fund estimates the implicit fossil fuel subsidies for the U.S. to be $646 billion each year. And the London School of Economics reports that these estimates often underestimate the harm of climate dangers by failing to account for how hazards can cascade across ecological and economic systems. A basic principle of market economies is that the price of a good should reflect its true cost. That's not happening with Big Oil, which privatizes the benefits and socializes the costs. Now, in Washington State, we are facing decisions on who should pay the costs of an oil spill in our waters: Big Oil or citizen taxpayers. The State Department of Ecology is conducting a rulemaking that will establish financial responsibility requirements for refineries, pipelines, and other bulk oil-handling facilities. The Department's draft rule does not even come close to covering the estimated costs of a large oil spill. THE CURRENT DRAFT FINANCIAL RESPONSIBILITY REQUIREMENTS FOR CLASS 1 FACILITIES ARE INSUFFICIENT TO COVER OIL SPILL RESPONSE AND DAMAGE COSTS. These measures are not just about protecting our natural environment?they're about safeguarding our communities and our way of life. I believe the State Department of Ecology should consider the following points developed by the Friends of the San Juans, which I support: The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. The $300 million maximum financial responsibility amount is based on a 1993 study that used 1992 U.S. dollar values to identify oil spill response and damage costs at $12,500 ? $18,900 per barrel. The proposed financial responsibility requirements are based on the outdated and low-estimated $12,500 per barrel cost. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. The Ecology Department reports that "a large spill could cost the state $10.8 billion and 165,000 jobs. The draft rule does not address current oil spill response and damage costs. Instead, it focuses on "the commercial availability and affordability" of achieving needed financial responsibility for an oil spill. It thus allows oil industry profits to supersede the financial responsibility requirements for the costs and damages from an oil spill. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel. The cost of the spill response and damage costs for the 2010 tar sands crude oil spill into the Kalamazoo River was $1.2 billion, or $60,153 per barrel. An oil spill from the Puget Sound spur of the Trans Mountain Pipeline could impact the Salish Sea including the San Juan Islands as well as the Nooksack River, Lower Skagit River, Samish River, Sumas River, Swinomish Channel, Padilla Bay, and the human and animal communities that live near and within these waters. Canada's Trans Mountain Pipeline expansion project is expected to be operational this year. It will increase the pipeline's current capacity by 590,000 barrel per day and increase

oil tanker traffic in the Salish Sea by 696 ship transits per year. Thank you for considering my views on this draft rule of the State Department of Ecology.

Response to I-13-1

See response to comment I-6-1.

Thank you for including information about the Exxon Valdez spill. After the tragic environmental results of the Exxon Valdez spill, the Legislature acted promptly to enact laws to better protect Washington from this type of incident. Ecology developed and adopted rules to ensure legislative direction was instituted and vessel and facility contingency planning, inspection and drill programs, staging and use of oil spill response equipment, and oil transfer containment requirements were established. Because of this, our waters, unique environments, culture and economy are better protected today. These initiatives are designed to prevent spills and ensure forward leaning responses to minimize spill impacts. Washington has one of the strongest oil spill prevention, preparedness, and response programs in the nation as a result of the Exxon Valdez spill.

Additionally, considering the profits and externalized costs of the largest oil handling companies when determining financial responsibility requirements for Class 1 facilities is outside the scope of this rule as most of these companies do not operate facilities in Washington and are not subject to this rule.

I-16: Rebecca Moore

Comment I-16-1

Dear Friends, I am writing as a resident of Friday Harbor regarding the Spill Prevention, Preparedness, and Response program. I am glad to see that the Washington State Department of Ecology has already started the process of requiring financial accountability from oil companies in cases of oil spills for which they are responsible. But more needs to be required of them, especially since tank vessels and barges are already complying with a hefty fine through various protection and indemnity clubs. The same could, and should, be required of Class 1 refineries and facilities. I am especially concerned about the oil from Canadian tar sands. A higher rate should be charged for cleaning up these spills, given the fact that tar sand oil is a particularly "dirty" form of oil. Thank you for your consideration of these issues. Sincerely yours, Rebecca Moore Friday Harbor, WA

Response to I-16-1

See response to comment I-6-1.

I-17: Mary Ferm

Comment I-17-1

The draft rule will not come close to covering the costs of a major oil spill. This should be part of the expense of doing business for oil companies. (In preschool I always taught the kids that they need to clean up their own messes. Adults and businesses should do the same. That's a basic rule of fairness and justice.) Refineries, pipelines and other oil infrastructure should have the same financial responsibility requirements as vessels. Requirements should prioritize compensation for oil spill impacts over oil company profits, possibly through P&I clubs. Canada's trans mountain pipeline should have a higher per barrel amount responsibility to compensate for higher oil spill response costs of tar sands projects, at least 63,253 per barrel.

Response to I-17-1

See response to comment I-6-1.

I-19: Kady Titus

Comment I-19-1

See comment letter I-19-1 in Appendix B.

Response to I-19-1

See response to comment I-6-1.

Thank you for including information about the Exxon Valdez spill. After the tragic environmental results of the Exxon Valdez spill, the Legislature acted promptly to enact laws to better protect Washington from this type of incident. Ecology developed and adopted rules to ensure legislative direction was instituted and vessel and facility contingency planning, inspection and drill programs, staging and use of oil spill response equipment, and oil transfer containment requirements were established. Because of this, our waters, unique environments, culture and economy are better protected today. These initiatives are designed to prevent spills and ensure forward leaning responses to minimize spill impacts. Washington has one of the strongest oil spill prevention, preparedness, and response programs in the nation as a result of the Exxon Valdez spill.

I-20: Fayette Krause

Comment I-20-1

It is time that Big Oil pays for its "mistakes." There is no reason to socialize the costs of these "mistakes" when the perpetrator is very obvious.

Response to I-20-1

See response to comment I-1-1.

I-21: Kenneth Zirinsky

Comment I-21-1

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Response to I-21-1

See response to comment I-6-1.

I-22: Don Stillman

Comment I-22-1

To the Washington State Department of Ecology: I believe a devastating oil spill into the Salish Sea now may be inevitable. We need to do all we can to prevent such a disaster, but--if it occurs--we face the question of who pays for the cost of that oil spill? Will it be the checkout person at Island Market on Orcas Island, or the cleaners at the Outlook Inn, or the construction crew building the house on Buck Mountain? They and Washingtonians like them all work hard and pay taxes—and they're likely to be the ones who foot the bill for most of the clean-up work and damages after an oil spill. I would propose that we make Big Oil cover those costs instead. The five biggest oil companies reported combined profits of $196.3 billion last year...more than the entire economic output of many countries. ExxonMobil, for example, raked in $36 billion for its shareholders. While price-gouging American consumers at the pump and elsewhere and contributing massively to our climate crisis, Big Oil has never been more profitable. We, as taxpayers, provide Big Oil with huge subsidies with the biggest being the license to pollute for free. Harvard

researchers have found that pollutants from oil and gas combustion were responsible for 8.7 million premature deaths annually from heat and air pollution. The Office of Management and Budget reports that growing costs from intensifying disasters, such as wildfires, floods, droughts, and others due to Big Oil could cost the federal budget $2 trillion annually by the end of the century. The International Monetary Fund estimates the implicit fossil fuel subsidies for the U.S. to be $646 billion each year. And the London School of Economics reports that these estimates often underestimate the harm of climate dangers by failing to account for how hazards can cascade across ecological and economic systems. Many politicians worship at the idol of free markets as they rake in sizeable political donations from Big Oil. But a basic principle of market economies is that the price of a good should reflect its true cost. That's not happening with Big Oil, which privatizes the benefits and socializes the costs. Now, in Washington State, we are facing decisions on who should pay the costs of an oil spill in our waters: Big Oil or citizen taxpayers. The State Department of Ecology is conducting a rulemaking that will establish financial responsibility requirements for refineries, pipelines, and other bulk oil-handling facilities. The Department's draft rule does not even come close to covering the estimated costs of a large oil spill. The current draft financial responsibility requirements for Class 1 facilities are insufficient to cover oil spill response and damage costs. These measures are not just about protecting our natural environment—they're about safeguarding our communities and our way of life. I believe the State Department of Ecology should consider the following points developed by the Friends of the San Juans, which I support: 1. The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. The $300 million maximum financial responsibility amount is based on a 1993 study that used 1992 U.S. dollar values to identify oil spill response and damage costs at $12,500 – $18,900 per barrel. The proposed financial responsibility requirements are based on the outdated and low-estimated $12,500 per barrel cost. 2. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. The Ecology Department reports that "a large spill could cost the state $10.8 billion and 165,000 jobs. The draft rule does not address current oil spill response and damage costs. Instead, it focuses on "the commercial availability and affordability" of achieving needed financial responsibility for an oil spill. It thus allows oil industry profits to supersede the financial responsibility requirements for the costs and damages from an oil spill. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. 3. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel. The cost of the spill response and damage costs for the 2010 tar sands crude oil spill into the Kalamazoo River was $1.2 billion, or $60,153 per barrel. An oil spill from the Puget Sound spur of the Trans Mountain Pipeline could impact the Salish Sea including the San Juan Islands as well as the Nooksack River, Lower Skagit River, Samish River, Sumas River, Swinomish Channel, Padilla Bay, and the human and animal communities that live near and within these waters. Canada's Trans Mountain Pipeline expansion project is expected to be operational this year. It will increase the pipeline's current capacity by 590,000 barrel per day and increase oil tanker traffic in the Salish Sea by 696 ship transits per year. Thank you for considering my views on this draft rule of the State Department of Ecology. Sincerely, Don Stillman 1442 Pioneer Hill Road Olga, WA 98279

Response to I-22-1

See response to comment I-6-1.

Considering the profits and externalized costs of the largest oil handling companies when determining financial responsibility requirements for Class 1 facilities is outside the scope of this rule as most of these companies do not operate facilities in Washington and are not subject to this rule.

I-26: Kathryn Nollman

Comment I-26-1

See comment letter I-26-1 in Appendix B.

Response to I-26-1

See response to comment I-6-1.

I-27: Heather Nicholson

Comment I-27-1

First and foremost, nature in the Pacific Northwest should not be subject to even the possibility of oil and hazardous material spills and releases, period. However since it's still being enabled to trek through, refineries, pipelines, and other bulk oil handling facilities must be financially capable and obligated to fully clean up and fix such damage they could cause. Nothing is more important to me in our region than ecological health of the land, water and wildlife within it. The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is absurdly low. It is not enough. It must be at least $1 billion per facility. The Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel in order to address the higher oil spill response and damage costs for spills of tar sands products. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Class 1 facilities could do the same as tank vessels and barges which can comply with the $1 billion financial responsibility requirement through protection & indemnity clubs or mutual insurance associations. No more externalizing costs onto nature and the public. If the polluters have to pay, all life will be safer and less burdened. Sincerely, Heather Nicholson

Response to I-27-1

See response to comment I-6-1.

I-33: d robinson

Comment I-33-1

The most important fact is that ONE DROP OF OIL WILL SPOIL/POISON A GALLON OF WATER! My following comments are as follows: 1. The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: at least $1 billion per facility. 2. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. 3. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel. 4. IN A PERFECT WORLD: The real solution is to prohibit all forms of fossil fuel production and infrastructure IMMEDIATELY Thank you for accepting my comments and I wish to be kept informed as to what the decision is.

Response to I-33-1

See response to comment I-6-1.

I-34: Steven Smith

Comment I-34-1

Dear Department of Ecology, State of Washington, Thanks for your consideration of public comments, and especially the points elucidated below, in regards to Chapter 173-187 WAC and repeal of Chapter 317-50 WAC 1. The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: At least $1 billion per facility. Please look at the history of fossil fuel extraction, refining and transportation and note the exorbitant costs of environmental accidents. For instance the Alaska oil spill in Prince Williams Sound (Exxon Valdez Oil Spill) resulted in Exxon spending an estimated $2 billion cleaning up the spill and a further $1 billion to settle related civil and criminal charges. Our environment, here in the Salish Sea and surrounding land areas, is every bit as sensitive as the Alaska area affected by the Valdez spill, and the cost in today's dollars is likely to be much higher than the $3 billion spent by Exxon. Truly, $300 million would be only "a drop in the bucket" as far as possible monetary damages from an incident!!! 2. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. They really must be held to this higher financial liability standard in the event of a catastrophic event, otherwise who will end up paying to remediate the damages....the taxpayers, as usual! Big oil, and all their ancillary services, need to at least "ante up" and take care of potential disasters created by their activities. 3. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement per barrel transported should be increased dramatically, so that the possibility of any potential spill is covered. If this is done, then it should be obvious to most folks that this tar sands oil is not a financially viable product. It should also be noted that tar sands pipelines have experienced hundreds of ruptures over the past decade, spilling more than one million gallons of oil that has polluted rivers, wetlands, and threatened wildlife. We need to get away for this very polluting and expensive fossil fuel source and move toward safer alternatives. Thanks again for your consideration and thoughtful decision making in regards to the above concerns. Sincerely, Steve Smith Concerned Citizen of WA State

Response to I-34-1

See response to comment I-6-1.

I-35: Carol Ellis

Comment I-35-1

Washington state residents, Tribes, outdoor enthusiasts & the fisheries themselves need Ecology to play hard ball with Big Oil. Oil spills are hazardous far past the initial cleanup. You must raise the maximum cap expenditure, annually. Starting with a base of 1 billion. And it's Ecology's responsibility to charge Canada tar sands commensurate with its risk: higher. We are overdue at insuring the true cost of protecting our waters.

Response to I-35-1

See response to comment I-6-1.

I-36: Nancy Stephanz

Comment I-36-1

I accept the fact that oil laden tankers will be going through the Strait of Juan de Fuca for years to come. I do want the Sate of Washington to require at least one additional rescue tug to be sited at Roche Harbor (I have watched the presentations about the best site for such a vehicle over the past year), but I also believe it is the oil companies themselves who should pay for the vessel, it's crew's salaries and for all clean-up required in case of an oil spill. They are the ones making money off this resource from Canada and Washington State. They can pay. The taxpayers of Canada and Washington State, who have no control over the transport or sale of this oil, and who do not benefit directly from the transport or sale of the oil, should not have to pay for the safety/clean-up costs in the case of an accident. Nancy Stephanz

Response to I-36-1

See response to comment I-1-1.

Requiring an Emergency Response Towing Vessel (ERTV) to be stationed in Roche Harbor is outside the scope of this rule.

It is important to understand that this rule's levels of financial responsibility in no way impacts Washington's laws on unlimited liability for oil spills. RCW 90.56.360 and 90.56.390 require that the responsible party of an oil spill is responsible for the costs of that spill. Spillers are responsible to pay the full costs of any spill. This means that a responsibility party with $300 million of demonstrated financial responsibility would still be liable for costs exceeding that amount.

I-37: Phyllis Farrell

Comment I-37-1

Please require fossil fuel facilities and operations in Washington State to assume adequate financial responsibility for damage and full clean up and recovery operations they incur. I hope we can overcome the perception that current legislation and regulations pander to the influence and weight of the fossil fuel companies that put profits beyond public health and the environment.

Response to I-37-1

See response to comment I-1-1.

It is important to understand that this rule's levels of financial responsibility in no way impacts Washington's laws on unlimited liability for oil spills. RCW 90.56.360 and 90.56.390 require that the responsible party of an oil spill is responsible for the costs of that spill. Spillers are responsible to pay the full costs of any spill. This means that a responsible party with $300 million of demonstrated financial responsibility would still be liable for costs exceeding that amount.

I-38: Kathleen Lorence-Flanagan

Comment I-38-1

Both my husband and I are involved with protection of the Salish Sea, he as a citizen scientist with multiple activities in this area, myself as a board member of Evergreen Islands, an environmental group here in Anacortes. Both of us also volunteer for a Stormwater testing project with Friends of Skagit Beaches. It seems a logical step to establish adequate financial responsibilities in case of spills at pipelines, bulk oil handling facilities and refineries. Protection of the Salish Sea ecosystems has become more and more important as they come under increasing threat. Much more robust requirements than what are currently being proposed by Washington State Dept. of Ecolgy (DOE) are needed. ($1 billion versus $300 million and at least $60,000.00 per barrel for tar sands products (known to be extremely dirty and difficult to clean up).

Additionally, values recommended by DOE are reportedly based on 30 year-old information. Certainly more current information is needed. We ask that companies managing these oil products not be let off the hook for the impacts of any accidental, adverse events. Thanks for your time.

Response to I-38-1

See response to comment I-6-1.

I-39: Dirk Vermeeren

Comment I-39-1

See comment letter I-39-1 in Appendix B.

Response to I-39-1

See response to comment I-6-1.

It is possible that a new study to estimate costs of an oil spill from a Washington State Class 1 facility in today's environment may inform an update to the rule's financial responsibility requirements. Our intent is to reopen the rule when information becomes available through new studies or lessons learned during our implementation of the COFR program.

Ecology considered environmental justice and Title VI Civil Rights as it related to this rulemaking and did not identify any specific environmental justice or Title VI issues related to this rulemaking. The adopted rule seeks to protect Tribes and underserved communities by establishing financial responsibility requirements that had not previously been established.

I-40: Jennifer Johnston

Comment I-40-1

This is very important because if there is a large earthquake, an oil spill would be catastrophic. We need to be proactive in making sure that a plan to clean up and compensate the area for damage.

Response to I-40-1

See response to comment I-1-1.

I-42: Dirk Vermeeren

Comment I-42-1

See comment letter I-42-1 in Appendix B.

Response to I-42-1

Thank you for submitting your informational comment containing an official report, prepared by David Dybdahl of ARMR (a surplus line insurance brokerage) and provided to Dade County, Wisconsin. The report provides expert recommendations for insurance coverage requirements in support of Enbridge Energy Partners' application for a conditional use permit to upgrade and maintain a proposed pumping station in Dade County. This report was prepared in 2015.

In this report, Dybdahl provides information on the risk bearing capacity of Enbridge Energy Partners to address the clean-up and other potential damages resulting from an oil spill at the proposed pumping station. This information has high correlation with the adopted COFR rule, as Enbridge transports Alberta Sand tar oil in the pipeline (similar to Trans Mountain Pipeline) and the recommendation is intended to provide assurances that Enbridge, or other reliable sources, will have money available to ensure the timely

remediation and restoration of the environment in the event of a spill and money will be available to affected citizens of Dane county to pay for the damages they may incur as a result of an oil spill.

Dybdahl describes the benefits and shortcomings of General Liability insurance, which is the most common insurance product and primarily used by companies to provide liability insurance if their operations result in property or bodily injury damages. General Liability insurance may include exclusions, for example, a damage causing event must be discovered and reported within a defined time period or the insurance company will not pay for damages caused by the event. This means damages caused by a slower, undetected oil leak may be excluded from coverage, leaving the company, and potentially the damaged parties, to cover the losses. Also, General Liability insurance does not cover the costs of oil spill clean-up, restoration costs, and natural resource damages.

The report explains that Environmental Impairment Liability (EIL) insurance policies contain specific insurance coverage for "Clean-up Costs", "Restoration Costs" and "Natural Resources Damages" associated with an oil spill.

To ensure effective insurance coverage for the costs of clean-up and damages that result from an oil spill, both General Liability and EIL insurance policies must be in place.

After analyzing Enbridge's risk factors, insurance types' inclusions and exclusions, and available financial assets, Dybdahl recommends:

- That Enbridge procures and maintains a General Liability insurance policy in the amount of $100,000,000, and
- As part of this overall liability insurance requirement, Enbridge should purchase $25,000,000 of EIL insurance.

This expert recommendation, while developed nine years ago, is less than half of the financial responsibility required in the adopted rule. Ecology chose to maintain the financial responsibility requirements in the adopted rule in order to provide a robust financial responsibility program in Washington.

I-43: Dirk Vermeeren

Comment I-43-1

See comment letter I-43-1 in Appendix B.

Response to I-43-1

Thank you for submitting your informational comment regarding American Risk Management Resources (ARMR).Network, LLC., which informs us that this organization is an environmental insurance brokerage. During the COFR rule development process, Ecology had several communications with experts in the surplus insurance industry and members of the Surplus Line Association of Washington.[3] The website includes a list of active brokerage firms and ARMR.Network, LLC. is a member.

I-44: Daisy Roche

Comment I-44-1

We are providing these brief comments on behalf of the International Group of P&I Club's Vessel Response Plan Working Group. Section WAC 173-187-040 (22) defines a "P&I Club" as an "international protection and indemnity mutual organization". We understand that in accordance with the guidance set out in the

[3] Surplus Lines Association of Washington

authorizing statute, RCW 88.40, this is not intended to limit P&I Clubs to the those within the International Group of P&I Clubs. We also note that section WAC 173-187-200 (3) is intended to address requirements for an owner or operator that has more than one vessel or facility subject to financial responsibility requirements. In order to make it clear that this is intended to apply to multiple vessels or facilities that are required to obtain a COFR, we respectfully suggest amending the beginning of the section to read "(3) An owner or operator of more than one vessel or facility that is required to obtain a Washington COFR under this chapter may obtain...".

Response to I-44-1

Thank you for providing comments on the proposed rule. The comment confirmed understanding that the rule's definition of P&I club is based on Chapter 88.40 RCW and that this definition is not intended to limit P&I clubs to those within the International Group of P&I clubs. Additionally, the comment recommended an amendment to WAC 173-187-200(3) to clarify the requirements for an owner or operator who has more than one vessel or facility subject to financial responsibility requirements. Ecology agrees that the recommended language clarifies that subsection of rule and Ecology updated the language to reflect that change.

I-46: Grant Bailey

Comment I-46-1

Ecology's proposed maximum spill penalty recovery of $300 million is insufficient to cover the costs of a major spill in Puget Sound of the Salish Sea. My career in environmental assessment and risk assessment has included spill risk and assessment of the Northern Tier Pipeline, the Trans Mountain Cross Cascades pipeline, Gas pipelines for industry and cogeneration, and years of work supporting Ecology, the Washington State Energy Facility Siter Evaluation Council, Nuclear Waste Advisory Council, and the licensing and review of biofuels facilities, pipelines, transshipment facilities and others. The $300 million proposed by Ecology will only cover the first 90 days of a major spill effort. After that, not even shorelines will be remedied, let alone industry costs to marine fisheries, Tribal losses, property value losses, income losses, monitoring costs; long term effect costs and others. For context, the Deepwater Horizon spill damages are currently at $65 BILLION. That is MORE THAN 200 TIMES the amount you propose! The Deepwater Horizon Spill was 40 miles offshore with remote shorelines. There is not one single location in the Salish Sea that is as far as 40 miles from shore and Puget Sound's shorelines are urban and developed. Someone at Ecology or the Governor's office needs to accept the new paradigm here and open their eyes to the fact that any liability requirement needs to be in the 10's of $Billions - not the $300 million proposed by Ecology. If that were the limit and had to be paid, major oil companies wouldn't even notice a dip in quarterly profits. This requirement is a good idea. As long as you are going to all this effort, propose a number that will make a difference.

Response to I-46-1

See response to comment I-6-1.

I-47: David Turnoy

Comment I-47-1

The specter of a large oil spill looms over our region, casting a shadow of potential devastation. The stakes are high. At risk are our environment, economy, and cultural resources; the vulnerable Southern Resident killer whales and their dwindling food source, chinook salmon; the forage fish that nurture the salmon and the eelgrass that provides refuge for the creatures that call the coastlines of the Salish Sea home. All of this and much more are at risk from a major oil spill. The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and

other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same. Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel. Thank you for reading, David Turnoy Eastsound, WA

Response to I-47-1

See response to comment I-6-1.

I-51: Theresa Needham

Comment I-51-1

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

Response to I-51-1

See response to comment I-6-1.

I-53: Shaun Hubbard

Comment I-53-1

See comment letter I-53-1 in Appendix B.

Response to I-53-1

See response to comment I-19-1.

I-54: laurie sherman

Comment I-54-1

I live in Anacortes WA, a big refining town. We have had countless oil spills! I can relate to the extensive and extended damage that occurs when a train goes off the tracks, oil leaks from failed lines, explosions kill workers and smoke from refining stinks up neighborhoods in stagnant air. When a spill fills the bay, there is a huge effort to assist with clean up and recovery, often from community volunteers to recover fish and fowl struggling in the oily guck. Refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility. Please make oil companies take financial responsibility for the clean up. the species of the world, suffer with the long term effects of oil spills. We must step up our standards to curtail these accidents and paying cash dollars is a great incentive and a necessary action to force the changes that need to happen.

Response to I-54-1

See response to comment I-6-1.

I-56: Annesa Knowles

Comment I-56-1

I believe that the financial responsibility for oil spills should be fully incurred and sufficient compensation should be provided by oil industry profits. Period. They have the funds to provide more than adequate equipment, training, and other preventative measures, yet it seems like time and time again, they fail to do so so that they can show bigger profits. So, yes, the ones responsible for the messes, should be the ones to foot the bill when others have to clean up after them.

Response to I-56-1

See response to comment I-1-1.

I-58: Molly Doran

Comment I-58-1

See comment letter I-58-1 in Appendix B.

Response to I-58-1

See response to comment I-1-1.

Thank you for sharing information about the Skagit Land Trust.

While the adopted rule's required financial responsibility amount of $300 million for onshore facilities is consistent with California's required financial responsibility amount, this is not the main reason in which this amount was determined. Please see response to comment I-6-1 for more information.

It is possible that a new study to estimate costs of an oil spill from a Washington State Class 1 facility in today's environment may inform an update to the rule's financial responsibility requirements. Our intent is to reopen the rule when information becomes available through new studies or lessons learned during our implementation of the COFR program.

I-59: Nathan Donnelly

Comment I-59-1

Responsible parties need to pay for the entire cost of the cleanup, on-going costs, retribution to the surrounding communities and economies, and a HEFTY fine equal to double digit percentages of the companies total worth. True accountability will have to go beyond even that, but karma will have to play a roll.

Response to I-59-1

See response to comment I-1-1.

I-60: Sharon Burke

Comment I-60-1

I am writing to protest the proposed $300M insurance requirement for Class 1 facilities. The estimated cost to clean up a major oil spill in our state is $10B. Therefore, $300M is not nearly enough coverage. Ideally, it should be $10B in coverage, but you should at least require $1B as a start. Although the oil industry may claim financial hardship to pay for that level of coverage, it simply is not true. They spend billions of dollars to spread misinformation on the reality and causes of global warming and to bankroll politicians who will assist them in these endeavors. They also have posted record profits, so yes, they can afford to pay for higher premiums, no matter what their highly paid lobbyists may say. Oil companies will protest a higher coverage amount nonetheless because they simply do not want to put even a small dent in those record profits. To

protect the bottom line is deeply ingrained in their nature, even when their activities pose a grave danger to the general public. Your mandate on the other hand is to protect our environment, not to assist in the profit-making ability of corporations. History shows that it is only a matter of time before we experience a major oil spill in our state. The Trans Mountain pipeline, which should have never been approved, is a likely candidate and since tar sands oil is the hardest kind of oil spill to clean up, you should demand the highest amount of coverage from them. We have subsidized the oil industry since their inception with lax tax policies, but now is the time to make sure that we stop giving them a license to pollute and contaminate our precious environment. If they do pollute or harm anywhere in Washington, they must pay. Therefore, they need adequate insurance coverage so that they cannot hide behind the strategy of filing for bankruptcy to avoid making restitution. Please protect the citizens of Washington and our wildlife, not oil corporations. Thank you.

Response to I-60-1

See response to comment I-6-1.

Ecology's website notes that the costs of an oil spill could cost $10.8 billion. The study that this amount is derived from is "Socioeconomic Cost Modeling for Washington State Oil Spill Scenarios". This study was prepared 20 years ago in 2004, published in 2005 and was based on a vessel spill into open waters using the following assumptions:

- Spill originates from a vessel in open water (Strait of Juan De Fuca/San Juan Islands, Pacific Coast, and Columbia River).
- 250,000 barrels of Alaska North Slope (ANS) Crude oil spills directly to water resulting in the most significant impact.
- Response capabilities have limited effectiveness or are ineffective due to funding constraints, i.e. a fully funded Washington State Spills Prevention, Preparedness, and Response Program with response assets staged and in a state of readiness do not exist.
- Costs are attributed to impacts to port operations, marinas, commercial shell fishing, commercial fishing of pelagic and demersal species, parks, recreation, and tourism,
- Includes Tribal impacts – lands, commercial fishing, and subsistence fishing,
- Majority of costs are associated to impacts to commercial fishing, assuming that industry's seasons and impacts from 20 years ago.

This study was generated to assess impacts to state and tribal resources and our local economy if a worst-case spill from a vessel occurred in open water and a state spills prevention, preparedness, and response program did not exist.

As a result of the study, the Washington State Legislature established a zero spills policy for the state of Washington during the 2004 legislative session and directed significant steps be taken to establish the strongest industry spill prevention, preparedness, and response expectations in the nation. Since then, the Legislature has continued to act and enhance the states oil spill regulatory protections. Washington now has one of the strongest spill prevention, preparedness, and response programs in the nation.

The study did not develop data of a worst-case spill from a land-based oil handling facility. This type of study, developed in today's regulatory environment, would have different assumptions to consider, such as:

- Specific facility location and proximity to open water, sensitive environments, and communities.
- Primary and secondary containment systems and estimates of oil volumes that can reach water.

- Prevention plans and oil spill contingency plans and practices in place, which mitigate risk of spills.
- Oil spill response equipment and trained personnel strategically located and available to respond, 24/7.

Ecology understands the costs of a worst-case spill will be significant and could be higher than the $300 million. However, to determine a financial responsibility level for these on-land oil handling facilities we considered different factors and scenarios than those used in the 2004 study, and so the two results are not directly comparable.

I-61: Glenn Hendrick

Comment I-61-1

Hello, I hear the oil companies will only need to pay $300 million if there is an oil spill in the Salish Sea, and I also heard that the cost of an oil spill is closer to 11 billion. Please change your proposal to reflect the true cost that the oil companies must pay. If they are going to endanger our entire ecosystem for profit, then they must pay. Thank you!

Response to I-61-1

See response to comment I-60-1.

I-62: val veirs

Comment I-62-1

Dear Department of Ecology, Please act as a Department of Ecological Protection and require companies that cause an oil or other toxic spill to pay the ENTIRE cost of both cleanup and restoration, no matter the cost. To do otherwise puts the environmental cost on us citizens or on despoiled ecosystems. Thank you, Val Veirs San Juan Island (150 m from the Aleutian Isle)

Response to I-62-1

See response to comment I-37-1.

I-63: Clifford Wentworth

Comment I-63-1

Your new rule proposes that Class 1 facilities will be responsible for only $300 Million of the potential $10 Billion that your own office suggests would be the costs for a large spill. You are putting our San Juan Islands environment and economy in jeopardy. Please change the maximum potential liability for Class 1 facilities to $10 BILLION.

Response to I-63-1

See response to comment I-60-1.

I-64: kay kennell

Comment I-64-1

They need to protect our ecology and make big oil pay to play. Minimizing oil spill accountability would let the oil companies' profits rise while we risk losing what we love. The people that spill the oil should carry insurance to pay the full costs of a clean up which would be an environmental catastrophe. The Orcas thank you for taking this step we must protect the Salish Sea. Thank you.

Response to I-64-1

See response to comment I-37-1.

I-65: NINA Le Baron

Comment I-65-1

Hello! Your bad math is putting our environment/economy in jeopardy. You need to protect our ecology and make big oil pay to play. Minimizing oil spill accountability would let the oil companies' profits rise while we risk losing what we love. Corporate Profits are more important then anything to you right? If you vote yes, that means yEs Corporate Profits are more important then protecting our environment. We nEed to focus on non-polluting energy sources like TIDAL GENERATORS! If those were installed in DECEPTION PASS, We would have FREE ENERGY!!!! PLACES like the Orkney Islands have energy independence because of Tidal Generators. There are other options then BIG OIL! SAVE OUR LIVES! SAVE THE ENVIRONMENT FROM FOSSIL FUEL POLLUTION!

Response to I-65-1

See response to comment I-37-1.

Development of alternative sources of energy are outside the scope of this rule.

I-66: Colleen Howe

Comment I-66-1

Please do the math one more time, the Class 1 cost for facility clean up of oil spills is 300 million even though the actual costs Ecology says is 11 BILLION, who made your calculator? Do the math again. We are all on the planet, together. Regards, Colleen Howe

Response to I-66-1

See response to comment I-60-1.

I-86: Rachel Budelsky

Comment I-86-1

Thank you for considering input from concerned members of the public on the proposed draft Chapter 173-187 WAC - Financial Responsibility. I urge you to address the following issues in the final rule: 1. The $300 million maximum financial responsibility requirement for facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion. 2. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. This rulemaking is legally inadequate because it did not meet the state mandate that required Ecology to consider the cost of cleaning up the spilled oil and the damages that could result from the spill. According to Ecology, a large spill could cost the state $10.8 billion and 165,000 jobs. The draft rule exclusively addresses the commercial availability and affordability of financial responsibility, allowing oil industry profits to supersede the financial responsibility requirements needed to address the costs and damages from an oil spill. 3. Canadas Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington States northern refineries, should have a per barrel fee that is based on the higher oil spill response and damage costs for spills of tar sands products. The per barrel cost for the Trans Mountain Pipeline should be increased to $60,153 per barrel. For too long, the taxpayers have had to bear the brunt of the externalities generated by oil and gas companies in their pursuit of product and profit. Please consider tougher constraints on these businesses so that they are required to meet their responsibilities to the public and the planet.

Response to I-86-1

See response to comment I-60-1.

I-107: jim lombard

Comment I-107-1

I urge the Ecology department to substantially raise the amount of financial liability from an oil spill for Class 1 facilities by a factor of at least 20. Our oil spill response team on Lopez Island claims that a successful containment of an oil spill only captures about 10% of the total spill. The liability for an oil spill needs to be significant enough so that companies take enough safeguards to prevent a spill. Otherwise, this will just become a business expense and the long-term effect on the marine ecosystem of the Salish Sea will be it's degradation. Thank you, Jim Lombard

Response to I-107-1

See response to comment I-6-1.

I-138: Julie Carpenter

Comment I-138-1

I'm writing to comment on the proposed draft Chapter 173-187 WAC - Financial Responsibility. 1. Setting dollar-certain limits to liability is instantly dated, and is contrary to the rule of law and the need for corporations to take fiscal responsibility in exchange for the license to do business and make (record) profit. The $300 million maximum financial responsibility requirement for facilities is not enough. 2. Washington regulations should lead our county in increasing requirements for corporate financial responsibility. This must include funds to prepare for and mitigate after oil spill impacts, including those related to natural disasters, which are predictable in Washington. Our regulations should include collecting funds from company profits (aka taxation) to offset unintended consequences of carbon based business models and technology, including remediation of air quality, adverse health effects and predictably increasing multi-systemic infrastructure, ecological, humanitarian and other costs related to global climate change. This Draft does not meet the state mandate that requires Ecology to consider the cost of cleaning up the spilled oil and the damages that could result from the spill. The draft rule exclusively addresses the commercial availability and affordability of financial responsibility. This amounts to protection of insurance and oil industry profits, superseding financial responsibility for costs and damages related to oil spills. We must not let the limitations or costs of for-profit business insurance supercede proper governance of corporate actions within our state. 3. All foreign fuel producer/processors/retailers doing business in Washington should be required to have their corporate entity licensed in the U.S. with corporate responsibility guaranteed within Washington State. Foreign business and operation permits should be held to higher standards of liability for all clean up costs. Washington must regulate sufficiently to insure that foreign companies do not rely upon local taxpayers to pay for clean up costs.

Response to I-138-1

See response to comment I-6-1.

Requiring foreign companies conducting business in Washington to have their corporate entities licensed in the U.S. is outside the scope of this rule.

I-181: Mary Holder

Comment I-181-1

See comment letter I-181-1 in Appendix B.

Response to I-181-1

Thank you for your comment. See response to comment I-60-1.

One of the benefits of financial responsibility is being assured that there are significant liquid assets to pay the costs of an oil spill. These liquid assets, such as insurance coverage, may be used to pay the costs of a spill rather than income from normal operations. This helps protect the company from significant losses and potential bankruptcy.

