DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapter 173-186
Washington Administrative Code
OIL SPILL CONTINGENCY PLAN – RAILROAD

Summary of rulemaking and response to comments

August 2016
Publication no. 16-08-021

Publication and Contact Information

This publication is available on the Department of Ecology's website at
https://fortress.wa.gov/ecy/publications/SummaryPages/1608021.html

For more information contact:

Spill Prevention, Preparedness and Response Program
P.O. Box 47600
Olympia, WA 98504-7600

Phone: 360-407-7455

Washington State Department of Ecology - www.ecy.wa.gov

- Headquarters, Olympia 360-407-6000
- Northwest Regional Office, Bellevue 425-649-7000
- Southwest Regional Office, Olympia 360-407-6300
- Central Regional Office, Union Gap 509-575-2490
- Eastern Regional Office, Spokane 509-329-3400

Ecology publishes this document to meet the requirements of the Washington State Administrative Procedure Act (RCW 34.05.325)

To ask about the availability of this document in a version for the visually impaired, call the Spills Program at 360-407-7455.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

Concise Explanatory Statement

Chapter 173-186 WAC
OIL SPILL CONTINGENCY PLAN - RAILROAD

Spill Prevention, Preparedness and Response Program
Washington State Department of Ecology
Olympia, Washington 98504-7600

This page is purposely left blank.

Table of Contents

Introduction.....3

Reasons for Adopting the Rule.....4

Differences between the Proposed and Adopted Rule.....6
- Summary of changes described in a bulleted list.....7
- Summary of Comments Received By Section of the Proposed Rule.....9
- Commenter Index.....31

Appendix A: Copies of all written comments.....42

Appendix B: Transcripts from public hearings.....234

This page is purposely left blank.

Introduction

The purpose of a Concise Explanatory Statement is to:

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

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

Title:	Oil Spill Contingency Plan - Railroad
WAC Chapter(s):	173-186
Adopted date:	August 31, 2016
Effective date:	October 1, 2016

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: http://www.ecy.wa.gov/laws-rules/index.html

Reasons for Adopting the Rule

The Washington State legislature has declared that it is the public policy of the state of Washington "*to maintain the highest possible standards to ensure the purity of all waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington"* (RCW 90.48.010).

In RCW 90.56.005, the legislature further declared that *"water borne transportation as a source of supply for oil and hazardous substances poses special concern for the state of Washington."* Additionally, the legislature found that *"the movement of crude oil through rail corridors and over Washington waters creates safety and environmental risks. The sources and transport of crude oil bring risks to our communities along rail lines and to the Columbia River, Grays Harbor, and Puget Sound waters. These shipments are expected to increase in the coming years. Vessels and trains transporting oil into Washington travel on some of the most unique and special marine and freshwater environments in the United States. These water environments are a source of natural beauty, recreation, and economic livelihood for many residents of this state. As a result, the state has an obligation to ensure the citizens of the state that the waters of the state will be protected from oil spills."*

New Legislative Direction:
During the 2015 legislative session, RCW 88.46.010 and RCW 90.56.010 were amended to include railroads (not owned by the state) that transport bulk oil as cargo in the definition of a regulated "facility." RCW 90.56.210 was amended to expand Ecology's authority to require state contingency plans for rail and Ecology was directed to develop rules establishing contingency planning requirements for railroads. This was in response to changes in the modes of transportation, some properties of oil and the fate and effect of oil spills into the environment occurring in Washington State.

Washington State has experienced a dramatic shift from oil transported by vessel to oil transported by rail. Although we have had decades of oil spill planning in the marine areas where oil has historically been moved, we recognize that we lack oil spill planning along the railroad corridors where spills could impact rivers, creeks, streams, wetlands and our marine waters such as Puget Sound, harbors and bays. Oil properties and their impact on the environment vary by crude oil or refined product type, in their persistence, toxicity and the mechanical injury caused to organisms and their habitat. These rules provide appropriate levels of protection across that spectrum of impact.

Final Rules:
These final rules establish oil spill contingency plan, drill and equipment verification requirements, and provisions for inspection of records for owners and operators of railroad facilities, and for the response contractors that are listed in the railroad plans. These regulations extend our planning efforts inland and are intended to minimize the impacts of railroad spills to water.

Ecology conducted extensive public outreach while considering and developing these rules. Alternative versions of the proposed rules were discussed with stakeholders, the regulated community, federal, state, local, and tribal governments, environmental stakeholders, economic consultants, Ecology staff and other interested parties. Changes in response to public input were incorporated into these final rules. A detailed cost benefit analysis and a least burdensome analysis were conducted. The final rules were determined to be the least burdensome alternative for the regulated community to comply with, while still meeting Ecology's statutory mandates and the legislative goal of worst case oil spill planning for railroads.

Differences between the Proposed 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, stating the reasons for the differences.

The public comment period for this rule ran from April 6, 2016 to June 10, 2016. This section includes summarized comments received through June 12, 2016, to accommodate the increase in comments received by email on June 10, 2016. There are differences between the proposed rule filed on April 6, 2016 and the adopted rule filed on August 31, 2016 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.

There are two ways in this document to view the differences.

1. A summary of changes are described in a narrative form below in a bulleted list. Changes made solely for editing or clarification purposes are not included in this narrative list.
2. Ecology accepted comments on the proposed rules between August 31, 2016 and June 12, 2016. Hearings were held in Spokane on May 17, Everett on May 23, via a webinar on June 1, 2016, and in Vancouver on June 3, 2016. All comments received either in writing or at hearings are summarized below listed by section of the proposed rules, together with a response to the comments and the names of the commenters. Changes made solely for editing or clarification purposes are not included in this list. The summary is then followed by a list of commenters followed by a cross reference to the comment number.

Summary of changes described in a bulleted list

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

- A definition for the term "planning standards" has been added to the definition section, WAC 173-186-040. The paragraph describing the context of a planning standard has been moved to WAC 173-186-300 for greater clarity.
- The word "local" was added to the paragraph describing coordination of spills responses to more fully reflect the state's emergency response planning structure.
- The definition of "Rail Classification" was deleted after changes were made to WAC 173-186-120 which eliminated the need to use this term in the rules.
- Minor clarifying changes were made to WAC 173-186-100 to better reflect that a single integrated railroad plan may be submitted on behalf of a group of rail operators, and that the plan could be submitted by either an owner, an operator, or a primary response contractor.
- No change was made to the definition of worst case spill volume involving the entire number of railcars; however, a change was made to the portion of the definition that allows a railroad to submit an alternative calculation for consideration, which is permitted by statute.
- Several changes were made to the phase-in section, WAC 173-186-120.
    - In the interim while a full plan is being developed, rail operators will provide either a federal oil spill plan or a letter containing key information to demonstrate the ability to respond to spills;
    - A process is defined for managing a plan submittal if there is a rail operating area where Geographic Response Plans (GRPs) do not yet exist;
    - The phase-in time for purchasing equipment if that is necessary after initial plan review by Ecology was shortened; and
    - A paragraph relating to rail operators that may move oil in the future (not currently subject to regulation) was moved to WAC 173-186-420 where it is more appropriately located because it is not a phase-in for the current rules.
- A minor clarification change was made to WAC 173-186-140 to indicate that the reference is to oil products and not "any" products, which could be interpreted broadly.
- A change was made to WAC 173-186-200 to indicate that all rail operators, not limited to those transporting biological oils, may use the boilerplate plan that will be posted on the Ecology website.
- Several changes were made to WAC 173-186-220, primarily clarifying edits. This section was clarified to describe the process for protecting the environment in areas where GRPs do not yet exist.
- The equipment planning standards in WAC 173-186-310 were adjusted to be aligned, and in proportion with, the planning standards for facilities, pipelines and vessels.
- It was clarified in WAC 173-186-320 that the equipment maintenance procedures apply to oil spill response equipment and not to other types of railroad equipment.

- The requirement to have access to equipment capable of responding to oils that sink or submerge was expanded to all crude oils since many types of crude oils will sink under certain conditions, whether they are classified as Group 5 oils or not.
- An addition to WAC 173-186-430 was made to require a public comment period for permanent significant changes to approved plans.
- The drill core components listed in WAC 173-186-520 were modified to reflect recent changes in the federal National Preparedness for Response Exercise Program guidelines, published in 2016.