Including the consideration of natural disasters such as earthquakes and tsunamis as well as the age/condition of the Class 1 facility's infrastructure is outside the scope of this rulemaking. It should be noted that Ecology recently updated Chapter 173-180 WAC and now requires seismic protection measures to be put in place for storage tanks and transfer pipelines at Class 1 facilities.

While the adopted rule's required financial responsibility amount of $300 million for onshore facilities is consistent with California's required financial responsibility amount, this is not the main reason in which this amount was determined. Please see response to comment I-6-1 for more information.

I-195: Leah Harnish

Comment I-195-1

See comment letter I-195-1 in Appendix B.

The attached comments are on behalf of the American Waterways Operators. If for some reason they do not open, please let me know and I will send them again in another format.

Response to I-195-1

Thank you for providing comments on the proposed rule. In the adopted rule language "Verification of financial responsibility" means "a verification by ecology that a covered vessel is a current member of an international protection and indemnity (P&I) club." AWO recommended to modify the definition of "Verification of financial responsibility" to include not only those vessels that demonstrate membership in a P&I club but also vessels that have approved Certificates of Financial Responsibility (COFRs) from another state or federal agency where financial responsibility is in the amount of or greater to the amounts required under the Washington rule.

Ecology did not include this change in the adopted rule language. When Ecology can verify a vessel's P&I club membership, the vessel has no action to take, but this is not the case when having to validate the equivalency of another state or federal agency's COFR. First, the federal financial responsibility requirements for vessels do not meet Washington's requirements. With respect to another state's certificate, Ecology does not know what state a vessel may have received a certificate from and therefore cannot verify whether that state's COFR amount is "of or greater to" the amounts required under Washington rules unless the vessel owner/operator provides the agency documentation via the WA COFR application process. Once this documentation is submitted, Ecology personnel will review the application and supporting documentation to ensure that the proof of financial responsibility is applicable to Washington.

I-200: Mike Doherty

Comment I-200-1

Re: Rulemaking—Chapter 173-187 WAC and repeal of Chapterb317-50 WAC. Formal Comment Period. My name is Mike Doherty. I am a resident of Port Angeles, Washington. I concur with the comments of those offering testimony during the three on-line public hearing opportunities, who express the need to expand the amount of financial responsibility required for operations in Washington waters and related shoreland facilities, including associated pipelines. The proposed $300 million amount is inadequate. For years, in relevant forums, Wash. St. Dept. of Ecology staff have cited a general state policy of "Polluter

Pays", and that there is "unlimited liability" to cover the "response costs and damages" of "worst case oil spills". If Washington residents imagine spill volumes of Prince William Sound, the Deepwater Horizon, and other large spills, sloshing around in the Salish Sea, the San Juan Islands, Washington (and Canadian) harbors, clearly the economic, social and environmental damages could be greater than $300 million. The oiling/re-oiling of resources could be catastrophic, especially if oil cargoes include Alberta tar sands oil, which, in general, sinks, rather than floats. Response, clean-up and damage assessment will be much more challenging for public agencies than ANS crude and product spills. Since at least the 1960's, the oil majors have used deception and misrepresentation to downplay the possible impacts of large oil spills, methane leaks and other activities of the oil industry, contributing to the well-documented causes of global warming. These large corporations are among the wealthiest businesses in the world. The announced recent annual profits of $32 billion by a single oil company, along with regularly reported government subsidies of billions to the industry, should be considered by the regulators to justify much higher levels of financial responsibility. I concur with Ms. Akerman, in her testimony in this regard. If "affordability" remains a concern, Ecology staff should require that covered pipelines, tugs, barges and other facilities subject to this rulemaking, to form pooled insurance organizations similar to the P & I clubs or other proven methods of disaster coverage. The Dept. of Ecology should also acknowledge that the State of Washington, and most of the developed world, is moving away from fossil fuel economies. This transition will likely result in reduced expenditures by fossil fuel industries in their maintenance and risk management budgets. The justification and support for the recommendation of the Dept. of Ecology, tended to rely on out-of-date studies and unnamed economists. Surely, the State can generate more timely and accountable consulting advice. In recent decades, State agencies, local governments, treaty tribes and business interests (such as Earth Economics) have generated well-documented higher values for the many public and private resources at risk from oil spills. Thank you for the opportunity to submit testimony into the rulemaking process. Mike Doherty Port Angeles, WA 98363

Response to I-200-1

See response to comment I-6-1.

Thank you for including information about larger spills such as the Deepwater Horizon. As oil spill risk continues to change and new risks emerge, Washington State is committed to ensuring we establish regulations and processes to protect the state’s natural resources now and for future generations. An integral part of this is having assurance that a vessel or oil handling facility that handles oil in bulk in or near or our waters can pay for the cleanup and damage costs related to a spill prior to an actual spill.

Covered vessels transiting in Washington State waters are required to show proof of financial responsibility up to $1 billion. The $300 million financial responsibility requirement applies to onshore facilities.

It is possible that a new study to estimate costs of an oil spill from a Washington State Class 1 facility in today’s environment may inform an update to the rule’s financial responsibility requirements. Our intent is to reopen the rule when information becomes available through new studies or lessons learned during our implementation of the COFR program. Conducting a current analysis to determine scenarios from Class 1 facilities was outside the scope of this rulemaking.

Requiring facilities to establish a mutual insurance association is also outside the scope of the rulemaking.

I-202: Joann Roomes

Comment I-202-1

I agree with the proposal that BIG OIL companies should be held responsible for cleaning up their "mistakes", and that therefore they must demonstrate their ability to pay up to certain amounts in case of an oil spill.

Response to I-202-1

See response to comment I-1-1.

I-211: Donna Albert

Comment I-211-1

The cost of a worst case spill The worst case historical spill is in the neighborhood of $1 billion. Yet, the draft rule requires only $300,000,000 of insurance, based on a value set 30 years ago in California law. In today's dollars that $300M is well over $600M. This value does not consider conditions specific to WA (such as the extraordinary risk in Puget Sound to ecosystems there - no equivalent exists in California). CPI on $600M will never get us to full coverage of the historical worst case spill of $1B. According to Ecology's webpage Spill Prevention, Preparedness, and Response Program, "Based on 2006 numbers, a large spill could cost the state $10.8 billion..." https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response RCW 88.40.025 Financial responsibility for onshore or offshore facilities: An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall adopt a rule that considers such matters as the worst case amount of oil that could be spilled... The proposed $300M would not come close to covering the worst case spill as described by Ecology on their own webpage. For more detail, applying the definition of worst case spill in RCW 173-182-030 (73) by facility, see the Friends of the San Juans analysis. Insurance and subsidies No one calculates the amount of insurance required to cover a financial risk better than an insurance actuary. The cost of insurance is high if the likelihood and cost of losses are high. Insurance considers and covers the real risk of an event. It's a very bad sign when one can't afford the insurance. Is Department of Ecology choosing a number for the rule that is clearly too small because the fossil fuel industry can't afford to insure against the real risk inherent in their operations? If so, this is a subsidy. Just because the industry is legally liable for the full cost of the spill doesn't mean they will be able to pay the full amount. That's why insurance is required - that's what insurance is for. No amount of money in the world could actually make up for a major spill — it would just pay for an imperfect attempt to clean up what can never really be cleaned up. The incalculable cost of risking losing ecosystems and risking pollution of drinking water is a subsidy. Fossil fuel subsidies (like this insurance subsidy) keep fossil fuel profits artificially high. Our own Washington State Investment Board has billions of dollars invested in fossil fuels, in order to share in those artificially inflated profits (at everyone's expense, and to the detriment of Washington ecosystems). Because burning them causes climate change and ocean acidification, fossil fuel products are dangerous even when they don't leak and are used as intended — so dangerous that all life on earth is threatened by them. Fossil fuel companies' previous and ongoing use of the atmosphere as a sewer is a very expensive subsidy - look what it's already costing California. I'm guessing that the State is concerned about placing a financial burden on industry which could have economic or reliability consequences. This is understandable, but shortsighted, because subsidies will only delay the inevitable. When these subsidies are no longer sufficient to support this failing industry, taxpayers and consumers could suddenly be left holding the bag. Subsidies must be eliminated as part of an economically efficient and well-managed transition off of fossil fuels. The State of Washington must find a way to provide for continuity of energy services without wasting taxpayer money subsidizing fossil fuel companies. Every action by every state agency (including investing and rulemaking) should be aligned with other state laws and executive orders, the state Energy Strategy, a just and smooth transition to a low carbon economy, and climate emissions limits in law that require we cut emissions about in half by 2030 and to near zero by 2050. The State of Washington must be proactive. If paying for the real cost of insuring their operations is already greater than the fossil fuel industry can afford, that is a wakeup call that they are already in economic trouble. Their financial problems

will only get worse as demand for fossil fuels drops, and they are held accountable for massive externalized costs (see California lawsuit). Giving them a subsidy now only delays the inevitable. It is economically inefficient and in direct conflict with Washington state laws and goals to subsidize fossil fuels. SEPA process I was unable to open the DNS and SEPA Checklist on the Ecology website. Please provide in a format that is easier to access. I find it difficult to believe that fossil fuel subsidies have no environmental consequences.

Response to I-211-1

See response to comment I-60-1.

Considering the climate impacts of, and subsidies to, the fossil fuel industry is outside the scope of this rulemaking. However, it is also important to understand that this rule's levels of financial responsibility in no way impacts Washington's laws on unlimited liability for oil spills. RCW 90.56.360 and 90.56.390 require that the responsible party of an oil spill is responsible for the costs of that spill. Spillers aree responsible to pay the full costs of any spill. This means that a responsible party with $300 million of demonstrated financial responsibility would still be liable for costs exceeding that amount.

Thank you for providing comments regarding the difficulty of opening the SEPA Checklist and Determination of Nonsignificance. We updated the file format on Ecology's website to rectify this issue.

I-213: Janet Burke

Comment I-213-1

My name is Janet Burke and I am a property owner on Henry Island, San Juan County. I have spoken with the people who would be oil spill responders. I was informed that in the event of an oil spill they could not protect Open Bay because of the rough waters of Haro Straights that run past the mouth of Open Bay. It is imperative that the shorelines of San Juan Island and the Salish Sea be protected and that needs to be done by the all Class I facilities not the Washington state taxpayers. $300 million to pay for an oil spill? The study that amount was based on is 30 years old. It is now estimated that it would cost $11 billion, but whatever the cost the Class I facilities should be solely responsible, not me! It is ludicrous that class 1 facilities would pay less than ships at sea, or for that matter less than the actual cost of an oil spill. For 2023 the three largest oil and gas producers themselves reported a combined profit of $85.6 billion dollars. The argument that they can not afford to pay the actual cost of the oil spill sounds pretty disingenuous in light of their profits. I want this proposed legislation changed to require to Class I facilities to pay the full price of any oil or tar sand spill Respectfully submitted Janet M Burke

Response to I-213-1

See response to comments I-37-1 and I-60-1.

Ecology will conduct a rapid, aggressive, and well-coordinated response to any spill to Washington State waters, including Open Bay.

I-215: Kip Smith

Comment I-215-1

To whom it may concern. I am a property owner on Henry Island. I am concerned about the proposed new rule Chapter 173-187 WAC ? Financial Responsibility that clearly limits the financial responsibilities of big oil companies in case of an oil spill. They should be 100% liable for all reparations and clean up. Especially since they get 100% of the revenue. Kip Smith

Response to I-215-1

See response to comment I-37-1.

I-216: Nancy Kaye

Comment I-216-1

I agree with the experts that larger insurance should be carried by shipping companies as even a small spill can be disastrous .Thank you

Response to I-216-1

See response to comment I-1-1.

The adopted rule's authorizing statute, Chapter 88.40 RCW, established financial responsibility amounts for covered vessels. During rule development, Ecology learned that most covered vessels are members of P&I clubs and that P&I clubs provide $1 billion oil spill risk protection for their member vessels. Any covered vessels that are not members of P&I clubs must submit a COFR application.

I-218: Joe Greenheron

Comment I-218-1

Please ensure that the full costs of response and remediation for major oil spills will be accounted for in this ruling. Oil and petroleum product carriers must demonstrate their ability to pay up to certain amounts in case of an oil spill. Thank you.

Response to I-218-1

See response to comments I-1-1 and I-37-1.

I-220: David Pavelchek

Comment I-220-1

I support increasing liability coverage requirements for entities covered by the proposed regulation to at least the level required for marine transport. There is no reason to believe that the maximum credible accident is less costly than for marine traffic. The petroleum industry overall has large under-funded liabilities, from toxic cleanup, to well retirement, to climate pollution to disinformation. There are also patterns of shedding liabilities to under-funded entities. Protection of the citizens from being forced to pay for these risks requires realistically large financial liability requirements. Appropriately large liability coverage requirements will also encourage more care in avoiding accidents.

Response to I-220-1

See response to comment I-6-1.

I-224: Rein Attemann[4]

See comment letter I-224-1 in Appendix A

Comment I-224-1, page 98, Joyce Wier

Dear Department of Ecology,

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel

[4] Rein Attemann submitted 458 individual comments as one submission. The uniquest comments are identified by page number.

amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Regards, Joyce Wier Herb's Dr WA 99156

Response to I-224-1, page 98, Joyce Wier

See response to comment I-6-1.

Comment I-224-1, page 355, Tyson Runnels

Dear Department of Ecology,

Washington Department of Ecology,

As a resident I support the following recommendations from the Washington Conservation Action organization:

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"I am commenting on the proposed new rule Chapter 173-187 WAC - Financial Responsibility and the existing Chapter 317-50 WAC - Financial Responsibility for Small Tank Barges and Oil Spill Response Barges. Here are three recommendations:

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I(protection& indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel."

****

The recommendations make sense given historical data. The risks are real. The threat of a truly heavy cost may spur additional corporate measures to avoid an incident.

Proof of financial capability is required. Too many instances exist of companies declaring bankruptcy and walking away.

It is possible that implementing the recommendations could drive some companies out of the industry. Still, other risk-avoidance companies might start up in response.

These kinds of decisions are always complicated and difficult. Good luck.

Sincerely,

Tyson Runnels Regards,

Tyson Runnels

5613 Whitehorn Way

Blaine, WA 98230

Response to I-224-1, page 355, Tyson Runnels

See response to comment I-240-1.

Comment I-224-1, page 373, Elly Claus-McGahan

Dear Department of Ecology,

I live in walking distance of Commencement Bay in Tacoma, WA. I am commenting on the proposed new rule Chapter 173-187 WAC - Financial Responsibility and the existing Chapter 317-50 WAC - Financial Responsibility for Small Tank Barges and Oil Spill Response Barges. Here are three recommendations:

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I(protection& indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

The area I live in is home to superfund sites, is still dealing with Occidental on the Tide Flats and the fall out from the Asarco Plant. Companies should not be able to declare bankruptcy and leave without covering the environmental damage that they have caused. The financial responsibility requirements need to be commensurate with projected damage costs.

Thank you. Regards,

Elly Claus-McGahan 4301 N Frace Ave Tacoma, WA 98407

Response to I-224-1, page 373, Elly Claus-McGahan

See response to comment I-240-1.

Comment I-224-1, page 408, Ellen DeGrasse

Dear Department of Ecology,

I am commenting on the proposed new rule Chapter 173-187 WAC - Financial Responsibility and the existing Chapter 317-50 WAC - Financial Responsibility for Small Tank Barges and Oil Spill Response Barges.

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Companies need to stand ready to pay what it would cost to clean up what they may spill. This is only fair to everyone (and everything) else, but it would properly incentive companies to minimize their spill risks and respect the environment. Mutual insurance associations or other mechanisms could help them do this.

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Only by requiring corporations to consider the TRUE costs of every aspect of their decisions regarding environmental impacts will economic pressures align corporate behavior with what is best for society and the planet.

Regards,

Ellen DeGrasse 5315 27th Ave NE Seattle, WA 98105

Response to I-224-1, page 408, Ellen DeGrasse

See response to comment I-6-1.

Comment I-224-1, page 418, Catherine Kettrick

Dear Department of Ecology,

it is unconscionable that oil companies are avoiding responsibility for oil spills. They should pay 100% of the costs, not taxpayers. They will say that costs will increase for consumers. Costs increase for consumers when greedy companies look to squeeze as much profit as possible from their operations. CEOs and stockholders need to take a pay cut.

Regards, Catherne Kettrick 6836 21st Ave NE Seattle, WA 98115

Response to I-224-1, page 418, Catherine Ketterick

See response to comment I-37-1.

Comment I-224-1, page 443, Ruchi Stair

Dear Department of Ecology,

I am commenting on the proposed new rule Chapter 173-187 WAC - Financial Responsibility and the existing Chapter 317-50 WAC - Financial Responsibility for Small Tank Barges and Oil Spill Response Barges.

I live on Lummi Island and can see the Cherry Point refinery from my house. An oil spill would impact the crabbing, salmon fishing, and orca's who swim on my shore.

Here are three recommendations:

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I(protection& indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

I strongly oppose Canada's Trans Mountain Pipeline , which transports Alberta tar sands to Washington State's northern refineries, and via tanker through the Strait of Juan de Fuca. The Trans Mountain Pipeline should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products, which consist of heavy bitumen diluted with volatile solvents. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Regards, Ruchi Stair

2227 N Nugent Rd Lummi Island, WA 98262

Response to I-224-1, page 443, Ruchi Stair

See response to comment I-6-1.

I-225: Sophie Todd

Comment I-225-1

See comment letter I-225-1 in Appendix B.

Response to I-225-1

Thank you for your comments. The adopted rule allows the owner or operator’s parent or sister corporation to provide a guarantee. It also allows for a non-related corporation to provide a guarantee. Ecology will ensure the guarantor has the financial stability to satisfy the financial responsibility requirements by requiring the guarantor to satisfy all self-insurance requirements on a quarterly and annual basis.

Through conversations with surplus line insurance experts and the Washington State Insurance Commission, Ecology learned that the insured is responsible for the deductible before insurance pays out any claim payment. They also noted that having greater than 1% deductible sounds plausible in the current insurance market and that consideration of deductibles in the rule is appropriate. Based on this expert advice, Ecology did not change the requirement to cover a deductible greater than 1% with another source of financial responsibility in the adopted rule.

Ecology considered factors, such as how bonds or letters of credit are liquidated and industry best practice, while developing rule language for the establishment of a standby trust in connection with a surety bond, letter of credit, and guarantee. This mechanism provides a high level of protection for the state in the event a responsible party is unable to pay the costs of an oil spill. Ecology did not include this comment's recommendation in the adopted rule.

Ecology will not require regulated entities to prove financial responsibility with any specific form. Forms have been developed and will be available on the COFR website for use at the applicant's discretion. During implementation of this rule, Ecology will host informational workshops to introduce the COFR application process, as well as forms that may be used as backup for the COFR application. Feedback on form content will be considered. This is an approach that affords the regulated community flexibility on how they prove financial responsibility based on their business needs.

Ecology incorporated advice from experts in the insurance industry when establishing insurance requirements as described in the adopted rule. The rule allows insurance products that are obtained through surplus line insurance brokers as a method to prove financial responsibility, which limits reliance on the Washington insurance market. Ecology believes the requirements in the adopted rule are strong, flexible, and meet the objectives set forth by the Legislature.

Under the Oil Pollution Act of 1990, the owner or operator of an onshore facility from which oil is discharged (responsible party) is liable for the costs associated with clean-up and damages resulting from the spill. Washington oil spill laws and regulations also direct that the responsible party is liable and shall pay for all clean-up costs and damages resulting from an oil spill. Washington State's objective is to ensure that a responsible party can pay, and the Legislature made it clear that a regulated facility shall pay, the full cost of oil spill clean-up and compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur as a result of the spill.

The Oil Spill Liability Trust Fund's (OSLTF) purpose is to ensure funds are available to initiate a rapid and aggressive response and pay claims when there is no known responsible party, or the responsible party refuses to pay. The adopted rule set financial responsibility levels in order to ensure the oil handlers that operate in this state can pay. The OSLTF should be a last resort when a responsible party will not pay. The State is providing assurance under this adopted rule that the OSLTF does not have to be used and additional costs do not have to be borne by the state and federal government to recover costs.

Ecology reviewed the section of rule that describes a "significant change" and will retain this section as written. There are many business events that may constitute a "significant change" and would affect the company's ability to maintain the required levels of financial responsibility. It is not Ecology's intention to list all the potential events that may result in a significant change for a regulated vessel or facility. Compliance with the adopted rule will be determined based on a regulated vessel or facility meeting the financial and timing requirements of the adopted rule. A significant change would be any event that may prevent a regulated entity from being able to continue complying with the adopted rule.

"Authorized representative" is a term consistently used in Ecology's oil spill rules. It is defined in the rule and provides appropriate direction to ensure the person that is the responsible party for a vessel or facility signs and binds the application.

If an alternative financial responsibility calculation is revoked, a new Washington COFR will be necessary. The adopted rule has been updated to clarify this requirement. If Ecology revokes an alternative financial responsibility calculation, the decision is appealable to the pollution control hearings board, as provided in RCW 43.21B.110(1)(c).

Clarifying when Ecology will draw on a financial responsibility instrument is outside the scope of this rulemaking.

Ecology considered the comment's suggestion to require financial responsibility on a per vessel or per facility basis and determined that the adopted rule will not be revised as suggested. The adopted rule consistently references the owner or operator of a vessel or facility. It never references the owner and operator of the vessel or facility. In doing so, the rule only requires either the owner or the operator to obtain proof of financial responsibility for the vessel or facility. In addition, the rule allows the owner or operator of multiple vessels or facilities to obtain one COFR that covers all the vessels or facilities.

When Ecology issues the Washington COFR, Ecology is stating that the proof of financial responsibility requirements under Chapter 173-187 WAC have been met. When the requirements have been met, Ecology has determined that the applicant's financial responsibility is sufficient. No revision to the rule is required.

Ecology considered the comment's suggestion to specifically note that Ecology will consider all Moody's Baa sub-classification ratings acceptable. The adopted rule will not be revised based on this suggestion. This clarification is redundant. Ecology will consider all Moody's Baa or better credit ratings as acceptable.

I-227: Rick Eggerth

Comment I-227-1

March 8, 2024 Diana Davis Dept. of Ecology, Northwest Regional Office Spill Prevention, Preparedness, and Response Program P.O. Box 330316 Shoreline, WA 98133-9716 Submitted via the online comment portal: https://sppr.ecology.commentinput.com/?id=Njtx23iVBu RE: Draft Rule, Chapter 173-187 WAC Financial Responsibility Dear Ms. Davis: The following comments are submitted by Sierra Club regarding Dept. of Ecology's ("DOE") draft rule to establish new financial responsibility requirements for Washington State's onshore petroleum handling facilities (Chapter 173-187 WAC). Sierra Club has already provided many of its comments in a joint letter submitted by a group of environmental NGO's regarding the proposed rulemaking for "Class 1 facilities." Class 1 facilities are the state's largest facilities for transferring, processing, or transporting petroleum on or near the state's navigable waters, and include refineries, pipelines, and other bulk oil handling facilities. The content of that joint comment letter is incorporated here by reference. This letter focuses on DOE's position, clearly evident in its Preliminary Regulatory Analysis, that the burden on the petroleum industry of financial responsibility requirements exceeding $300 million in annual insurance coverage for Class 1 facilities is too much for the industry to bear. That aforementioned joint comment letter addresses various reasons why that position is incorrect and concludes that financial responsibility limits of at least $1 billion annually should be set. The instant letter dives deeper into DOE's analysis, and details why any concern about the industry's ability to afford at least $1 billion in annual coverage is not well-taken. EXTERNALIZED COSTS To begin, consider the context in which the petroleum industry operates. It is one of the most profitable industries on the planet, with many of its members consistently among Earth's top performing companies. On that basis alone, any worry about the cost of buying adequate financial responsibility is misplaced. For such a wealthy industry, with such a rich record of costly and deadly mistakes (e.g., the 1969 Santa Barbara Channel spill, the 1989 Exxon Valdez grounding, and the 2010 Deepwater Horizon blowout, among many), it is not asking too much that members of the industry fully protect society from their mistakes and negligence. But DOE's rulemaking process focuses on maintaining industry profits, not protecting society. DOE's emphasis on "least-burdensome alternative" is an entirely economic view of how not to inconvenience the industry. This not only misunderstands the industry's economics, it also fails DOE's statutory obligation to consider factors besides economics, as well as its self-avowed mission "to protect, preserve, and enhance Washington's environment for current and future generations." (DOE website) And if there is insufficient financial responsibility required of Class 1 facilities, then in the event of a major spill that leaves the citizens of Washington having

to clean up, and pay for cleaning up, the mess. This would not square with DOE's mission. Concern about the potential burden of financial responsibility requirements on industry profits ignores how the petroleum industry enormously benefits from the "externalized costs" that they pass onto society. "Externalized costs" are generated by producers but paid for by society. A myriad of externalized costs benefit the industry, starting with government subsidies. According to U.S. Senator Sheldon Whitehouse (D-RI), Chairman of the U.S. Senate Budget Committee, speaking on May 3, 2023, about $1 trillion annually in subsidies benefit fossil fuel industries worldwide according to the International Energy Agency. (See https://www.budget.senate.gov/chairman/newsroom/press/sen-whitehouse-on-fossil-fuel-subsidies-we-are-subsidizing-the-danger-) For the U.S. alone that's about $20 billion annually. But Sen. Whitehouse goes on to detail more externalized costs that benefit the industry: [T]he really big subsidy is the license to pollute for free. The IMF calls this global free pass an "implicit" fossil fuel subsidy. Economists call it an "unpriced externality." Behind these benign-sounding phrases is a lot of harm. Start with harmful effects of local air pollution. Researchers from Harvard found pollutants from oil and gas combustion were responsible for 8.7 million premature deaths annually – the increased mortality rates from heat and air pollution we heard about at last week's hearing. Then, growing costs from intensifying disasters: wildfires, floods, droughts, which according to OMB could cost the federal budget $2 trillion annually and reduce US GDP 3 to 10 percent by the end of the century. You tally up the harms, and the IMF estimates it at a $5.4 trillion annual subsidy worldwide. In the United States, it's $646 billion – every single year. Worse, this is almost certainly undercounting the true costs. The London School of Economics reports that studies often underestimate the harm of climate dangers by failing to account for how hazards can cascade across ecological and economic systems. These cascades can cause irreparable damage to human well-being, to ecosystems, and to the US economy. These are the systemic risks we've heard about from previous witnesses. And [. . .] extracting these dirty fuels has terrible consequences for human health - especially for children. From higher rates of birth defects to childhood leukemia, there's ample evidence that communities around oil and gas extraction sites pay an especially high price. It's textbook economics that the price of a good should reflect its true cost. The fossil fuel industry violates this rule of market economies. [Italics added] (End of quotation) All of these externalized costs are borne by society, not the industry. And yet, DOE's focus on affordability seems more concerned that adequate financial responsibility instruments not be too expensive for the industry. Again, this contradicts DOE's statutory mandate (as explained by DOE itself) and DOE's role in protecting society (as stated in DOE's website). DOE'S PRELIMINARY REGULATORY ANALYSIS Chapter 6 of DOE'S Preliminary Regulatory Analysis (PRA) is the "least-burdensome alternative" analysis, DOE's justification for its proposed financial limits of required insurance or other financial instruments. It's flaws are explained below. PRA Chapter 6.1 and 6.2 Chapter 6.1, the introduction to what is titled "Least-Burdensome Alternative Analysis," notes that RCW 34.05.328(1)(e) requires that DOE, "to be able to adopt the [financial responsibility] rule, . . . must determine that the requirements of the rule are the least burdensome set of requirements that achieve the goals and objectives of the authorizing statute(s)." (Italics added.) Chapter 6.2 of the PRA clarifies that the authorizing statute, Chapter 88.40 RCW, has as its goals and objectives: • To define and prescribe FR [Financial Responsibility] requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington. • To define and prescribe FR requirements for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters. DOE says this means that the authorizing statute requires it "to adopt a rule that considers worst-case oil spill scenarios, the cost of cleaning up spilled oil, the frequency of operations at facilities, damages that could result from spills, and the commercial availability and affordability of FR." This means that DOE must consider, according to the authorizing statute, five different items: (1) worst-case oil spills, (2) spilled oil clean-up costs, (3) frequency of facilities operations [that could cause spills], (4) damages that could result from spills, and (5) commercial availability and affordability of financial responsibility. But the rest of chapter 6 – DOE's actual least-burdensome alternative explanation – focuses on only financial burden, the last item. This isn't the analysis the statute requires. The full five-part analysis must be done, and

a financial responsibility requirement of at least $1 billion in annual coverage should be imposed. PRA Chapter 6.3.1 Requiring higher financial responsibility for facilities Chapter 6.3.1 says that (italics added): We . . . believed a higher amount [of financial responsibility] would provide better assurance that the costs and damages associated with a worst-case spill to Washington's unique waters and resources could be covered by the company. This higher level could have provided a higher level of protection for the state but failed to meet the specific objective of considering commercial affordability and availability of FR in the marketplace. By requiring a greater FR, this rule would have been more burdensome for facilities. We expect that many facilities will choose to meet the FR requirements through self-insurance. Setting a maximum FR of $600 million would have caused roughly half of Class 1 facilities to fail to meet the self-insurance requirements. We learned insurance from the commercial insurance market is not generally available to the regulated industry for pollution control and damages above $200 million. Industry is able to supplement the available insurance with other financial means to meet the $300 million requirement but would find it burdensome to find a means to meet a $600 million requirement. This is problematic in many ways. It focuses entirely on financial affordability, with nothing said about the other four items DOE acknowledges it must look at. Between externalized costs and the other four items, DOE should require the industry to pay whatever it takes to protect the people, animals, habitat, and environment of the State of Washington. In the second quoted paragraph, DOE says that greater FR would be burdensome for facilities, noting that half of Class 1 facilities fail to meet self-insurance requirements, apparently because insurance from the marketplace is "not generally available" above $200 million. But what this actually means is not explained and seems to contradict the fourth paragraph of the Executive Summary of the PRA (p. 9), which says that insurance markets "for onshore facilities do not presently provide coverage" above $200 million. Which is it? Not generally available indicates that there is limited availability, but coverage that is not presently provided means there is nothing available. This needs to be clarified. The "unavailability" conclusion also needs more explanation and support. DOE should detail how it determined the availability of insurance in the marketplace. According to the recent public comment sessions, DOE consulted with the State Dept. of Insurance and a private insurance consultant. But what research did they do? What exactly were their conclusions? Who was it that DOE communicated with? What is the expertise of those DOE communicated with? Was the private consultant someone DOE found on their own, or was it a referral from the industry? If it was an industry referral, did DOE try to find an independent consultant? Similarly, how did DOE reach the conclusion that "[i]ndustry is able to supplement the available insurance with other financial means to meet the $300 million requirement but would find it burdensome to find a means to meet a $600 million requirement"? The undersigned's experience as an attorney litigating for years against the petroleum industry indicates that oil company insurance placements became cheaper as more is bought (reflecting that because lower insurance layers must be used up before reaching the next layer, the likelihood of higher layers being at risk is reduced). Again, what research was done? Who did DOE talk to? All questions raised in the preceding paragraph apply. While requiring more FR may create more burden, the level of burden should be very high given the benefit of externalized costs and the extreme profitability of the petroleum industry. And burden is supposed to be just one of four items considered in DOE's analysis. PRA Chapter 6.3.4 Requiring the State of Washington to be listed as additional insured or certificate holder on an insurance policy This alternative was found "more burdensome on covered parties" because, as stated in chapter 6.3.4 of the PRA: Insurance companies are likely to charge an additional premium to add an additional insured to the policy. It is also possible that insurance companies will not allow additional insureds or certificate holders, which would result in fewer insurance options for the regulated industry. Additionally, requiring the State to be listed as additional insured or certificate holder may not be effective in guaranteeing that the State would receive a payout in the event of an oil spill, so it is questionable that there would be any benefit to this requirement. Our insurance industry advisors communicated that the most effective way to ensure the state is paid for a loss is to require an insurance company representative to sign a certificate of insurance agreement with the State as the beneficiary. This raises more questions. Why is it

unduly burdensome for insurance companies to charge an additional premium to add an Additional Insured (AI)? That would have to be a huge premium. AI premiums usually don't cost much. This raises the question of whether DOE appreciates the difference between an AI and an Additional Named Insured (ANI)? ANI's do carry much greater premiums. But again, the benefit of externalized costs indicates that the industry should pay the greater premiums. How will the mere possibility "that insurance companies will not allow additional insureds or certificate holders" result in fewer insurance options? If it's only a possibility, then it might not occur. And insurance companies generally insure anything legal if the requested premium is paid. If insuring AI's or ANI's requires a higher premium, that shouldn't be a reason not to require that Class 1 facilities acquire such coverage. Better that the industry pay for this than that society pay to clean up a major spill. And even if options were reduced, how is that too much of a burden? Reduced options do not mean no options. And how is the possible ineffectiveness of guaranteeing the State a payout a reason not to do it? No insured is guaranteed a payout. Questions as to whether "there would be any benefit to this requirement" begs the question of whether there is any benefit to any required insurance, as there is always the question of whether the insurance will pay out. Also, who are "our insurance advisors," why do they think "the most effective way to ensure the state is paid for a loss" is to list the State as beneficiary, and what is meant by "a certificate of insurance agreement"? Finally, did DOE do any analysis of the value to the State of being able to make a claim on an insurance policy? Having the ability to present a claim, and to demand that a defense be provided by an insurance company – rights that come with being an ANI, but not an AI – are quite valuable. The details of DOE's insurance analysis should be described, and if shown to be inadequate that analysis should be re-done. CONCLUSION To summarize, DOE's conclusions relating to affordability are poorly supported and don't address all five items that DOE says it should address. DOE's analysis should also incorporate an unbiased analysis of externalized costs, and a thorough detailing of the who's and how's of its insurance consulting. DOE, for all the reasons in this letter and in the joint letter Sierra Club signed onto, should recognize that affordability to the petroleum industry should not be the focus of its analysis, and acknowledge that financial responsibility requirements of at least $1 billion are required to protect the public interest. Sincerely, Rick Eggerth Co-chair, Mt. Baker Group On Behalf of Sierra Club Washington State

Response to I-227-1

See response to comment I-6-1.

Additionally, considering the profits and externalized costs of the largest oil handling companies when determining financial responsibility requirements for Class 1 facilities is outside the scope of this rule as most of these companies do not operate facilities in Washington and are not subject to this rule.

Ecology is required by statute, RCW 34.05.328(e), to determine “that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the statute that the rule implements. Ecology is also required under the Washington Regulatory Fairness Act, to evaluate the relative impacts of rules that impose costs on the businesses within the industry. If impacts to small businesses are determined, Ecology must take action to reduce these impacts. Requiring $1 billion would not meet this requirement.

Ecology discussed requiring the State of Washington to be listed as “additional insured” or “additional named insurance” on the regulated entities’ insurance policies with experts in multiple disciplines, including, insurance and risk assessment. The state would not be better protected from the costs of an oil spill through this requirement. Instead, obtaining an agreement from the insurance provider that the insurance provider agrees to pay claims that result from an oil spill legally binds the insurance provider to pay oil spill clean-up and damage claims.

Information regarding all entities that Ecology communicated with throughout the rule development process, and all references and resources reviewed to develop the adopted rule language are available to the public through a public disclosure records request.

Thank you for identifying the inconsistency in the PRA's discussion of $200 million insurance constraint. This issue has been corrected.

I-231: Elizabeth Michaelson

Comment I-231-1

Dear Public Servants in the Washington State Dept of Ecology. I am curious why even a fraction of the cost of cleaning up an oil spill in our state should be paid for with our tax dollars. Instead they are getting away with paying a fraction, while we carry the burden? Why aren't we expecting the culprits to pay for their own mess? Especially considering no one can ever completely cleans up an oil spill. These are Our beaches! Our fragile ecosystems! Our salmon, and whales, and starfish, and eelgrass beds entrusted to You to protect. On behalf of all living things in our interdependent web, please don't be weak, Stand Strong!!

Response to I-231-1

See response to comment I-37-1.

I-236: Janet Hedgepath

Comment I-236-1

Good afternoon. My name is Janet Hedgepath and I'm just a citizen of Vancouver, Washington. And you know, I grew up reading the signs in the stores that said, you break it, you buy it. I taught my children that they were responsible for their actions. And even when those actions had consequences that they weren't necessarily intending to have. Responsibility is a national value. And yet we've not always extended this value of responsibility to the fossil fuel industry. In this case, I appreciate that the department thought through the consequences of raising uh the financial responsibility limits and that there was some concern about that, yet at the same time, we've all seen the widespread catastrophic destruction that some of these industry accidents can bring and 300 million dollars is not even close to helping restore and respond to those concerns and those accidents. As a citizen, I don't feel like I should have to pay for their accidents. And I'm happy to hear that the industry has done all kinds of things to make it less likely that those accidents will occur, but that's why they're called accidents: they happen. And I think they need to be held responsible for those actions and be prepared to financially meet them. So I'm asking that the department raise the minimums for financial responsibility for the class one facilities. And I know you looked at 600 million, but I would say at least a billion dollars because at the cost of the way things are now, that would also probably not be sufficient to deal with it, but it would come closer. Thank you for this opportunity.

Response to I-236-1

See response to comment I-6-1.

I-237: Dirk Vermeeren

Comment I-237-1

Thank you very much for affording me the time to comment. My wife and I retired from the industry in 2014, choosing Bellingham, Washington as our home. After roughly 30 plus years moving throughout the world in my career for both international and national oil companies, I'm today speaking on behalf of myself, the local community and taxpayers of Washington State. In urging of ecology to fulfill its stated responsibility to the citizens of Washington State by requiring local industries to maintain effect based level environmental impairment liability insurance (EIL), of roughly 60,000 barrels minimum. $60,000 for barrel

bill minimum to cover costs related to a major catastrophe. My professional career includes operations assignments as refiner manager at Point at Chevron Point Wells, now known as Alon Asphalt, and marketing and business development assignments with Chevon aviation in Singapore and project development assignments in Saudi Arabia. My professional experience allows me to speak with insight on the oil industry. In my view, the proposed level of financial responsibility is far from adequate to cover actual cleanup and restoration costs of a worst case scenario, which for us is a Cascadia Fault earthquake. It appears DOE is more focused on the short term financial success of industries that have stated obligation to the citizens of Washington state by allowing the industry to define what is affordable. As we say in the oil industry, it is not whether an incident will happen, it is when. This is why we have spill response plans and annual drills. The oil industry has plenty of examples of major incidents in spills. It can be used by DOE or engaging an independent insurance industry expert that will develop an up-to-date cleaned up cost estimate using current dollars. Washington state cannot or Washington state cannot depend on the federal government support via the oil spill liability trust fund OS LTF of 1 billion dollars as a backup. A change administrations every 4 years can undermine those funds as was seen in 2017 when Congress has spent it collecting those levies for the oil industry. In closing, allow me to highlight the DOE environmental justice statement. I'll all Washington residents, regardless of income, race, ethnicity, color or national origin. Have a right to live, work, and recreate in a clean and healthy environment. Low income communities, communities of color, and indigenous people in Washington and across the country often wear bear the brunt of pollution and the impacts of climate change. We're committed. We are committed to making decisions that do not place disproportionate environmental burdens on these communities. Therefore, I ask DOE to review their proposed inadequate financial limits and develop to current dollar cost based financial responsibility limits thereby placing Washington taxpayers ahead of oil industry shareholders. Thank you for the time.

Response to I-237-1

See response to comment I-39-1.

Thank you for sharing your knowledge about environmental impairment liability insurance (EIL).

The OSLTF purpose is to ensure funds are available to initiate a rapid and aggressive response and pay claims when there is no known responsible party, or the responsible party refuses to pay. The adopted rule set financial responsibility levels in order to ensure the oil handlers that operate in this state can pay for oil spill cleanup and damages. The OSLTF should be a last resort when a responsible party will not pay. The State is providing assurance under this adopted rule that the OSLTF does not have to be used and additional costs do not have to be borne by the state and federal government to recover costs.

I-238: Donna Albert

Comment I-238-1

Hi, Donna Albert. I'm a, I'm commenting as a private citizen. Um So, um although uh there's unlimited liability for the harms from a spill (and I'm just speaking about pipelines here that's what I know the best), that doesn't ensure that the people Washington won't be stuck with the costs. That's what insurance is for. So uh if the industry can't afford the insurance, um and if a transition is needed, it uh seems like that should be provided. And uh we should be requiring the cost of an actual maximum worst case spill, so obviously at least a billion dollars would have to be covered. But uh, and also I'm observing that the 300,000 that you chose 300 million that you chose from the California example is actually 600 600 million. I'm I'm getting my numbers screwed up because I can't see. Is actually uh 600 million today right am I am I using the right numbers? And then uh, so that's already um, outdated. So just a CPI, which I'm assuming is a a consumer price index wouldn't be enough to catch up on that. Um So anything less than 100% reliable insurance coverage for a maximum spill is actually a subsidy and the actual cost of these um industry operations um must be must be associated so that so that uh we're not subsidizing and encouraging to continue, but I

understand you need um, continuity and you don't want to exceed their capacity to buy the insurance in the short term. You've got to put them on a timeline where they see within a short number, short number of years that they will have to provide that so that they can decide whether they can continue to operate and how to how how, what kind of a transition they have to make. Uh Thank you.

Response to I-238-1

See response to comment I-6-1.

Ecology considered incorporating a periodic increase of financial responsibility into this rule, similar to 33 CFR § Part 138.240 and Alaska's financial responsibility rule. Alaska has the authority to periodically increase financial responsibility because their authorizing statute, AS 46.04.045, directs them to do so. Washington's authorizing statute does not include direction to increase financial responsibility periodically. Ecology would need legislative direction to include this type of requirement in our rule. It is Ecology's intent to update Chapter 173-187 WAC to maintain financial responsibility requirements that are commensurate with the highest levels of commercially available financial responsibility needed to pay for a worst case spill.

Considering subsidies to the fossil fuel industry is outside the scope of this rulemaking. However, it is also important to understand that this rule's levels of financial responsibility in no way impacts Washington's laws on unlimited liability for oil spills. RCW 90.56.360 and 90.56.390 require that the responsible party of an oil spill is responsible for the costs of that spill. Spillers are responsible to pay the full costs of any spill. This means that a responsible party with $300 million of demonstrated financial responsibility would still be liable for costs exceeding that amount.

I-239: Laura Ackerman

Comment I-239-1

Okay, thank you. Good morning. I'm Laura Ackerman. I live in Spokane. I used to live in Bellingham years ago. I have a basic familiarity with oil refineries, facilities and transportation in the Northwest. I support at the least the 1 billion dollars per facility as a financial responsibility. The tank vessels and barges can do this with protection and indemnity clubs or mutual insurance associations and surely big oil can do what the tank vessels and barges do or pay out of their own profits. European and US oil and gas majors have made profits of more than a quarter of a trillion dollars since Russia invaded Ukraine according to a new analysis by Global Witness on February ninth of this year making 2 years marking 2 years since the conflict began. After posting record gains in 2022 off the back of soaring energy prices, the big 5 fossil fuel companies paid shareholders an unprecedented 111 billion dollars in 2023. in total Shell, bp, Chevron, Exxon-Mobil, and Total Energies have paid 200 billion to shareholders since the invasion of Ukraine. Three of the largest oil and gas producers reported strong combined profits of 85.6 billion dollars in 2023 according to a February 2 nd 2024 story in the Washington Examiner. Exxon Mobil reported 36 billion in profit for the year supported by further oil and gas production. And Chevron outlined product profits of 21.4 billion, the second largest profits in a decade for both. Shell reported adjusted earnings of 28.25 billion which was down from 2022, but it was the second largest in a decade and says Mike Worth, Chevron's chairman and chief executive officer quote in 2023 we returned more cash to shareholders and produce more oil and natural gas than any year in the company's history. End quote. For Exxon and Chevron, the resilient profits were partly driven by strong growth in oil and gas production in the United States. The companies have had a renewed focus on domestic fossil fuel production. And Canada's Trans Mountain Pipeline for Puget Sound should have a financial response requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of Tar Sands products. Transmountain Corporation released the company's financial statements on May 30 th 2023 for a three-month period ending March the 31 st 2023, the pipeline operated at full capacity with 228,000 barrels per day going to Washington State on the Puget

pipeline. adjusted earnings for the 3 month period ending March 31 st of 2023 increased by 8 million to 50.1 million and it was mainly due to increased revenue on the Puget line. Trans Mountain Corporation can afford to clean up their own spills and the key here I think is that oil companies can afford their own financial responsibilities and uh they should be made to have insurance for a billion dollars for class one facilities per facility. Thank you.

Response to I-239-1

See response to comment I-22-1.

I-240: John Battalia

Comment I-240-1

See comment letter I-240-1 in Appendix B.

Response to I-240-1

See response to comment I-6-1.

One of the benefits of financial responsibility is being assured that there are significant liquid assets to pay the costs of an oil spill. These liquid assets, such as insurance coverage, may be used to pay the costs of a spill rather than income from normal operations. This helps protect the company from significant losses and potential bankruptcy.

O-2: Sierra Club, Ken Zirinsky

Comment O-2-1

Okay, um I just I I'm a member of the Sierra Club and we are very concerned about the impact of oil Spills on the uh Puget Sound quality of life uh, for uh

both all the people who live here and for all the animals and plants. And um our I'm worried that the proposed 300 million maximum uh financial uh requirement for class one facilities is not enough. And um I don't see any um, I don't understand why the uh facilities should not have the same requirements as the tank vessels and and barges. A lot of these facilities are located right next to the water, the same way the tank vessels and barges are. So it seems to me that at the very least, the refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges, uh meaning that the class one facilities should have the 1 billion per facility. So I think that the financial responsibility requirements should prioritize sufficient compensation for oil impacts over the oil uh industry uh profits and um the tank vessels and uh the barges can comply with the 1 billion financial responsibility requirement through these P&I clubs, these protection and indemnity clubs or possibly through mutual insurance um associations and so uh why the class one facilities should be able to comply using these same techniques. So in summary, I'm basically requesting that the class one facilities have the same 1 billion financial requirement uh as the tank vessels and barges. And I thank you for your time listening to my comment.

Response to O-2-1

See response to comment I-6-1.

O-3: Friends of the San Juans, Lovel Pratt

Comment O-3-1

Thank you, Thea, for this opportunity to testify. My name is Lovel Pratt and I'm the Marine Protection and Policy Director at Friends of the San Juans. I agree with Ken Zirinsky's and Janet Hedgepath's testimony that the 300 million maximum financial responsibility requirement for class one facilities is not enough. As included in RCW, 88-40-025. Ecology was directed to consider the following in this rulemaking process: the worst case amount of oil that could be spilled, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility. So these considerations may not have compatible outcomes. However, the rulemaking process should not have focused on the commercial availability and affordability of financial responsibility. As a result, the draft rules proposed 300 million maximum financial responsibility requirement for class one facilities fails to fulfill the requirement in RCW 88-40-025. Quote, an onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department, that's ecology, as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The draft rule does not address the current costs and damages from oil spills and focuses on the availability and affordable and affordability of financial responsibility, allowing oil industry profits to supersede the financial responsibility requires needed for compensation. For over 20 years passenger vessels with a fuel capacity of just 6,000 gallons have had a 300 million maximum financial responsibility requirement. And it makes no sense that the same 300 million maximum financial responsibility requirement has been proposed for class one facilities, which are the state's largest oil handling facilities that transfer process or transfer oil on or near the navigable waters of the state. These are refineries, pipelines, and the state's largest bulk oil handling facilities. The draft rule prioritizes oil industry profits above Ecology's mission, quote, to protect, preserve, and enhance Washington's environment for current and future generations, unquote. Um Ecology's prioritization of oil industry profits over the financial responsibility required to compensate for these damages contradicts Ecology's commitment quote to reduce greenhouse gas emissions by 95% by 2050. This will help protect a wash, help protect Washington's environment and economy from the effects of climate change. unquote.

Thank you, I'll finish my comments now. Ecology's valuation of oil spill impacts is based on 2006 2006 numbers quote a large spill could cost the state 10.8 billion and a 165,000 jobs, unquote. In today's dollars the cost would be 16.8 billion. The 300 million maximum financial responsibility for class one facilities is based on California's regulations, which were established in 1995 and based on a 1993 study that used 1992 US dollar values to identify the cost of oil spill response and the damages that could result. The 30 plus year old study identified the oil spill response and damage costs at $12,500 to $18,900 per barrel. In today's dollars, those costs would range from $27,916 to $42,209. In summary, the draft rule fails to identify a financial responsibility amount for class one facilities necessary to compensate the state and affected federally recognized Indian tribes, counties and cities for damages that might occur during a reasonable worst case spill of oil. The draft rule should be revised to address the higher skill response and damage costs for Alberta Tar Sands, or Canadian Tar Sands products, also known as bitumen, diluted bitumen and dilbit. The draft rule should be revised to remove the 300 million limit and require class one facilities to demonstrate their ability to pay the full worst case spill costs at currently as currently calculated uh that's with the outdated and low estimate of $12,500 per barrel. Alternatively, and at the very least, class one facilities should have the same financial responsibility requirements as tank vessels er which is 1 billion dollars. The final rule should include a provision that directs Ecology to conduct reviews and updates to the financial responsibility requirements similar to the federal um procedure for updating limits of liability to reflect significant increases in the consumer price index and statutory changes. And finally, if this rulemaking process does not allow for the financial responsibility requirements for class one facilities to be increased, in the final rule, the requirement for an update to be completed within 2 years should be added to the final rule. Thank you so much.

Response to O-3-1

See response to comment I-166-1.

O-5: Washington Conservation Action, Rein Attemann

Comment O-5-1

Yup, Rein Attenman Washington Conservation Action. I echo Laura's excellent remarks. Uh it just shows the vast uh, margin of profits and resources that oil industry has uh to meet a 1 billion dollar maximum liability coverage. But I thank you for the opportunity to comment on the rule and for all your hard work on this effort throughout the past year. It is critical that financial responsibility requirements are established for Washington State's onshore oil handling facilities. While there's unlimited liability for oil spills in Washington State, financial responsibility requirements are needed to ensure that these facilities won't go bankrupt before covering all of their spills response damage costs and putting uh the rest of the bill on taxpayers and communities. Washington State's class one facilities put the well-being in health of communities and cultures, wildlife, clean water, clean air, and the Salish Sea ecosystem at risk. As required by RCW 88.40.025, an onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case oil spill from that facility and to navigable waters in the state. Instead of determining what financial responsibility amount would be needed to compensate the state, Tribes, counties, and cities for damages from class one facilities. Ecology’s proposed rule is based primarily on just one of these 5 considerations. Quote, commercial availability and affordability of a financial responsibility quote. And we know oil industry has resources. Um yeah, the $300 300 million dollar maximum financial responsibility that you have selected is based on California's regulations which were established 30 years ago and based on a study that was uh in 1993 that used 1992 US dollar values to identify the cost of oil spill response and the damages that could result from a spill. This 30 old study uh yeah identified costs at 12,500 to 18,900 per barrel and today's dollars based on average inflation rate of 2.52% per year. Obtaining that period it would be equivalent to about $27,900 and $42,000 per barrel and over 652 million maximum financial responsibility. This means that today's prices are 2 times as high as average prices since 1995 and a dollar today only buys 50% of what it would buy back then. Cost of cleaning up oil spills and financial responsibility to impacted communities have increased and will continue to increase in the future. And Enbridge energy pipeline spill of 1.8 1.28 billion dollars is a case in point. So we know that spills can exceed a billion dollars. Um I would just suggest that the rule include a section around, termination or cancellation of proof of financial responsibility that does not relieve a person subject, uh to 173-187. And a good reference would be Alaska’s administrative code, 18 AAC 7 5.272. We would recommend that you adopt similar language from state of Alaska around public access to financial responsibility records. This is not much different than what Washington Ecology is required to do with quarterly crude oil movement in the state. Okay, and we like to uh thank you for including a 30 day review and comment period under section 173-187-120(3) related to alternative financial responsibility calculations. Uh so if you're able to do that and provide uh public transparency, it seems like, we should the public have access to financial responsibility records as well. Uh thank you and we'll be writing and submitting more detailed comments by the eighth of March.

Response to O-5-1

See response to comment I-6-1.

OTH-1: San Juan City Council, District 2, Cindy Wolf

Comment OTH-1-1

Dear Ms. Davis,

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

In summary: The draft rule fails to identify a financial responsibility amount for Class 1 facilities necessary to compensate the San Juan County, the state, Tribes, cities, and other counties for damages that might occur during a reasonable worst case spill of oil. The draft rule should be revised to address the higher spill response and damage costs for tar sands products. The basis for the financial responsibility requirement for Class 1 facilities that transfer, process or transport tar sands products should be increased to at least $60,153 per barrel. The draft rule should be revised to remove the $300 million limit and require Class 1 facilities to

demonstrate their ability to pay their full worst case spill costs as currently calculated (with the outdated and low estimate of $12,500 per barrel – see attached). Alternately and at the very least, Class 1 facilities' financial responsibility requirement should be increased to $1 billion. If this rulemaking process does not allow for the financial responsibility requirements for Class 1 facilities to be increased in the final rule, the requirement for an update to be completed within two years should be included in the final rule. The final rule should include a provision that directs Ecology to conduct reviews and updates to the financial responsibility requirements similar to 33 CFR § 138.240 - Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes . Thank you for your consideration.

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

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

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

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

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

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

7 Ibid .

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

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

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

Response to OTH-1-1

See response to comment I-166-1.

Appendix A: Summarized Comment Response

Ecology received multiple identical comments. All identical comments are included in this appendix.

We received the following two identical comments.

Comments I-166-1 & I-207-1: Lovel Pratt

Friends of the San Juans · Washington Conservation Action · Sierra Club Washington State RE Sources · Communities for a Healthy Bay · Evergreen Islands

Washington Physicians for Social Responsibility · Whale Scout San Juan Islanders for Safe Shipping · Center for Sustainable Economy

Friends of Grays Harbor · Endangered Species Coalition · Orca Network Citizens for a Clean Harbor · 350 Tacoma · Seattle Aquarium · The Lands Council

Friends of the Earth · Center for Biological Diversity · Columbia Riverkeeper

Puget Soundkeeper · Sound Action · Wild Orca · The Conversation 253 · Spokane Riverkeeper STAND.earth · Natural Resources Defense Council

March 7, 2024

Diana Davis

Department of Ecology, Northwest Regional Office Spill Prevention, Preparedness, and Response Program

P.O. Box 330316

Shoreline, WA 98133-9716

Submitted via the online comment portal: https://sppr.ecology.commentinput.com/?id=Njtx23iVBu

RE: Draft RuleT, Chapter 173-187 WAC Financial Responsibility Dear Ms. Davis,

Thank you for the opportunity to comment on the draft rule that will establish the new Chapter 173-187 WAC Financial Responsibility. The undersigned represent 27 nonprofit organizations that work on environmental health and safety issues in Washington State.

It is critical that financial responsibility requirements are established for Washington State's onshore oil handling facilities. While there is unlimited liability for oil spills in Washington State,[1] financial responsibility requirements are needed to ensure that these facilities won't go bankrupt before covering all of their oil spills' response and damage costs.

In the event of an oil spill for which the costs for cleanup and damages exceed the assets of a responsible party, that party may face insolvency.[2]

[1] RCW 90.56.370 Strict liability of owner or controller of oil—Damages—Exceptions.

[2] Mercer Management Consulting. June 1993. *Analysis of Oil Spill Costs and Financial Responsibility Requirements*. PDF page 247. https://fortress.wa.gov/ecy/ezshare/sppr/preparedness/MercerStudy1993_CombinedFiles.pdf.

These comments will focus on this rulemaking's establishment of financial responsibility requirements for Class 1 facilities, the state's largest oil handling facilities that transfer, process, or transport oil on or near the navigable waters of the state. Class 1 facilities include refineries, pipelines, and other bulk oil handling facilities.

Washington State's Class 1 facilities put the well-being and health of communities and cultures, wildlife, clean water, clean air, and the Salish Sea ecosystem at risk.

As required by RCW 88.40.025:

An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state.[3]

Instead of determining what financial responsibility amount would be needed to compensate the state, Tribes, counties, and cities for damages from a Class 1 facility's oil spill, Ecology's proposed rule is based primarily on just one of these five considerations, "*the commercial availability and affordability of financial responsibility*":

The department shall adopt a rule that considers such matters as the worst case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan approved under chapter 90.56 RCW, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility. In order to demonstrate financial responsibility as required under this section, the owner or operator of a facility must obtain a COFR from the department. The requirements of this section do not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government.[4]

Financial responsibility necessary to compensate the state, Tribes, counties, and cities for damages:

RCW 88.40 sets the financial responsibility requirements for vessels and directs Ecology to set the financial responsibility requirements for facilities. RCW 88.40 does not direct Ecology to base the financial responsibility requirements for Washington State's industrial facilities on other West Coast states' financial responsibility requirements.

Yet $300 million maximum financial responsibility for Class 1 facilities is based on California's regulations which were established in 1995 and based on a 1993 study that used 1992 US dollar values to identify the cost of oil spill response and the damages that could result from a spill.

This 30+ year-old study identified the oil spill response and damages costs at $12,500 - $18,900 per barrel. In today's dollars, those costs would range from $27,916 – $42,209 per barrel.[5] The $18,900 per barrel cost

[3] RCW 88.40.025 Financial responsibility for onshore or offshore facilities.

[4] RCW 88.40.025 Financial responsibility for onshore or offshore facilities.

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

was recommended for facilities given that "[n]atural resource damage claims are expected to rise in the future."[6] However, California based its 1995 regulations on the low range of $12,500 per barrel.

Oil spill response and damage costs:

Ecology's only comprehensive valuation of oil spill impacts is based on 2006 numbers: "a large spill could cost the state $10.8 billion and 165,000 jobs."[7] In today's dollars the cost would be

$16.8 billion.[8]

Regarding the cost estimate above, Ecology states:

We note that this estimate was based on open-water spills significantly disrupting fishery activities (such as might occur from a large vessel) and impacts specific to an onshore facility spill may differ.[9]

However, no analysis was conducted on the costs of a vessel's large oil spill as compared with an onshore facility's large oil spill. In Ecology's review of potential oil spill damages, the only reference to an onshore facility's oil spill is the 1999 Olympic pipeline gasoline spill and explosion, concluding that "in today's dollars it could cost over $404 million."[10] These costs are

$104 million above the proposed maximum financial responsibility requirement.

In today's dollars, the total cost of a Class 1 facility's large oil spill could cost $16.8 billion. The proposed $300 million maximum financial responsibility requirement would cover less than 2%. In addition to the funds available in Washington State's oil spill response account (RCW 90.56.500),[11] the federal Oil Spill Liability Trust Fund, can provide up to $1 billion dollars per oil spill event for response and damage costs.[12] All of these funds combined would cover less than 8% of the potential costs of a large oil spill.

Who would pay for the remaining costs if the Class 1 facility is bankrupt after covering just $300 million of the total oil spill costs? The draft rule fails to identify a financial responsibility amount for Class 1 facilities necessary to compensate the state and affected federally recognized Indian Tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil. Washington state taxpayers, state and local governments and Tribes and businesses should not have to pay for these costs.

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

[7] Ecology's Spill Prevention, Preparedness, and Response Program webpage: https://ecology.wa.gov/About-us/Who-we-are/Our-Programs/Spills-Prevention-Preparedness-Response.

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

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

[10] *Ibid*. [11] The most recent State Oil Spill Response Fund cash balance is in the Treasurer's Report-Nov 2023 (Fund 223, page 13): $6,459,388.45. https://www.tre.wa.gov/wp-content/uploads/011_-November-2023-Monthly-Report- Web.pdf.

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

Financial responsibility requirements should be based on the estimated spill response and damage costs in today's dollar values. Where there is a range of estimated costs, the high end of the range should be the basis for financial responsibility requirements to ensure that the necessary funding is available to address all spill response and damage costs.

Worst case spill of oil:

Ecology defines Class 1 facilities' worst case spill volumes solely on the volume of each facility's largest above ground storage tank. Ecology does not consider complications from adverse weather, or the site characteristics and storage, production, and transfer capacity, in defining worst case spill volume, as is included in WAC 173-182-030 (73).

The list of Class 1 facilities (provided by Ecology) includes each facility's worst case spill volume, the total cost of a worst case spill based on the outdated and low estimate of $12,500 per barrel, and the percentage of that total cost that would be covered by the proposed $300 million maximum financial responsibility requirement. Only five of the thirty Class 1 facilities would be covered by the $300 million requirement. See the *Proposed Financial Responsibility Requirements for Class 1 Facilities* on page 11.

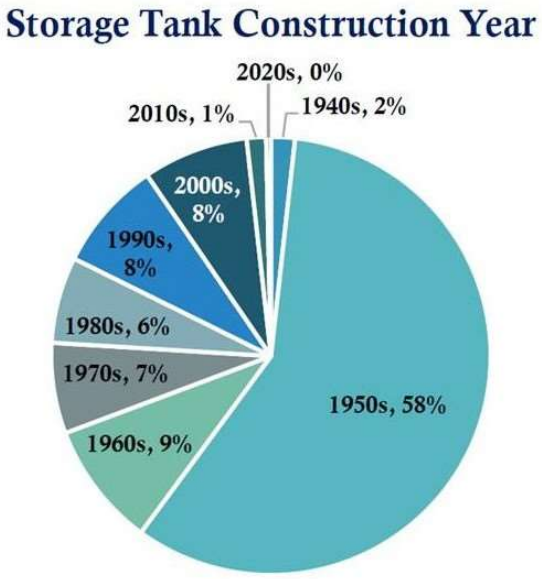
The proposed $300 million maximum financial responsibility requirement would cover only a small fraction of the total cost of a worst case spill from these refineries:

* Phillips 66 Ferndale Refinery: 3.64%
* Marathon Anacortes Refinery: 4.00%
* BP Cherry Point Refinery: 4.82%
* HollyFrontier Sinclair Puget Sound Refinery: 7.97%
* Par Pacific U.S. Oil Refinery: 8.74%

Ecology defines Class 1 facilities' worst case spill volumes solely on the volume of each facility's largest above ground storage tank (per WAC 173- 182-030 (73)). There is reason to be concerned about spills from above ground storage tanks.

According to an economic impact assessment of Western States Petroleum Association (WSPA) member facilities in Washington State, "[t]he existing tankage infrastructure is aged, with 89% of the tanks being built prior to the first implementation of WAC 173-180-330 in 1994."[13]

For pipelines, "worst case spill" is defined in WAC 173-182-030 (73)(d). The Puget Sound spur of Canada's Trans Mountain Pipeline transports Alberta tar sands crude and other oil products to Washington State's northern refineries. The financial



[13] Turner Mason & Company. February 16, 2023. *Refining Industry Economic Impact Assessment Washington State Amendment to WAC Chapter 173-180, 184*. The quote is on page 4; the pie chart, *Storage Tank Construction Year*, is on page 16. https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid100/did200006/pid_204735/assets/merged/vn0mi00_document.pdf?v=13 730.

responsibility requirement for the Trans Mountain Pipeline should be based on the higher oil spill response and damage costs for spills of tar sands products (also known as bitumen, diluted bitumen, and dilbit).

A spill from the Puget Sound spur of the Trans Mountain Pipeline could impact the Nooksack River, Lower Skagit River, Samish River, Sumas River, Swinomish Channel, Padilla Bay, the Salish Sea, and all the human and animal communities that surround and live within these waters.

The construction of Canada's Trans Mountain Pipeline expansion project is more than 98% complete and expected to be operational in the second quarter of 2024.[14] This expansion project will increase the pipeline's current capacity by 590,000 barrels per day.[15]

The response, remediation, and restoration costs for the 2010 pipeline spill of tar sands crude oil into the Kalamazoo River was over $1,208,000,000 or $60,153 dollars per barrel.[16]

The spill response and damage costs could be much higher for a tar sands oil spill in the Salish Sea and its watershed as compared with the Kalamazoo River. According to Ecology:

Bitumen from Alberta, even once diluted, is uniquely difficult to remove after a spill, because of its properties. Alberta bitumen oils are potentially sinking oils, or some portion may sink after weathering, which renders ineffective conventional techniques to contain and remove oil from the water's surface. Potentially sinking oil poses a risk of contamination to sediments and their ecosystems, which include economically and culturally valuable shellfish and fisheries.[17]

The draft rule should be revised to address the higher spill response and damage costs for tar sands products. The basis for the financial responsibility requirement for Class 1 facilities that transfer, process or transport tar sands products should be increased to at least $60,153 per barrel.

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[14] Trans Mountain blogpost. January 12, 2024. *Trans Mountain Receives Decision on Variance Application*. https://www.transmountain.com/news/2024/trans-mountain-receives-decision-on-variance-application.

Reuters. January 24, 2024. *Canada's Trans Mountain pipeline expansion to start in April*. By Arathy Somasekhar and Georgina Mccartney. https://www.reuters.com/world/americas/canadas-trans-mountain-pipeline-start-up- second-quarter-2024-01-24/.

[15] U.S. Energy Information Administration. January 8, 2024. Canada's Trans Mountain Pipeline expansion reportedly 95% complete. https://www.eia.gov/todayinenergy/detail.php?id=61184.

[16] UNITED STATES SECURITIES AND EXCHANGE COMMISSION. FORM 10-Q. September 30, 2014, Quarterly Report.

Page 19. https://media.mlive.com/grpress/news_impact/other/Enbridge%20FORM%2010-Q.pdf.

[17] Ecology. 2012. *Final Cost-Benefit and Least Burdensome Alternative Analysis Chapter 173-182 WAC Oil Spill Contingency Plan*. Pages 8-9. (Web address is no longer provided.)
See also: H. Gary Greene, John Aschoff. 2023. *Oil spill assessment maps of the central Salish Sea – Marine seafloor & coastal habitats of concern – A tool for oil spill mitigation within the San Juan Archipelago, Washington State. USA*, Continental Shelf Research, Volume 253, 2023, 104880, ISSN 0278-4343, https://doi.org/10.1016/j.csr.2022.104880.
https://www.sciencedirect.com/science/article/pii/S0278434322002333.

Commercial availability and affordability of financial responsibility:

The draft rule does not address the current costs and damages from oil spills, focusing instead on "the commercial availability and affordability of financial responsibility." This elevates oil industry profits above the financial responsibility requirements needed to compensate the state, Tribes, counties and cities for their oil spill costs.

To justify the $300 million maximum financial responsibility requirements for Class 1 facilities, the rulemaking's *Preliminary Regulatory Analyses* quotes the same section of the 2003 ESB 5938 (Updating financial responsibility laws for vessels) three times to justify using California's financial responsibility requirements for this rulemaking (on pages 15, 37, and 44):

The legislature finds that the current financial responsibility laws for vessels are in need of update and revision. The legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast.

However, ESB 5938 does not address financial responsibility requirements for Class 1 facilities. The 2022 legislation that required this rulemaking, E2SHB 1691 (Concerning financial responsibility requirements related to oil spills), and RCW 88.40 make no mention of a uniform system of financial responsibility on the Pacific Coast or parity among west coast states.

The draft rule prioritizes oil industry profits above Ecology's mission "to protect, preserve, and enhance Washington's environment for current and future generations."[18] Ecology considered a $600 million financial responsibility requirement, but decided against this amount solely because of perceived affordability concerns:

This higher level could have provided a higher level of protection for the state but failed to meet the specific objective of considering commercial affordability and availability of FR [financial responsibility] in the marketplace. Having to demonstrate FR for $600 million would require companies to pay significant costs into the millions of dollars per year to remain in business.[19]

For over 20 years, passenger vessels with a fuel capacity of at least 6,000 gallons have been required to demonstrate financial responsibility to pay $300 million, and tank vessels that carry oil as cargo in bulk have had to demonstrate financial responsibility to pay $1 billion.[20] It makes no sense that the $300 million maximum financial responsibility requirement for facilities is the same amount that is required for passenger vessels with a fuel capacity of just 6,000 gallons.

[18] Department of Ecology State of Washington webpage: https://ecology.wa.gov/About-us.
[19] Ecology. January 2024. *Preliminary Regulatory Analyses for Chapter 173-187 WAC Financial Responsibility.* Page 48. https://apps.ecology.wa.gov/publications/documents/2408001.pdf.
[20] ESB 5938 - Updating financial responsibility laws for vessels. Sec. 3.(2)(a) and (3)(a) https://lawfilesext.leg.wa.gov/biennium/2003-04/Pdf/Bills/Session%20Laws/Senate/5938.SL.pdf?q=20240122064544.

It should not be too burdensome for Class 1 facilities to have at least a $600 million financial responsibility requirement. Tank vessels and barges are able to comply with the $1 billion financial responsibility requirement. Why? The answer is mutual insurance associations.

RCW 88.40 outlines the amount of financial responsibility a vessel must demonstrate and provides authorization to establish a process for verification of protection & indemnity (P&I) club membership. P&I clubs are mutual insurance associations that serve the vessel community and that provide risk pooling for their members. They provide insurance type protection for oil pollution risk, as well as other risks that are common for the vessel industry.[21]

Class 1 facilities could establish their own mutual insurance association to pool their resources and meet higher financial responsibility requirements.

The draft rule should be revised to remove the $300 million limit and require Class 1 facilities to demonstrate their ability to pay their full worst case spill costs as currently calculated (with the outdated and low estimate of $12,500 per barrel – see the *Proposed Financial Responsibility Requirements for Class 1 Facilities* at the end of these comments). Alternatively, and at the very least, Class 1 facilities' financial responsibility requirement should be increased to $1 billion.

This rulemaking's focus on "the commercial availability and affordability of financial responsibility" implies that the oil industry can't do business responsibly, and is an example of how the oil industry benefits from "externalized costs" – costs that are generated by producers but paid for by society as a whole.

The petroleum industry is one of the most profitable on the planet, with many of its members consistently among the top performing companies in the world. The financial responsibility requirements must be based on the amount "necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages," at today's costs, not 1990's costs, and not "affordability" for the oil industry. Washington State's Class 1 facilities should be obligated to pay for all of their oil spill response and damage costs.

In summary:

(1) **The draft rule fails to identify a financial responsibility amount for Class 1 facilities necessary to compensate** the state and affected federally recognized Indian Tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil.

(2) **The draft rule should be revised to address the higher spill response and damage costs for tar sands products**. The basis for the financial responsibility requirement for Class 1 facilities that transfer, process or transport tar sands products should be increased to at least $60,153 per barrel.

(3) **The draft rule should be revised to remove the $300 million limit and require Class 1 facilities to demonstrate their ability to pay their full worst case spill costs** as currently calculated (with the outdated and low estimate of $12,500 per barrel – see the *Proposed Financial Responsibility Requirements for Class 1 Facilities* on page 11).

(4) **Alternatively, and at the very least**, Class 1 facilities' financial responsibility requirement should be increased to $1 billion.

[21] PROPOSED RULE MAKING CR-102 (July 2022) (Implements RCW 34.05.320). Page 2. https://ecology.wa.gov/getattachment/9e8bf4e8-8007-4afd-938f-165a24983191/WSR-24-03-115.pdf.

(5) **If this rulemaking process does not allow for the financial responsibility requirements for Class 1 facilities to be increased in the final rule, the requirement for an update to be completed within two years should be included in the final rule**.

(6) **To ensure that the financial responsibility requirements reflect current costs**, the final rule should include a provision that directs Ecology to conduct annual reviews and updates as needed to the financial responsibility requirements similar to 33 CFR §138.240 - Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes.[22]

Thank you for your attention to these comments.

[22] 33 CFR § 138.240 - Procedure for updating limits of liability to reflect significant increases in the Consumer Price Index (Annual CPI–U) and statutory changes. https://www.ecfr.gov/current/title-33/chapter-I/subchapter-M/part- 138/subpart-B/section-138.240.