Summary of Comments Received By Section of the Proposed Rule

The following comments have been summarized from the comment letters. After each comment is a list of names of those who commented.

PART I: PURPOSE, APPLICABILITY, AUTHORITY AND DEFINITIONS

WAC 173-186-010 PURPOSE.

1. Summary of comments: Commenters suggested further clarifying how the concept of equipment planning standards are used in this regulation. Other commenters suggested that the proposed rules wrongfully require response actions within regulated and specified timeframes suggesting that this is prohibited by federal statute.

Response: A definition for planning standards has been added to the definition section, WAC 173-186-040. The paragraph describing the context of how planning standards are applied when reviewing plans has been moved to WAC 173-186-300 for further clarity. Equipment planning standards require strategic pre-staging of oil spill response equipment in certain geographic areas, in order to be better prepared to respond to oil spills. They do not require specific response actions within specific timeframes.

Commenter(s): Patrick Brady, Melissa Hagan

---

2. Summary of comments: Commenters suggested the purpose of the rule should be narrowed to planning relating only to oil moved in High Hazard Flammable Trains.

Response: The Legislature has directed Ecology to write regulations for railroad planning that includes both crude and refined oils, for cargo oils transported by rail in any volume. Ecology must follow the mandate from the Legislature.

Commenter(s): Patrick Brady

---

3. Summary of comments: Commenters suggested adding the word "local" in this section to reflect that local agencies are a component of the coordinated approach to emergency planning efforts.

Response: This change has been made.

Commenter(s): Mayor Kelli Linville and Council President Pinky Vargas

---

WAC 173-186-020 APPLICABILITY.

4. Summary of comments: Commenters suggested that the rules allow railroads to develop "umbrella" contingency plan coverage under the plan of a rail partner, or owner or under the plan of their customers. Commenters also suggested allowing railroads to share planning costs and combine resources by forming a master or integrated plan with others.

Response: The proposed rules allow railroads to organize under an integrated or single plan with multiple enrolled rail members. Minor clarifying changes were made to WAC 173-186-100 to further clarify this.

Commenter(s): Amber Carter

---

5. Summary of comments: Commenters suggested that Ecology provide a blanket exemption, or alternatively specific exemptions dependent on rail operations to the requirements for Class III railroads that do not transport crude oil. Examples of exemptions provided in the comments include allowing rail to reduce the requirements according to rail speed, length of rail corridor, volume of oil moved annually, or type of oil moved.

Response: The equipment requirements are scaled to the volume of oil a railroad moves, in other words a rail operator that moves a smaller volume of oil has fewer equipment requirements. Ecology believes this is appropriately scaled to the risk of spills.

Commenter(s): Amber Carter

WAC 173-186-040 DEFINITIONS.

"Worst case spill"

6. Summary of comments: There were comments on the importance of retaining the proposed definition of a worst case spill, and the importance of the requiring that plans include equipment necessary to respond to a release of the entire cargo. There were comments suggesting that the proposed definition is inconsistent with other Ecology regulated facilities, and the proposed rule would be much higher in volume than actual crude oil unit train incidents. Commenters suggested that railroads be able to submit a "worst case spill" or "largest foreseeable spill in adverse weather conditions" volume using engineering calculations that are consistent with federal regulations.

Response: The definition of worst case spill as applied to railroads is consistent with other worst case spill definitions in WAC and the legislative intent for planning purposes. No change has been made to the definition of worst case spill. However, changes were made to the equipment planning standards found in WAC 173-186-310, which correlate to the definition of worst case spill. A responsible party (spiller) is liable to respond and recover spills to water of all sizes. The worst case volume is calculated for the purposes of planning and allows the state to set measurable equipment standards which scale over time for plan review and approval. The equipment planning

standards in WAC 173-186-310 were adjusted in the final draft to be aligned and in proportion with the worst case spill volume and related equipment standards for other regulated facilities, pipelines and vessels. This change scales the requirements evenly across all industry sectors while providing an appropriate, measurable level of protection.

And finally, a change was made to the portion of the definition that allows a railroad to submit an alternative calculation for consideration, which is permitted by statute. This change was necessary in order to meet the statutory language.

Commenter(s): Patrick Brady, Tim Kelly, Columbia Basin Railroad and the Central Washington Railroad, Group Letter, Bob Curcio, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, Washington State Legislators, Kathryn Kolan, JD, Washington State Medical Association, Rebecca Ponzio, Washington Environmental Council, Dan Serres, Conservation Director with Columbia River Keeper, at the June 23 Vancouver hearing, New Progressive Alliance

---

"Worst case spill"

7. Summary of comments: Commenters wondered whether this definition implies a minimum threshold for an incident that requires a response, such as derailments with fire, or a 5 gallon oil spill.

Response: There are no defined de-minus spill volumes for response. Spills to water, significant threats of spills or spills to ground that could threaten water are all covered by the contingency plan.

Commenter(s): Timothy Doyle, King County LEPC

"Oil"

8. Summary of comments: Commenters suggested that non-crude oil and biological oils have significantly different risks/flash points, and should either be excluded from the rules or be regulated and planned for differently Other commenters suggested that the definition of oil should include only oil being transported in commerce and therefore would not include oil for fuel or lubrication.

Response: The definition of oil is set by statute. The proposed rule is based on preparing for a spill of the rail cargo; however it is also prudent that a plan holder prepare for a spill of the fuel oil as well.

Commenter(s): Patrick Brady

"Facility"

9. Summary of comments: Commenters suggested amending the definition of facility to clarify that rail cars that are used for storage are included under the regulation. Other commenters suggested deletions to parts of the definition pertaining to a facility, other than a railroad.

Response: If a facility stores oil as cargo by rail car, this operation is covered under this rule and those operations should be described in the plan. The definition of facility is set by statute and the definition is included in the rules in its entirety, though only a portion pertains to railroads.

Commenter(s): Rebecca Ponzio, Washington Environmental Council, T. Jeffrey Johnson and Thomas G. Johnson

---

"EDRC"

10. Summary of comments: The term is used but not defined.

Response: WAC 173-186-040 contains the statement linking definitions between other statutes and regulations, stating that unless the context clearly requires otherwise, the definitions in chapters 90.56 RCW and 173-182 WAC apply to this chapter. It is not necessary to repeat all definitions.

Commenter(s): Timothy Doyle, King County LEPC

---

11. Summary of comments: Commenters suggested that the rules are missing many of the definitions found in the existing oil spill contingency planning regulations, and that those key definitions should either be added or a reference made between the two regulations.

Response: A new definition for the term "planning standard" was added. Otherwise, WAC 173-186-040 contains the statement linking definitions between other statutes and regulations, stating that unless the context clearly requires otherwise, the definitions in chapters 90.56 RCW and 173-182 WAC apply to this chapter. It is not necessary to repeat all definitions.

Commenter(s): Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper

---

PART II: OIL SPILL CONTINGENCY PLANS

SECTION A – PLAN SUBMITTAL AND MAINTENANCE

WAC 173-186-100 AUTHORITY TO SUBMIT CONTINGENCY PLAN.

12. Summary of comments: Commenters suggest allowing rail plan holders to submit their federal oil spill response plans created for the federal government in lieu of contingency plans

described in this rule.

Response: The proposed rule allows for this, as long as the plan meets all of the state's requirements, see WAC 173-186-100 (3).

Commenter(s): Amber Carter, Tana Wood

---

13. Summary of comments: Commenters suggest extending the list of persons permitted to submit a plan on behalf of a railroad or group of railroads to nonprofit corporations, ports, local governments, marine terminals, tribes or any other entity approved by Ecology.

Response: The authority to submit a plan is set by statute and Ecology must follow statutory mandates. A minor clarifying change has been made in this section to further clarify that a single, integrated plan may be submitted either by an owner, an operator or a primary response contractor.