Sincerely,

Lovel Pratt

Marine Protection and Policy Director Friends of the San Juans

Rein Attemann

Puget Sound Senior Campaign Manager Washington Conservation Action

Sept Gernez Chapter Director

Sierra Club Washington State

Eddy Ury

Climate & Energy Policy Manager RE Sources

Logan Danzek Policy Manager

Communities for a Healthy Bay

Tom Glade President Evergreen Islands

James Moschella

Climate & Health Program Manager Washington Physicians for Social Responsibility

Whitney Neugebauer Director

Whale Scout

Shaun Hubbard Co-founder

San Juan Islanders for Safe Shipping

John Talberth, Ph.D.

President and Senior Economist Center for Sustainable Economy

Arthur (R.D.) Grunbaum President

Friends of Grays Harbor

John Rosapepe

Pacific Northwest Representative Endangered Species Coalition

Howard Garrett President

Orca Network

Tammy Domike Community Organizer Citizens for a Clean Harbor

Stacy Oaks Community Organizer 350 Tacoma

Nora Nickum

Senior Ocean Policy Manager Seattle Aquarium

Naghmana Sherazi

Climate Justice Program Director The Lands Council

Marcie Keever

Oceans & Vessels Program Director Friends of the Earth

Brady Bradshaw

Senior Oceans Campaigner Center for Biological Diversity

Dan Serres Advocacy Director

Columbia Riverkeeper

Emily Gonzalez

Director of Law and Policy Puget Soundkeeper

Amy Carey Executive Director Sound Action

Dr. Deborah Giles

Science & Research Director Wild Orca

Barbara Church

The Conversation 253

Katelyn Scott Water Protector

Spokane Riverkeeper

Sven Biggs

Canadian Oil and Gas Program
Director STAND.earth

Michael Jasny

Director, Marine Mammal
Protection Project Natural
Resources Defense Council

Mary Coltrane
President
League of Women Voters of
Washington

Proposed Financial Responsibility Requirements for Class 1 Facilities

Even using the outdated low estimate of $12,500 per barrel as the basis for total oil spill costs, the $300 million maximum financial responsibility requirement would, for most of the Class 1 facilities, cover only a fraction of the total cost of their worst case spill. Given the $12,500 per barrel cost, the $300 million maximum financial responsibility requirement would cover a 24,000 barrel oil spill. Only five of the thirty Class 1 facilities have a worst case spill volume less than 24,000 barrels.

Class 1 Facilities	**Type**	**Location**	**Worst Case Spill Volume (in Barrels)**	**Worst Case Spill Cost at $12,500/barrel**	**Cost exceeds $300 Million by**	**$300 Million as a % of total cost**
BP Cherry Point	Refinery/Marine Terminal	Blaine	498,438	$6,230,475,000	$5,930,475,000	4.82%
Holly Frontier Sinclair	Refinery/Marine Terminal	Anacortes	301,316	$3,766,450,000	$3,466,450,000	7.97%
Marathon Anacortes	Refinery/Marine Terminal	Anacortes	600,000	$7,500,000,000	$7,200,000,000	4.00%
Phillips 66	Refinery/Marine Terminal	Ferndale	659,222	$8,240,275,000	$7,940,275,000	3.64%
US Oil	Refinery/Marine Terminal	Tacoma	274,655	$3,433,187,500	$3,133,187,500	8.74%
Trans Mountain	Pipeline and Pipeline/ Tankage	Canada to Northern Refineries	89,455	$1,118,187,500	$818,187,500	26.83%
BP NW Pipelines - Olympic	Pipeline and Pipeline/ Tankage	I-5 Corridor	110,000	$1,375,000,000	$1,075,000,000	21.82%
SeaPort Sound Terminal	Marine Terminal	Tacoma	78,336	$979,200,000	$679,200,000	30.64%
Alon Asphalt Company	Marine Terminal	Point Wells/ Richmond Beach	131,754	$1,646,925,000	$1,346,925,000	18.22%
Kinder Morgan	Marine Terminal	Seattle	82,400	$1,030,000,000	$730,000,000	29.13%
Tesoro	Marine Terminal	Port Angeles	80,000	$1,000,000,000	$700,000,000	30.00%

Andeavor Logistics	Pipeline	Salt Lake to Pasco to Spokane	4,669	$58,362,500	NA	NA
REG Grays Harbor	Refinery/Marine Terminal	Hoquiam/ Grays Harbor	52,143	$651,787,500	$351,787,500	46.03%
Tesoro	Marine Terminal	Pasco	58,533	$731,662,500	$431,662,500	41.00%

Class 1 Facilities	Type	Location	Worst Case Spill Volume (in Barrels)	Worst Case Spill Cost at $12,500/barrel	Cost exceeds $300 Million by	$300 Million as a % of total cost
Maxum	Marine Terminal	Seattle	604	$7,550,000	NA	NA
Nustar Energy	Marine Terminal	Tacoma	78,830	$985,375,000	$685,375,000	30.45%
Nustar Energy	Marine Terminal	Vancouver	109,509	$1,368,862,500	$1,068,862,500	21.92%
Phillips 66	Spokane Terminal Tank	Spokane	80,000	$1,000,000,000	$700,000,000	30.00%
Phillips 66	Moses Lake Terminal Tank	Moses Lake	45,000	$562,500,000	$262,500,000	53.33%
Phillips 66	Renton Terminal Tank	Renton	54,510	$681,375,000	$381,375,000	44.03%
Phillips 66	Marine Terminal	Tacoma	43,000	$537,500,000	$237,500,000	55.81%
Phillips 66 Yellowstone	Pipeline	Spokane to Moses Lake	5,491	$68,637,500	NA	NA
Shell Oil	Marine Terminal	Seattle	113,226	$1,415,325,000	$1,115,325,000	21.20%
Tidewater	Marine Terminal	Pasco	45,272	$565,900,000	$265,900,000	53.01%
Tidewater	Marine Terminal	Vancouver	65,558	$819,475,000	$519,475,000	36.61%
Tidewater	Pipeline	Pasco Terminal Tanks-Dock	45,272	$565,900,000	$265,900,000	53.01%
Sea Port Sound Terminal	Pipeline	Tacoma	3,652	$45,650,000	NA	NA
TLP Management Services	Marine Terminal	Seattle	115,629	$1,445,362,500	$1,145,362,500	20.76%
Tesoro	Marine Terminal	Vancouver	92,538	$1,156,725,000	$856,725,000	25.94%
US Oil	Pipeline	Tacoma to McCord	1,985	$24,812,500	NA	NA

Response to I-166-1 & I-207-1

Thank you for your comments. Please see response to comment I-60-1.

While the adopted rule's required financial responsibility amount of $300 million for onshore facilities is consistent with California's required financial responsibility amount, this is not the main reason in which this amount was determined. Please see response to comment I-6-1 for more information.

Thank you for identifying the Preliminary Regulatory Analyses' (PRA) reference to ESB 5938 related to setting requirements for Class 1 facilities that are consistent with requirements in other western states. We have removed this reference as consistency with other western states was not the main reason in which the $300 million financial responsibility amount was determined for onshore facilities.

This comment recommends establishing financial responsibility requirements based on the high end of the range of estimated costs to ensure that the necessary funding is available to address all spill response and damage costs. This is not a feasible option as it fails to consider:

- the actual costs of spills over the past 30 years,
- the availability of financial responsibility over $300 million, as directed by Legislature, and
- the Administrative Procedures Act, Chapter 34.05 RCW, which requires Ecology to "determine, after considering alternative versions of the rule…that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives".

In regards to comments requiring facilities to establish a mutual insurance association, this is outside the scope of the rule.

One of the benefits of financial responsibility is being assured that there are significant liquid assets to pay the costs of an oil spill. These liquid assets, such as insurance coverage, may be used to pay the costs of a spill rather than income from normal operations. This helps protect the company from significant losses and potential bankruptcy.

Ecology did not include a provision in the adopted rule to update the rule within two years. Ecology periodically updates rules based on capacity and resource availability, agency priorities, and/or legislative direction. If Ecology decides to conduct a future rulemaking, we will review feedback received throughout rule implementation from Tribes, regulated industry, and stakeholders, use our subject matter expertise and experience from implementing the rules, and requirements in law to determine the potential scope of the future rulemaking. If a future rulemaking is conducted, Ecology would follow the prescribed rulemaking process including seeking Tribal and stakeholder engagement, workshops, public hearings, and public review and comment periods.

It is possible that a new study to estimate costs of an oil spill from a Washington State Class 1 facility in today's environment may inform an update to the rule's financial responsibility requirements. Our intent is to reopen the rule when information becomes available through new studies or lessons learned during our implementation of the COFR program.

Ecology considered incorporating a periodic increase of financial responsibility into this rule, similar to 33 CFR § Part 138.240 and Alaska's financial responsibility rule. Alaska has the authority to periodically increase financial responsibility because their authorizing statute, AS 46.04.045, directs them to do so. Washington's authorizing statute does not include direction to increase financial responsibility periodically. It is Ecology's intent to update Chapter 173-187 WAC to maintain financial responsibility requirements that are commensurate with the highest levels of commercially available financial responsibility needed to pay for a worst case spill.

We received the following three identical comments from Antonio Machado.

Comment I-208-1, O-11-1 and O-4-1

Antonio Machado

Senior Manager, Northwest Technical

March 8, 2024

Ms. Diana Davis Rulemaking Lead Department of Ecology

P.O. Box 47600

Olympia, WA 98504-7600

Sent via email to: Diana.Davis@ecy.wa.gov

Re: WSPA Comments on Proposed WAC 173-187 Rulemaking Dear Ms. Davis:

The Western States Petroleum Association (WSPA) appreciates this opportunity to provide comments on the Washington Department of Ecology (Ecology) proposed WAC 173-187 Financial Responsibility Rulemaking process. WSPA is a trade association which represents companies that produce energy for transportation along the west coast, including refineries and operations in Washington State.

WSPA members understand that the proposed rulemaking is intended to ensure that vessel and facility owners and operators have adequate financial resources to cover cleanup costs and damages resulting from oil spills. The dedicated workers in the energy industry play a crucial role in producing energy in the state of Washington and deeply value the rich natural resources. They are firmly committed to preserving and safeguarding them for future generations. WSPA has remained a dedicated supporter of the Washington Department of Ecology's oil spill program since its inception.

Over the years, our industry has learned from past incidents and invested significant resources in continuous improvement. Throughout the last three decades, we have implemented substantial measures to minimize environmental harm while producing and transporting the energy essential to sustaining the economic vitality of our region.

Ecology's draft rule language for Financial Responsibility includes standard COFR amounts, which were discussed with stakeholders during the rulemaking workshops. These amounts mirror

California's, which are considerably higher than those in other jurisdictions, such as Alaska. This alignment is consistent with the legislature and Ecology's intent to harmonize COFR amounts along the West Coast.

Ecology's analysis of financial responsibility, which began with 1992 data, may appear to some as requiring adjustment to current values. However, WSPA believes it is essential to consider and acknowledge the significant advancements in oil spill prevention and response technologies over the past 30 years. Furthermore, stakeholders in Washington State have made substantial improvements since the 1990s, including response plans, equipment staging, current response equipment stockpiles, geographic response plans (GRPs), routine drills and training, vessel strength enhancements, and pre-booming. These improvements reasonably suggest a lower likelihood of a worst-case spill similar to those in the 1990s.

Additionally, oil spill cleanup cost calculations often assume a direct linear relationship between spilled barrels and associated dollar amounts, which is no longer accurate for most analyses. The industry has actively engaged in enhancing and adopting international, federal, and other standards, bolstering vessel monitoring and inspections, and collaborating with regulatory agencies. We have also adopted oil handling standards and spill prevention measures, improved preparedness and response assistance capabilities, and enhanced navigation technology, all while prioritizing crew competency. Proactively, we utilize double-hulled vessels to mitigate spill risks, as the improved material strength significantly minimizes the potential for spills.

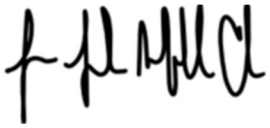
Moreover, we have enhanced tug designs, and WSPA supports an emergency response tug vessel that, while it has not been used to deter oil spill potential, has provided aid to vessels in other industries or services.

Our members adhere to strict policies and procedures ensuring both safety and efficiency in their operations. We believe in being prepared in any case and for any event. We currently maintain higher than ever emergency response safety supplies and conduct regular drills to prepare for any contingency. Additionally, our industry boasts the best safety record of the past two decades, as noted by the Harbor Safety Committee, making our waters the safest navigable waters in the United States. Going forward, WSPA fully supports ongoing efforts to improve safety and environmental protection. Producing energy is a complex, demanding, and challenging process. WSPA and its members believe that no job or task takes precedence over protecting the environment and the safety of our workers and community.

WSPA members believe that the proposed financial responsibility amounts reflect the current insurance and bond markets in a more realistic manner than when the financial responsibility amounts were adjusted two-fold. The proposed Financial Responsibility amounts in the agency’s proposed rule language, we believe, provide appropriate protections given the significant improvements in the industry over the last decades and considering technological advancements. We commend the agency for its efforts, and we reaffirm our unwavering dedication to supporting the rulemaking process and maintaining a focus on environmental stewardship and safety.

If you have any questions regarding the comments presented in this letter, please do not hesitate to contact me via e-mail at amachado@wspa.org or by phone at (360) 594-1415.

Sincerely,



cc: Jessica Spiegel, WSPA

Response to I-208-1, O-11-1 and O-4-1:

The COFR rule will strengthen the state's already strong position of protecting Washingtonians from the impacts of an oil spill by ensuring our state's largest oil handling facilities and vessels have funds available to pay the costs of oil spill clean-up and damages.

In recent decades, we have seen a decrease in both large and small oil spills from onshore facilities and vessels. This downward trend is due to heightened public awareness of oil spill damage to natural resources as well as advancements in prevention, preparedness, and response capabilities implemented by the state and industry. Nevertheless, spills occur on a periodic basis and they can be very costly and cause considerable damage.

Over the last 30 years, Ecology has adopted many rules and requirements to reduce the likelihood of spills. These changes included requirements for contingency planning for vessels and facilities, implementation of inspection programs, implementation of drill requirements, requirements for oil spill response equipment use and staging, and requirements for containment practices during oil transfers. The initiatives were, and continue to be, aimed at preventing spills and ensuring forward leaning responses to minimize spill impacts. The state has some of the highest oil spill prevention, preparedness, and response standards in the world and continues to work with industry to provide the highest level of assurance possible to protect our state resources and its citizens.

We received the following comment letter that was signed by 597 individuals.

Comment I-210-1: Marcie Keever

Please find attached at petition signed by 600 members and activists from Washington State and Friends of the Earth supporting the financial responsibility rules and supporting strong requirements for vessel and facility owners to have the financial resources on hand to clean up spills and prevent the costs from being passed on to Washingtonians.

Friends of the Earth United States

Attached, please find the signatures of 597 Friends of the Earth supporters:

Re: Approve the proposed Chapter 173-187 WAC Financial Responsibility rule

Dear Washington Department of Ecology,

I am writing to urge you to approve the proposed Chapter 173-187 WAC Financial Responsibility rule.

Oil spills are deadly for aquatic organisms and for local economies that rely on our ocean's resources. They also have devastating public health impacts for coastal communities. That's why

it’s so important the companies responsible for oil spills are prepared to act immediately should the worst happen.

Furthermore, the financial burden of oil spill cleanup should fall on those responsible for the damage, not the Washington taxpayer. Requiring vessel and facility owners to have the

financial resources on hand to clean up spills prevents the costs from being passed on to Washingtonians.

Again, please approve the proposed Chapter 173-187 WAC Financial Responsibility rule. Thank you,

Title	First Name	Last Name	City	State	Zip Code
	Maryam	Khawar			77550
	Cristen	Jaynes	Seattle	WA	981034539
MRS.	Gianina	Graham	Redmond	WA	98922
	Kathyryn	Oliver	Seattle	WA	98199
	Garrett	Kinsley			98027
	Desiree	Nagyfy	Deer Park	WA	990068352
	Robin	Zahler	Snohomish	WA	982905613
	Howard	Donaghy	Port Orchard	WA	983663752
	Marquam	Krantz			98110
Mr.	Marquam	Krantz	Bainbridge Island	WA	98110
	Jayne	Carpenter	Vancouver	WA	986844843
	David	Breckette		WA	98038
	Candice	Cassato	Olympia	WA	98502
	Linda	Curry	Kelso	WA	986265308
	Pat	Layden	Seatac	WA	981883651
	Devin	Smith	Olympia	WA	985069650
Miss	Alessandra	Paolini	Sammamish	WA	980746324
Ms.	Lori	Bellamy	Seattle	WA	981174125
Ms.	Margaret	Mills	Deer Harbor	WA	982430191
	Cornelia	Teed	Bellingham	WA	982257154
	DORI	BAILEY		WA	98325
	Barbara	Tountas	Shoreline	WA	981551531
Ms	Kris	Brown	Renton	WA	980588200
	Patricia	Kingsley		WA	98001
Ms.	Susan	Heywood	Tacoma	WA	984083525
	Hannah	Zizza	Seattle	WA	981174106
	Kari	Darvill-Coate			98021
Mr.	GEORGE	NORRIS	Sequim	WA	983823769
mr	Dan	Schneider	Seattle	WA	981154217
	James	Mulcare	Clarkston	WA	99403
	Ben	Moore	Mountlake Terrace	WA	980435648

	Casshondra	Vermeer			98375
	Richard	Feeney	Port Orchard	WA	983662854
	Danielle	Anderson	Moses Lake	WA	988370254
	Allen	Gates			99205
Ms.	Sarah	Polda	Normandy Park	WA	981984730
	Sandra	Emerson		WA	98045
	Diane	Rose	Kirkland	WA	980335321
	Amber	Kaplan	Spokane	WA	992238171
	Charlotte	Ogden		WA	98075
	Louise	Steenblik	Bellingham	WA	98229-8900
	Steve	Bear	Port Townsend	WA	983688833
	Mary-Margaret	OConnell		WA	98506
	edie	lackland	Seattle	WA	98112
MD	Kjersten	Gmeiner	Seattle	WA	981255019
	Nancy	Shah	Kenmore	WA	980280203
Ms.	Susan	Thiel	Spanaway	WA	983877630
	Heidi	Lehwalder	Mountlake Terrace	WA	98043
	Maria Lourdes	de Vera	Tacoma	WA	98404
	Linda	Lindsay	Langley	WA	982600112
	Gordon	Radovich			98312
	Janet	Fulton	Bellingham	WA	982294428
	Mary	Bibro	Seattle	WA	981074085
	Edward	Kaeufer	Blaine	WA	982309696
Ms.	Dawn	Wojciechowski	Kirkland	WA	980341006
	Kay	S			98503
	Monica	Schuh		Washington	98087
	Matt	Courter			98178
Ms	Jenny Virginia	Moore	Stanwood	WA	98292
Ms	Erin	Braybrook	Arlington	WA	982238172
	Stephanie	Peace		WA	98037
	Dr	Copas	Medina	WA	980390188
	Theresa	Schwacke	Freeland	WA	982498766
	Dr	Copas	Medina	WA	980390188
Ms	Nancy	Peters	Kirkland	WA	98033
Ms.	Pat	Belair	Spokane Valley	WA	990379321
	Laurette	Culbert			98107
	Suzi	Hokonson	Spokane	WA	992084264
	Judy	Bluhm	Auburn	WA	98092
	JANET	WAITE		WA	98087-5930
	clemence	perslin	Vancouver	WA	986861416
	Anne	James		WA	99156

	Melanie	Kenoyer	Vancouver	WA	98660
	Astrid	Held-Rude	Shoreline	WA	981552127
	William	McGunagle			99207
	Thomas	Thomas		WA	98502
	Sylvia	Ford	Lakewood	WA	984984036
	Victoria	Urias	Seattle	WA	981253705
	Teresa	Abel	Clarkston	WA	99403
	Christopher	Wiscavage	Bellingham	WA	982292199
	Lorraine	DeGloria	Seattle	WA	98133
	Andrea	Avni	Vashon	WA	980703019
	Evangelina	Cuevas	Yakima	WA	98909
	Linda	Brown	Sumas	WA	98295
Mr.	Geoffrey	Richards	Poulsbo	WA	983708402
	Tavis	Schmidt	Spokane	WA	992234453
	Sandra	Wilson			98250
	Annette	Fredrickson	Bremerton	WA	983104656
	Russ	Thomas	Kirkland	WA	980334759
Ms.	Barbara	Cardarelli	Redmond	WA	980522632
	Nancy	Hayden	Spokane	WA	992248372
	Anne	Ricker		WA	98501-7405
	Daniela	Roth			87505
	Blaine	Kohl		WA	98290
	Susan	Shouse	Everett	WA	982012546
	Rod	Tharp			98506
	Daniela	Roth		WA	98221
Ms.	Susan	McRae	Olympia	WA	985063382
	Robert	Cuthbertson	Mount Vernon	WA	98274
	Stephanie	Mayes		WA	98374
	teri	tomasek	Everett	WA	982012033
Ms	Calista	Whitney	Spokane	WA	992086789
	Joe	Hickey	Union	WA	985920057
Mrs	Carolyn	Treadway	Lacey	WA	98503
	CHARLES	BELENY	Dayton	WA	993284900
	James	Jordan	Sammamish	WA	980747100
	Jon	Atmore	Seattle	WA	981153211
	Donna	Patrick	Olympia	WA	L985139008
ms	Patricia	PERRON	Seattle	WA	98122-6805
	Barbara	Sussman		WA	98199
	H. Lehman	Holder Jr.	Vancouver	WA	986642411
	todd	gray	Seattle	WA	98126
	Carol	Hill	Mountlake Terrace	WA	980432449

	Peter	Mills		WA	98640
Ms.	Beverly	Gilyeart	Everett	WA	982084603
	Amanda	Klauk	Colbert	WA	990059240
	Lin	Higley	Mead	WA	990219445
	TONY	BRENNA		WA	98365
	mj	sutcliffe	Lacey	WA	985032575
Ms	Anita	Scheunemann	Rochester	WA	98579-8693
	Brandie	Deal	Bothell	WA	980218353
	Mary	Kita	Redmond	WA	98053
	Doreen	Harwood		WA	98021
Ms.	Janet	Wynne	Bellingham	WA	982298976
	Gudy	Terenzio		WA	3610
	Wynann	Brownell		WA	98516
	cheri	hill		WA	98672
	Jimmye	Angell	Walla Walla	WA	993622106
	Julia	McLaughlin	Rochester	WA	985799588
	Kathryn	Kirschner	Bremerton	WA	983129613
	Sandy	Gese	Ione	WA	991390623
	Ellen	Hopkins	Kenmore	WA	98028
	Elaine	Peterson	Ellensburg	WA	989263244
	Hayley	Mills-Lott	Woodland	WA	986742952
	Tanara	Saarinen	Gig Harbor	WA	983351802
	Greg	Gurnett		WA	99324
	Eric	Fellows	Tacoma	WA	984067943
Ms	Amy	Walter	Tonasket	WA	988551051
	Scott	Bishop	Olympia	WA	985024734
	Lyle	Wirtanen	Walla Walla	WA	993629232
	Hal	Enerson	Port Angeles	WA	983620255
	Cecile	Ervin	Walla Walla	WA	99362
	Garrison	Nakayama	Kent	WA	98032
Mr.	Bruce	Gundersen	Poulsbo	WA	983709210
	Nancy	Salovich			98503
	Nora	Vralsted-Thomas	Medical Lake	WA	990228820
	Michael	Mahaffa	Brush Prairie	WA	986068103
	Brenda	Lewis	Chelan	WA	988168609
	Patricia	Wilson	Belfair	WA	98528
	Suzanne	Nevins		WA	92086
	Curt	Given	Everett	WA	982014800
Ms	Jill	Ungar	Ellensburg	WA	989262316
Hospital A	STEVEN	MONAHAN	Kenmore	WA	980284754

	Lana	Hoover	Seattle	WA	981063151
	Elizabeth	Walton	Sammamish	WA	98074
	John	Mcgill	Sequim	WA	98382
	Renee	Gravender			99006
	Shawna	Stonum		WA	98445-1546
Ms	Sheryl	Sparling	Lynden	WA	982649121
	Norman	Moldestad	Covington	WA	980420041
	Anne-Marie	Read	Shelton	WA	985849418
	Molly	Sutor	Spokane	WA	992248211
	Vikki	Voss			98584
	susan	kuhn	Mountlake Terrace	WA	98043
Ms	Lynne	Roberson	Port Angeles	WA	983639776
Mr	.Michael	Hedt	Burley	WA	98367
	Jeff	Freels		WA	98503-6927
	Carol	Stevens	Spanaway	WA	983877845
	Karla	Bouvette	Vancouver	WA	986601289
	Julia	McLaughlin	Rochester	WA	985799588
	Jane	Leavitt	Seattle	WA	98144
Mr	Steve	Green	Burlington	WA	98233
	Kim	James	Bellingham	WA	982269786
	Janice	Denk	Snohomish	WA	982906164
	Craig	Britton	Port Townsend	WA	983680583
	Denny	Richard	Ocean Shores	WA	985699641
Mrs.	Carolyn	Tamler	Freeland	WA	982499541
	Debbie	Taylor-adams		WA	98686
	Kim	Groff-Harrington	Bothell	WA	980127722
Mr	Phil	Pennock	Seattle	WA	981174418
	Joanne	Folkins	Seattle	WA	98112
	Norm	Conrad	Mount Vernon	WA	98274
	Eleanor	Dowson	Mill Creek	WA	98012-4817
	S	Eckersley		WA	98281
	Shelley	Eckersley		WA	98281
	Selim	Uzuner	Carnation	WA	980145800
	Eleanor	Israel	Rainier	WA	985769404
	Jerry	Okubo		WA	98155
Mrs.	Rita	Hogan	Olympia	WA	985040001
	Lisa	Tretheway	Redmond	WA	980522209
	Melinda	Mehring	Lakewood	WA	984983326
	Darcy	Johnson		WA	98934
	Carole	H			98368

	William	Osmer			98029
Mr	Phil and Lynn	Ritter	Sammamish	WA	980744215
	Shena	Warhola	Lake Stevens	WA	982589795
	Kasey	McGill	Bainbridge Island	WA	98110
Ms	Charlene	Davies	Spokane	WA	99218
Ms.	Paula	Bennett	Seattle	WA	981254139
	Eric	Woodward	Battle Ground	WA	986044236
	Share	Jolliffe		WA	98110
	Louetta	Jensen	Puyallup	WA	98374
Ms	Stacey	Cooper	Shoreline	WA	981773001
	Gail	Tedford		WA	98312
	Jack	Cooley		WA	V8B0S2
	James	Adams	Olympia	WA	985023013
	Mary	Jeffrey	Woodinville	WA	980720763
	Bronwen	Evans	Seattle	WA	981042211
	Ursula	Mass	La Conner	WA	98257
	William	Reinhardt	Seattle	WA	98178
	Amanda	Honrud	Seattle	WA	981152526
	Cherie	Altevers			98607
	Blaine	Peet	Bremerton	WA	983106618
	Marcia	Gowing			98103
	Kelly	Keefer	University Place	WA	984672229
	Millie	Magner	Seattle	WA	981991441
	j	j	Seattle	WA	981023448
	Darcy	Johnson	Kittitas	WA	989340774
Mr.	Donald	Agnelli	Lake Forest Park	WA	981551824
	Kathryn	Godwin		WA	98092
Mrs.	Claire	Alkire	Sequim	WA	983828164
	PATRICIA	DORSEY		WA	98277
Ms	Barbara	Townsend	Lake Stevens	WA	982586401
	Y	Z	University Place	WA	984674820
	Matlene	Seeake		WA	98110
Mrs	Devon	Kerbow	Covington	WA	980425061
	Antony	Lyttle		WA	73800
	Kristina	Giles	Seattle	WA	98103-6661
	Liz	Combs	Puyallup	WA	983731469
	Catherine	Madole	Walla Walla	WA	993621719
	Carole	Henry			98380
	Mont	Livermore	Clarkston	WA	994032629
	Elaine	Green	Bellingham	WA	982297954
ms.	Stephani	Hemness	Olympia	WA	985121818
	Eufemia	Scarfone	Seattle	WA	981774223

Ms	Cheryl	Dailey	Olympia	WA	985024222
Professor	Ellen	Boyle	Seattle	WA	981083029
	Helen M	Latterell	Shoreline	WA	98155-1446
	Debbie	Spear	Monroe	WA	982727768
	Sylvia M	Smith	Olympia	WA	985169132
	Ron	Scheyer	Seattle	WA	981224050
	Lisa	Crum-Freund	Port Townsend	WA	983689584
	Amy	Kiba	Vancouver	WA	986851339
	Allen	Franzen	Wenatchee	WA	988011276
	Barry	Parker	Vancouver	WA	986641984
	David	Winkel	Clinton	WA	982369686
	Lisa	Crum-Freund	Port Townsend	WA	983689584
	Susan	Loomis	Renton	WA	980587834
	D	Hubenthal	Spokane	WA	992057334
	Gail	Atkins	Raymond	WA	985779492
Mrs.	Barbara	Glenewinkel	Auburn	WA	980018731
	Carrie	Pilger	Lynnwood	WA	980876509
	Robert	Ulrich		WA	98027
	Cindy	Gailey			98168
	Kathryn	DeWees	Spokane	WA	992234939
Mr.	C.	DeMaris	Olympia	WA	985072344
	Caryn	Carlin		WA	98116
Mr	Alun	Vick	Renton	WA	980574900
	Jean	Stolle	Vancouver	WA	986865750
	Florence	Harty	White Salmon	WA	986728901
	Barbara	Wallesz		WA	98229
Ms	Fay	Payton	College Place	WA	993241842
	MSG ret USA Te	Hansen			98584
	Karen	Fortier	Monroe	WA	98272
	James	Gunderson	Gig Harbor	WA	983357610
	Deborah	DeRosa		WA	98201
ms	suzanne	wittmann	Seattle	WA	98116
	Diane	Sullivan	Oak Harbor	WA	98277
	Ruth	King	Lacey	WA	985033025
	Angela	Stratton		WA	99337
	Brian	Cox	Pullman	WA	99163
	Gary	Albright	Snohomish	WA	982967857
	Judy	Cundy		WA	99208
	George	Shrewsbury	Deming	WA	982449572
	Diane	Lang	Seattle	WA	98125
Mrs	Rebecca	Bartlett	Anacortes	WA	982218339

Mr.	K.	Eggers	Addy	WA	991019712
	Kathryn	Lambros	Seattle	WA	981174444
	Lauren	Tozzi	Seattle	WA	981036941
ms	Pam	Klitz	Federal Way	WA	980035269
	Dale	Greer	Seattle	WA	981072504
Mr	John	Nelson	Graham	WA	983387754
	Noah	Ehler	Carnation	WA	98014
	Jonathan	Hartman	Camas	WA	986072534
	Deborah	Wells	Ocean Park	WA	98640
	Andrea	Chin	Redmond	WA	980521548
ms	Sandra	Russell	Pullman	WA	991632233
	Nance	Nicholls	Davenport	WA	99122
	Lydia	Sherwood		WA	98229
	George	Beasley	Newport	WA	991569344
	Janet	Swihart	Long Beach	WA	986311506
	Jennifer	Corrigan		WA	89143
	Glen	Anderson	Lacey	WA	98503
	Alice	Hassel	Camano Island	WA	982825518
	Pr	R	Sequim	WA	983824311
	Gerald	Hughes		WA	98231
	Sherry	Pennington	Kent	WA	98032
	Barbara	DelGiudice		WA	98550
	Barbara	Paulson	Pullman	WA	991633525
	Jackie	Cole	Woodinville	WA	980726501
	Robert	Walling	Seattle	WA	981337167
	Sally	Carter-DuBois	Olympia	WA	985028829
Mr.	Erik	LaRue	Burlington	WA	982339670
	Lynda	Dawson	Mukilteo	WA	982753434
	Diane	Britton			98106
	Beverly	Wakem			98466
	Mona	Lee		WA	98118
Mr	William	Shain	Kirkland	WA	980335503
	Dagmar	Fabian	Bellingham	WA	982251387
	J.	Eggers	Addy	WA	991019712
	Art	Bogie		WA	98221
	Steve	Hersch		WA	98223
	Janis	Swalwell	Freeland	WA	982490778
Mr.	Robert	Brown	Fircrest	WA	984666640
	Gregory	Penchoen	Roy	WA	985809731
	Darbi	Macy		WA	98008
	William	Tyrrell	Fircrest	WA	984666028
	Mark	Hughes	Shoreline	WA	981335691

Ms.	Evelyn	Lemoine	Seattle	WA	981224627
	Carole	Hansen			98275-2011
Ms.	Taen	Scherer	Seattle	WA	981184115
Ms.	Hilke	Faber	Seattle	WA	981081510
Mrs	Jody	Can	Vancouver	WA	98682
	Debbie	Badois	Bremerton	WA	983112562
	pete	mandeville	Spokane	WA	99208
	Tom	Harper	Port Angeles	WA	983622615
Mrs.	Toni	Penton	Snohomish	WA	982964924
	Wanda	McGill	Sequim	WA	98382
	Yvette	Goot	Colville	WA	991145031
	Susanne	Murray		WA	99163
Ms.	Maria	Magana	Burlington	WA	982331469
	Steven	Uyenishi	Seattle	WA	981156009
	pate	MACDONALD	Monroe	WA	982728638
	David	Todnem	Port Angeles	WA	98362
Mrs.	Catherine	Harper	Port Angeles	WA	983622615
	Karen	Jones	Seattle	WA	981173691
	Jaime	Vaughn	Rainier	WA	985769745
	Judy	Gray	Seattle	WA	981774219
	Heather	Hansen	Olympia	WA	985163026
	Karol	Long	Spokane Valley	WA	99216
Dr	Rose	Christopherson	Des Moines	WA	981987352
Ms	Donna	Musgrove	Lake Tapps	WA	98391
	Claudia	Clement	Olalla	WA	983594516
	Alex	Nakamura	Bellevue	WA	980053954
	Carolyn	Fort	Southworth	WA	983860061
	Joanna	Buehler			98027
	Carol	Ellis			99203
	Rich	Lague	Seattle	WA	981173014
	Rebecca	Tucker	Vancouver	WA	986853571
	Gina	Abernathy	Sammamish	WA	980757441
	Lynn	Offutt			98208
Mr	William	Looney	Silverdale	WA	983833845
	Alice	Nicholson	Seattle	WA	981054831
	Michelle	Pavcovich			98125
	Charlotte	Cherzan		WA	98604
	Genine	Edwards		WA	98902-1394
Mrs	Katherine	Wiese	Ridgefield	WA	986421105
	Dennis	Underwood	Tacoma	WA	984044914
	Joseph	Huss	Vancouver	WA	986621625
	Alice	Flegel	Rochester	WA	985798401

	Kathleen	Lee	Lacey	WA	98503
	Laura	Aymond	Centralia	WA	985314232
	Janet	Bachelder	Bremerton	WA	983124506
	Tamar	Lowell	Port Townsend	WA	98368
	Ann	Becherer		WA	98004
	Shannon	Markley	Shoreline	WA	981772723
	Theodore	King	Seattle	WA	981212214
Ms.	Sue	Nickerson	Battle Ground	WA	986044824
	Darla	Austerman		WA	99026
	Gillian	Chappell	Seattle	WA	98106
	LUCAS	WITT	Battle Ground	WA	986048347
Mr.	Keith	Robillard	Vancouver	WA	986825799
Ms.	Lori	Stefano	Yelm	WA	98597
Ms	Rebecca	Stocker	Tacoma	WA	984052210
	MaryJo	Wilkins		WA	99337
	Margaret	Anderson	Kirkland	WA	29205
	C. David	Cook	Seattle	WA	981081505
MRS	Sonia	Cobo	Redmond	WA	98052
Dr	Tracy	Ouellette	Bow	WA	982329246
	Rick	Naumoff		WA	83127
Ms.	Jo	Harvey	Pacific	WA	980471222
	Rebecca	Rose	Seattle	WA	981550177
Dr.	Linda	Andersson	Medina	WA	98039
Ms.	Marie	Colvin	Kennewick	WA	993372560
	Roberta R	Czarnecki	Everett	WA	982048614
	Meagan	Evans		WA	98290
	retro	jet		WA	98558
Mr.	Randall	Daugherty	Aberdeen	WA	985201700
	Valerie	Lovejoy	Bellingham	WA	982253659
	Mark	MacDonald	Seattle	WA	981461113
Ms.	Julie	Holtzman	Snohomish	WA	982902053
	Richard	Schoonover		WA	98406
	Linda	Ellsworth	Eastsound	WA	98245
	Christina	A Davis	Spanaway	WA	983875775
	Craig	Babcock		WA	98405
	Brian	Wilson	Seattle	WA	981153055
	Barbara	Rosenkotter	Deer Harbor	WA	98243
	DERRICK	HICKSON	Spokane	WA	992086933
	Jane	Frazer	Tacoma	WA	984041204
	John	Chadwick	Bellingham	WA	98226
	Mike	Bottemiller	Seattle	WA	981181721
	Ronald	Mazza		WA	98273

Mr.	Daniel	Henling	Seattle	WA	981072994
Mrs.	Kenlee	Ducoing	Seattle	WA	981162531
	Robert	Blumenthal	Seattle	WA	981157221
Mrs	Annette	Skelley	Port Angeles	WA	983629574
	Joel	Flank	Seattle	WA	981072926
	Julie	Moore	Bremerton	WA	983119471
Mr.	Delorse	Lovelady	Kenmore	WA	980287945
	Glenn	Maneman		WA	98208
	Isabel	Campbell	Gig Harbor	WA	983358812
	Kathryn	Jacobs	Chelan	WA	988169501
Ms.	Lynn	Stiglich	Vancouver	WA	98686
	Ernetta	Skerlec	Lakewood	WA	984992345
	Sandra	Aseltine	Bremerton	WA	983102032
	BAYARD	HILLWAY		WA	98382
	Susan	Farrar	Sammamish	WA	98075
Mrs	June	MacArthur	Port Orchard	WA	983663830
Ms.	Lisa	Winters	Black Diamond	WA	98010
	j	h	Orting	WA	98363
	Lorraine	Hartmann	Seattle	WA	981256943
	Mark	Ogloff	Sumas	WA	982954000
	Kathryn	Gingerich			98034
	Alena	Schoonmaker	Mead	WA	990219067
Ms.	Lorelette	Knowles	Everett	WA	982011560
	Ryan	Reid			98506-5254
	Charlene	Lauzon			98036
	Deborah	Kaye	Blaine	WA	982309005
	Michelle	Schweitzer	Seattle	WA	981081538
Ms.	Piper	Lee	Tacoma	WA	984222306
	Maureen	Lutz	Bellevue	WA	980058016
	Cole	Grabow	Seattle	WA	981092304
	Linda	Chu	Seattle	WA	98103
	Andrea	Speed	Tacoma	WA	984452443
	Linda	Brown	Sumas	WA	98295
	Maxine	Clark		WA	98391
	John	Gabriel	Lacey	WA	98503
	Spencer	Hoyt	Battle Ground	WA	986044047
	Sandra	Bergman			98371
	John	Simanton	Spokane	WA	992043519
	Dave	Schiesl	Tonasket	WA	988559454
	Sally	Rodgers	Port Townsend	WA	98368
Ms	Toni	Meehan	Brinnon	WA	983209758
	Nancy	Livingston	Bellingham	WA	982297630

	Dave	Roehm	Ocean Park	WA	986403455
	Joe	Nichols	Snohomish	WA	982909315
	Benjames	Derrick	Spokane	WA	992055032
	K	K		WA	98103
	Peter	Reagel	Burien	WA	981481286
	Dave	Fairburn		WA	98837
	Sara	Kelso	Woodinville	WA	980722546
	Miho	Reed			98075
Mrs	Susan	Harmon	Bellingham	WA	982294415
Mrs	Alycia	Staats	Seattle	WA	981156004
	Keiko	Yanagihara	Mercer Island	WA	980403361
	robert	murano	Vashon	WA	980704425
	Katherine	Mattes			98074
	Kristin	Peterson			98031
	priscilla	martinez	Snoqualmie	WA	98065
	Perry	Wong	Kent	WA	980314139
	James	Rutherford	Spokane Valley	WA	992121530
	Rebecca	Nimmons	Bellevue	WA	98006
	James	French	Seattle	WA	981033345
Ms.	Holly	Gadbaw	Olympia	WA	985012228
	Emily	Van Alyne	West Richland	WA	993537405
	Sam	MacKenzie	Vancouver	WA	986613502
	Carole	Heine			98365
	Sylvia	White			98368
	Bob	Gillespie	Mount Vernon	WA	982735831
Mrs	Iris	Sin	Issaquah	WA	980275667
	Kiel	Villeneuve			98597
	Chris	Guillory	Port Angeles	WA	983622803
Mrs	Cheri	Pysson	Sequim	WA	983823433
	Lisa	Bedker-Madsen	Arlington	WA	982239137
	Sybil	Kohl	Seattle	WA	981158112
	John	Frasca	Port Townsend	WA	98368
	Steve	Shapiro	Seattle	WA	981445517
	Alyace	Fritch	Seattle	WA	981257624
	Helen	Gilchrist	Olympia	WA	985122420
Ms.	Jennifer	Nelson	Seattle	WA	981338027
	elyette	weinstein	Olympia	WA	98501
	Edwyna	Spiegel	Seattle	WA	981175511
	Ben	Tanler	Seattle	WA	98103
	Greg	Espe	Seattle	WA	981156908
	Martha	Rios	Lynnwood	WA	98036
	Linda	Miller	Bow	WA	98232

Mr.	Gary	Kelly	Bothell	WA	98011-6707
Mr	Allen	Elliott	La Conner	WA	982570743
	Kathleen	Bradley		WA	98201
	Patricia	Warming			98109
	John	Thompson	Tulalip	WA	982717300
	Sarah	Dallosto	Tukwila	WA	981888031
	Kara	Harms	Bothell	WA	980129635
	Chris	Nolasco	Lynnwood	WA	980872401
Dr.	Jeanie	Bein	Bellingham	WA	982292784
Mrs	Nancy	McMahon	Olympia	WA	98501
	Caroline	Das Neves		Washington	0
	Diana	Fries	Othello	WA	993448613
	Maria	Kjaerulff	Gig Harbor	WA	983353685
	Dennis	Ledden	Sequim	WA	983829267
	Victoria	MacDuff		WA	99208
Mr	John	Gieser	Seattle	WA	981174420
	Jo	Turpin	Vancouver	WA	84123
	Cathy	Garry	Centralia	WA	985318906
	Pamela	Bendix		WA	98110
	Robert	Bortolin	Kirkland	WA	98034
	r	wood		WA	98105
	Kevin	Milam	Seattle	WA	981172901
	Mrs. Susan & Mr	Risser	Friday Harbor	WA	982508800
Ms	Marilyn	Heuser	Snohomish	WA	98290
	SYLVIA	WIEDEMANN	Seattle	WA	98108
	Angela	Bellacosa	Seattle	WA	98105
	Elizabeth	Johnson	Stevenson	WA	986480707
	Ruth	Hooper	Seattle	WA	981183917
Mrs	Margie	Jensen	Arlington	WA	982238319
Ms.	Angie	Dixon	Clinton	WA	98236
	Kristin	Stewart	Olympia	WA	98516
	Carey	Durgin	Seattle	WA	981062109
mrs.	micheline	gibbons	Bothell	WA	980113638
	Thomas	De Klyen	Silver Creek	WA	985855002
	Emily	Raymond	Seattle	WA	981037654
	Randy	Guthrie	Snohomish	WA	982905815
	Marian	Frobe	Spokane	WA	992055214
	Phillip	Leija	Spokane Valley	WA	99216
	Deborah	Wolf	Seattle	WA	981263295
Ms.	Marianne	Roberts	Everett	WA	982011322
Ms	Denise Marie	Echelbarger	Camano Island	WA	98282

	Wendy	Van De Sompele	Vashon	WA	980704126
	Aliya	Walmsley	Shoreline	WA	981553524
Ms.	Nancy	Johnson	Port Orchard	WA	983665316
	Cathy	Brandt	Issaquah	WA	98027
Miss	Lisa	Nemeth	Spokane	WA	992057309
	Michael	coffeen	Nordland	WA	983589671
	Laurie	Gemza	Kirkland	WA	98033
	Christopher	East	Tacoma	WA	984065913
	Lindy	Von Dohlen	Pasco	WA	99301
Mrs.	Margaret	Woll	Bellingham	WA	982255414
	CHARLENE	DONOVAN	Vancouver	WA	986843670
	Cindy	Rose		WA	98125
	Pheobe	Garcia		WA	98370
	Derek	Benedict	Lynnwood	WA	980368606
	Jonathan	Seil			98584
	Susan	Sargis	Friday Harbor	WA	982508943
	Andrea	Vos	Everett	WA	982086011
	Tika	Bordelon	Seattle	WA	981011965
	Lawrence	Magliola	Sequim	WA	98382
Mr	James	Reeder	Edmonds	WA	980269301
Mr.	Dan	Morgan	Lynnwood	WA	98036
	Theresa	Skager	Lakewood	WA	984992626
	Karen	Stoos	Bow	WA	982329591
	Liubov	Roberson	Everett	WA	982033830
	Amanda	Dickinson	Yakima	WA	989025264
	Ken	Zontek	Yakima	WA	98902
	David	Godwin	Auburn	WA	98092
	Connie	Corrick			98106
	Carrie	Heron	Seattle	WA	981183137
	Robert	Young	Cle Elum	WA	989221152
	Barbara	Sim	Seattle	WA	981054953
	Shaun	Sparkman	Sequim	WA	983828017
	Coni	Childs	University Place	WA	98466
Ms.	Deidre	Puffer	Tacoma	WA	984457706
	kristina	peterson	Mill Creek	WA	980122078
	Alice	Gray	Port Orchard	WA	983660797
	Beverly	Johnston		WA	98373
	Rikiann	Claypoole	Vancouver	WA	986601130
	John	Rose		WA	98125
	Lori	Blackshere	Camas	WA	986077316
	Tien	Vu	Renton	WA	980597071

mr	Philip	Chanen	Seattle	WA	98144-5632
	Lanie	Cox	Spokane	WA	992248242
	Myrna	Lipman	Shoreline	WA	981335671
Dr. (Ms.)	Virgene	Link-New	Anacortes	WA	982211422
	Mary	Nelson	Spokane Valley	WA	990378853
	Sarah	Cutler	Blaine	WA	982309770
	Cece	P	Seattle	WA	981184118
	G	Thompson		WA	98942
	Clementine	Mulvihill	Seattle	WA	981182730
	joanne	klein	Seattle	WA	981186111
	Margo	McGinley		WA	98203
	Sarah	Jordan	Bremerton	WA	98310
	Judy	Masbaum	North Bend	WA	980458727
	Crystal	Schaffer			98503-7136
Mr.	Daniel	Sandvig	Monroe	WA	98272
Mr.	Bruce	White	Kirkland	WA	980345845
	Shelly	Vallem	Port Angeles	WA	983624611
	Susan	Froeschner	Seattle	WA	981034320
	Diane	Weinberger	Greenbank	WA	982539751
	Frances	Mack	Bothell	WA	98021
	Kathleen	Wheeler		WA	99006
	Louise	Batten	Olympia	WA	98502
	Andrew and Ca	Magallon	Bremerton	WA	98311
	Bobette	Plendl	Everett	WA	982033239
	Stephanie	Edwards	Lake Forest Park	WA	981555435
	Sierra	Sanchez	Seattle	WA	981253934
	Heather	Murawski	Renton	WA	980580610
Mr.	Phillip	Leija	Spokane Valley	WA	99216
Mr	John	Kolman	Federal Way	WA	98023

Response to comment:

See response to comment I-1-1.

We received the following summarized comment from 458 individuals from I-224-1.

I am commenting on the proposed new rule Chapter 173-187 WAC - Financial Responsibility and the existing Chapter 317-50 WAC - Financial Responsibility for Small Tank Barges and Oil Spill Response Barges. Here are three recommendations:

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Response to I-224-1:

See response to comment I-6-1.

List of commenters:

Adams, Andrea
Adams, Gordon
Adams, James
Aiken, Randi
Alder, John
Allen, Kathleen
Allen, Noel
Alonso, Joyce
Apter, Ruth
Avni, Andrea
B, Shary
Baird, Peter
Baldwin, Rex
Barrie, Donald
Bartelmes, Farley
Barton, Terrence
Bates, James
Beck, Kim
Benedict, Derek
Bennett, Paula
Bergman. Sandra
Berner, Jeffry
Bhakti, Sara
Biale, Cheryl
Baldwin, Rex
Barrie, Donald
Bartelmes, Farley
Barton, Terrence
Bates, James
Beck, Kim
Benedict, Derek
Bennett, Paula
Bergman. Sandra
Berner, Jeffry
Bhakti, Sara
Biale, Cheryl
Braile, Steve
Brock, Barbara
Brouwer, Lucinda
Brown, Paul
Brown, Robert
Brown, S.F.
Brownlee, Morgan
Brumwell, Keith
Brunton, Beth
Bruton, Peggy
Bubelis, Wally
Buch, Anthony
Bullis, Amanda
Burger, Carole
Burke, Sally
Burr, Eric
Byram, Barbara
Byrnes, Coleman
Capen, Peter
Carlson, Craig
Carman, Jean
Carol, Porter
Carroll, Linda
Caya, Jamie
Cecchini, Kimberly
Christ, M'Lou
Chu, J
Ciske, Sandra
Clark, Aaron
Clark, Roger
Cody, Heidi
Coffey, Patricia
Cohan, Linda
Cole, Jackie
Conn, Patrick
Conrad, Norm
Cordero, David
Correia, Eileen
Covich, Sandy
Cox, Lanie
Craighead, Tom
Crane, Kimberly
Cronin, Jim
Cruz, Deborah
Cunningham, Ian
Cunningham, Lynda
Currier, Lynette
Curry, Linda
Czarnecki, Roberta
Davis, Christopher
DavisVirginia

de la Rosa, Marco
De, Jorge
Deal, Brandie
DeGrandchamp, Jan
DeRooy, Constance
Devlin, Felicity
Dickerson, Lon
Dickerson, Mary
Dickinson, Amanda
Doherty, Mike
Donnelly, Serena
Dowson, Eleanor
DuBois, Barbara
Durr, Rebecca
Dyck, Trevor
Eckhart, Jill
Edain, Marianne
Edmison, Sean
Edwards, Dixie
Edwards, Marva
Efron, Deborah
Ehler, Noah
Eldredge, Lynnette
Elledge, Mike
Ellis, E
Erbs, Lori
Ervin, Keith
Escamilla, Richard
Espe, Greg
Evans, Bronwen
Fabian, Dagmar
Fails, Annette
Fairchild, Jennifer
Fairow, Michelle
Feit, James
Fellows, Paul
Fels, Peter
Ferrari, Paul
Ferraris, Alfred
Fields, Marjorie
Finkelstein, Laura
Finn, Charlene
Flank, Joel
Flegel, Alice
Fleming, Mark
Foster, Barbara
Frank, Rebecca
Franks, Larry
Franz, Natalie
Frazer, Jane
Frazier, Jeannine
Friddle, Diane
Friedrick, Stephen
Gabrielson, Jo
Gaertner-Johnston, Lynn
Garcia, Cezanne
Garcia, Mariana
Gerecke, Harry
Gilmore, Thomas
Gleim, Nancy
Gogic, Laurie
Golde, Marcy
Golic, Kathy
Goodwin, Greg
Gordon, Jan
Graham, Gianina
Graham, Lynn
Graham, Margaret
Grajczyk, Joyce
Gregory, Barbara
Grindstaff, David
Grout, Mary
Grout, Richard
Grout, Scott
Grumm, Stephen
Guard, Mary
Guros, John
Gwinn, Anita
Gylland, Kathleen
Gyncild, Brie
H, Carole
Habib, David
Hadley, Janis
Hagen-Lukens, Deborah
Hahn, Jonny
Hall, Linda
Hampel, Susan
Harris, Patricia
Harris, Paul
Harrold, Terrence
Hartmann, Lorraine
Harvey, Jo
Hatfield, Phyllis
Hawkins, Chris
Hayden, Nancy
Heath, Elizabeth
Heavyrunner, Mia
Heller, Margie
Henling, Daniel
Henry, Marilee
Heymann, Peter
Hill, Jennifer
Hill, Michael
Holtzman, Julie
Howard, Amy
Hoyt, Spencer
Huang, Shirley
Huddlestone, Laura
Hughes, Laurel
Hurd, Janet
Hurst, Breena
Hurst, Sally
Hutchinson, Barry
Innes, Gwen
Jackson, Sego
Jacky, S.
Jacobs, Kathryn
Jennings, Joseph
Jensen, Molly
Johansen, Penelope
Johnson, Cherry
Johnson, Elizabeth
Johnson, Nancy
Johnson, Richard
Jones-Bamman, Leigh
Joy, Mark

Justis, William
Kaeufer, Edward
Karas, Lisa
Kaufman, Ronald
Kellems, Liisa
Keller, Jennifer
Keller, Sophia
Kelly, JoAnne
Kelly, Odette
Kendall, Elaine
Kenny, Patricia
Kenny, Robert
King, Ruth
Kissack, Beth
Kleinbergs, Inara
Knapp, Kenzie
Knowles, Lorelette
Krampe, Claude
Krantz, Marquam
Krenn, Caitlin
Krenn, Caitlin
Krohner, Mary
Lachance, Cynthia
Lague, Rich
Lambert, John
Lambros, Kathryn
Langgin, Diane
Larson, R
LaRue, Erik
Lasuk, Tanya
Lauzon, Charlene
Lawson, Tim
Ledden, Dennis
Leigh, Steve
Lemberger, Aviva
Leverich, Jenna
Link-New, Virgene
Lisovsky, Jessica
Liu, Hannah
Loehlein, Kenneth
Loomis, Gregry
Loomis, Susan
Lowe, Cheryl
Loyland, Susan
Lunceford, Kate
Lund, Marion
Lundquist, John
Lyman, Mike
M, Margaret
MacLeod, Dianna
MacRea, Carol
Mahder, Debbie
Maki, Linda
Maris, Celeste
Markley, Shannon
Marr, Shenandoah
Martinez, Priscilla
Mcclintock, Gloria
McClure, Leslie
McDermott, Janet
McGunagle, William
McLaughlin, Janice
McLaughlin, Julia
McNiel, Betty
Mehalchin, Martin
Merrill, John
Merz, Dennis
Meston, Kristen
Miller, Bonnie
Millner, Marjorie
Mills, Dayna
Mincin, Ken
Minick, Jim
Minugh, Julia
Misek, Jolie
Mohr, Jay
Moldoye, Michael
Moore, Rosemary
Morgan, Lesley
Mower, Amy
MPH, Breck
Muir, Guila
Mulcare, James
Murawski, Heather
Musgrave, Lee
N, Mary
Nagyfy, Desiree
Nakamura, Alex
Neary, Sally
Nelson, James
Nelson, Katherine
Niblack, Natalie
Nichols, James
Noel, Lynn
Norvell, Chelsea
Nuccio, Theresa
Obrien, William
Oliveira, Isabela
Olson, Carl
Ostrander, Lucy
O'Sullivan, Brett
Padelford, Grace
Palmer, Anlee
Parhar, Pawiter
Parker, Deborah
Parker, I've
Parker, Paul
Parks, Carrie
Parsley, Adina
Pauley, Jean
Peacey, Mary
Peltier, Jamie
Penchoen, Gregory
Pennock, Phil
Peterman, Susan
Pilger, Carrie
Potts, Paul
Pratt, Debbi
Prevendar, Jill
Proa, Mark
Pulliam, Chelsea
Pullin, Zachary
Pynchon, Susan
R, P
Rader, Patti
Rall, Ben

Ranz, Gary
Ranz, Lauren
Rasmussen, Nancy
Redman-Smith, JoAnna
Reeves, Mary
Reis, Elizabeth
Renner, Jeff
Riggs, Elizabeth
Ring, Susan
Riordan, Janet
Robinson, D
Roda, Anne
Roehm, Dave
Rogers, Daniel
Rojo, Carlos
Romberg, Harry
Ross, Eric
Rothenberg, Florie
Rousu, Dwight
Rowland, Danielle
Rudisill, Amanda
Rumiantseva, Elena
Salcedo, Corinne
Saunders, Michael
Schaffer, Crystal
Schanfald, Darlene
Schneider, Dan
Schuessler, Bob
Schwartz, Phebe
Schwede, Bette
Scribner, Denee
Senseney, John
Shank, Meredith
Shapiro, Steve
Shaw, Vicki
Shilling, Bruce
Shimeall, Nancy
Shomer, Forest
Short, Naomi
Shurgot, Michael
Silver, Ilene
Simanton, John
Sines, Charlotte
Siptroth, Michael
Skelton, Laura
Smith, Analeigh
Smith, Carol
Sneiderwine, William
Snell, Ronald
Sollenberger, Sharon
Somm, Erika
Soperanes, Wren
Spear, Vana
Species, Scott
Spencer, Arlene
Starbuck, Judith
Starzman, Robin
Stefano, Lori
Stevens, Carol
Stiffler, Tonya
Strang, Arnold
Struck, Fred
Swan, Alice
Tauson, Chris
Taylor, Polly
Teed, Cornelia
Thomas, Kat
Thomas, Terry
Thomas, Vicki
Thompson, John
Thorn, Debbie
Tjersland, Tory
Tokareva, Kate
Tonkovich, Jerry
Ungar, Arthur
Urias, Victoria
Uyenishi, Steven
Valentine, Jennifer
Van, Emily
Vandenberg, Nancy
Verrill, Karen
Vining, Jennifer
Voorhees, Virginia
Vossler, Susan
Vralsted-Thomas, Nora
Wade, Bruce
Wade, Valerie
Wale, Liisa
Walling, Robert
Watson, Jeffrey
We, Barbara
Weick, Lynette
Weinstein, Elyette
Weir, Kristi
Weis, Karen
Wend, Daniel
Wesley, James
Westberg, Philip
Westerlund, Trina
Wheeler, Kathleen
White, Nancy
Williams, Don
Williams, Steve
Willingham, Judith
Willoughby, Emily
Wilson, Sharon
Wineman, Marian
Wingard, Lucinda
Wittman, Sidonie
Woll, Margaret
Wolters, Curt
Wong, Christina
Wood, Angie
Woodworth, J.
Worley, Don
Young, Loewyn
Zettel, Stephen
Zirinsky, Kenneth
Zolotareva, Tatiana

We received the following summarized comments from 160 individuals.

Thank you for considering input from concerned members of the public on the proposed draft Chapter 173-187 WAC - Financial Responsibility. I urge you to address the following issues in the final rule:

1. The $300 million maximum financial responsibility requirement for facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion.

2. Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. This rulemaking is legally inadequate because it did not meet the state mandate that required Ecology to consider the cost of cleaning up the spilled oil and the damages that could result from the spill. According to Ecology, a large spill could cost the state $10.8 billion and 165,000 jobs. The draft rule exclusively addresses the commercial availability and affordability of financial responsibility, allowing oil industry profits to supersede the financial responsibility requirements needed to address the costs and damages from an oil spill.

3. Canadas Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington States northern refineries, should have a per barrel fee that is based on the higher oil spill response and damage costs for spills of tar sands products. The per barrel cost for the Trans Mountain Pipeline should be increased to $60,153 per barrel.

Response to comments:

See response to comment I-6-1.

List of commenters:

Commenter Name	Affiliaton	Comment Number
Adam, Lisa	Individual	I-135-1
Albert, Susan	Individual	I-226-1
Allison, Joanne	Individual	I-186-1
Armon, Caroline	Individual	I-57-1
Baker, Norman	Individual	I-201-1
Bakke, Simon	Individual	I-67-1
Banks, Wesley	Individual	I-113-1
Barats, Betty	Individual	I-80-1
Bartlett, Faye	Individual	I-232-1
Beck, Kathryn	Individual	I-116-1
Becke, Amelia	Individual	I-152-1
Bernheim, Stephen	Individual	I-52-1
Breskin, Flip	Individual	I-93-1
Brinson, Grant	Individual	I-172-1

Brinson, Leslie	Individual	I-94-1
Cahill, Tom	Individual	I-214-1
Campbell, Cynthia	Individual	I-204-1
Canright, Mark	Individual	I-194-1
Carlson, Darcy	Individual	I-168-1
Chadwell-Gatz, Courtenay	Individual	I-106-1
Charlton, Kirsti	Individual	I-141-1
Chen, Kathleen	Individual	I-77-1
Clark, Roger	Individual	I-84-1
Clay, Gretchen	Individual	I-230-1
Colson, Lynn	Individual	I-196-1
Conrad, Norm	Individual	I-149-1
Culver, Judith	Individual	I-193-1
Cummings, Tina	Individual	I-174-1
Daffron, Jeff	Individual	I-115-1
Davidson, Barbara	Individual	I-121-1
Davis, Virginia	Individual	I-169-1
Derrer, Lisa	Individual	I-125-1
Dickerson, Anne	Individual	I-175-1
Downing, Nancy	Individual	I-111-1
Dunbar, Destiny	Individual	I-162-1
Edain, Marianne	Individual	I-134-1
Ellis, Elizabeth	Individual	I-159-1
Ferrarini, Amanda	Individual	I-10-1
Follett, Carol	Individual	I-198-1
Fritzen, Lauren	Individual	I-197-1
Froebe, Jillian	Individual	I-97-1
Fujita-Sacco, Noreen	Individual	I-157-1
Gabrielson, Hannah	Individual	I-122-1
Garey, Steve	Individual	I-110-1
Grace, Ivana	Individual	I-123-1

Grace, Lise	Individual	I-144-1
Graham, Phyllis	Individual	I-219-1
Grant, Margarette	Individual	I-170-1
Guenther, Sarah	Individual	I-154-1
Hahney, Tom	Individual	I-142-1
Hamalainen, Asko	Individual	I-104-1
Hamill, Janet	Individual	I-49-1
Hamilton, Callie	Individual	I-191-1
Hampel, Susan	Individual	I-45-1
Harper, Steven	Individual	I-118-1
Hayes, Kaia	Individual	I-109-1
Heath, Marion	Individual	I-133-1
Hentges, Justin	Individual	I-18-1
Hogan-Campbell, Helen	Individual	I-222-1
Hogue, Amanda	Individual	I-147-1
Hopkins, Lees	Individual	I-182-1
Hostler, Ann	Individual	I-235-1
Hubbard, Shaun	Individual	I-78-1
Hull, Victoria	Individual	I-85-1
Jensen, Dena	Individual	I-173-1
Johnson, Richard	Individual	I-124-1
Jordan, Dorothy	Individual	I-68-1
Kauffman, Anne	Individual	I-83-1
Kay, Morgan	Individual	I-76-1
Kaye, Deborah	Individual	I-183-1
Kemp, Elizabeth	Individual	I-88-1
Kiera, Eileen	Individual	I-79-1
Knudsen, Sarah	Individual	I-167-1
Knutzen, Steve	Individual	I-105-1
Korn, Meryle	Individual	I-90-1
Kosa, Jay	Individual	I-128-1

Kroger, Jane	Individual	I-119-1
Kunkel-Patterson, Rachel	Individual	I-112-1
Lane, Jonathan	Individual	I-209-1
Larsen, Shelley	Individual	I-190-1
Larson, R	Individual	I-100-1
LaRue, Erik	Individual	I-155-1
Laws, David	Individual	I-150-1
Lee, John	Individual	I-146-1
Lee, Wynne	Individual	I-179-1
Lehwalder, Janet	Individual	I-72-1
Lindquist, Aurora	Individual	I-91-1
Liu, Hannah	Individual	I-171-1
Love, Kathleen	Individual	I-140-1
M, Tom	Individual	I-73-1
Maddox, Wanda	Individual	I-158-1
Maris, Shannon	Individual	I-108-1
Marquardt, Ross	Individual	I-148-1
Masss, Ursula	Individual	I-114-1
McBride, Jack	Individual	I-96-1
McColl, William	Individual	I-145-1
Mcgraw, David	Individual	I-11-1
McKenna, Sandra	Individual	I-205-1
Meckel, Brian	Individual	I-139-1
Merrill, Arria	Individual	I-233-1
Mitten-Lewis, Suzanne	Individual	I-161-1
Mower, Amy	Individual	I-126-1
Mulligan, Brian	Individual	I-206-1
Myrick, Shenandoah	Individual	I-127-1
Nielsen, Darcie	Individual	I-130-1
Olson, Janis	Individual	I-69-1
Ouellette, Tracy	Individual	I-14-1

Ouellette, Tracy	Individual	I-32-1
Parker, Stan	Individual	I-180-1
Parrott, Sue	Individual	I-92-1
Pearl-Thomas,Dina	Individual	I-117-1
Pernotto, Elizabeth	Individual	I-87-1
Posel, Ellen	Individual	I-156-1
Pulliam, Chelsea	Individual	I-217-1
Rainey, Laura	Individual	I-221-1
Reams, Donita	Individual	I-187-1
Reding, Andrew	Individual	I-74-1
Ripp, Jeanne	Individual	I-120-1
Romito, Rick	Individual	I-178-1
Rumiantseva, Elena	Individual	I-70-1
Russell, Kenneth	Individual	I-223-1
Sanchez, Genevieve	Individual	I-136-1
Scheer, David	Individual	I-184-1
Schuch, Janice	Individual	I-143-1
Schuster, Jerry	Individual	I-95-1
Sennett, Michael	Individual	I-212-1
Shafransky, Paula	Individual	I-228-1
Sheehan, Laura	Individual	I-153-1
Shields, Mary	Individual	I-189-1
Shimeall, Nancy	Individual	I-98-1
Smith, Carol	Individual	I-163-1
Snapp, Stan	Individual	I-75-1
Solum, Mary	Individual	I-188-1
Sterbenz, Lynn	Individual	I-101-1
Sterbenz, Shelby	Individual	I-199-1
Sue, Diane	Individual	I-234-1
Swets, Lydia	Individual	I-151-1
Sykes-David, Kristin	Individual	I-89-1

TenHove, Jac	Individual	I-71-1
Thomas, Vicki	Individual	I-131-1
Turnoy, David	Individual	I-9-1
Ulrich, Friedrich	Individual	I-102-1
Underwood, Bruce	Individual	I-103-1
Vasquez, Ned	Individual	I-81-1
Viniko, J	Individual	I-203-1
Wagner, Kendra	Individual	I-129-1
Wale, Liisa	Individual	I-192-1
Wallesz, Barbara	Individual	I-132-1
Warren, Gail	Individual	I-185-1
Weiss, Laura	Individual	I-229-1
Weiss, Tristan	Individual	I-160-1
Whirledge-Karp, Anne	Individual	I-164-1
Whiteaker, Miah	Individual	I-82-1
Wiederhold, Joe	Individual	I-137-1
Wight, Dean	Individual	I-165-1
Wilson, Stephen	Individual	I-176-1
Winger, Julie	Individual	I-41-1
Woll, Margaret	Individual	I-177-1
Woodbridge, Jennifer	Individual	I-15-1
Zylstra, Stephen	Individual	I-99-1

We received the following summarized comments from three individuals.

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. At the very least, refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility

Response to comments:

See response to comment I-6-1.

List of commenters:

Commenter Name	Affiliaton	Comment Number

Davis, Tyler	Individual	I-55-1
Hughes, Christel	Individual	I-50-1
Shank, Genevieve	Individual	I-48-1

We received the following summarized comments from seven individuals.

body content

Response to comments:

This comment did not provide any content for Ecology to consider

List of commenters:

Commenter Name	Affiliaton	Comment Number
Tester, John	Individual	I-23-1
Tester, John	Individual	I-24-1
Tester, John	Individual	I-25-1
Tester, John	Individual	I-28-1
Tester, John	Individual	I-29-1
Tester, John	Individual	I-30-1
Tester, John	Individual	I-31-1

Appendix B: Comment Letters

This section contains all of the comment letters submitted as attachments, rather than text.

Comment I-19-1

Hello, My name is Kady Titus, I'm Koyukon Athabascan from the Interior of Alaska. I have been living in Eastern Washington for the past 10 years.

I was just a baby when Exxon Valdez spilled 11 million gallons of crude oil into the Prince William Sound. The oil covered 1300 miles of coastline and killed hundreds of thousands of animals and sea life. Though I grew up 350 miles from Prince William Sound, the affects of the oil spill rippled through all the native communities in Alaska. There are 229 tribes in Alaska, most of which still live a subsistence life style, including mine, meaning they feed their family with what they are able to hunt, fish and gather, and nothing goes to waste.

As a child I remember my community members talking about the spill, how it was affecting our relatives on the coast and how it was going to affect us our hunting and fishing abilities since we are all connected. I remember my community organizing fundraisers, gathering resources to send down and sending our people through the years to continue the clean-up effort's. This wasn't just a point in time effort, it was a yearly event throughout my adolescent years.

It is estimated that Exxon Valdez killed 250,000 seabirds that are used for eggs, food, and trade. 3,000 Otters, which is 3,000 meals for just one family and material for winter clothing. 300 seals, just one seal can feed a village, and 22 Killer whales, one whale can feed a whole sub region of villages across the North Slope.

Exxon paid $2 Billion in clean-up cost and $1.8 Billion for habitat restoration. But it has been 35 years since that oil spill and pockets of crude oil still remain on the shores, wildlife numbers have not restored to pre spill numbers, and is thought to have played a collapse in Alaska's salmon and herring numbers.

Canada's Trans Mountain Pipeline (Puget Sound), which transports Alberta tar sands to Washington State's northern refineries. A spill in this area could directly impact the Salish Sea and all rivers connected to it. Tar Sand is more difficult to clean up than crude oil, and should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The per-barrel cost for the Trans Mountain Pipeline should be increased to at least $60,153 per barrel.

Comment I-26-1

The proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not enough. ***At the very least,*** refineries, pipelines, and other bulk oil handling facilities should be required to have the same financial responsibility requirements as tank vessels and barges: $1 billion per facility.

Financial responsibility requirements should prioritize sufficient compensation for oil spill impacts over oil industry profits. Tank vessels and barges can comply with the $1 billion financial responsibility requirement through P&I (protection & indemnity) clubs or mutual insurance associations. Class 1 facilities could do the same.

Canada's Trans Mountain Pipeline (Puget Sound). which transports Alberta tar sands to Washington State's northern refineries, should have a financial responsibility requirement that is based on a higher per barrel amount in order to address the higher oil spill response and damage costs for spills of tar sands products. The basis for the Trans Mountain Pipeline's financial responsibility requirement should be increased to at least $60,153 per barrel.

Comment I-39-1

02/28/2024

RE: 173-187 WAC, Financial Responsibility

Thank you for affording me time to comment.

My wife and I retired from the oil industry in 2014 choosing Bellingham, WA as our home after 30+ years moving throughout the world in my career for both international and national oil companies.

I am speaking on behalf of myself, the local community and taxpayers of WA State in urging the Dept. of Ecology to fulfill its stated responsibility to the citizens of WA State… by requiring local industries to maintain a fact based level of Environmental Impairment Liability insurance (EIL) of $60,000/barrel minimum to cover costs related to a major catastrophe.

My professional career includes operations assignments as refinery manager at Chevron Pt. Wells now known as Alon Asphalt, and marketing & business development assignments with Chevron

Aviation in Singapore and project development in Saudi Arabia. My professional experience allows me to speak with insight on the oil industry.

In my view, the proposed level of financial responsibility is far from adequate to cover actual cleanup and restoration costs of a worst case scenario…which is a Cascadia Fault earthquake. It appears DOE is more focused on the short term financial success of industries than its stated obligation to the citizens of WA State by allowing the industry to define what is 'affordable'.

As we say in the oil industry…***it is not whether an incident will happen, it is WHEN.*** This is why we have Spill Response Plans and annual drills.

The oil industry has plenty of examples of major incidents/spills that can be used by the DOE or engaging an *independent* insurance industry expert that will develop an up to date cleanup cost estimate using current dollars.

WA State cannot depend on the federal govt. support via the **Oil Spill Liability Trust Fund (OSLTF)** of $1Billion as a backup. A change in Administrations every four years can undermine those funds as was seen in 2017 when Congress suspended collecting those levies from the oil industry.