Commenter(s): Amber Carter, Patrick Brady

---

14. Summary of comments: Commenters suggested that Ecology clarify that rail plans will be publicly accessible through the agency's website from the time they are submitted, that the rules contain additional clarification on how stakeholders can view the plans and if the railroad plan holder claims that portions of the plan must be kept confidential and not disclosed to the public, require the plan holder to state the legal basis for the claim of confidentiality.

Response: Plans are available at any time to be seen upon request, though they are not permanently posted on Ecology's website due to issues with data storage. A request to review plans can be made in writing, through e-mail or by phone.

Commenter(s): Washington State Legislators, Mayor Kelli Linville and Council President Pinky Vargas

---

WAC 173-186-110 SUBMITTING A RAILROAD CONTINGENCY PLAN.

15. Summary of comments: Commenters suggested requiring the railroad to inform Tribes and Local Emergency Planning Committees (LEPCs) when a plan is submitted and require the railroad to ensure a transparent means for the Tribes and LEPCs in the review process. Commenters noted that LEPCs play a critical role in developing response plans and suggested that the rulemaking consider a higher level of engagement the committees and among Tribal nations.

Response: In 2015, there were over 40 LEPCs in Washington State. Most of these share the same jurisdictional area as counties, though some smaller communities serve as their own LEPC. LEPCs are responsible for developing a local emergency plan. This rule sets standards for the railroad industry plan to cover their individual oil handling operations. These plans are submitted to be approved by Ecology. The rule includes a transparent means for Tribes and LEPC's to engage in

the review process. The process is defined in WAC 173-186-430. There are two ways to receive notice of the public review opportunity, by signing up for the agency's listserv or through notice posted on the agency web page.

Commenter(s): Timothy Doyle, King County LEPC, Walt Hubbard, King County Emergency Management

---

WAC 173-186-120 PHASE-IN DATES FOR THIS CHAPTER.

16. Summary of comments: Commenters suggested extending phase-in dates to allow railroads additional time for compliance because obtaining contracts needed to meet the rule requirements could take additional time. Other commenters suggested that it is important that the plans be in place and implemented as soon as possible, and urged Ecology to maintain the proposed phase-in dates. Commenters also suggested that 90 and 120 days are too much and that railroads should have 65 days to submit their plans.

Response: Several changes were made to the phase in section, including requiring that in the interim while a full plan is being developed prior to submittal, rail operators will provide either a federal oil spill plan or a letter containing key information to demonstrate the ability to respond to spills. The reference to 65 days (which is the time needed to receive and review in the future new rail operators), was moved to a different section to provide more clarity that it is future oriented.

Commenter(s): Amber Carter, Patrick Brady, Washington State Legislators, Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper, Elizabeth Gulick at the May 17 Spokane hearing, Gene E. A. Johnson

---

WAC 173-186-130 ANNUAL PLAN MAINTENANCE.

17. Summary of comments: Commenters suggested adding a timeline requirement for the annual update and adding language that annual updates are made available for public review.

Response: The review is made annually. If an update made during the annual review is significant (defined in WAC 173-186-140), it will be made available for public review. This has been further clarified in the final rule.

Commenter(s): Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper

---

WAC 173-186-140 SIGNIFICANT CHANGES TO APPROVED PLANS.

18. Summary of comments: Commenters suggested changing the requirements for notifying Ecology for significant changes to a plan, extending the requirement for 24 hour notice due to an excessive bureaucratic burden placed on the plan holder. Commenters also suggested deleting a

portion of the proposed rule that defines a change in oil type as significant and needing to be reported because this is redundant with the other proposed reporting rule (Chapter 173-185 WAC). Commenters also suggested that the rule define significant transfers of equipment within the region as significant and needing to be reported. Commenters also suggested the rule require railroads to report significant changes in plans to Tribes and LEPCs.

Response: The 24 hour requirement is not onerous and can be completed through an email, fax or phone call. If the change is permanent, the rule allows an additional 30 days for the full plan update. Provisions exist for the primary response contractor to provide notification to Ecology of significant changes to equipment if they are made within the region (Chapter 173-182 WAC) and require an interim "backfill" if the changes result in a temporary loss of ability to meet the planning standards.

Commenter(s): Patrick Brady, Washington State Legislators, Timothy Doyle

---

SECTION B – CONTINGENCY PLAN FORMAT, CONTENT AND IMPLEMENTATION

WAC 173-186-200 CONTINGENCY PLAN FORMAT REQUIREMENTS.

19. Summary of comments: Commenters suggested requiring risk appropriate (or scaled) boilerplate plans to be available before the proposed timeline for compliance; and to extend the boilerplate plan to railroads transporting oils other than biological oils and accommodate lower risk factors. Commenters also suggested that the rule ensure that boilerplate plans provided by Ecology that are used by rail plan holders shall be deemed in compliance. Other commenters suggested that the source of the boilerplate plan be identified.

Response: Ecology intends to provide a boilerplate (fill-in) plan that can be used by any railroad plan holder, and to have it available immediately after the adoption of this rule. This tool will make it easier and reduce the costs for a railroad to meet the rule's requirements. Changes were made to clarify this in the rule (WAC 173-182-200). Ecology cannot presume that a plan will be immediately deemed in compliance because the burden is on the submitter to provide complete information. Boilerplate plans submitted by rail companies will be reviewed for approval.

Commenter(s): Amber Carter, Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper

---

WAC 173-186-210 BINDING AGREEMENT.

20. Summary of comments: Commenters suggested amending the rule to allow a Qualified Individual to be on site within 6 hours after notification of a spill. Other commenters suggested adding the words "appropriately trained" to describe the incident commander, and other language concerning hazardous material response training requirements.

Response: Ecology does not use the term QI in the rule. However, a Qualified Individual can serve as a local incident commander provided they meet the training standards described in the rule. The standards for training are contained in WAC 173-186-220 (g) (iv).

Commenter(s): Patrick Brady, T. Jeffrey Johnson and Thomas G. Johnson

---

21. Summary of comments: Commenters noted that it is common for other railroad companies to operate their equipment on lines owned by another company and suggested the final rule should be clear that the binding agreement must also be signed by any owner or operator of trains carrying oil as cargo on the line to which the plan applies.

Response: The rule covers this situation. It applies to rail owners and operators transporting oil as cargo whether they own or lease access to a rail line (with the exception of an operator of a state owned rail line). The binding agreement is signed by the person who has authority to commit the company to the funds for responding and to follow the content of the plan for spills.

Commenter(s): Washington State Legislators

WAC 173-186-220 CONTINGENCY PLAN GENERAL CONTENT.

22. Summary of comments: Commenters suggested establishing a prioritization process in the regulations for paying damage claims if they exceed the money available for compensation. Commenters also suggested that paying for oil spills should not be left to the tax-payer. And commenters asked who is responsible for planning evacuations and who would pay for them?

Response: Washington State has strict liability for oil spills. A responsible party (spiller) is strictly liable, without regard to fault, for the damages caused by spills to water, including the cost for evacuations should they be necessary. The rules require a description of the process that rail operators will use to set up their claims process at the time of a spill.

Financial disclosure requirements for railroads are under the jurisdictional authority of the Utilities Transportation Commission (UTC). Please refer to http://www.utc.wa.gov/docs/Pages/RailSafetyRulemaking151079.aspx for details about financial disclosure requirements. No changes were made to the rule language based on this comment.

Commenter(s): Group Letter, Dan Griffith, Eleanor Wireman, , Rebecca Ponzio, Washington Environmental Council, Paula Rotondi, Pauline Druffel at the May 17 Spokane hearing, Elizabeth Gulick at the May 17 Spokane hearing, Gene E. A. Johnson, New Progressive Alliance

---

23. Summary of comments: Commenters suggested adding language that limits the type of storage tank needing to be described by a rail operator, adding the words "an inventory of above ground storage tanks, if those tanks transfer oil in bulk to or from a tank vessel or pipeline." Other

commenters suggested the rule should also require listing of the locations of expected transfers of oil cargo, either loading or offloading of cargo.

Response: The proposed language is too limiting and will not provide a robust plan for potential oil spills from railroads. Ecology expects that the plan will contain a description of those locations where cargo is loaded or offloaded, as these operations present the risk of spills. Analyzing the risk of spills is a fundamental part of preparedness. No changes were made.