In closing, allow me to highlight the DOE Environmental Justice statement…

"All Washington residents, regardless of income, race, ethnicity, color, or national origin, have a right to live, work, and recreate in a clean and healthy environment. Low-income communities, communities of color, and indigenous people in Washington and across the

country often bear the brunt of pollution and the impacts of climate change. **We're committed to making decisions that do not place disproportionate environmental burdens on these communities**."

Therefore, I ask DOE to review their proposed inadequate financial limits and develop true current dollar cost based financial responsibility limits, thereby placing WA taxpayers ahead of oil industry shareholders.

Dirk Vermeeren Bellingham, WA

Comment I-42-1

An Insurance and Risk Management Report on the Proposed Enbridge Pumping Station

Prepared for

The Dane County Zoning and Land Regulation Committee

April 8, 2015

Prepared by:

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Executive Summary

Background

This risk management overview was prepared for the Dane County Zoning and Land Regulation Committee to assist in its review of Conditional Use Permit (CUP) application #2291 by Enbridge Energy Partners to upgrade a pumping station on its existing petroleum pipe line (Line 61) between

Marshall and Waterloo, WI. Approximately 12 miles of Line 61 currently transects Dane County and carries tar sands oil from Canada to refineries south of Wisconsin.

I have extensive experience in environmental risk management and insurance. I hold bachelors and masters degrees in risk management and insurance from the University of Wisconsin Madison where I have been a guest lecturer on environmental risk management and insurance topics for 34 consecutive years. My work has included advising and providing technical information to the US Department of Defense, the US Environmental Protection Agency and Department of Energy on environmental insurance issues, successfully placing insurance programs on many of the world's toughest environmental risks, including insuring the remediation of Chernobyl for the World Bank in London, and serving as the managing Director of the Global Environmental Practice Group of one of the world's largest insurance brokerage firms. I have been published in numerous journals and textbooks, including the chapter on environmental insurance in the Chartered Property and Casualty Underwriter (CPCU) 4, *Commercial Liability, Risk Management and Insurance* textbook, and also authored and edited the chapter "Environmental Loss Control" in the *Associate in Risk Management* (ARM) textbook.

Purpose

The objective of this risk management overview is to provide The Dane County Zoning and Land Regulation Committee with information on the risk bearing capacity of Enbridge Energy Partners to address the clean-up and other potential damages resulting from an oil spill at the proposed pumping station upgrade on Line 61. Of specific concern to the County Zoning and Land Regulation Committee are these goals.

Dane County seeks assurances that:

* Enbridge, or other reliable sources, have money available to ensure the timely remediation and restoration of the environment in the event of a spill.
* Money will be available to affected citizens of Dane county to pay for the damages they may incur as a result of an oil spill at the pumping station.
* There will be no unfunded potential liability or expenses to the county for granting a Conditional Use Permit or as a result of a spill from the pumping station.

As specified in the scope of services agreement, this report includes the following: an evaluation of Enbridge’s existing insurance program, including a review of issues associated with Commercial General Liability insurance policies and a determination of the suitability of such policies to cover costs associated with a spill event; an analysis of Enbridge’s offer of indemnity and insurance to Dane County; a summary comparing Enbridge’s current liability insurance policy with the policy forms being litigated over the 2010 spill on line 6B in Michigan; a summary of government sponsored oil spill funds; and, recommendations on the appropriate types and amounts of insurance necessary to cover the costs of response, clean up, and environmental remediation associated with a catastrophic spill event.

Summary of Research Findings and Conclusions

Upon review of a summary of the Enbridge liability insurance program, the Enbridge 2014 financial statements and government sponsored oil spill response programs, I find and conclude that:

* Enbridge is strictly liable under US environmental laws to pay to clean up an oil spill at one of their lines;

* Between the General Liability insurance coverage that Enbridge purchases with its modified Pollution Exclusion, the current liquid assets of Enbridge including profits and the funds available in government sponsored oil spill clean-up funds, there are sufficient liquid assets and other financial resources available in 2015 to fund the remediation of a Maximum Probable Loss (MPL) spill from line 61 in Dane County;
* Enbridge has proven in the past to pay for oil spill clean ups in a responsible manner through a combination of partially recoverable General Liability insurance proceeds and profits from ongoing operations;
* The very healthy financial picture of Enbridge today is not necessarily predictive of the future ability of Enbridge to meet the financial obligations associated with an oil spill over the duration of the Conditional Use Permit;
* Enbridge Energy Partners is only partially insured in both "Limits of Liability" and the scope of the insurance coverage for a known potential magnitude oil spill arising from one of their pipe lines;
* The $700 million of General Liability insurance coverage that Enbridge currently purchases is less than the known loss cost of the $1.2 billion Enbridge oil spill in 2010 on Line 6B in Michigan;
* Enbridge purchases a General Liability insurance policy which contains a pollution exclusion and defined exceptions to the pollution exclusion for spills which meet certain time element requirements;
* There is ongoing insurance coverage litigation associated with the Enbridge Line 6B spill in 2010 that highlights the insurance coverage ambiguity inherent in a General Liability insurance policy containing a Pollution Exclusion exceptions to the exclusion instead of genuine Pollution insurance or more accurately Environmental Impairment Insurance;
* Controversy over these missing coverages in the General Liability insurance policies currently purchased by Enbridge lie at the core of the Line 6B insurance coverage litigation involving $103 in unrecovered insurance proceeds for the Line 6 B spill;
* Subject to the Pollution Exclusion, the Enbridge General Liability insurance policies insure "Property Damages" and do not include specific insurance coverages for clean-up costs, restoration costs and natural resources damages normally associated with an oil spill;
* Enbridge does not currently purchase Environmental Impairment Liability (EIL) insurance on Line

61. In contrast to the General Liability insurance policies which only apply to liability arising from "Property Damage", EIL insurance policies contain specific insurance coverage for "Clean-up Costs", "Restoration Costs" and "Natural Resources Damages" associated with an oil spill.

Because the proposed conditional use is of unlimited duration, risk factors which may be encountered decades into the future need to be incorporated into the permitting process today. The county may not be able to add changes to the permit related to risk management issues in the future.

These future risk factors could include;

* The potential (likely) down turn in the use of fossil fuels over time;

* Reduced cash flow and profitability for Enbridge as a result of a general down turn in the throughput of crude oil in pipelines;
* A general down turn in their business would lead to the reduced ability of Enbridge to maintain robust safety and loss control protocols and to upgrade their pipelines over time;
* Over time, the aging pipe line systems would become more prone to spills, and;
* In the above scenario, Enbridge may not have the liquid assets that they have today to pay for a significant spill at the same time they are more likely to have a spill due to aging infrastructure.

Recommendations

In consideration of my research findings and conclusions, and based upon my 30 plus years of experience in the insurance and risk management profession I recommend;

* That Enbridge agree to indemnify and hold harmless Dane County for pollution losses Per the terms as outlined in Enbridge's proposal titled "CONDITIONAL USE PERMIT ("CUP") CONDITIONS";
* That Enbridge procures and maintains liability insurance, including Environmental Impairment Liability insurance, making Dane County an Additional Insured to a level equal to 10% of the Line 6 B loss costs, $125 000,000;
* As part of this overall liability insurance requirement, Enbridge should purchase $25,000,000 of EIL insurance on the proposed pumping station in Dane County
* Technical insurance specifications for General Liability Insurance and Environmental Impairment Liability insurance appear in Appendix A.

There are compelling reasons for requiring Enbridge to obtain environmental insurance as a condition of permit approval. These reasons include;

* Accessing through the insurance underwriting process, an independent and objective evaluation of the environmental risks associated with the Enbridge pumping station in Dane County;
* Back stopping the insurance coverage problems which can arise when a General Liability insurance policy containing a "Pollution" exclusion is relied upon to insure pollution losses from an oil spill. This problem is evidenced by the fact that Enbridge is currently involved in litigation over $103,000,000 in unrecovered General Liability insurance from the 2010 spill on Line 6B. Some lawsuits over the meaning and effect of pollution exclusions in General Liability insurance policies can take 20 years or more to resolve in the courts. Genuine Environmental Impairment Liability insurance is much more reliable than General Liability insurance to pay for pollution losses.

With the exception of the recommended EIL insurance, I believe these insurance recommendations are identical to those previously proffered by Enbridge. The recommendations will not create an undue burden on Enbridge, as the total amount of required insurance on the pumping station would be set at approximately 1/10 the cost of the 2010 Enbridge spill on Line 6B in Michigan which to date has cost

$1.2 Billion.

Overview of Risk Management Considerations

Liability insurance as a risk management tool

Insurance is the de facto risk governance mechanism used by parties to gauge the risks of certain endeavors in commerce. A common example of this concept in practice is a banker requiring a borrower to maintain fire insurance on a building the banker is lending money on. By requiring fire insurance on the building the banker does not need to evaluate the relative riskiness of the building being damaged by the fire, the insurance underwriter has already made that determination in the insurance premium charged to insure the building.

If the risk of a fire on the building is low, the insurance premium will be low in relative terms. If the risk is high, the insurance premium for fire insurance will be high. If the risk of fire is so high that it makes the building uninsurable in the informed perspective of the insurance underwriter, the banker will not make the loan. By simply requiring fire insurance the banker accesses the knowledge base of the insurance industry on the relative risk of fires specifically on the building the loan will be made on. As an added benefit, if there is a fire, there will be insurance coverage to pay for the loss. The lender does not need to know anything about fire hazards to manage the fire risk on the building. A simple go or no go on the lending decision relative to the risk that the building will have a fire can be based on the ability of the borrower to obtain fire insurance. Requiring insurance on the building is all the lender has to do to harness the collective wisdom of thousands of fire risk management practitioners in the insurance industry.

In a similar fashion to the banker accessing the insurance industry's vast expertise in fire risks simply by requiring fire insurance on the buildings they lend on, Dane County can harness the knowledge of the insurance underwriting community on the spill risks of pipelines simply by requiring a relatively small amount of EIL insurance on the pumping station.

I am recommending that minimum amounts of liability insurance be maintained by Enbridge over the life of the CUP. Insurance has been utilized in commerce for more than 400 years. Insurance is the one financial mechanism that can be counted on to endure for decades into the future. Insurance is a dynamic financial tool that is able to adapt to new information on risks over time. Simply by requiring insurance be maintained on the pumping station the global knowledge base in the insurance industry on the relevant risks of tar sands oil pumping stations will be accessed by the stakeholders in the pumping station on an annual basis.

Determining the risk - Maximum Probable Loss

It is not the scope of this report to determine the likely costs associated with an oil spill from Line 61 in Dane County, nor am I qualified to make such a determination. However, to accomplish the goals of this report an objective measure of the potential costs resulting from a spill from Line 61 in the county must be made. As a benchmark for a Maximum Probable Loss scenario I used the $1.2 Billion dollar cost already incurred by Enbridge for a spill in 2010 from their Line 6B in Michigan. The spill into a feeder creek at a time of high water ultimately impacted the Kalamazoo River. $1.2 billion is a reasonable Maximum Probable Loss bench mark because the Line 6B spill event actually happened in recent history and it occurred on an Enbridge pipe line in a state with an environment very similar to Wisconsin's. The Enbridge Line 6B spill was the most expensive land based oil spill on record.

Due to the geography of the pumping station in Dane county I have conservatively assumed that the expected loss potential for a spill at the proposed Dane county pumping station will be far less than the

$1.2 billion Maximum Probable Loss scenario in today's dollars. In fact the costs associated with on land pipe line spills are likely to be a small fraction of $1.2 billion dollars.

Line 61 with increased pumping capacity will have more oil flowing through it than line 6B did. However, Dane county has considerably less risk than other counties along Line 61 because of the relative distance of the Pumping station to population centers or waterways that have a significant flow rate and the addition of a retaining pit at the pumping station designed to capture 1 hour of pipe line flow as a safety measure. It should be noted that safety measures on pipelines do not always operate as intended. The spill on the Enbridge line 6B lasted 17 hours due to human error in spite of the detection and shut off technologies on the 6B line which were designed to kick in within 5 minutes in the event of a spill. Safety measures at the Dane County pumping station cannot eliminate all risk.

My recommended insurance requirements for the CUP at a total of $125,000,000 in limits of liability are only 10% of the Maximum Probable Loss. This is a very conservative estimate designed to make the recommended insurance coverage on the pump station procurable and affordable for Enbridge, while creating a long term risk management and financial backstop for the county which is unrelated to the future profitability of Enbridge. If the Dane County pumping station was closer to a flowing waterway the suggested limits of liability would be much higher based on the empirical evidence regarding the costs to clean up the Kalamazoo River in Michigan after the Enbridge line 6B spill.

Dane County does not have preplanned financial resources in the form of environmental insurance or other loss reserves to independently respond to a spill event from the pipeline or to defend the county from potential liability in the event the county is vicariously liable for its potential a role in a spill event. However, the way the environmental protection laws have been drafted, the County and local government do not presently have a material statutory role in the remediation process of a pipeline spill. Under the current environmental laws and regulations, oil spill clean-up efforts would be led by the State of Wisconsin with oversight from the Federal government. Government officials in WI also enjoy governmental immunity to relatively low amounts when the damages caused by a pipeline spill are considered.

The available monetary resources to pay for a spill event

To evaluate the risk bearing capacity of Enbridge Energy Partners (EEP) I looked at their available cash flow from ongoing operations (projected $960 million in 2015, see Appendix C), their insurance coverage ($700 million of General Liability insurance with a pollution exclusion and a time element pollution release coverage give back), and potential access to government sponsored petroleum spill response programs ($1 billion per spill plus an inconsequential amount from the State of Wisconsin Spill Fund).

These items comprise the liquid assets available for Enbridge today to address the costs associated with a spill from Line 61.

I did not consider the overall net worth of Enbridge in the resources availability evaluation for two reasons. First, these assets are not needed today, and secondly, the valuations of companies change a great deal with the passage of time. The salvage value of buried steel pipes in the face of a general oil pipeline industry wide decline in future decades is highly speculative.

In total there are over $2 Billion dollars in short term funds available today to respond to a spill from Line 61. This amount far exceeds the expected cost of spill in Dane county.

However, this ability to pay for an oil spill through these resources could deteriorate over the life of the proposed conditional use. Profits and access to insurance vary year to year. Spill funds are subject to politics and may not endure over time. For example, the state of Wisconsin is in the

process of dismantling its government-sponsored spill program for fertilizer spills in the state. Over a longer time horizon, even federal funds from oil spills may be dismantled. Although access to insurance is not guaranteed over time, insurance does and should play a role in the overall risk management strategy of the stakeholders. The inability to procure insurance is, in itself, a risk management tool. Access to insurance operates as the canary in the coal mine to provide early warning of unusually risky and therefore uninsurable endeavors in commerce to stakeholders in those endeavors.

Future risk factors

A reduction in demand for fossil fuels to address the threat of climate change would change the fundamental business of Enbridge. The core business of Enbridge is essentially to transport fossil fuels through pipelines to processing facilities and markets.

The precipitous decline of the coal industry in the US is a prime example that illustrates this point. Despite the fact that coal has remained unchanged for centuries and powered the industrial revolution for over 100 years, the coal industry has seen over 70% of its valuation evaporate in just 5 years, driven to a great extent over environmental concerns.

All fossil fuel based companies will be subject to the same economic pressures over time if society moves to reduce the green house foot print of energy sources. This trend is already under way as evidenced by the coal industry. Ultimately, that means burning less fossil fuels, which would logically negatively impact the business of crude oil pipeline companies and their future profits.

These factors could adversely change the overall risk picture of a Pumping Station on Line 61 over the course of time;

(7) A reduction in the amount of oil products shipped through Enbridge pipelines would reduce cash flow and impair the firm's ability to pay for uninsured spill expenses out of profits;

(8) Reduced profitability would limit the firm's ability to maintain robust safety levels that Enbridge prides its self upon today;

(9) A reduction in the amount of crude oil which is taxed to fund the Federal oil spill response program would reduce the funding levels for these fail safe contingency plans to pay for oil spill clean ups;

(10) Changes in the global insurance market place and/or the claims experience of Enbridge in particular could impair the firm's ability to purchase liability insurance to pay for the costs associated with a spill in the future;

(11) The current and renewal GL insurance policies purchased by Enbridge have the same wording that one of their former insurance companies in the 2010 policy year is using to deny a $103,000,000 claim made by Enbridge for pollution clean-up costs arising from Line 6B spill in 2010. This insurance coverage dispute is currently being litigated. Lawsuits involving Pollution Exclusions can take decades to resolve. An adverse judgment in this case pertaining to how General Liability insurance policies respond to pollution losses could significantly impair the usefulness of the Enbridge General Liability insurance for future spill events.

(12) A judge in Alberta, London or New York ruling in insurance coverage litigation over contamination events and pollution exclusions, in a case totally unrelated to Enbridge or even to pipelines specifically, could significantly reduce the insurance available to Enbridge simply by establishing case law precedence that certain environmental damages are not insured by GL policies.

All of these risk factors have the ability to dramatically alter the ability of Enbridge to pay for an oil spill over the extended duration of the proposed conditional use.

As a partial hedge to these changing factors I recommend that the Conditional Use Permit contain insurance requirements for General Liability Insurance and Environmental Impairment Insurance on the pumping station.

Summary and analysis of the current Enbridge general liability insurance program

In lieu of sending over 40+ insurance policies which make up the Enbridge General Liability insurance program, Enbridge sent their senior insurance manager Selina Lim, accompanied by Aaron Madsen of Enbridge and attorney Jeffery Vercauteren of Wythe, Hirschboeck Dudek, S.C. to the American Risk Management Resources Network, LLC offices in Middleton for a meeting with me on March 18th. Ms. Lim came prepared with a summary of their insurance program which included descriptions and references to the items I had requested for the insurance review. We discussed the summarized parameters of the Enbridge General Liability insurance program from her prepared documents.

Enbridge declined to provide the actual insurance policies (42 of them in total) to me for review, claiming that the documents contain trade secrets. Nonetheless, I found their summary of their insurance program to be credible.

I did not read any of the actual liability insurance policies. This amount of detail was not necessary to evaluate the insurance coverage parameters of concern in the Enbridge liability insurance program for a number of reasons, including;

1. Enbridge has a professional insurance manager with more than 12 years of experience and Enbridge utilizes the largest insurance brokerage firm in the world to negotiate their insurance policies. Competent insurance practitioners would purchase insurance exactly as described in the summary documents. In fact, it would be very difficult for Enbridge to do otherwise due to constraints in the insurance market place.
2. The Enbridge General Liability insurance coverage is of the type most commonly used on large companies involved in the oil and gas business. The primary insurance policy is written by a Mutual Insurance company where the policy holders actually own the insurance company. The primary insurance company has a reputation for being liberal with claims payments- a fact that may have created a claims payment problem on a past loss for Enbridge, which is further discussed below. There were no unusual restrictive terms revealed by the insurance manager relative to the pumping station in Dane County, nor would I expect there to be any.
3. The $700,000,000 limits of insurance purchased by Enbridge was confirmed by a certificate of insurance prepared by their insurance broker and is also mentioned in the financial documents from 2014 filed with the SEC.
4. The current insurance policies will expire on May 1st and new insurance policies will be purchased. Where the current insurance policies are a gauge on what insurance Enbridge may have in the future, there are no guarantees that Enbridge will be able to maintain these high levels of insurance in the future. (The recommended insurance levels anticipate this contingency.)
5. It was represented in the March 18th 2015 meeting that Enbridge would renew their insurance on May 1st. It served little purpose to closely review insurance policies that

would expire in a few weeks. This highlights the importance of taking a long term view when considering the placement of any insurance conditions on the CUP application.

6. The current Enbridge insurance coverage is largely irrelevant in any decision making of Dane County regarding a long term Conditional Use Permit. Almost all insurance policies only insure for 1 year and must be renewed annually. The insurance market place changes over time and can be subject to considerable variation year to year. Knowing what the insurance coverage is today is not necessarily predictive of what it will be even 2 years from today.

The base General Liability insurance policy that Enbridge purchases follows the usual and customary liability insurance coverage purchased by large companies in the energy sector. The lead insurance company in the Enbridge liability insurance program is AEGIS. AEGIS is a mutual insurance company which is owned by its policy holders. AEGIS is the largest insurer in the energy sector. The other 41 insurance companies "follow form" to the AEGIS base insurance policy language. In essence these "excess" carriers provide their limits of insurance capacity in "Layers" with each layer of insurance mirroring the insurance coverage provided by the primary insurance policy.

In this common structure of building claims paying capacity, the terms of the coverage in the excess layers are determined by the AEGIS primary insurance policy. Therefore, by knowing what the primary insurance policy says, we know what the coverage provided by the Excess insurance policies is as well. This rule holds true as long as no additional exclusions are added to any of the Excess insurance policies in the tower. It was represented by the Enbridge insurance manager that all layers of coverage in their insurance program follow the base AEGIS policy form. This advice is credible because it follows the usual custom and practice in the insurance business.

The current Enbridge primary General Liability policy insures for liability claims arising from;

a. Bodily Injury,
b. Property Damage defined as physical injury to tangible property,
c. Personal injury including libel and slander,
d. In addition to these coverages for claims, the policy insures Defense Costs.

The key coverages in the General liability insurance policy that would come into play in the event of a spill from a pipe line are claims for Bodily Injury, Property Damage and the costs incurred to Defend those claims.

The Enbridge GL policy, like virtually all General Liability insurance policies sold over the past 40 years, has a pollution exclusion. Introduced into the insurance business in 1970, pollution exclusions are the most litigated words in the history of the insurance. Over the past forty years, the legal profession has sent a lot of kids to college by arguing which part of a pollution exclusion, if any, should apply to a loss involving the contamination of things ranging from sandwiches to Superfund hazardous waste sites.

Insurance coverage litigation over the meaning and intent of a pollution exclusion can take decades to sort out in the courts once a claim is denied by the insurance company and the insured sues for coverage under the insurance policy. One prime example of litigation over a pollution exclusion in General Liability insurance policies involved the City of Edgerton, Wisconsin and a Superfund hazardous waste site. The insurance coverage litigation over the meaning and effect of pollution exclusions in the General Liability insurance policies purchased by the city spanned decades in

Wisconsin courts. In that case, one of the troublesome clauses was the use of the term "Sudden and Accidental" as an exception to the pollution exclusions in various policy years.

Over decades, teams of lawyers working in hundreds of similar insurance coverage litigation cases were unable to decisively conclude that a sudden pollution even must mean a quick pollution event. To eliminate ambiguity surrounding the term, in 1986 the word "sudden" was dropped from common use as part of the standard exception to Pollution exclusions, in Commercial General Liability insurance policies.

"Sudden and accidental pollution liability" is what Enbridge shows for insurance coverage in their financial statements today. However, the pollution exclusion exemption in the Enbridge policy is not limited to sudden or quick events. A Property Damage or Bodily Injury claim arising from a pollution event that begins and is discovered within 30 days and is reported to the insurance company within 90 days is not excluded by the Pollution Exclusion in the primary Enbridge General Liability insurance policy. Hence the words "sudden and accidental" carry no weight in the current pollution exclusion. A more accurate term to describe the limited coverage for pollution events within the current General liability insurance policy is "Time Element Pollution" coverage.

The "sudden and accidental pollution liability coverage" that Enbridge has today on the General Liability insurance policy is different than the General Liability insurance policies the City of Edgerton had in place during the time the Superfund site was slowly leaching hazardous waste into the ground.

However, the reliability of covering a pollution loss through a pollution exclusion is no less complex as evidenced by the $103,000,000 in unrecoverable General Liability insurance as a result of the Enbridge Line 6B spill.

Taking all of this history into account, it is my professional opinion that the county should avoid being completely dependent upon a General Liability Insurance policy containing a Pollution Exclusion as a financial back stop for an oil spill.

How the current Enbridge General Liability insurance policy treats pipeline spills

In the event of a pipe line spill of tar sands oil or other petroleum product, the pollution exclusion on the Enbridge General Liability policy will come into play. The pollution exclusion may not operate to eliminate the insurance coverage for an oil spill, but the exclusion will be one of the determining factors under consideration by the insurance company in their decision to pay a claim or not.

As evidenced by the insurance coverage litigation on the Line 6B spill, insurance companies are not always in harmony on how pollution exclusions should operate. Even insurance companies participating in the same insurance placement can be in disagreement over pollution exclusions.

The pollution exclusion in the Enbridge General Liability insurance applies to all claims arising from the emission, discharge, release, or escape of "Pollutants". In essence a "Pollution exclusion" eliminates the coverage in the insurance policy for Bodily Injury and Property Damage liability claims if the proximate cause of the loss is the release or escape of "Pollutants". The damages caused by an oil spill will definitely fall within multiple parameters of a pollution exclusion.

"Pollutants" is a defined word in the insurance policy which essentially boils down to "contaminates". If a material can contaminate something it can be a pollutant in an insurance policy. In Wisconsin for example, in the Landshire foods case which went to court over the effect of a pollution exclusion, sandwiches contaminated with bacteria have been denied insurance

coverage at the appellate court level because bacteria contamination was deemed by the court to be a “pollutant”.

Although the Enbridge insurance policy is purchased in Canada and Wisconsin laws would not apply to any insurance coverage disputes, if sandwiches can be a “Pollutant” in an insurance policy, tar sand oils in a wetland or on farm field would certainly fall under the definition of an excluded “pollutant” in the event of a pipe line spill.

Sudden and Accidental Pollution Insurance?

As Highlighted in Appendix C, why does Enbridge represent that they have sudden and accidental pollution liability insurance when their only liability insurance on Line 61 is a General Liability insurance policy which contains a pollution exclusion? The topic itself confuses most people. The bulk of the answer can be attributed to marketing hype originating from the sellers of general liability insurance policies using insurance slang dating back to the 1970’s. General Liability insurance policies have not used the terms “sudden and accidental” to define an exception to the pollution exclusion since the 1980’s.

Enbridge is not alone in its use of the term sudden and accidental pollution liability coverage, it is commonly used in the oil and gas business to describe a GL policy with an exception to the pollution exclusion for contamination events happening within certain time frames. There is an exception to the pollution exclusion in the Enbridge General Liability insurance policy for pollution losses that happen in certain time frames. By excluding the exclusion for a certain set of circumstances, a double negative creates positive insurance coverage for contamination events that fit the parameters of the exception to the exclusion.

Technically, General Liability insurance policy with remnant coverage under a pollution exclusion and Pollution Insurance should not be confused; genuine pollution insurance, which is more accurately referred to as Environmental Impairment insurance, has specified coverages that are not specifically provided in General liability insurance policies. Another distinguishing factor in genuine pollution insurance is that the coverage only applies to losses caused by pollution events.

There was a point in time where the statement “we have sudden and accident pollution coverage” on a General Liability policy made more sense than it does today. From 1970 through 1986, General Liability insurance policies had exceptions to the pollution exclusion for sudden and accidental releases of “Pollutants”. In those years, pollution exclusions commonly said that the pollution exclusion in the General Liability policy would not apply if the dispersal, release or escape of pollutants that caused the insured damages was sudden and accidental. The words sudden and accidental were actually incorporated into the insurance industry standard pollution exclusion in those years. The problem was “sudden” was an undefined term in the GL policy and insurance companies were stuck with paying for claims at Superfund Hazardous waste sites where the actual pollution went on for decades.

To clarify the intent of pollution exclusions the words sudden and accidental were eliminated from common use in pollution exclusions in 1986. Today when there is an exception to a pollution exclusion in a General Liability insurance policy, the exception to the exclusion for certain types of pollution events is defined parameters measured in hours or days. Because the coverage give back in the pollution exclusion is driven by specified times, the more accurate way to describe the coverage is “Time Element” pollution coverage.The Enbridge General Liability insurance policy contains Time Element pollution coverage in the General liability insurance policy. The remnant coverage for a pollution event after the exclusion is not just limited to sudden or quick pollution-- a

leak could continue for up to 30 days, and the Pollution exclusion in the General Liability insurance policy would not apply to a loss for Bodily injury or Property Damages.

The Time Element Pollution Exception

The Enbridge General Liability insurance policy contains an exception to the pollution exclusion if the pollution event meets certain "Time Element" parameters.

The Pollution Exclusion in the Enbridge General Liability insurance policy will not apply only if;

1. The pollution release begins and is discovered within 30 days and
2. Enbridge reports the loss to the insurance company within 90 days of discovery.

An obvious gap in Enbridge insurance coverage is if a leak is not detected until the 31st day, in which case the Pollution exclusion on the GL policy would come into play and Enbridge would not have insurance assets to pay for a spill. In contrast a good quality EIL policy does not limit the duration of a contamination event in order for the damages arising from pollution taking place during the coverage period of the policy to be insured losses.

The three Levels of Pollution Exclusions in the Enbridge Liability Insurance Policies

There are three exceptions to the remnant Time Element pollution coverage on the Enbridge General Liability insurance policy, the most significant of these exceptions is there is no coverage for Property Damage to the properties owned or leased by Enbridge. In effect how this works is there are 3 negatives in a row in relation to pollution loss involving the pumping station and right of way on the Enbridge GL policy. The Pollution Exclusion, The Time Element Exception to the Pollution Exclusion and then an exception to the Time Element exception that would reapply the pollution exclusion to any Property Damage to the right of way properties that may be affected by a spill. This example illustrates how nebulous insurance coverage can be when exceptions to exclusions are relied upon for insurance coverage on a pollution event as opposed to purchasing genuine EIL insurance which is designed for this purpose.

The Enbridge GL policy is written on an indemnity basis, meaning the insurance companies agree to reimburse Enbridge for losses after Enbridge has paid for them. This is common practice.

The Enbridge liability insurance protection survives the bankruptcy of the insured which is a good feature for Dane county looking decades into the future to formulate a risk management plan.

Differences between General Liability Insurance and genuine Pollution Insurance

For unknown reasons, the terminology Sudden and Accidental Pollution Liability is still used to describe the remnant liability insurance created by the time element exception to the Pollution Exclusion in the General Liability insurance policies commonly purchased by oil and gas companies. Describing an insurance policy that only addresses coverage for pollution events as an exception to a far reaching pollution exclusion is really not "Pollution Insurance". There are fundamental insurance coverage differences between genuine Pollution Insurance and General Liability insurance which contains an exception to a pollution exclusion. An insurance policy that only addresses coverage for pollution events within the exclusion section of the policy is not genuine pollution Insurance.

A more technically accurate term for "pollution insurance" is Environmental Impairment Liability insurance (EIL) which is sometimes sold under the title Pollution Legal Liability insurance. The sole purpose of EIL insurance is to fill insurance coverage gaps created by the ever present pollution exclusions in property and liability insurance policies. Environmental Impairment

Liability insurance has been continuously available in the North America since 1980. The current insurance market capacity for genuine environmental insurance on a pumping station exceeds $100,000,000. That amount of insurance capacity has been available on a newly constructed pipeline pumping station for more than 30 years.

Enbridge does not purchase separate Environmental Impairment Liability insurance. An EIL policy covers Bodily Injury, Property Damages and Defense Costs. The definitions of these terms in EIL policies mirror the definitions commonly used in GL policies. However, the major difference is where a GL policy says there is no coverage for claims arising from pollution, an EIL policy *only* insures claims arising from the release or escape pollution either quickly or over time.

An EIL policy designed specifically to cover claims arising from pollutants provides broader coverage for environmental losses than a GL policy does. A good quality EIL insurance specifically insures Cleanup Costs, Emergency Response Costs, Restoration Costs and Natural Resources Damages within the insuring obligations of the policy. GL polices do not reference these important elements of coverage which will always come into play as a source of damages in a pipeline spill.

Analysis of Enbridge Indemnification and Insurance Proposal to Dane County

Enbridge has offered to indemnify Dane County for any loss the county incurs as a result of the pumping station. Enbridge has also offered to include Dane County as an Additional Insured on the first

$100,000,000 of General Liability insurance maintained by Enbridge. Being indemnified by Enbridge is good for Dane County because the indemnity is first dollar protection and makes Dane county eligible to be an Additional Insured on the Enbridge General Liability insurance policy.

Being an “Additional Insured” on the Enbridge General Liability policy is a benefit for Dane County. By being named as an “Additional Insured” the Enbridge liability insurance would defend Dane County in the event Enbridge caused damages to a third party and the third party sued Dane County for the county’s contributory role in the Enbridge created loss event.

Being added as an Additional Insured under the Enbridge GL policy should not be confused with being added as a Named Insured to an insurance policy. An Additional Insured cannot make a direct claim for clean-up expenses associated with an oil spill under the General Liability policy. The Additional Insured could make a claim against the Named Insured in which case the named insured may have coverage subject, however, to the effects of the pollution exclusion. But, anyone can make a claim against the Named insured - you do not need to be an Additional Insured to do that.

The main advantage to the county of being an Additional Insured on the Enbridge GL policy is access to Defense Cost insurance coverage and in the event Dane County is held liable for their contributory negligence in a covered GL claim for Enbridge, the Enbridge liability insurance would indemnify Dane County for its stake in that loss. A key point to keep in mind is the breadth of the insurance coverage for the Additional Insured is no broader than the coverage for the named insured with a few possible exceptions unrelated to a pollution loss.

The benefit of the county being an Additional Insured under the Enbridge General Liability insurance assumes that there is no “insured versus insured” exclusion on the Enbridge General Liability insurance policy. If the Enbridge General liability insurance policy contained an “insured vs insured exclusion and the county became an “insured” by being named as an “Additional Insured” if the county made a claim against Enbridge for some reason, the Enbridge insurance

policies would not apply to the county claim because one insured is claiming damages from another insured.

The need to avoid an "insured versus insured" exclusion in the Enbridge liability insurance is anticipated in the recommended insurance requirements in Appendix C.

Being an Additional Insured on the Enbridge General Liability insurance policy does not;

- Enable the County to make a direct claims for pollution clean-up under the Enbridge insurance policy;
- Correct for the inherent risk management deficiencies in relying on a General Liability policy to pay for pollution claims as previously discussed.

In reality, Dane County has a very small loss exposure in its zoning role on the pumping station. The county enjoys statutory immunity from liability as a public entity in Wisconsin and is not involved with the operations of the proposed Enbridge pumping station. It is hard to imagine a scenario where Dane County would ever become part of a claim made against Enbridge. But if it ever did happen, being indemnified by Enbridge and being named as an additional insured on the Enbridge insurance policy would be a good thing.

Review of insurance coverage litigation involving the Enbridge Line 6B spill

Because the matter is in active litigation, Enbridge could not provide the requested details on the

$103,000,000 insurance coverage case.

However, I discussed the matter in broad terms with the insurance manager of Enbridge in our face to face meeting. In essence there are two central issues in the Line 6B insurance coverage litigation that relate to Dane County prospectively:

1. The insurance policy language that is in dispute over $103,000,000 in unpaid claims under the Enbridge General Liability insurance policy is unchanged today from the insurance policy language in effect during the 2010 policy year.
2. The insurance company is disputing whether the costs form the Line 6B spill is covered "Property Damage" in a General Liability insurance policy.

One common point of contention in insurance coverage litigation involving pollution claims under General Liability insurance policies over the past 30 years is whether a clean-up order from the government constitutes a claim for "Property Damage" under the definition that term in the GL policy.

Because General Liability insurance policies only insure Property Damages, these insurance policies are inherently deficient in their coverage for government ordered Clean-up costs, Natural Resource Damages and Restoration Costs. This is the major motivation behind my recommendation that the Line 61 pumping station be insured under an environmental insurance policy. A genuine EIL policy specifically insures Clean-Up Costs, Natural Resources Damages and Restoration Costs in addition to Bodily Injury and Property Damage Liability.

Of particular significance in this matter, the insurance companies below and above this $103,000,000 layer paid the Line 6B claim which illustrates how unreliable exceptions to pollution exclusions can be to fund pollution losses.

In our meeting it was revealed that the insurance company that they are in insurance coverage litigation over regarding the Line 6B spill is no longer a participant in the Enbridge insurance program. This was to be expected.

Considering these represented facts there was no reason to evaluate the insurance coverage in effect in 2010 versus the coverage in effect today. I was told that the insurance policy language is essentially unchanged from 2010 to today. Which means the same arguments presented by the insurance company that is refusing to pay Enbridge's claim for $103 million could potentially be presented by another insurance company in the future too deny a claim arising from a pipeline spill.

The inherent danger in relying on exceptions to pollution exclusions to pay for pollution losses

The coverage provided by the Enbridge General Liability insurance for pollution damages could change overnight as determined by legal matters completely outside of the control of Enbridge or their insurance companies.

For example on December 30, 2014 the Wisconsin Supreme court determined that manure and nitrates in ground water as a result of farming operations were excluded by the Pollution Exclusion in General Liability insurance policies. Prior to this decision, the precedent case law in WI was that manure was a "product" and there for not excluded as a "pollutant" under the Pollution exclusion in General Liability insurance policies commonly sold to farms. As a result of that Wisconsin Supreme Court decision on the insurance purchased by one farm, on December 31st 41,000 farms in Wisconsin were left clearly uninsured under the General Liability insurance policies for contamination claims arising from manure spreading operations.

In previous decades under various exceptions to Pollution Exclusions in the liability insurance policies sold to farms, many farmers and their insurance agents believed they had "sudden and accidental" pollution insurance as part of their General Liability insurance policy. The belief survived even though the reference to sudden and accidental pollution events was removed from the General Liability insurance policies sold to farms in 1986. In clearing up the confusion over the effects of the Pollution Exclusion, one Wisconsin Supreme Court Justice commented in the December 30th ruling that a common exception to the Pollution Exclusion for certain defined contamination events on the farmers GL policy was "useless" insurance, much to the surprise of the 41,000 farmers and their insurance agents.

Although Wisconsin case law on pollution exclusions should not have a bearing on an insurance policy purchased in Canada, the current Enbridge insurance coverage litigation over $103,000,000 of GL insurance containing a pollution exclusion on the Line 6B spill in 2010 and the proper operation of a Pollution Exclusion in that policy parallels the Wisconsin farm situation. Even if Enbridge prevails in the collection of the $103,000,000 in liability insurance, another litigated insurance coverage case in Canada, New York or London could eliminate the GL coverage for a pollution event for Enbridge and everyone else in that legal jurisdiction who buys insurance dependent upon an exception to a pollution exclusions containing the same language.

The insurance coverage litigation over $103,000,000 of General liability insurance providing Time Element Pollution coverage for only Property Damage illustrates the need for back up Environmental Impairment Liability insurance on the Line 61 environmental loss exposures in Dane County.

The Enbridge general liability insurance policy is missing essential coverages to clearly insure an oil spill event

The track record of the Enbridge General Liability insurance program is that on Line 6 B, all of the insurance companies with the exception of just one company, paid for the costs of clean up to the maximum limits of liability on the insurance policies they sold to Enbridge. However, for the reasons stated above, this could change over time with the development of insurance coverage case law which could be adverse to Enbridge.

The Enbridge General Liability insurance coverage with its Pollution Exclusion and the exceptions to the exclusion if a spill is discovered within 30 days from the start of the spill is missing separately defined coverage parts for:

- Clean-up Costs
- Natural Resource Damages
- Emergency Response Costs
- Restoration Costs
- Coverage for spills longer than 30 days

All of these insurance coverage elements are provided in a good quality Environmental Impairment Liability insurance policy. Which is why I recommend the purchase of EIL coverage on the pumping station and, optionally, the pipe line in Dane County.

The availability of government-backed oil spill funds

There are actually two sources of Government funded spill response programs for oil spills;

1. The Wisconsin Spills Law which accesses general purpose revenues from the state of Wisconsin with an annual allocation of $3.5 million per year, funds are accessed by the WI DNR and;
2. The Oil Pollution Act with a current balance exceeding over $4 billion in the Oil Spill Liability Trust Fund and taxes of more than $300,000,000 annually. Funds for clean-up costs and other damages are accessed by the Federal Government or the State.

There is no apparent government source of funds for a county to respond to a spill event. However, environmental laws do not create a obligation for counties to respond to pollution events the county did not cause.

Considering the magnitude of the Enbridge Maximum Probable Loss potential, by far the more significant and therefore relevant of these two funds is the Federal Oil Spill Liability Trust fund.

After the crude oil spill in Alaska involving the Exon Valdez, The Oil Pollution Act of 1990 was passed and a federally sponsored fund was created for federal and state trustees to respond to the clean-up costs and victim compensation arising from future oil spills, including spills from pipe lines. The Oil Pollution Act does not anticipate a role for local governments in spill response.

The Oil Spill Liability Trust Fund (OSLTF) will pay for costs incurred from tar sands oil spills arising from pipelines. The spill must only threaten a waterway to be eligible for the fund. Threating a water way will be a certainty on any spill from Line 61 in Dane County.

In essence, the idea of the spill fund is to assure that the federal or state authorities (not the county) have the resources necessary to pay for an oil spill.

Recoverable cost from the Oil Spill Liability Trust Fund include:

- Removal Costs

- Real or Personal Damages
- Loss of Profits and/or Income
- Loss of subsistence
- Lost government revenue
- Increase public services
- Up to $500 million in Natural resource damages compensation.

The trust fund does not distinguish between a sudden or gradual spill events. The funds also survive the bankruptcy of a responsible party who causes a spill.

The Oil Spill Liability Trust Fund is financed by taxes on certain types of unrefined oils, plus fines and penalties imposed by the government on parties responsible for spills. In something peculiar to the definition of the oil that is taxed, tar sands oil is not paying into the fund through taxes.

The trust fund received a recent major influx of money, over $3 billion, from the fines assessed against BP in the Deep Water Horizon oil spill in the Gulf of Mexico.

Payments from the fund are subject to a limit of $1 Billion per incident. “Incident” means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.

The $4 billion dollar fund in 2015 back-stops the responsible party’s ability to fund an oil spill clean-up either through cash or insurance recoveries. The parties responsible for the spill must fully reimburse the Oil Spill Liability Trust Fund for any fund monies utilized by the responders to a spill. The funds are still available to responders in the event of the bankruptcy of the responsible party.

Because of the $1 billion cap per incident there would need to be four un-reimbursable spills of at least a billion dollars each before the current funding would be exhausted. A more probable scenario over time would be the political elimination of the fund all together.

The largest on land oil spill in history was the 2010 Enbridge Line 6B spill in Michigan, which has cost Enbridge $1.2 billion to date without the effects of any potential future fines or penalties resulting from the spill. The $4 billion fund subject to its $1billion dollar per incident cap in the short term and foreseeable future has sufficient funding to address all of the costs associated with a spill at a pump station in Dane county even if Enbridge has no cash or insurance available to reimburse the fund.

However, there is no way to reliably predict the status of future funding of the Oil Spill Liability Trust Fund over the term of a conditional use permit.

For More information on the Oil Pollution Act, tar sand oil, taxes and the Oil Spill Liability Trust Fund see Appendix B.

Insurance Recommendations and Conclusions

A long term view on insurance is needed

The current Enbridge Liability insurance program is not very relevant to the actual risk involved with the construction and operation of a pumping station in Dane County decades into the future. Any risk management strategies used by the county to address potential environmental impacts

under the Conditional Use Permit need to anticipate changes in a number of variables, including the future economic viability of a pipe line carrying tar sands oil and changes in the insurance market place taking place over that time horizon. Insurance has been around for over 400 years, it is a good bet that insurance will exist as a financial product for the entire period the CUP is in place. Therefore insurance requirements as a condition for the CUP are highly recommended.

Specified insurances as part of a Conditional Use Permit create numerous risk management advantages to Dane County.

- Insurance can adapt to new information on risk over time.
- The limits of insurance can be adapted to future loss costs due to the effects of inflation.
- Insurance underwriters provide an objective 3rd party evaluation of a risk.
- Insurance underwriters have access to an extremely efficient global knowledge sharing network of hazards.
- By accessing one specialized insurance underwriter the collective best practices of multiple companies in the same business, in this case pipe lines, can be utilized for advance loss control.
- By requiring insurance for a particular activity there is no need for the stakeholders in the activity to have expertise in risk evaluation or risk management. The private insurance industry will efficiently take all risk factors into account when offering to insure the activity. By simply requiring robust insurance, the stakeholders access the collective risk management knowledge of thousands of people working in the insurance business in North America alone. A firm like Enbridge would access the global insurance market place. In which case all of the knowledge and experience held by the people that work with insuring pipe lines on a global scale would be brought to bear on a pumping station in Dane County.

Recommended types and amounts of liability insurance

I recommend that Enbridge procure and maintain the following liability insurance policies over the course of the permit duration:

- $100,000,000 limits in General Liability insurance with a time element exception to the pollution exclusion (currently in place), and;
- Environmental Impairment Liability insurance with a $25,000,000 limit

At a limit of $700 million the Enbridge General Liability insurance program, which insures more than 15,000 miles of pipe lines, does not have enough limits to pay for a known magnitude $1.2 Billion loss exposure. Purchasing insurance equal to 100% of the known loss exposure is common practice in insurance. However, it is very possible that Enbridge is already purchasing all of the General Liability insurance capacity available in the world for their operations. Therefore, I do not recommend the purchase of higher GL limits for the operation of the Line 61 Pumping Station.

I conservatively set the liability insurance recommendations at 1/10 the cost of a previous Enbridge spill on Line 6B in Michigan. Being 90% under a known loss event, with many factors being the same between the Enbridge pipe lines in MI and WI, is a very modest level of insurance to ask for.

To supplement the General Liability insurance coverage maintained by Enbridge, I recommend that Enbridge purchase an Environmental Impairment Liability insurance policy on the pumping

station in Dane County with a limit of liability of $25,000,000 per loss. If more than one location is insured under this policy, the policy must have an annual Aggregate Limit of Liability of $50,000,000. The Annual Aggregate provision would come into effect if more than one loss is reported under the policy over the policy term. However, the most that would be paid by the policy for a single loss is $25,000,000.

This EIL insurance policy should provide Excess coverage and "Difference In Conditions Coverage" (DIC) for environmental damages over the primary General Liability insurance currently maintained by Enbridge. DIC coverage fills in coverage gaps that the General Liability policy may have for pollution losses.

It would be acceptable if this EIL insurance covered all of line 61 in Dane County. Although the existing pipe line is not part of the permit application, expanding the insurance coverage to include the existing pipeline in Dane County should have no effect on the premium charged for the EIL insurance policy on the pumping station, and the additional insured locations would benefit both Enbridge and Dane County.

Three risk management objectives in these recommendations

There are three risk management objectives in my recommendation that Enbridge maintain a small amount of environmental insurance on the pumping station in Dane County:

1. Back stop the primary Enbridge insurance program with broader insuring obligations than a General Liability insurance policy which only addresses Property Damage and then only if certain Time Elements are met to get around the Total Pollution exclusion in that insurance policy;
2. Access the independent risk evaluation capability of an environmental insurance underwriter over the life of the proposed conditional use;
3. Create a relatively small genuine environmental insurance to backstop potentially unrecoverable General Liability Insurance, the potential inability of Enbridge to pay for a spill clean-up out of profits in the future, or deficiencies in government sponsored oil spill funds.

The recommended $125,000,000 of liability insurance, which includes $25,000,000 of genuine environmental impairment insurance, is readily available in the insurance market place today, and will be available in the foreseeable future. In the event of an oil spill at the pumping station, the county, the state, the federal government and affected third parties could all make claims against Enbridge. The liability insurance policies do survive as an asset in the event Enbridge is bankrupt, so in that sense, the policies could have some value to the county as an asset of last resort to recover damages that Enbridge has caused.

A detailed insurance specification for General Liability and Environmental Insurance on the Line 61 pump station is shown in Appendix A.

Appendix A: Recommended Liability Insurance Specifications

General Liability Insurance

Commercial General Liability Insurance or the equivalent

Insuring the operations and completed operations of the line 61 pumping station in Dane county. Coverage shall be provided for Bodily Injury Liability, Property Damage Liability and Defense costs.

The pollution exclusion in this policy shall not apply to the escape or release of pollutants or contaminates that begin and are discovered in no less than 14 days and are reported to the insurer within no less than 30 days.

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII. Coverage shall be extended to Dane County as an Additional Insured.

This insurance shall be Primary and Non-contributory to any insurance Dane County may have available. Any rights of subrogation against Dane County shall be waived.

The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an Additional Insured

The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County

Minimum Limit of Liability $100,000,000

Environmental Insurance Specification

Environmental Impairment Liability Insurance, Site Pollution Liability Insurance or the equivalent

Insured Location: The pumping Station on Line 61 in Dane County (optionally the policy may insure the pipe line in Dane County)

Insurance must be provided by an insurer with an A.M. Bests rating of at least A, XII. Coverages To Be Included:

- On and off site Clean-up expenses
- Damages to Natural Resources
- Emergency response cost to at least $1,000,000
- Bodily Injury Liability
- Property Damage Liability
- Contractual liability naming Dane County as an Additional Insured
- This policy must be Primary and Noncontributory to any insurance Dane County may have access to.
- The policy cannot contain an "Insured vs. Insured" exclusion applying to Dane County as an additional insured.
- This coverage can be excess over other collectable insurance and the deductible or self-insured retention amounts of the underlying insurances
- This policy shall provide difference in conditions coverage excess of the deductible or self- insured retentions in the primary General Liability insurance program.
- This insurance does not need to drop down below the Self Insured Retention amounts on the coverages provided by the Enbridge master insurance program.
- The policy shall obligate the insurer to provide 60 days notices of cancellation or nonrenewal to Dane County.

Limits of liability

$25,000,000 per loss and in $25,000,000 Annual Aggregate for all losses over the course of the policy term.

The pumping station and the pipe line located in Dane County will be considered a single location for the purpose of determining the aggregate limit of liability required.

If said insurance policy insures more than Dane County properties the policy shall have an Annual Aggregate Limit of $50,000,000.

Self-Insured Retention

The maximum self-insured retention on this policy shall be the underlying insurance including the Self Insured retention in the Enbridge Master General Liability insurance program or $1,000,000.

Evidence Of Insurance

Upon request by Dane County, Enbridge shall furnish a certificate of insurance to the county which accurately reflects that the procured insurances fulfill these insurance requirements.

Appendix B: Federal sources of oil spill clean-up cost and victim compensation funding

This reference material is derived from **http://www.fas.org/sgp/crs/misc/R43128.pdf**

And has been edited for ease of reference in this report.

Oil Sands and the Oil Spill Liability Trust Fund:

The Definition of "Oil" and Related Issues for Congress Jonathan L. Ramseur

Specialist in Environmental Policy January 22, 2015

"The Oil Spill Liability Trust Fund (OSLTF) provides an immediate source of federal funding to

respond to oil spills in a timely manner. Monies from the OSLTF can be used to respond to a wide variety of oil types, including oil sands-derived crude oils.

However, the OSLTF arguably plays a backup role in terms of response funding during many oil spills. The responsible party for an oil spill often provides the primary source of response (i.e., cleanup) funding, and the federal government may recover costs or damages paid from the OSLTF. This was the case with the Enbridge leak in Line 6 B no federal dollars were used Thus, the financial impact to the trust fund could be minimal if the majority of its payments are reimbursed by the responsible parties. Nonetheless, the liability of responsible parties may be limited under certain conditions.

In those situations, the OSLTF could effectively pay—up to a per-incident cap of $1 billion."

Uses of the Fund

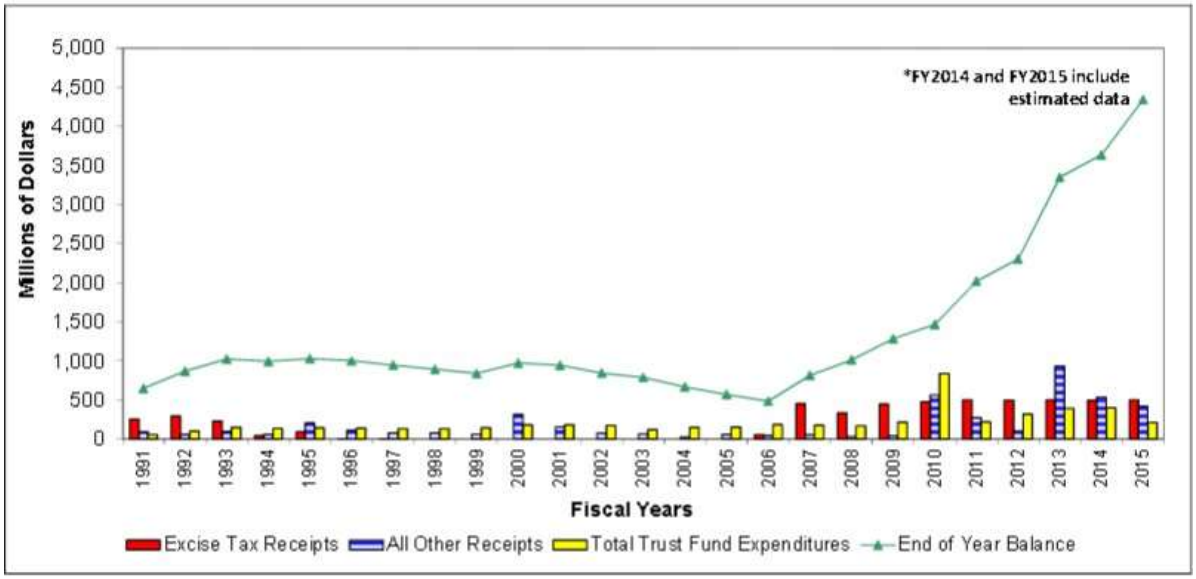
"Pursuant to OPA Section 1012, the trust fund may be used for several specific purposes:

- payment of removal costs, including monitoring removal actions, by federal authorities or state officials;
- payment of the costs incurred by the federal and state trustees of natural resources for assessing the injuries to natural resources caused by an oil spill, and developing and implementing the plans to restore or replace the injured natural resources;
- payment of parties' claims for uncompensated removal costs, and for uncompensated damages."

The Oil Spill Liability Trust Fund

Figure 2. Oil Spill Liability Trust Fund

Receipts, Expenditures, and End-of-Year Balances



Source: Prepared by CRS; data from annual Office of Management and Budget, Budget of the United States Government, Appendices.

Notes: The initial gap between the end-of-year balance (line) and the receipts-expenditures columns is due to the FY1991 starting balance of $358 million. The relative increases in "other receipts" in 1995 and 2000 are due to transfers from the Trans-Alaska pipeline fund of $119 million and $182 million, respectively. The increases in expenditures and "other receipts" between 2010 and 2013 are related to the 2010 *Deepwater Horizon* oil spill.

As **Figure 2** indicates, the "other receipts" category has contributed a substantial portion of revenues in recent years, the vast majority stemming from the 2010 *Deepwater Horizon* oil spill. Other receipts include earned interest on the unexpended trust fund balance, fees from fines and penalties, and cost recovery from responsible parties. The trust fund is likely to receive additional revenues related to that incident, particularly from anticipated Clean Water Act civil penalties on BP.

Appendix C: Relevant Enbridge Financial Facts

SEC Filings - Form 10-Q

Enbridge Energy Partners LP filed this form on 5/2/2014

Excerpts taken from the Enbridge 2014 annual report

The Partnership expects adjusted EBITDA for 2015 to increase approximately 12 percent, to between

$1.68 billion and $1.78 billion, and expects distributable cash flow for 2015 to increase approximately 15 percent, to be between $900 million to $960 million

Page 23 - Legal and Regulatory Proceedings

A majority of the costs incurred for the crude oil release for Line 6B are covered by the insurance policy that expired on April 30, 2011, which had an aggregate limit of $650.0 million for pollution liability.

Including our remediation spending through March 31, 2014, we have exceeded the limits of coverage under this insurance policy. As of March 31, 2014, we have recorded total insurance recoveries of

$547.0 million for the Line 6B crude oil release, out of the $650.0 million aggregate limit. We expect to record receivables for additional amounts we claim for recovery pursuant to our insurance policies during the period that we deem realization of the claim for recovery to be probable.

In March 2013, we and Enbridge filed a lawsuit against the insurers of our remaining $145.0 million coverage, as one particular insurer is disputing our recovery eligibility for costs related to our claim on the Line 6B crude oil release and the other remaining insurers assert that their payment is predicated on the outcome of our recovery with that insurer. We received a partial recovery payment of $42.0 million from the other remaining insurers.

Of the remaining $103.0 million coverage limit, $85.0 million is the subject matter of the lawsuit Enbridge filed in March 2013 against one particular insurer who is disputing our recovery eligibility for costs related to our claim on the Line 6B oil release. The recovery of the remaining $18.0 million is awaiting resolution of this lawsuit. While we believe those costs are eligible for recovery, there can be no assurance that we will prevail in our lawsuit.

We are pursuing recovery of the costs associated with the Line 6A crude oil release from third parties; however, there can be no assurance that any such recovery will be obtained. Additionally, fines and penalties would not be covered under our existing insurance policy.

Enbridge will renew its comprehensive property and liability insurance programs which will be effective May 1, 2014 through April 30, 2015 having a liability aggregate limit of $700.0 million, including sudden and accidental pollution liability. The deductible applicable to oil pollution events will increase to $30 million per event, from the current $10 million. In the unlikely event that multiple insurable incidents occur which exceed coverage limits within the same insurance period, the total insurance coverage will be allocated among the Enbridge entities on an equitable basis based on an insurance allocation agreement the Partnership has entered into with Enbridge, Midcoast Energy Partners, and other Enbridge subsidiaries.

Environmental

Lakehead Line 6B Crude Oil Release

During 2014, our cash flows were affected by the approximate $141.4 million we paid for environmental remediation, restoration and cleanup activities resulting from the crude oil release that occurred in 2010 on Line 6B of our Lakehead system.

In March 2013, we and Enbridge filed a lawsuit against the insurers of our remaining $145.0 million coverage, as one particular insurer is disputing our recovery eligibility for costs related to our claim on the Line 6B crude oil release and the other remaining insurers assert that their payment is predicated on the outcome of our recovery with that insurer. We received a partial recovery payment of $42.0 million from the other remaining insurers during the third quarter 2013 and have since amended our lawsuit, such that it now includes only one carrier. While we believe that our claims for the remaining $103.0 million are covered under the policy, there can be no assurance that we will prevail in this lawsuit.

Comment I-43-1

About Us

We Provide Insurance Solutions to Complex Needs.

ABOUT US

ARMR.Network, LLC is a specialty wholesale environmental insurance brokerage firm and Managing General Agency.

ARMR.Network, LLC is uniquely designed as an Environmental Risk Resource Group on a wholesale insurance brokerage platform. We are specialists in environmental insurance. We enable our broker/agent production partners to compete effectively with the largest and most expensive in-house environmental resource groups in the insurance brokerage community.

OUR PROGRAMS, PRODUCTS, AND RESOURCE

Our Mission

We are dedicated to being leaders in specialty insurance solutions and helping our clients succeed through our experience and expertise in environmental insurance.

Our Values

At ARMR, we value our partnerships, prioritize honesty and dependability, uphold integrity, strive for excellence, and embrace innovation and knowledge.

WHO WE ARE

ARMR is a team of dedicated specialty insurance professionals, constantly reinventing the way wholesale brokers tackle environmental and specialty insurance challenges.

DEDICATED TO QUALITY

LEARN MORE

WE ARE YOUR ENVIRONTMENTAL INSURANCE SALES RESOURCE!

With every client, we help pre-qualify and pre-sell and meet network insurance specifications as well as provide a Free evaluation of customers' risks and exposures.

ARMR.Network is a specialty wholesale environmental insurance brokerage firm and Managing General Agency. ARMR. Network is uniquely designed as anwholesale insurance brokerage platform. We are specialists in environmental insurance. We enable our broker/agent production partners to compete effectively with the largest and most expensive in- house environmental resource groups in the insurance brokerage community. Our senior brokers have more than 20 years of experience in environmental insurance plus advanced multi-disciplined educational credentials in related fields.

We offer exceptional expertise and experience in environmental insurance and risk management. Our exceptionally well-qualified insurance brokers in their long careers have placed insurance on some of the most complex in the world, including developing the first Contractors Pollution Liability insurance policy in the world, insuring the containment operations from the nuclear disaster at Chornobyl, and developing the first insurance wrap-ups for Superfund remediation contractors. As risk and insurance consultants, our services have been engaged by the US EPA, the US Army Corps of Engineers, and the US Justice Department. We are the major contributors to the chapters in the CPCU, ARM, and IRMI texts on environmental insurance and we were also major contributors to the professional liability loss prevention chapter on environmental and mold risk professional liability loss prevention manual for the Independent Insurance Agents and Brokers of America. No matter how routine or complex the risk, from a single underground storage tank to a merger and acquisition involving significant environmental legacy costs, ARMR.Network has the experience and knowledge to help solve any environmental risk management challenge on a global basis. We welcome the opportunity to discuss how we can best serve your agency and your clients. We want to be your one-stop full-service environmental resource group.

C O M P E T E E F F E C T I V E LY

Production and Service at Its Best

With over 40 insurance markets offering more than 150 different non-standardized environmental insurance policy forms including literally thousands of endorsements ARMR.Networks specialized expertise frees up your time to focus on production and service while increasing your hit ratios and reducing your errors and omissions loss exposure in this professionally treacherous line of insurance. We provide you with immediate access to exceptionally qualified environmental risk management resources. We insulate you from competitors who have dedicated in-house environmental resource expertise. With years of experience and real-time knowledge of the environmental insurance market at the home office level, we help pre-qualify opportunities and dramatically increase your brokerage efficiency. By engaging the services of ARMR.Network, LLC as your Environmental Resource Group your agency will successfully generate significant new and exceptionally profitable organic revenue streams. At the same time, you will be satisfying your client’s needs for effective environmental risk management solutions.

A R M R D I F F E R E N C E

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Comment I-53-1

Shaun Hubbard

Also attaching file containing same comments as submitted below. File name:

COMMENTS RE: Rulemaking - Chapter 173-187 WAC and repeal of Chapter 317-50 WAC
Submitted via the Public Comment Form on Department of Ecology website

I am a resident of Seattle and San Juan Island and co-founder of San Juan Islanders for Safe Shipping. Our group advocates for responsible shipping in the Salish Sea because we are surrounded by water. Our islands are in the middle of a roundabout of vessel traffic, and we feel very vulnerable. The environment is our economy and way of life, and we look to our State's Department of Ecology to help us protect it.

Thank you for the opportunity to comment on the financial responsibility requirements of Class 1 facilities.

The key word here is "responsibility". Mistakes happen. If you make a mistake, own it and fix it. Parents teach this to their children as early as toddler age, as in "Clean up your toys, please".

I wish this weren't true, but oil spills do happen. An oil spill is a very very big mistake. Whoever spills that oil is responsible and should be held accountable. They need to clean it up and pay for that cleanup -- ALL of it, because this spilt oil will negatively impact everything it touches,

environmentally and economically, for a very long time. The oil from the 1989 Exxon Valdez spill is still present and causing harm. 35 years ago, the total cost for that disastrous mistake was $7 billion. Exxon retrieved only 8% of the spilt oil and paid only 1% in punitive damages. Meanwhile, an entire community's economy and environment were devastated and left irreparable. Where is the responsibility there?

Class 1 facilities are as responsible for an oil spill as the vessels that carry the product. Without these facilities, there would be no tank vessels and barges. Therefore, requiring the same financial responsibility from Class 1 facilities as for vessels -- $1 billion per facility is a fair ask. But really, it's not enough and we all know that $300 million is definitely not enough. Your own analysis states that a significant oil spill could cost $10.8 billion and 165,000 jobs -- based on 30-year-old estimates!

To really be serious about protecting the ecology of our state, the financial responsibility needs to be much higher. The oil industry can afford it. The average taxpayer cannot. By not requiring full financial responsibility for Class 1 facility oil spill damages, our state is basically giving money to the oil industry. Money that we will never see. If an oil spill happened, we would be left with the check and having to live with the devastating consequences. Ecology cannot let this happen to our state.

Please require Class 1 facilities to cover the full costs to clean up an oil spill based on current and future numbers, especially in light of the Trans Mountain Pipeline expansion soon to bring ever more costly risks to our state.

Thank you.

TO: Diana Davis

Department of Ecology, Northwest Regional Office Spill Prevention, Preparedness, and Response Program

P.O. Box 330316, Shoreline WA 98133-9716

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Thank you.

Ms. Shaun Hubbard

PO Box 805, Friday Harbor WA 98250

Comment I-58-1

Diana Davis

Department of Ecology, Northwest Regional Office Spill Prevention, Preparedness, and Response Program

P.O. Box 330316

Shoreline, WA 98133-9716

Dear Ms. Davis,

Skagit Land Trust is deeply concerned that the $300 million maximum financial responsibility requirement for class 1 facilities in your proposed new rule chapter 173-187 WAC Financial Responsibility is woefully inadequate.

Skagit Land Trust (SLT) with over 1500 members was formed in 1992 to conserve wildlife habitat, agricultural and forest lands, scenic open space, wetlands, and shorelines for the benefit of our community and as a legacy for future generations of people and wildlife.

Marine shoreline habitats protected by SLT either by acquisition and/or conservation easements include the Fidalgo Bay Aquatic Reserve, the Fidalgo Bay Carstens Conservation Area, the March Point Conservation Area, and the Samish Island Conservation Area. These highly sensitive marine shoreline habitats could be catastrophically impacted by an oil spill from the Class 1 facilities in the area, including the Marathon refinery (Anacortes), HP Sinclair Puget Sound refinery, and the Puget Sound spur of Canada's nearly completed Trans Mountain Pipeline expansion.

Pacific Great Blue Herons are a unique nonmigratory subspecies found only along the coast, rivers, and tributaries of the Salish Sea. The largest nesting colony of Pacific Great Blue Heron (Ardea erodias fannini) in the Salish Sea, the March Point Heronry, is part of SLT's March Point Conservation Area. With almost 600 nests, the March Point Heronry is considered the primary breeding center for Pacific Great Blue Herons in the Salish Sea. The sheer number of herons breeding, nesting, and rearing their young at March Point, provide the genetic diversity necessary to sustain a thriving population of Pacific Great Blue Herons in the Salish Sea.

The March Point herons have a bird's eye view of the Marathon (Anacortes) and HP Sinclair Puget Sound refineries, and of Padilla and Fidalgo Bays. The herons nest here because Padilla Bay's 8,000-acre eel grass bed, the second largest eel grass bed on the Pacific Coast of North America, functions as a nursery for juvenile salmon, crab, and herring, and as a home for forage fish whose high caloric content provides the nutrition needed by nesting Pacific Great Blue Heron and their rapidly growing young. Foraging studies have documented the use of Padilla Bay, Fidalgo Bay, and Samish Bay by Pacific Great Blue Herons for feeding during the nesting season. An oil spill into these waters would have a disastrous effect on the Pacific Great Blue Heron population.

Since 1999, Skagit Land Trust has played a key role in the protection of Fidalgo Bay, acquiring and placing conservation easements on over 500 acres of tidal property in south Fidalgo Bay before donating the tidelands to the state for the Department of Natural Resources (DNR) to manage as part of the Fidalgo Bay Aquatic Reserve. Our conservation easements ensure the preservation of these unique tidal flats, salt marshes, sand and gravel beaches, and expansive native eelgrass beds-- habitats vital to the reproductive, foraging and rearing success of many fish and bird species. SLT continues to support the aquatic reserve through the protection and restoration of additional Fidalgo Bay shoreline and streams that flow into the Bay.

Fidalgo Bay Aquatic Reserve provides critical Pacific herring spawning habitat. Surf smelt and sandlance are found here. Restored native Olympia oysters are thriving here. Along with Great Blue Herons, many migratory birds, Dungeness crab, and federally designated endangered species like bald eagles, peregrine falcons, and Puget Sound Chinook salmon feed here.

Skagit Land Trust's Samish Island Conservation Area protects 1,600 feet of natural shoreline on Padilla and Samish Bays which, along with the bays' eelgrass beds, provide nesting and or foraging habitat for many species, including rare, gray-bellied Brant.

An oil spill of any size from the Marathon (Anacortes) refinery, the HP Sinclair Puget Sound refinery, or the Puget Sound spur of Canada's Trans Mountain Pipeline could have an irrevocable, devastating impact on the extraordinary unique and sensitive marine ecosystems of Padilla Bay, Fidalgo Bay, and Samish Bay.

Oil spill response, cleanup and compensatory damage costs are not cheap, and when tar sands crude oil is involved in a spill the costs are even greater as tar sands sink rather than float in water. DOE's proposed maximum financial responsibility (FR) requirement does not take into account the greater costs associated with tar sand spills. The cost of the spill response and damage costs for the 2010 tar sands crude oil spill into the Kalamazoo River was $1,208,000,000 or $60,153 per barrel, an amount significantly higher than the $12,500 per barrel cost DOE has assigned in the proposed rule.

Washington State law RCW 88.40 requires that when determining the maximum financial responsibility of a Class 1 facility for an oil spill caused by the facility, DOE must look at how much the cleanup of the spilled oil would cost in today's dollars, how frequently operations that could result in a spill take place at the facility, and the current day cost of damages that could result

from the spill. DOE has not done this. Instead, DOE has chosen to model its proposed rule on California's COFR Rule.

Based on the California regulation, DOE's proposed FR rule puts the worst-case spill cost for WA State Class 1 facilities at $12,500 per barrel, a figure California established in 1995 based on a 1993 study of 1992 oil spill cleanup costs. Applying that figure to the 600,000 barrels in a worst-case spill scenario at Marathon's Anacortes refinery, the volume of the largest above ground storage tank at that refinery, the cost for containment, cleanup and damages would come to $7,500,000,000. DOE's proposed $300 million maximum financial responsibility requirement would cover only 4% of that total cost.

The chances of a worst scenario oil spill happening are very small, but when one does occur, Skagit Land Trust believes the financial responsibility requirement for the offending facility should cover the total actual cost based on today's dollars, not on dollars based on 30-year-old data. If DOE persists in establishing a woefully inadequate maximum financial responsibility requirement for Class 1 facilities, it will have failed to carry out its stated mission, "To protect, preserve, and enhance Washington's environment for current and future generations".

Washington State has no limit on the amount the responsible party is required to pay for damages caused by an oil spill. RCW 88.40 requires regulated entities to demonstrate financial responsibility for oil response cleanup costs and, as necessary, to compensate the State and affected recognized Indian tribes, counties and cities for damages that might occur during a spill.

However, the numbers tell us DOE's proposed $300 million FR requirement is far too low. Since the cost of a major spill cleanup could easily exceed that amount, such a low FR requirement would allow a Class 1 facility with inadequate resources to declare bankruptcy before all costs are paid, leaving an unfair and unjust monetary burden on WA taxpayers, state and local governments and tribes.

DOE justifies lowballing the FR amount for Washington Class 1 facilities because RCW 88.40 requires DOE to consider availability and affordability when determining financial responsibility requirements. But DOE should recognize and acknowledge that Class 1 facilities could join together in protection and indemnity clubs or mutual insurance associations thereby enabling themselves to meet adequate financial responsibility requirements, just as tank vessels and barges now do to reach their $1 billion financial responsibility requirement.

In summary, the proposed $300 million maximum financial responsibility requirement for Class 1 facilities is not nearly enough. At the very least, a $1 billion financial responsibility requirement should be established for each Class 1 facility.

Additionally, DOE must take into account the significantly higher costs of cleaning up and paying for damages caused by a tar sands oil spill. Canada's Trans Mountain Pipeline (Puget Sound) should have a financial responsibility requirement based on these higher costs. DOE should establish the per barrel amount cost for a Trans Mountain Pipeline spill to at least $60,153 per barrel.

Thank you for your careful and thoughtful consideration of our comments. Molly Doran

Executive Director, Skagit Land Trust

Comment I-181-1

Diana Davis, Department of Ecology, Northwest Regional Office, Spill Prevention, Preparedness, and Response Program

Sent as attachment via Department of Ecology's online tool

Re: New Chapter 173-187 WAC Financial Responsibility. Dear Ms. Davis:

Please accept our comment (pp. 1-7) on the proposed new Chapter 173-187 WAC, to establish financial responsibility (FR) for clean up and damage costs for oil spills and the Preliminary Cost Benefit Analysis (CBA) that supports the proposal.

Thank you for this opportunity to comment on these important rules. Our comment addresses only the rules proposed for onshore facilities: refineries, pipelines and other bulk facilities (Class 1 facilities).