Commenter(s): Patrick Brady, Washington State Legislators

---

24. Summary of comments: Commenters suggested rail carriers are not provided with the density, API gravity, oil group number and sulfur content of oil offered into transportation.

Response: This information is not required in the proposed or final rule.

Commenter(s): Patrick Brady

---

25 Summary of comments: Commenters suggested that the regulations require a plan holder to work with Ecology to identify Geographical Response Plans (GRPs) for areas where they have not been established. Other commenters suggested that the draft rules require the plan to include information on a lengthy list of sensitive areas, resources, and facilities and should also require drinking water intakes along the shipment routes, important water supply intakes for irrigated agriculture as well as commercial and industrial uses. And in addition to "significant economic resources" to be protected in the geographic area covered by the plan, there should be identified those facilities near to the shipment lines in which there are vulnerable or sensitive populations, such as hospitals, schools, day care centers or senior assisted living facilities.

Response: RCW 90.56.210 describes the type of resources at risk information that should be listed in oil spill contingency plans. It includes natural, cultural and economic resources at risk from oil spills. GRPs are developed by the response community as annexes to the Northwest Area Contingency Plan (NWACP) and can support the identification of pre-identified booming strategies to minimize impacts to sensitive resources to meet this purpose. If a rail operator is transporting oil in an area where GRPs are not yet developed the rule contains procedures for the rail company to work with Ecology to develop this information.

Commenter(s): Brian La Freniere, C J Cannon, Chris Wooten, Debra Olsen, Elisabeth Benard, Washington State Legislators, Melissa Malott, Citizens for a Healthy Bay, Vladimir Shakov, Susanne Marten, Stanley Shaw, Phil Brooke, Patsy Tyvand, Nancy Newman Chapa, Michael R. Craven, Maude A. Laslie, Linda Fortune, Mary Paynter, Colleen Gray, Derek Young, Pierce County, Laure Nichols, Hayley Mathews

---

26. Summary of comments: Commenters suggested that the development of quality and comprehensive GRPs within the proposed 90-day/or 120-day phase-in period is infeasible.

Response: If GRPs have been developed to meet these requirements, the plans may simply refer to the NWACP to meet these requirements. If railroad operations occur in areas where GRPs do not exist, railroad plan holders will submit summary descriptions of the sensitive areas and prepare booming strategy "control points" for major waterways in the vicinity of the railroad tracks. The rail company will work with Ecology to develop this information.

Commenter(s): Patrick Brady

---

27. Summary of comments: Commenters suggested that the rules should require providing the field document listing critical information on the initial emergency phases to all first responder agencies in communities through which the shipment lines run.

Response: This document could be obtained by first responders. First responders could also have access to local emergency response plans and the Northwest Area Plan, all of which could be implemented in a response.

Commenter(s): Washington State Legislators

---

28. Summary of comments: Commenters suggested adding identification of appropriate protective equipment, including respirators, for oil spill responders to the definition of spill assessment.

Response: The selection of appropriate personal protective equipment is based on the spill scenario, product type, volume spilled and the conditions of the day. We did not add the more prescriptive language recommended in your comment because prescribing personal protective equipment is outside the authority of our rules. In a spill or drill, deployment of equipment and personnel shall be guided by safety considerations and in accordance with WISHA and L&I standards. The responsible party must take all actions necessary and appropriate to immediately collect and remove, contain, and treat oil entering waters of the state and address the entire volume of an actual spill regardless of the planning standards. The planning standards do not, and cannot, prescribe how spill responses will be conducted.

Commenter(s): Rebecca Ponzio, Washington Environmental Council, Laura Ackerman, Spokane Lands Council at the May 17 Spokane hearing

---

29. Summary of comments: Commenters suggested the word significant be better defined for the requirement for a spiller to provide an updated report if it changes after the initial call.

Response: The requirement to update an initial report is when either the initially reported details (product type, responsible party, response activities, impacts to water, etc.) or the volume of the spill changes. No changes were made to the rule language to define significant because we do not want to inadvertently limit the conditions where an updated report may be appropriate.

Commenter(s): Timothy Doyle, King County LEPC

---

30. Summary of comments: Commenters suggested the rules are inadequate because they do not require contingency plans to identify the training and skills which would prepare involved and impacted workers and leaders to be properly qualified to deal with the tasks of an oil spill.

Response: The rail companies establish their own training levels following laws, rules and best practices. Ecology requires the plan holder to describe that training. If during a spill or drill, training gaps are observed, a plan update will be required.

Commenter(s): T. Jeffrey Johnson and Thomas G. Johnson

---

31. Summary of comments: Commenters suggested that full details of the initial response actions be required in the regulations. Commenters also suggested that failure to specifically require a description of the actions taken for spills into sewer or stormwater systems is an oversight.

Response: 90.56.210 requires that plans include full details of the method of response to spills of various sizes from any facility which is covered by the plan. The equipment used to respond to sewer or stormwater systems is the same type of equipment that may be required to respond to other narrow or constricted waterways. The boom, skimming and storage equipment required in plans is verified through the planning standards and tested in drills.

Commenter(s): Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper

---

SECTION C – PLANNING STANDARDS

WAC 173-186-310 EQUIPMENT PLANNING STANDARDS.

32. Summary of comments: Commenters requested that contingency plan requirements for railroads should be comparable with the most rigorous contingency plan requirements for pipelines and vessels on the marine side. For some commenters this included the 1-, 2-, and 4-hour planning standards and aerial surveillance capabilities. Other commenters suggested adding references to trained personnel in addition to equipment in this section.

Response: The planning standards for railroads are commensurate with the contingency plan requirements for other types of oil handling facilities (refineries and tank farms). The railroad requirements were created to prescribe where railroad planning points would be required and to ensure that the equipment relied upon for storage and early hours containment was appropriate for the operating environments railroads may impact (both inland and marine). The planning standards are designed to respond to a worst case spill from the railroad. Additional early hours planning

requirements and aerial surveillance capabilities may be pursued in a future rulemaking under the Best Achievable Protection (BAP) review cycle.

Commenter(s): Group Letter, Andy Stephens, Brian La Freniere, CJ Cannon, Chris Wooten, Debra Olsen, Elisabeth Benard, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, Rebecca Ponzio, Washington Environmental Council, Melissa Malott, Citizens for a Healthy Bay, Vladimir Shakov, T. Jeffrey Johnson and Thomas G. Johnson, Susanne Marten, Stanley Shaw, Phil Brooke, Patsy Tyvand, Nancy Newman Chapa, Michael R. Craven, Maude A. Laslie, Linda Fortune, Mary Paynter, Colleen Gray, Derek Young, Pierce County, Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper, Laure Nichols, Laurie Lawhon, Hayley Mathews, Laura Ackerman, Spokane Lands Council at the May 17 Spokane hearing, New Progressive Alliance

---

33. Summary of comments: Commenters suggested the regulations identify adequate or additional planning points for the distribution of oil spill response equipment and trained personnel, and to identify areas that are so remote there is no overland access to bring equipment. Commenters also suggested applying the concept of shorelines of statewide significance to this rule in order to ensure adequate coverage.

Response: Planning points are a geographic location used to analyze the equipment planning standards contained in WAC 173-182-310. The equipment necessary to address the worst case spill volume is brought to an incident over a period of time. The methodology to determine this is described in WAC 173-186-380 and 173-186-400. There is at least one planning point for all rail operators, and a process to develop planning points if a rail operator begins transporting oil in an area where none exist. The model used to verify planning points cascades equipment over the road network over timeframes. The model allows Ecology to evaluate equipment service areas above and beyond the identified planning points. Based on the model parameters we feel there are an adequate number of planning points described in the rule.

Commenter(s): Group Letter, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing Rebecca Ponzio, Washington Environmental Council, Dan Serres, Conservation Director with Columbia River Keeper, at the June 23 Vancouver hearing, Ken Rone at the June 23 Vancouver hearing, Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper, New Progressive Alliance

---

WAC 173-186-330 PLANNING STANDARDS FOR CRUDE OILS.