We are residents of Skagit County where two of state's five refineries are located and through which the Olympic Pipeline, operated by BP, transports oil, jet fuel, gasoline and diesel fuel to various facilities in Washington and Oregon. We moved to Skagit County nearly two decades ago because of its beautiful diverse natural environment, rich farmlands and proximity to the Cascade Mountains and fragile Salish Sea. We enjoy exploring Skagit's natural beauty and the many creatures supported by its special environment.

Like many Skagit residents we are concerned about the long term health of Skagit's bays, estuaries, rivers and streams and the ability of these features to support the uniquely diverse small and large life forms that inhabit them (including eel grass beds, floating bull kelp, shorelines, fish, birds, invertebrates and all other wildlife). Consequently, we have worked as volunteers commenting on various environmental regulatory issues including coal export, oil by rail and oil refinery worker safety. We advocate for regulatory measures that we believe best protect Skagit, the Salish Sea and navigable waters throughout Washington affected by your rules. Although large oil spills may be low probability incidents they can result in high, ongoing, long-lasting and sometimes permanent consequences. We urge you to ensure that financial responsibility requirements for Class 1 facilities will provide sufficient compensation for oil spill impacts by those responsible for the costs and ensure that responsible parties cannot evade clean up and damage costs through bankruptcy or otherwise, leaving the major costs of clean up for government entities and Tribes. Unfortunately, we believe the FR amounts you have proposed for Class 1 facilities will not achieve the goals of the rulemaking effort. We request that you re-write the Class 1 facility rules and revise portions of the CBA that accompanies them.

The rules must adequately address FR for large spills from Class 1 facilities, including worst case spills.

The recent large gasoline spill from the Olympic Pipeline in Skagit County into waterways serves as a reminder for the Department and Skagit residents that oil spills can happen any time, anywhere and for any reason. The root cause of that spill is still unknown. Also unknown is whether there was delay between the beginning of the spill until any warning device notified BP or delay in BP's notification of the Unified Command.

An incident involving a Class 1 facility can release any amount of hazardous liquids into waterways. Causes of such incidents can range from a large or small failure (caused by a damage mechanism such as corrosion) of refinery process equipment or of storage tank or pipeline equipment, human error or natural causes like a severe storm or seismic events. See, the following 4 examples: 1.) an incident at the Husky Refinery near Lake Superior in which flying debris from an explosion and fire ruptured an asphalt tank (17,000 barrels of hot asphalt were released and flowed outside the tank's containment area) and narrowly missed the rupture of a Hydrogen Fluoride storage tank. An investigation found that the refinery had failed to implement appropriate

process safety management operating procedures during a shutdown. U.S. Chemical Safety Board, *Final Investigation Report*. *FCC Unit Explosion and Asphalt Fire at Husky Superior Refinery Superior, WI, Incident Date: April 26, 2018*. Report No. 2018-02-I-WI published December 23, 2022. https://www.csb.gov/husky-energy-superior-refinery-explosion-and-fire/; 2.) an oil spill into the Kalamazoo River cited in the agency's CBA in which on July 25, 2010, over 1 million gallons of heavy bitumen spilled from a cracked and corroded Enbridge Energy pipeline (and whose operators ignored an automated breach signal and continued to pump for 17 hours) contaminating the River for 35 miles and costing more than $1.2 billion ($60,153 per barrel) for a cleanup work that took 5 years. *Kalamazoo River oil spill*, https://en.wikipedia.org/wiki/Kalamazoo_River_oil_spill; 3.) CBA footnote 12, p.14 states that Hurricane Katrina in 2005 resulted in approximately 8 million gallons of oil released from Louisiana facilities damaged by the storm; and 4.) In 2021 Hurricane Ida released an unknown quantity of oil from area oil facilities smearing crude oil across 11 miles of the Gulf of Mexico. Partlow, J. September 7, 2021. *Oil spill in Gulf of Mexico is one of more than 2,000 reports of water pollution after Ida*. Washington Post."

https://www.washingtonpost.com/climate-environment/2021/09/07/oil-spill-hurric ane-ida/.

These incidents a few among others throughout the country demonstrating that any kind of large oil spill incident can result from any number of causes.

Neither the CBA nor the rules discuss earthquakes or tsunamis, and yet our region is predicted to experience a very large seismic event at some future time.

These should be included in the CBA's discussion. The CBA and rules should also take into account and discuss the age of some of the equipment at Class 1 facilities, for example the aging storage tanks (some of which are 70 years old) at Washington's refineries.

FR of $300 million for Class 1 facilities is grossly inadequate.

According to the Department's website and Preliminary Analysis for this rulemaking, based on 2006 dollars, "a large spill could cost the state $10.8 billion and 165,000 jobs." The monetary cost would be a significantly higher amount in today's dollars. The CBA should have disclosed what that amount would likely be in today's dollars. The regulation's proposed $300 million maximum financial responsibility requirement would cover less than 3% of the $10.8 billion costs (in 2006) of a large oil spill. How much lower would that percentage be today? The $300 million maximum would allow Class 1 facility owners to externalize most of the costs of oil spill clean up and damages to federal, state and local governmental entities (I.e., their taxpayers) and Tribes. In today's economy, financially burdened governmental entities and Tribes would lack sufficient funds to provide a timely or effective clean up. (We note that the U.S. Oil Spill Liability Trust Fund, is limited to providing up to $1 billion dollars per oil spill event) . The rules' FR amount violates the intent of the statute underlying this rulemaking requiring agency rules as "necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil … ." RCW 88.40.025, Financial responsibility for onshore or offshore facilities. The amount of FR for Class 1 facilities in the proposed rules does not come close to meeting the Legislature's intent. It must be rewritten.

The proposed rule inappropriately gives more weight to one of the law's stated factors to be considered.

RCW 88.40.025, provides in pertinent part: "[a]n onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might

occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall adopt a rule that considers such matters as the worst case amount of oil that could be spilled, as calculated in the applicant's oil spill contingency plan approved under chapter 90.56 RCW, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, **and** the commercial availability and affordability of financial responsibility." (Emphasis added.)

The Department has used just one of the five factors set forth in the second sentence of the statute, "the commercial availability and affordability of financial responsibility," and given this factor more weight than the other four in its decision to set the $300 million maximum FR for Class 1 facilities. The Legislature itself did not prioritize these factors or direct that weight be added to any one to set the FR amount. The plain language uses "and" rather than "or" in setting forth the factors. They should be weighed and applied equally. Choosing one factor above others to determine appropriate FR undermines the directive of the first sentence in the statute. As discussed above, the Department has concluded that the amount necessary to compensate the state would be $10.8 billion dollars based on 2006 dollars. The Department cannot reasonably conclude that the FR for Class 1 facilities should be as low as $300 million without giving more weight to "commercial availability and affordability" than any other factor and ignoring its own information about costs. The rule must be rewritten to require significantly greater FR in order to meet the Legislative intent to provide "necessary" compensation.

Basing the rules on the desire to achieve "parity" with California is inappropriate.

The Legislature did not mandate parity with California in the plain language of the statute itself or its statement of intent. RCW 88.40. Nor did it require that it be used as the basis for Ecology's Class 1 facilities' financial responsibility requirement. Nevertheless, the Department relies on a goal of achieving parity with California's rules in reaching its FR amount for those facilities despite knowing that its rules are inadequate to meet today's costs. The proposed financial responsibility $300 million amount for Class 1 facilities is based on 1995 California Rules that in turn were based on a 1993 study by Mercer Management Consulting, Inc. California based its requirements on the low range for the per barrel oil spill cost ($12,500) cited in that study. It is unreasonable for the Department of Ecology to follow California's outdated rules with amounts based on 1993 dollars.

The Department acknowledged the California rules were out of date in its Stakeholder Workshop #6 when it explained among other things that: since the early 90s when the rules were were established "… prices as reflected in the Consumer Price Index (CPI), have risen by a multiplier of approximately 2.176. When the 2.176 CPI inflation factor is applied to $12,500, the result is $27,200. When the 2.176 CPI inflation factor is applied to $300,000,000, the result is $652,800,000." Meanwhile, oil company profits have risen substantially. See, for example, Reed, S. New York Times. Feb. 2, 2024. Oil Giants Pump Their Way to Bumper Profits. https://www.nytimes.com/2024/02/02/business/oil-gas-companies-profits.html?smi d=nytcore-android-share. The $300 million amount is not even as much as the 1999 Bellingham Olympic Pipeline settlement amount reported in the CBA to be $404 million in today's dollars (the CBA p. 36 acknowledges that settlement amounts do not necessarily capture the true costs: "[s]ettlements are often made for lesser amounts than the real costs of the spill."

Ecology's reliance on 2003 legislative intent is likewise misplaced.

The use of 2003 legislative intent as a justification for the $300 million FR appears to involve an attempted sleight of hand. First, the agency explains that the relevant bill is Engrossed Second

Substitute House Bill (E2SHB) 1691. "Through Engrossed Second Substitute House Bill (E2SHB) 1691, codified in RCW 88.40, the Legislature directed Ecology to adopt rules regarding financial responsibility (FR) requirements for oil handling facilities and vessels." This is the 2022 Bill that underlies the present version of RCW 88.40, including the stated legislative intent in RCW 88.40.005.

Yet, the agency then relies heavily on language in section 1 of Engrossed Senate Bill 5938 of 2003 to justify its inadequate FR amount for Class 1 facilities: "[i]t also meets the legislative intent of Engrossed Senate Bill 5938, passed in 2003 … ." Time, experience and rising costs of cleanup and damages, together with the fact that the Legislature in 2022 included a new statement of intent in the law and did not repeat the language from 2003, all demand that the FR requirements in these rules be rewritten to account for today's likely clean-up costs and damage amounts.

Importantly, the more than 20-year old Engrossed Senate Bill 5938 intent statement was specifically directed at vessels. "The legislature finds that the current financial responsibility laws for vessels are in need of update and revision." (Emphasis added.) That statement did not include Class 1 facilities. There is nothing in the current statute, the older statute or in the 2003 or 2022 Engrossed Bills requiring, recommending or even suggesting parity with other states' rules for Class 1 onshore or offshore facilities.

Additionally, even the 2003 Bill does not mandate consistent dollar amounts of FR. It stated "[t]he legislature intends that, whenever possible, the standards set for Washington state provide the highest level of protection consistent with other western states and to ultimately achieve a more uniform system of financial responsibility on the Pacific Coast. (Emphasis added.) Consistency of administrating various rules and statues does not require mathematical equality in FR levels set at different points in time. Additionally the modifier in the second sentence "whenever possible" can be read as allowing higher FR even for vessels if 1995 rules in California, for example, are, as now, out-of-date and determined to be ineffective to protect our unique and fragile environment in Washington State. The Legislature was not demanding ineffective rules just for the sake of west coast consistency, but was seeking the "highest level of protection."

The oil Industry has the ability to comply with FR requirements greater than $300 million.

The CBA says in §6.3.1 that the agency "learned" that insurance from the commercial insurance market is not "generally available" for pollution control and damages above $200 million. "Industry is able to supplement the available insurance with other financial means to meet the $300 million requirement but would find it burdensome to find a means to meet a $600 million requirement." The CBA again gives greater weight to one factor out of 5 in the 2003 legislation: "availability and affordability." It drops FR down to an amount -$300 million - that has been in effect for more than 20 years for commercial passenger vessels with a fuel capacity of at least 6,000 gallons and concludes that a higher level "could have provided a higher level of protection for the state but failed to meet the specific objective of considering commercial affordability and availability of FR [financial responsibility] in the marketplace." It defies belief that one of the most profitable industries in our country cannot "afford" higher FR. Oil tanker vessels have complied with their $1 billion FR requirement for over 20 years and they have done so using risk pools including P&I (protection & indemnity) clubs or other mutual insurance associations. See CR102, p. 2 for description. Class 1 facilities can do the same.

The agency should not succumb to oil industry pressure concerning available insurance. After 7+ years of working on Washington's recently adopted refinery worker safety rules including attending numerous stakeholder meetings with representatives of the state's 5 refineries and

studying California's rulemaking process for that state's refinery safety rules, we know that the oil industry has a tendency to overstate its compliance costs and ability to comply when engaged in rulemaking with state agencies. We request that you take a hard look at the information provided by that industry about the ability to obtain and/or afford insurance coverage over $300 million and rewrite rules that come closer to providing adequate FR. In light of the costs of clean up that have resulted from earlier incidents elsewhere and the critical need to ensure that those responsible for oil spill incidents pay for their oil spills, and not push costs onto governments and Tribes, we believe that a more reasonable financial responsibility requirement for Class 1 facilities would be $1 billion (the same amount as for tanker vessels which participate in mutual insurance associations).

Oil spills of Alberta tar sands (bitumen) must be treated differently in the rules.

The Puget Sound spur of Canada's Trans Mountain Pipeline transports Alberta tar sands crude and other oil products to Washington State's northern refineries. This pipeline is in the (nearly complete) process of expanding. The expansion is expected to increase the volume of the pipeline's current capacity by 590,000 barrels per day. A spill into the Salish Sea or our region's rivers, including the Skagit River near us, from the transport of bitumen would be particularly devastating given the unique properties of bitumen.

Years ago we attended a presentation about oil spills in the Salish Sea hosted by the Northwest Straits Foundation at which, among other things, Ecology's Dave Byers explained to attendees the important difference between the behavior of spilled crude oil and Alberta tar sands oil (bitumen). We learned that that heavy bitumen, even diluted, is extremely difficult remove after a spill. "Regular" oil removal efforts can neither contain nor remove bitumen from the surface of a water body. And the bitumen will sink in the water column. The sunken bitumen will contaminate sediments and destroy ecosystems. The 2010 Kalamazoo River oil spill and the following multi-year clean up discussed above is instructive. However, the depth and geography of the Salish Sea would make the clean up more complex and more costly than that of the Kalamazoo River.

The Class 1 facilities' FR requirements applicable to bitumen transport must be even higher than those applied to spills of other oil based on the expected significantly higher costs of damages and clean up. Even bearing in mind that a spill into the Salish Sea would likely be more costly than the clean up of the Kalamazoo River, that oil spill disaster's per barrel clean up cost could reasonably be applied to create a special FR requirement for the Trans Mountain Pipeline bitumen of $60,153 per barrel. We request that the agency rewrite the rules to add a special FR rule for tar sands oil spilled from Class 1 facilities, or, in the alternative, begin a new rulemaking for this purpose.

The CBA omits full analysis of qualitative costs to the environment.

In weighing costs and benefits the Department is required by the Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) to "determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs … ." (Emphasis added.) Disappointingly, the CBA fails to discuss in any detail (or even identify) the fragile natural resources at stake in §4.2.2, "Establish required levels of financial responsibility for oil handling facilities and pipelines." Despite the APA language, the CBA ignores these qualitative costs of oil spills on the state's natural resources.

Among other things a large and certainly a worst case oil spill from a Class 1 facility could result in the extinction of the critically endangered Southern Resident Orca Whales (See, NOAA Fisheries Recovery Plan for Southern Resident Killer Whales (Orcinus orca), January 17, 2008. https://www.fisheries.noaa.gov/resource/document/recovery-plan-southern-reside nt-killer-whales-

orcinus-orca} and devastate other killer whale species' populations as well as kill other marine mammals. Salmon and other prey species would be lost not only from spilled oil killing individual animals but from suffocating nursery habitats like eel grass beds and floating bull kelp upon which the animals depend.

Forage fish and invertebrates could be destroyed. Indeed the entire food web in affected parts of the Salish Sea could be devastated. Shorebirds, seabirds, waterfowl, Great Blue Herons and other birds and their food sources would be lost. One of the lessons learned from the Olympic Pipeline explosion and other incidents like the 1989 Exxon Valdez vessel incident in is that the oil spill impacts on water bodies and species that depend on them can be very long lasting, even permanent.

Contrast Ecology's CBA to Washington Dept. of Labor and Industries (L&I), Final Cost-Benefit Analysis for Safety Standards for Process Safety Management of Highly Hazardous Chemicals, June 2023, §**4.6** pp.98-101, Process Safety Management (PSM),Chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals https://www.lni.wa.gov/rulemaking-activity/. In discussing qualitative costs, L&I's CBA describes in detail the numbers and names of the various species dependent upon the health of the Salish Sea and the proximity to the Salish Sea of the facilities (in this case the state's refineries) that can spill oil into the Sea's unique and fragile environment.

It seems inconceivable that the state's environmental agency would omit a qualitative analysis of the harm to the natural environment in its CBA. A revised CBA should include this information. Like the L&I rules, effective FR rules also serve a deterrent function against conscious risk taking to save money or lack of conscientious performance of tasks. That, in turn, will help prevent externalization of costs and reduce the likelihood of spills and harm to the environment. Ecology's CBA §4.2.2 only analyzes the quantitative costs of the loss of some species in terms of financial damages that would be incurred from those who use the resources. The impacts on fragile and unique natural resources in Washington's navigable waters should be added to a revised CBA as qualitative damages.

We ask that you rewrite the rules for Class 1 facilities, write a special FR rule for bitumen transport (or initiate a new rulemaking for this purpose) and revise the accompanying CBA for all of the above reasons. We are counting on you to make the rules strong, effective and enforceable. Too much is at stake for Washington's citizens and natural resources for you to fail in your purpose. Thank you for considering our comment.

Sincerely,

Mary Ruth and Phillip Holder

Comment I-195-1

The American Waterways Operators

999 N. Northlake Way Suite 223

Seattle, WA 98103

PHONE: 206.406.3922

EMAIL: pschrappen@americanwaterways.com

Peter J. Schrappen, CAE Vice President – Pacific Region

March 8, 2024 Ms. Diana Davis

Department of Ecology, Northwest Regional Office Spill Prevention, Preparedness, and Response Program

P.O. Box 330316

Shoreline, WA 98133-9716

RE: Chapter 173-187 WAC Financial Responsibility Proposed Rule Language Dear Ms. Davis:

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. Our industry is the largest segment of the U.S.-flagged domestic maritime fleet and the most sustainable mode of freight transportation, producing 43 percent less greenhouse gas emissions than rail and more than 800 percent less than trucks. On behalf of AWO's more than 300 member companies, we appreciate the opportunity to comment on the Chapter 173-187 WAC Financial Responsibility Proposed Rule Language.

Washington state is an important hub for maritime transportation on the West Coast. Fifteen AWO member companies are headquartered in Washington, with more operating throughout the state's waterways. The tugboat, towboat and barge industry contributes $6.1 billion annually to the state's economy, moving over 119 million tons of freight and supporting 22,500 jobs. AWO has worked collaboratively with the Department of Ecology (ECY) over the years on a range of policy issues, including spill response and tug escort rules, and has served as an industry representative on the Oil Spill Rulemaking Advisory Committee, the Columbia River Vessel Traffic Management Working Group, the Safety Assessment Working Group, and the Board of Pilotage Commissioners' Oil Transportation Safety Committee.

AWO has a track record of working with government and private sector stakeholders to ensure safe, sustainable, and environmentally sound navigation and our members take care to implement effective and appropriate risk mitigation measures while operating in Washington state waters. We thank ECY for consistently engaging with industry throughout this process and for incorporating multiple AWO recommendations into the proposed rule language. Given the interstate nature of the maritime industry, the most successful policies are those that reflect parity with adjacent states and recognize that recognizes that vessels are mobile assets that can be moved with as little as an hour' notice and perform a variety of functions. The proposed rule does this.

However, to improve the rule further for all stakeholders, AWO recommends amending the definition of "Verification of Financial Responsibility" to mean:

"Verification from Ecology for a covered vessel that has demonstrated the vessel is currently a member of a P&I club that provides appropriate financial responsibility amounts in Washington state as required under these rules *or has been approved for a certificate of financial responsibility by another state or federal agency where financial responsibility is in the amount of or greater than the amounts required under these rules*."

ECY created the verification process to expedite certificates of compliance for vessels that have Protection and Indemnification (P&I) Club membership. P&I Clubs cover oil pollution risk up to the maximum amount the state requires and ECY has confirmed that the certification includes all information necessary to quickly verify if a vessel is covered. However, P&I Club membership is not the only insurance option available to vessel owners. Operators should not be excluded from the verification for financial responsibility process if they are able to demonstrate that they have a certificate of financial responsibility issued by another state or federal agency in the amount that meets Washington state's financial responsibility requirements.
Thank you for the opportunity to comment on this issue. Sincerely,

Peter Schrappen, CAE

Vice President – Pacific Region
The Tugboat, Towboat and Barge Industry Association

Comment I-225-1

BP Products North America Inc. Phone: 1 360-340-1885

E-mail: sophie.todd@bp.com

VIA ELECTRONIC SUBMISSION

March 8, 2024 Diana Davis

Financial Responsibility Unit Supervisor Department of Ecology

Northwest Regional Office, Spill Prevention, Preparedness, and Response Program

P.O. Box 330316

Shoreline, WA 98133-9716

Re: Rulemaking – Chapter 173-187 WAC

Dear Ms. Davis:

Thank you for the opportunity to submit written comments on the Washington Department of Ecology's ("Department of Ecology") proposed rulemaking on financial responsibility for petroleum products, Washington Administrative Code Chapter 173-187, pursuant to RCW 88.40.005, *et seq.* These comments are submitted on behalf of BP America Inc. and its subsidiaries (collectively, "bp") which own and/or operate a petroleum refinery, terminal, and pipeline in the State of Washington. Under the proposed rule, bp would be required to provide financial responsibility for several Class 1 facilities.

We appreciate the comments and revisions that the Department of Ecology has already incorporated into its proposed rule. bp offers the following additional comments to identify several issues that are likely to impede the regulated community's capacity to comply with the

proposed rule. In each case, we suggest minor modifications intended to improve compliance and meet the Department of Ecology's primary goal of providing strong, durable financial assurance instruments that protect the State and its citizens from the cost of marine oil spills. Thank you for considering these comments as you prepare the final rule.

- The final rule should expressly allow an owner or operator's parent or sister corporation, or a firm with a substantial business relationship with the owner or operator, to provide a guarantee for the owner or operator.

The proposed guarantee language should be modified to harmonize and match the approach used in the Department of Ecology's Dangerous Waste financial assurance regulations, which expressly allow a "direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator [i.e. a sister corporation], or a firm with a 'substantial business relationship' with the owner or operator" to provide a

guarantee for a facility owner or operator if the parent company, sister company, affiliate, or other related entity meets the "financial, application, and reporting" requirements of proposed WAC 173-187-220(g) (relating to self-insurance). *See* WAC 173-303-620(4) (incorporating by reference 40 C.F.R. § 264.143(f)(10)).

That approach has been approved for use at other sites in Washington that face a similar risk of a future spill or release of a substance or substances that may result in harm to people, wildlife, and the environment. It allows an owner or operator to obtain a guarantee from a related corporate entity that is strong and structured to meet the financial requirements in a wide range of potential future economic conditions that might impact the owner, operator, and potentially the broader petroleum refining, marketing, and transportation industry in Washington. The State and its citizens have an interest in securing guarantees from the strongest corporate entities. Allowing corporate guarantees from a related corporate entity would help provide assurance and security to the State and its citizens, who ultimately seek protection against the risk of non-performance or non-payment.

- The requirement to provide duplicative financial assurance when an insurance deductible is above 1% is unnecessarily onerous, does not provide any additional protection for the State of Washington or the environment, and should be removed from the final rule.

The current proposed rule only allows a deductible in an insurance policy if the applicant demonstrates supplemental financial responsibility coverage for the amount of the deductible when the deductible is greater than 1% of the policy amount. This rule would apply even though the insurer issues a policy that agrees to pay all claims on a first-dollar basis. As you know, first-dollar coverage means that the insurer pays the claim first without any deductible. The insurer then seeks reimbursement for the deductible from the insured. The requirement to provide additional financial assurance for the deductible is duplicative, unnecessary, and does not provide any additional protection for the State of Washington when the State is paid in full without any deductible under a 'first dollar' policy.

As the Department of Ecology acknowledged in the Preliminary Regulatory Analyses for Chapter 173-187 WAC, "insurance from the commercial insurance market is not generally available to the regulated industry for pollution control and damages above $200 million."

Preliminary Regulatory Analyses for Chapter 173-187 WAC, Jan. 2024, p. 48. When proposing a $300 million maximum financial responsibility requirement for Class I facilities, the Department of Ecology acknowledged that multiple insurance products, or a combination of insurance and other financial responsibility instruments, will need to be obtained and 'stacked' to reach the $300 million total required amount of financial responsibility. Providing additional layers of insurance (likely with their own deductibles) on top of that, in order to meet a requirement to insure the deductible, will further tax the capacity of the commercial insurance market, without providing any financial benefit to the State or its citizens.

- The requirement to use a standby trust in connection with a surety bond, letter of credit, and guarantee is burdensome and unnecessary.

The proposed rule requires a standby trust be established if a surety bond, letter of credit, or guarantee is used as the financial responsibility mechanism. WAC 173-187-220(b), (c), (d). Maintaining a standby trust is an expense and an administrative burden, and it is not clear what benefit a standby trust serves where the financial responsibility instrument—whether a surety bond, letter of credit, or a guarantee—can be drawn on by the State of Washington in the event of an oil spill.

In particular, it is not clear why a standby trust is needed for a guarantee, when a standby trust is not required for a guarantee in the Department of Ecology's rules for Dangerous Waste, WAC § 173-303-620(4) (incorporating by reference 40 C.F.R. § 143(f)(10)). Instead, the Dangerous Waste regulations for a corporate guarantee provide that the guarantor can either perform the cleanup itself or establish a trust with the required amount of funds for cleanup. We believe that a similar approach would be equally effective for marine oil spills.

The requirement to establish a series of empty standby trust accounts for guarantees, surety bonds and letters of credit creates an administrative burden for the regulated community, with no apparent benefit to the State or its citizens. It would be more appropriate to require the creation of a trust account, if one is needed, at the point when the obligation to make payment or perform cleanup has been triggered under one of these financial responsibility mechanisms, and to further limit the obligation to situations where the State seeks to have funds deposited into a trust account, rather than to have a guarantor or surety perform the required response actions.

- The proposed financial responsibility forms are an integral part of the rule and should be submitted to the public for comment.

We understand that proposed forms are being developed for the financial responsibility mechanisms in the rule and for a standby trust. Those forms have not yet been made available for public comment. Those forms should be: (1) made available for public comment and (2) incorporated into the final rule to identify the terms and conditions that the Department of Ecology would require or accept for each of the available financial responsibility mechanisms. Public comment will help address any potential issues or inconsistencies between the proposed forms and proposed rulemaking language. It is better—for both the Department of Ecology and the regulated community—to address those issues now than to deal with inconsistencies in a future rulemaking or on an ad hoc basis.

It is our understanding that these proposed forms will track the language used by the United States Environmental Protection Agency ("EPA") for facilities providing financial responsibility for underground storage tanks, found in 40 C.F.R. Part 280, Subpart H. We agree that the

language in those forms is useful, and in many cases, contains provisions we would like to see in the Department of Ecology's final rule in WAC 173-187. However, since the Department of Ecology's proposed rule differs from the federal underground storage tank rule, it is important to consider how EPA's forms will be used or adapted to the final rule that the Department of Ecology adopts.

- The sources of insurance should be broadened to ensure sufficient coverage and reduce strain on the Washington insurance market.

The current proposed rule requires insurance to be purchased from an entity authorized to sell insurance in Washington or through a licensed surplus line broker. This requirement will likely strain the capacity of the Washington insurance market heavily. The Department of Ecology's stated reason for this choice is that other insurance "may be a high risk insurance that cannot be relied upon to provide coverage in the event of an oil spill." Preliminary Regulatory Analyses for Chapter 173-187 WAC, Jan. 2024, p. 51. Although this may be a valid concern in the case of insurance originating from a market outside the United States, the Department of Ecology should consider whether an alternative approach will provide equivalent protection.

The current rules for financial assurance for dangerous wastes, WAC § 173-303-620(4)(d) and 40 C.F.R. § 264.143(e)(1), require an insurance company to be licensed in a state within the United States, or to carry a certain financial strength rating. We believe the proposed rule could be modified to harmonize with and adopt the same approach for marine oil spills. It is notable that the Washington legislature found it appropriate for other financial assurance mechanisms to be purchased outside the State of Washington. For bonds, for example, the statute only requires that a bond be issued by a bonding company authorized to do business in the United States. RCW 88.40.030. Insurance and surety bonds are both nationwide industries, and the provisions that apply to surety bonds can be applied to insurance to achieve a similar level of financial strength and protection.

The Department of Ecology should also revise this rule to expressly allow insurance instruments issued by affiliate companies, often called "captive insurance," in order to prevent undue strain on the Washington insurance market.

- We support the Department of Ecology's selection of a $300M maximum amount of financial responsibility and note that additional funds for oil spill response actions may be available from other sources, such as the Oil Spill Liability Trust Fund.

In the proposed language for the rule, Ecology declined to include a maximum of $600M in financial responsibility for Class I facilities, recognizing that no insurers offer such coverage in the United States, and that an unachievably high requirement would not "meet the specific objective of considering commercial affordability and availability of financial responsibility in the marketplace," and would place financial responsibility instruments and compliance out of reach for many facilities. Preliminary Regulatory Analyses, Jan. 2024, p.48. This is consistent with the statutory objectives in RCW 88.40.025, which require the Department of Ecology to consider the commercial affordability and availability of financial responsibility.

We recognize that some commenters on the proposed rule have asked for higher levels of financial responsibility. In response, the Department of Ecology may find it useful to point out that the Oil Pollution Act of 1990 created an Oil Spill Liability Trust Fund ("OSLTF") which already provides up to $1.5 billion to respond to a release of oil into navigational US waterways,

including up to $750 million for the initiation of natural resource damage assessments and claims in connection with any single incident. 26 U.S.C. § 9509(c). Owners, operators, and other parties who are responsible for the release must reimburse the OSLTF for funds that are used to respond to the release. *Id.* § 9509(d). This is fully consistent with the Department of Ecology's goal to make sure that the entity responsible for a spill pays to clean it up.

The OSLTF is another layer of funding—and significant funding at that—to ensure that Washington's navigable waters will be protected in the event of such a spill. The net effect of the rule that the Department of Ecology is considering now is to increase the amount of financial assurance that may be available for oil spill response in marine waters up to $1.8 billion per facility and incident.

- The Department of Ecology should clarify the "significant changes" provision.

Under proposed rule section WAC 173-187-300, owners and operators must notify the Department of Ecology of a "significant change" within seven days, and the Department of Ecology may suspend/terminate the certificate of financial responsibility ("COFR") if the owner or operator can no longer demonstrate financial responsibility based on the "significant change." "Significant change" is defined in WAC 173-187-300 as:

Significant changes include, but are not limited to:

- A change in ownership or operational control;
- That a method of demonstrating financial responsibility will be terminated or any coverage thereunder will cease;
- Any financial responsibility coverage amount that will be changed or adjusted.

The underlined language above (i.e., "include, but are not limited to") should be replaced with "are." Facility owners and operators should not have to predict what may constitute a significant change beyond the identified change in ownership or operational control, termination of a financial responsibility instrument, or a change in the required amount of financial responsibility for a facility. Particularly where the consequence is suspension or termination of the COFR, it should be clear what each facility owner and operator must do to ensure compliance with the rule.

- The Department of Ecology should clarify who can make the authorized representative designation.

The proposed rule allows an authorized representative to apply for a COFR on behalf of an owner or operator. We understand that the Department of Ecology intends this provision to make sure that a company and its leadership understand that they are bound by the financial responsibility obligations signed and submitted by the authorized representative. We also understand that the Department of Ecology is developing a form for the authorized representative designation. As discussed above, it is important for this form and any other proposed form to be made available to the public for review, as there may be inconsistencies in the language of the rule and what is contemplated on the form. In particular, the "authorized representative" definition in the proposed rule ("a person who has the authority, or delegated authority, to submit and attest to relevant information," WAC 173-187-040) seems broad enough that it could include any person so designated by an applicant. If the Department of Ecology intends only for a

limited set of persons to serve as an authorized representative, that should be made clear now in the rulemaking process.

- The Department of Ecology should provide appropriate process for the revocation of approval of an alternate financial responsibility amount.

Under the proposed rule section WAC 173-187-120, the Department of Ecology may revoke approval of an approved alternate financial responsibility calculation "at any time in response to new information or after operational or engineering changes that alter the conditions of approval." This provision should also include a defined period of time in which the owner or operator can propose a revised alternative financial responsibility amount that accounts for the new information or operational or engineering changes, and a 60-day time period to adjust its financial responsibility instruments for the new amount. The proposed rule should also include a dispute resolution procedure in the event that the Department of Ecology and the owner or operator do not agree on the required amount of financial responsibility.

- The Department of Ecology should clarify when it will draw on a financial responsibility instrument.

The rule does not clearly identify the circumstances in which the Department of Ecology would draw on any financial responsibility instrument. For example, if an owner or operator uses a surety bond as financial responsibility, will the Department of Ecology draw on the bond as soon as an oil spill occurs, or will it draw on the bond only if the owner or operator fails to clean up the spill or adequately cover the costs of clean up and damages? The point at which the Department of Ecology intends to draw on the proposed financial responsibility instruments should be identified clearly in the final rule.

- Financial responsibility should be required on a "per vessel" or "per facility" basis.

The proposed rule appears to require financial responsibility on a "per vessel" or "per facility" basis. If a facility operator provides adequate financial responsibility for the facility, there is no need for the owner to provide a second and duplicate layer of financial responsibility. The final rule should be clarified to make this point explicit. As an example, the federal rules for underground storage tanks contain a provision that states, "if the owner and operator of a petroleum [UST] are separate persons, only one person is required to demonstrate financial responsibility." 40 C.F.R. § 280.90. A similar approach would be appropriate here.

- Issuance of a COFR should be an explicit affirmation of the sufficiency of the underlining financial responsibility mechanism.

The proposed rule implies that, when the Department of Ecology issues a COFR, it has determined that the applicant's financial responsibility instrument is sufficient. Specifically, the proposed rule states in WAC 173-187-250, "If Ecology approves the application for financial responsibility, it will issue a Washington COFR to the applicant stating that the proof of financial responsibility requirements have been met for each vessel or facility identified in the application." The rule should clearly state that the Department of Ecology has determined that the applicant's financial responsibility is sufficient when it issues a COFR.

- The Moody's rating requirement for self-insurance should include all "Baa" ratings.

The credit rating required for self-insurance should be clarified. The proposed language in WAC 173-187-220(g)(i)(B) requires a credit rating of Baa or better by Moody's credit rating agency,

among other acceptable credit ratings. Moody's uses several "Baa" ratings: Baa1, Baa2, and Baa3. All three "Baa" ratings should be accepted and this should be stated clearly in the final rule.

Thank you for your consideration of these comments. If you have any questions or would like further information about anything in this letter, please contact us by e-mail at Sophie.Todd@bp.com and Patsy.Williams@bp.com, with a copy to the following legal counsel who assisted us in preparing these comments: Jean.Martin@bp.com, Sara.Warren@alston.com, and Elise.Paeffgen@alston.com. We will be happy to schedule a call to answer your questions, or to respond in writing to your requests.

Sincerely,

Sophie Todd, Crisis & Continuity Advisor BP Cherry Point Refinery

BP Products North America Inc. and affiliates

Cc: Patsy Williams, bp Tom Wolfe, bp Jess Gonzalez, bp

Christina Landgraf, bp Susan Lifvendahl, bp Jean Martin, bp

Elise Paeffgen, Alston & Bird Sara Warren, Alston & Bird

Comment I-240-1

John Battalia

3-4-24

Dear Diana,

As a former resident of Orcas Is. and a continuing supporter of "The Friends of the San Juan Islands" I would like to encourage higher mandatory insurance levels for refineries, pipelines, and other bulk oil handling facilities.

In my opinion they should also be held to the same standards as tank vessels and barges which is 1 Billion dollars. In my mind they could do as much or more damage as tank vessels and barges.

The Salish Sea is one of the most unique and beautiful areas of the US — let's keep it that way — a large oil spill would be catastrophic — let's not let the oil companies and carriers get away from responsibility by "declaring bankruptcy" Make 1 Billion dollar insurance mandatory. Their profit margins can afford it!

Thank you for caring about your unique and precious environment.

Sincerely,

[illegible]