34. Summary of comments: Commenters suggested the regulations require planning standards for diluted bitumen that include the recommendations from the National Academy of Sciences' Spill of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects and Response. Commenters also suggested the term "Group 5 oils" is not defined in the draft rules and the final rules should include a definition of this term. Commenters supported the inclusion of equipment standards for oils that may submerge or sink.

Response: A change was made in the rule for the standard relating to Group 5 oils based on the recommendations from the National Academy of Sciences. Because almost all crude oils have the potential to submerge or sink, when they encounter sediment or when they weather over time, the equipment required to address sinking oils will apply to all crude oil types. There is no need to define Group 5 because the term is no longer used in the rule.

Commenter(s): Group Letter, Washington State Legislators, Rebecca Ponzio, Washington Environmental Council, Laura Ackerman, Spokane Lands Council at the May 17 Spokane hearing, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, New Progressive Alliance

---

WAC 173-186-350 PLANNING STANDARDS FOR SHORELINE CLEANUP.

35. Summary of comments: Commenters suggested that this section require standards for cleanup in marinas, wetlands, beaches, sewers and all other impacted resources.

Response: The shoreline cleanup requirement in WAC 173-186-350 would include the type of equipment necessary to respond to a variety of environments.

Commenter(s): Chris Wilke, Puget Soundkeeper, Sue Joeger, Puget Soundkeeper, Sophia Ressler, Puget Soundkeeper

---

WAC 173-186-360 PLANNING STANDARDS FOR AIR MONITORING TO PROTECT OIL SPILL RESPONDERS AND THE PUBLIC.

36. Summary of comments: Commenters suggest the rules include requirements for adequate protective gear for first responders and a description of response to spills with adverse air quality. Other commenters suggested that the rule lacks requirements for the protection of human populations during potential evacuations. Commenters also noted support for the requirements of air monitoring.

Response: This type of information is included in the Northwest Area Contingency Plan, and rail operators refer to the area plan and demonstrate consistency through drills. Under the Northwest Area Contingency Plan (NWACP) the response community, industry, interested public, state, federal and tribal representatives formed a taskforce to work together to identify private and government air monitoring capability, and how those will be coordinated for community air monitoring.

Commenter(s): Group Letter, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, Rebecca Ponzio, Washington Environmental Council, Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper, New Progressive Alliance

---

37. Summary of comments: The final rules should add that the plan identify how these resources will include or coordinate with appropriate federal, state and tribal wildlife management agencies and authorized wildlife rescue and rehabilitation centers.

Response: This type of information is included in the Northwest Area Contingency Plan, and rail operators refer to the area plan and demonstrate consistency through drills.

Commenter(s): Washington State Legislators

SECTION D – PLAN EVALUATION

WAC 173-186-410 OIL SPILL CONTINGENCY PLAN BEST ACHIEVABLE PROTECTION FIVE-YEAR REVIEW CYCLE.

38. Summary of comments: Commenters wondered whether the rule requires industry to improve cleanup technologies. Other commenters suggested that railroads be held to comparable standards for best achievable protection planning requirements as the marine industry.

Response: In 2012 after a review of the lessons learned from the Deepwater Horizon spill in the Gulf of Mexico, the Washington State Legislature established a standard for maintaining the best achievable protection (BAP) in equipment, training and procedural advancements in oil spill planning. The concept of BAP is also applied to rail plan holders.

Commenter(s): Andy Stephens, Leah Boehm Brady, Chris Nerison at the May 17 Spokane hearing

---

39. Summary of comments: Commenters suggested that Best Achievable Protection planning should include the use of liquid CO2 for fire suppression, the use of train air brake pipes to move the suppressant to the fire site, and high temperature suits for local responders for close in suppression.

Response: This rule is developed for the purpose of responding to oil spills and addressing firefighting equipment is out of scope for the rule. We agree that a gap analysis and assessment of fire response equipment is needed to address risks from rail and pipelines.

In April 2015, Gov. Inslee signed the Oil Transportation Safety Act, enacting ESHB 1449 to help protect Washington state from the risks associated with transporting oil.

ESHB 1449 provided a step forward to help protect the environment and Washingtonians from new oil spill risks. The bill specifically directed Ecology to undertake five policy initiatives to help address these new risks:

- Advance notice of oil movement
- Railroad contingency planning

- Geographic response plans
- Vessel traffic safety evaluation and assessment
- Equipment cache grants

Under the equipment cache grants program Ecology will provide grants to emergency responders for oil and hazardous materials response equipment, firefighting public safety equipment, and training. A stakeholder group will be convened to assist with developing and administering the grant program. The stakeholder group will consist of first responders, oil spill response cooperatives, oil and rail industry representatives, and businesses that receive liquid bulk crude oil. An analysis will be conducted to evaluate current available resources and the need for response equipment in specific locations. The funding for the grants must be prioritized based on who has the greatest need for the equipment, and coordinated to maximize the benefit of currently available equipment and resources.

Commenter(s): Curt Leslie

WAC 173-186-420 PROCESS FOR PLAN APPROVAL.

40. Summary of comments: Commenters suggested that there be public notice and a review and commenting opportunity in WAC 173-186-130 for significant changes to approved plans. Commenters also suggested specifying that LEPCs, TEPCs and the SERC be involved in the review process.

Response: Some significant changes are subject to public review. The process for public review is outlined in the rules.

Commenter(s): Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, Rebecca Ponzio, Washington Environmental Council, Timothy Doyle

---

41. Summary of comments: Commenters suggested that as a common carrier, at any time a shipment that would require compliance could be made. Refusing or delaying a shipment in order to allow time for the railroad to come into compliance with the state regulation imposes an unnecessary burden on interstate commerce and therefore should logically be preempted by federal law. Likewise, requiring a small railroad to create and maintain a plan as a contingency for traffic that may never materialize is also an undue burden on the short-line railroad.

Response: If rail operators choose to develop an integrated or umbrella plan, it may be structured to quickly enroll railroads and avoid compliance delays.

Commenter(s): Toby J. Van Altvorst, Western Washington Railroad

---

WAC 173-186-430 PROCESS FOR PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT PERIOD.

42. Summary of comments: Commenters suggest requiring a public notice, review, and commenting opportunity when there is a significant change of the plans in order to approve the plan. Commenters also suggested that the plans be available for review through Ecology's website.

Response: The rule has been clarified that permanent significant changes are posted for public review. Plans are available upon request to review. Because plans change frequently in order to be improved, it is difficult to maintain them permanently on a website.

Commenter(s): Group Letter, Washington State Legislators, New Progressive Alliance

---

43. Summary of comments: Commenters suggest requiring in 173-186-430 provisions for initial responders (including local fire and police) to be trained at the 24 hour HAZWOPER level as well as provision for rail crews and other onsite personal (railyard, terminal, and facility) to be trained at the 24 hour HAZWOPER level.

Response: The Department of Ecology does not set nor enforce standards for hazard awareness training. This is outside the scope of this rule.

Commenter(s): T. Jeffrey Johnson and Thomas G. Johnson

PART IV: INSPECTION OF RECORDS, NONCOMPLIANCE, AND ENFORCEMENT

WAC 173-186-610 ENFORCEMENT—NONCOMPLIANCE.

44. Summary of comments: Commenters suggest the proposed penalty for technical administrative-type violations of these regulations is excessive and appears inconsistent with the enforcement direction provided by statute in RCW 90.36. Other commenters suggested that Ecology should make clear that this penalty for violation of the planning rules is in addition to and separate from any damages or liability that may incurred for natural resources damages or damages or injury to persons or property, or penalties incurred for violation of any other laws relating to a spill. Commenters supported strong enforcement sanctions in order to avoid complacency.

Response: The noncompliance section of the rule is commiserate with requirements for other regulated facilities.

Commenter(s): Patrick Brady, Washington State Legislators, Jerry White, Spokane RiverKeeper at the May 17 Spokane hearing

---

OTHER GENERAL COMMENTS

45. Summary of comments: Commenters requested the Department of Ecology implement the strongest rules for Chapters 173-185, and 173-186 as possible.

Response: While spill response planning standards are a shared responsibility of federal and state governments under applicable clean water and rail safety laws, the changes in oil movement make it critical that we act now to expand our planning along rail corridors planning standards and protect the unique peculiarities of Washington's environment and the health and safety of our citizens.

Commenter(s): Group Letter, Jean Avery, Judi Chelotti, Nancy Hansen, Marilyn Boyd, Washington State Legislators, New Progressive Alliance

---

46. Summary of comments: Commenters support the rule changes, state that they will be protective and are measurable. Other commenters suggest the rules also cover other products transported by rail.

Response: The rule covers oil spill contingency planning. Other hazardous materials are outside the scope of the rulemaking.

Commenter(s): Candace Mumm, Kirsten Angell, Shayne Cothern, Washington State Legislators, Randy S. Gray

---

47. Summary of comments: Please provide the public with risk planning documents, if they exist. If they do not exist, then they need to be developed/approved with mitigation and recovery plans in place before further shipments of oil/coal/combustibles/hazardous shipments are allowed to be shipped via rail.

Response: This rule applies to oil spill preparedness and not more broadly to railroad operational or safety risks. In developing their plans, railroad plan holders will do some risk analysis relating to oil spills and write plans to address those risks.

Commenter(s): Anne Coxon

---

48. Summary of comments: Commenters suggested that we need contingency planning, but we also need to stop extracting oil, or minimize (or even stop) oil/coal transport by rail. Commenters expressed concerns about rail traffic in cities and also suggested that the rules be written to reduce the risk of oil spills and fires due to increased frequency of rail movement.

Response: The planning standards are designed to respond to a worst case spill from a railroad. They do not avert or minimize oil spills into waterways. Prevention requirements for railroads are outside of the scope of these rules.

Commenter(s): Behnosh Najafi, Greg Anderson, James Griener, Kiwibob Glanzman, Liz Spoerri, Ziggy at the May 17 Spokane hearing, Sue Carver, Sarah Stephens, Mike Sennett, Lynda and George Wessman, Leah Boehm Brady, Robert and Karen Mitchell, Ed, Pauline Druffel at the May 17 Spokane hearing, Dave Bilsland at the May 17 Spokane hearing, Richenda Fairhurst, Camas United Methodist Church, at the June 23 Vancouver hearing, Linda Garcia at the June 23 Vancouver hearing

---

49. Summary of comments: Commenters suggested that as interstate common carriers, rail operations are generally pre-empted from state regulation by the federal government. Other commenters suggested that the concept of pre-emption extends to intra-state rail operators as well. Commenters suggested that imposing these rules will have the effect of favoring non-rail transportation.

Response: Ecology does not believe this rule is pre-empted. Ecology disagrees that the rules will result in favoring non-rail transportation, but rather will put all modes of transportation on par by requiring equal investment on oil spill preparedness.

Commenter(s): Patrick Brady, Toby J. Van Altvorst, Western Washington Railroad, Evelyn Nackman, Association of America Railroads

---

50. Summary of comments: Commenters suggested that the rules require a railroad to describe the prevention measures to reduce or mitigate hazards including relating to inspecting equipment and other structures, reducing the volatility of Bakken oil, reducing speed under certain conditions and delaying rail traffic immediately after a landslide. Other commenters suggested that the rules require prevention measures such as double hull rail cars, mandated use of newer designed rail cars, limiting the number of cars on a train, GPS transponders on rail cars, concrete based bed ties on railbeds.

Response: Prevention requirements for railroads are outside the scope of these rules.

Commenter(s): Melissa Hagan, W. J. Hudson, Dan Picton, James T. Grant, Karen Jeffery, Robert and Karen Mitchell, Ben Sobel at the May 23 Everett hearing, Richenda Fairhurst, Camas United Methodist Church, at the June 23 Vancouver hearing, Stephen Hellriegel

---

51. Summary of comments: Commenters suggested that the rules have a significant gap due to the danger of derailments resulting in fires, that the region lacks water and firefighting foam capability and the rule should contain standards for firefighting equipment.

Response: We agree that a gap analysis and assessment of fire response equipment is needed to address risks from rail and pipelines. In April 2015, Gov. Inslee signed the Oil Transportation Safety Act, enacting ESHB 1449 to help protect Washington state from the risks associated with transporting oil. ESHB 1449 provided a step forward to help protect the environment and

Washingtonians from new oil spill risks. The bill specifically directed Ecology to undertake five policy initiatives to help address these new risks:

- Advance notice of oil movement
- Railroad contingency planning
- Geographic response plans
- Vessel traffic safety evaluation and assessment
- Equipment cache grants

Under the equipment cache grants program Ecology will provide grants to emergency responders for oil and hazardous materials response equipment, firefighting public safety equipment, and training. A stakeholder group will be convened to assist with developing and administering the grant program. The stakeholder group will consist of first responders, oil spill response cooperatives, oil and rail industry representatives, and businesses that receive liquid bulk crude oil. An analysis will be conducted to evaluate current available resources and the need for response equipment in specific locations. The funding for the grants must be prioritized based on who has the greatest need for the equipment, and coordinated to maximize the benefit of currently available equipment and resources.

Commenter(s): Tim Young, Commissioners of Skamania County Fire District 4 at the June 23 Vancouver hearing, Melissa Malott, Citizens for a Healthy Bay

---

52. Summary of comments: Commenters wondered whether we should be planning for contingencies in case BNSF ever decides to reopen the old Milwaukee Road between Ellensburg and Lind.

Response: These rules will require railroad plan holders to have a contingency plan for all rail corridors where oil as cargo is transported.

Commenter(s): Brian Hovis

---

53. Summary of comments: Commenters suggested provisions being made to move railroad tracks inland to avoid or lessen the problems of earthquakes and sea level rise.

Response: The contingency plan and plan specific planning standards are designed to respond to a worst case spill from the railroad. They do not avert or minimize oil spills into waterways. Prevention requirements for pipelines are outside the scope of these rules.

Commenter(s): Sabrina Ellis

---

54. Summary of comments: Commenters suggested that the rules are inadequate in four areas: setting a standard for evaluating and monitoring the condition of rails used to transport this oil; requiring a more detailed assessment of equipment to implement in situ burning but also decision

making process an Incident Commander will use to assess risk to cause wildland fire, notification to pertinent local and state responders to allow for preparation for repercussions of an escaped burn, identifying liable party should this escape occur, and identifying who will represent railroad in occurrence of an in-situ burn caused wildfire; requiring assessment of geological risks along rail route; and developing an adequate baseline Natural Resource Damage Assessment and Restoration Plan. Other commenters suggested requiring more details about how in-situ burn decisions are made and justified as a response tactic.

Response: The contingency plan and plan specific planning standards are designed to respond to a worst case spill from the railroad. They do not avert or minimize oil spills into waterways. Prevention requirements for pipelines are outside the scope of these rules.

Commenter(s): Shayne Cothern, Department of Natural Resources, Chris Wilke, Puget Soundkeeper, Sue Joeger, Puget Soundkeeper, Sophia Ressler, Puget Soundkeeper

---

55. Summary of comments: Commenters suggested that the rule lacks standards existing on the marine side such as planning for dispersants, access to high current boom and aerial surveillance.

Response: Some of the differences are attributed to inland versus marine operating environments. Other differences are attributed to regulatory authority (for example, regulating the operation of an oil transfer versus merely the transportation of oil). After conducting a thorough review process and considering many alternatives, Ecology has determined that these rules balance the need for appropriate protection with the potential costs of compliance.

Commenter(s): Brian La Freniere, CJ Cannon, Chris Wooten, Debra Olsen, Elisabeth Benard, Rebecca Ponzio, Washington Environmental Council, Vladimir Shakov, Susanne Marten, Stanley Shaw, Phil Brooke, Patsy Tyvand, Nancy Newman Chapa, Michael R. Craven, Maude A. Laslie, Mary Paynter, Colleen Gray, Derek Young, Pierce County, Chris Wilke, Puget Soundkeeper, Sue Joeger, Puget Soundkeeper, Sophia Ressler, Puget Soundkeeper, Melissa Malott, Citizens for a Healthy Bay, Laure Nichols, Hayley Mathews

---

56. Summary of comments: Commenters suggested that the rules require all receiving facilities and rail operators to carry insurance and demonstrate financial responsibility to the level of three times the estimated damages from oil spills. Commenters suggested that railroads obtain and show proof of bonds sufficient to cover the full extent of these costs.

Response: Financial responsibility is outside the scope of this rulemaking. Financial disclosure requirements for railroads are under the jurisdictional authority of the Utilities Transportation Commission (UTC). Please refer to http://www.utc.wa.gov/docs/Pages/RailSafetyRulemaking151079.aspx for details about financial disclosure requirements for railroads. No changes were made to the rule language based on this comment.

Commenter(s): Gene E. A. Johnson, James T. Grant, Paula Rotondi, Elizabeth Gulick at the May 17 Spokane hearing, Don Steinke at the June 23 Vancouver hearing

---

57. Summary of comments: Commenters suggested that the regulation require the implementation of the Washington-approved rail contingency plan during a response, bringing over similar language from Chapter 173-182 WAC.

Response: The statute (RCW 90.56.270) requires the implementation of the approved plan in the event of a spill.

Commenter(s): Chris Wilke, Puget Sound Keeper, Sue Joeger, Puget Sound Keeper, Sophia Ressler, Puget Sound Keeper

---

58. Summary of comments: Commenters expressed concerns over the use of dispersants, and hope that they will only be used in the most dire of circumstances.

Response: This rule does not contain standards requiring the use of dispersants. The state's policy on use of dispersants can be found in the Northwest Area Contingency plan. Most railroads operate in many areas where the state has a "no use" dispersant policy (inland shallow waters).

Commenter(s): Chris Nerison at the May 17 Spokane hearing

COST BENEFIT ANALYSIS (CBA)

59. Summary of comments: Commenters suggested updating the cost-benefit analysis to include the analysis of insurance expert Robert J. Blackburn, hired by the City of Vancouver that indicates a worse-case scenario in Vancouver could cost $6 billion; to consider additional values particularly along the Columbia River. The costs of the spill in the Kalamazoo River are understated. The likely cost of the proposed rule are described in far more detail than are the claims of spills and the other costs associated with the likely benefits of the proposed rule.

Response: We have added the Blackburn document to our analysis, as an illustration of potential spill impacts on and along the Columbia River, as well as additional discussion of potential spill impacts specific to the Columbia and surrounding areas. The total cost of the spill on the Kalamazoo continues to increase, and we have updated the value in the CBA to reflect more recent estimates as of August 2016.

The difference in the level of detail shown in the discussion of the costs of the rule versus the discussion of its benefits is based in the ability to more precisely describe the requirements of the rule. The rule requires specific equipment, which is straightforward to address and quantify. The benefits of the rule, however, depend on the sizes of spills, their locations, whether fire is involved, nearby affected property and environmental services, the types of oil transported, and the likelihood of a spill event. Because oil travels by rail along corridors in Washington that vary

significantly in these attributes, and because of lacking information on the specific quantitative risks of oil-by-rail spills of different sizes in different locations, we cannot quantify it to the same degree as the cost estimate. We have, however, added additional illustrative values that may be impacted by a rail spill, as well as language comparing the costs of the rule to how much those illustrative values would need to avoid impacts to have equivalent cost-savings.

Commenter(s): Group Letter, Lovel Pratt, Mulno Cove Consulting and Friends of the Earth, at the May 23 Everett hearing, Don Steinke at the June 23 Vancouver hearing, New Progressive Alliance

---

60. Summary of comments: Commenters appreciated the inclusion of population data in the CBA but felt that there should be more discussion on the relevance of this data relating to risk of spills and damages from spills.

Response: The CBA has been updated with additional discussion.

Commenter(s): Laura Ackerman, Spokane Lands Council at the May 17 Spokane hearing

---

SMALL BUSINESS IMPACTS

61. Summary of comments: Commenters suggested that for a small railroad operator, the rule would have substantial cost impacts for the less than 0.1% of non-crude oil product moved out of the total annual carloads. This could have the effect of making transport by rail unaffordable and force movement of non-crude oil products on our streets and highways instead.

Response: After considering alternatives to the adopted rule contents, as well as the goals and objectives of the authorizing law, Ecology determined that the adopted rule represents the least burdensome requirements meeting those goals. There are a number of measures written into the rule to reduce the burden, including ability to submit a federal plan, ability to develop an integrated plan to cover multiple companies, a schedule for phasing in the rule.

Commenter(s): Amber Carter

Commenter Index

The list below contains the names of organizations or individuals who submitted a comment on the rule proposal and the comment number above where you can find Ecology's summary and response.

Group Letter: this is an alphabetized list of those whom submitted a similarly written, group letter. Some of the group letters had minor variations; some letters were sent multiple times.

Abigail Tupper Mitchel
Adam Levine
Adam Udovich
Al Alpert
Alex Abbott
Alexandra Biggs
Alexandra Tufnell
Alfred Colter
Alfred Ferraris
Alice D. Gray
Alice Hibberd
Alice Steijn
Alice Swan
Alice Tobias
Alice Yang
Alan Thiese
Allan Hendrix
Alys Kennedy
Amelia Becke
Amy McKay
Amy Mower
Andrea Avni
Andrea Higgins
Andrea Speed
Andreas Enderlein
Angela Jacobs
Angie Boone
Anita Jahns
Ann Giantvalley
Ann Jones
Ann Lazaroff
Ann Van Buskirk
Anne Elkins
Anne Hall
Anne Kroeker
Anne Wermus
Annette Klapstein
Anngele Vose
Annie Clay
Anthony Gervais
Antonia Wood
Ardeth L. Weed
Arlene Roth
Arnold Martin
Arnold Strang
Audrey Adams
B Davidson
Barbara Bonfield
Barbara Brock
Barbara Brueckner
Barbara Gregory
Barbara Gross
Barbara L. Wood
Barbara Phinney
Barbara Read
Barbara Rosenkotter
Barbara Whitt
Barry Hutchinson
Beatrice Lackaff
Becky Chappell
Ben Rall
Benita Moore
Bergith Kayyali
Berinda Van Cleave
Bernard Walter
Beth Brunton
Beth Call
Beth Jensen
Bette Ann Schwede
Bette Jingling
Betty Karst
Bill Daugaard
Bill Jones
Bill Nerin
Binh Nguyen
Blayney Myers
Bob Zeigler
Bobbi Goff
Bobbi Hickox
Bonnie and Doug Rohrer
Bonnie Miller
Brad Bardwell
Brandie Deal
Brenda S. Bailey
Brenna Taylor
Brett Llewellyn
Brian Baltin
Brian Benson,
Brian Flaherty
Brian Huseby
Brian Lewis
Brian Reid
Brian Silverstein
Brianna Kohlenberg
Bruce & Mary Schleicher
Bruce Barnum
Bruce Carter
Bruce Clifton
Bruce Dobson
Bruce Hoeft
Bruce Shilling
Bryan Branson
Bryan Doull
Bryan Gilroy
C Canonica
C Creager
C L Burger
Carissa Daniels
Carla Happel
Carlo Voli
Carlton Ward

Carol Davidek-Waller
Carol Dickinson
Carol Else
Carol Meyer
Carol Stevens
Carol Sword
Carol Torchia
Carol Whitehurst
Caroline Armon
Carolyn Fletcher
Carolyn Treadway
Carolyn Wood
Catherine Adams
Catherine Ross
Cathryn Chudy
Cathy and Craig Spalding
Celine Bressler
Charlene Larsen
Charles Colenaty
Charles Gustafson
Charlie Bakert
Cherie Warner
Cheryl Loucks
Cheryl Mitchell
Cheryl Speer
Chey Thurman
Chris Covert-Bowlds
Chris Dynega
Chris Guillory
Chris Kanit Cottrell
Chris Lykins
Chris Stay
Christian & Lea Andrade
Christian Bookter
Christine Landon
Christine Mead
Christopher Key
Christopher King
Christopher Kralik
Christopher Pringer
Christopher Watson
Christy Lewis
Christy Papadakis
Chuck Hanna-Myrick
Chuck Rohrer
Chuck Sheaffer
Claire and Hilkka Egtvedt
Clark Wiegman
Codi Hamblin
Colleen Cunningham
Colleen Curtis
Colleen Hinton
Colleen Lenihan
Colleen McDonald
Constance Lee
Constance Rodman
Corey Elliott
Corinne McWilliams
Cornelia Teed
Craig Britton
Craig Kirby
Curtis Hughes
Cynthia Noble
Cynthia Parker
D R
D Robinson
Dale Birdsell
Dan Freemen
Dan Kegebein
Dan Loucks
Dana Beebe
Daniel Albright
Daniel Anderson
Daniel McMannis
Danne Neill
Danny Dwinell
Darcia Hurst
Dave Popoff
Daveeee Schiesls
David and Geri Turnoy
David and Julie Peha
David Arntson
David Blair
David Groves
David Hand
David Hirst
David Linn
David MacKey
David Perk
David Scheer
David Schiesl
David Stetler
David Thompson
David Todnem
David Winkel
Dawn Morgan
Dawn Spickler
Deb Bear
Debbie Bremner
Debbie Burnup
Debbie Spear
Debbie Thorn
Debby Forbush
Debby Herbert
Deborah Efron
Deborah Gandolfo
Deborah McCoy
Deborah Parker
Debra Vandegeift
Demian
Denis Langhans
Dennis Raymond
Dennis Underwood
Desdra Dawning
Desire LacQuaye
Desiree Mendes
Desiree Nagyfy
Diana Talbott
DiAnne Gabris
Diane Kinnally
Diane Marks
Diane Sullivan
Diane Tait Dong
Diane Thompson
Diane Weyer
Dianna MacLeod
Dianna Maish
Dolores Wiens
Don Ely
Don Lahti
Don McMillin
Don Thomsen
Donald LaMoure
Donna Davis
Donna Hamilton
Donna Hanson
Donna Snow
Dore Richman

Doris Johnson
Dorothy Jane Davis
Dorothy Knudson
Dorothy Lipsky
Dorothy Moritz
Doug Brown
Douglas Boe
Douglas McLemore
Douglas Strabel
Dr. Cairo D'Almeida
Dr. Jeffrey Paul LaGasse
Dr. Michael Berres
Duane Naught
E Ellis
Ed Bennett
Edie Jorgensen
Edward Colley
Edward Laclergue
Edward Mills
Edward Ury
Eileen LeVan
Eleanor Dowson
Elinor Lake
Elizabeth Cross
Elizabeth Lengel
Ellen Henderson
Ellen McCartan
Elyce Woycke
Elyette Weinstein
Emily Krieger
Eric Burr
Eric Dale
Eric Fosburgh
Eric Kuhner
Ericka Berg
Ericka Sjogren
Erik Ebert
Erik LaRue
Erika Thorsen,
Estella Mixson
Eugenia A. Pattersons
Evan Callahan
Evelyn Popejoy
Fay Payton
Faye Bartlett
Fayette Krause
Felicity Devlin
Fiona Barrett
Florence Harty
Forrest O'Reilly
Forrest Rupley
Frances Blair
Frances Lawren
Francine Burg
Francis Lenski
Frank Johnsen
Frank Koterba
Franz von Hirschmann
Fred Karlson
Fritz Chess,
G D Abbott
G G
Gabriele Bartholomew
Garry Nakayama,
Gary Albright,
Gary & Laura Rothenberger
Gary McLaughlin
Gary Porter
Gayle Rothrock
Gen Obata
Gena DiLabio
Gene Lawson
Geoff Briggs
George & Barbara Rofkar
George Dilg
George Summers
Gerald & Jackie Penningroth
Gerald Patterson
Gerald Stansfield
Giles Sydnor
Gill Fahrenwald
Gina Leone
Gina Pantier
Glen Anderson
Gloria McClintock
Greg & Rebecca Durr
Greg Espe
Greg Goodwin
Greg Marsh
Greg Mueller
Gregory Penchoen
Gregry Loomis
Gunnel Clark
Guy Chan
Gwen Innes
Gwen Nakano
Gwyn Jean
Hal Glidden,
Harold Lang
Harris Dunkelberger
Heather Buekw
Heather Hall
Heather Murawski
Heidi Gann
Helen Behan
Helen Bigelow
Helen Curtis
Helen Read
Helene Steinhardt
Helga Aldrich
Helga Burkhardt
Herb Dye
Hilarie Ericson
Holly Hallman
Hope Nastri
Indigo Summer
Irene Willey
Irina Vodonos
Irmgard Conley
Irina Vodonos
Isolde Perry
J Derosia
J Kelly
J Nichols
J. Woodworth
J. Scott MacElveen
Jack Burke
Jack Mackie
Jack Tull
Jackie Cole
Jackie Grove
Jacob Bale
Jacqueline Moskowitz
James Baron
James Cronin
James DeSeranno
James Doyle
James Krieger

James MacRae
James Mulcare
James M. Tandoo
James Wayrynen
Jamie Caya
Jamie Dampier
Jan Gordon
Jan Hadleyavery
Jan Thorne
Jan Verrinder
Jane Hadley
Jane Jaehning
Jane Metcalfe
Jane Steadman
Janelle Witter
Janet Chalupnik
Janet Ferrari
Janet Hedgepath
Janet Marx
Janet Rexroth
Janet Riordan
Janet Way
Janet Wynne
Janice Macarthur
Janis Fensch
Janna Rolland
Jared Howe
Jason Knopp
Jay Russo
Jay Wang
Jean Mendoza
Jean Richardson
Jean Teach
Jean Whitesavage
Jeanette Redmond
Jeanne Kleyn Kleyn
Jeanne Martin
Jeanne Poirier
Jeevake Attapattu
Jeff Freels,
Jennifer Calvert
Jennifer Pittman,
Jennifer Sprague
Jennifer Westra
Jennifer Woodbridge
Jenny O'Neill
Jeri Harris,
Jerome Sullivan
Jerry Chilson
Jerry Kessinger
Jessica Drummond
Jessica Levin
Jill Feuerhelm
Jill Gustafson
Jill Hamilton,
Jill Stryker,
Jill Timm
Jill Zaklan
Jillian Gallery
Jim Clymer
Jim Strichartz
Jini Fisher
Jo Harvey
Joan Cole
Joan Turpin
JoAnne Cummings
JoAnne Kelly
Joanne Wright
Joe Chasse
Joe Thompson
Joe Wiederhold
Joel Taryn
Johanna Molloy
John & AJ Jittipsopa-Zinner
John Eschen
John Fenker
John Gordon
John Hardy
John Hennessy
John Lambert
John McGovern
John Niendorf
John S
John Sherwin
John Springer
Jolyn Plough
Jon Martin McCallum
Jonathan Walter
Jonny Hahn
Joseph A. Yencich
Joseph & Diane Williams
Joseph LaValle
Joyce Grajczyk
Joyce Lewis
Joyce Weir
JR Trimble
Jude Armstrong
Judith Bluhm
Judith Fouts
Judith Laik
Judith Landy
Judith Langhans
Judy & Ed Cole-Martin
Judy Turksel
Judyth O. Weaver
Julia Hurd
Julia Glover
June Chaus
Justin Morgan
Kamori Cattadoris
Karen Berntsen
Karen Best
Karen Byrne
Karen Clark
Karen Erlander
Karen Fisher
Karen Hedwig Backman
Karen Howard
Karen Kelly
Karen Pickering
Karen Richter
Karen Soma
Kate Frangos
Katharine Harkins
Katherin Balles
Katherine Alice Tylczak
Katherine Nelson
Kathleen Hunt
Kathleen Lowney
Kathleen Wolfe
Kathlene Croasdale
Kathryn Alexandra
Kathryn Fletcher
Kathryn Plitt
Kathryn Schetzer
Kathryn Vinson
Kathy Kestell
Kathy Schaeffer

Kathy Smith
Kay S
KC Young
Keith Anklam
Keith Cowan
Keith Larson
Kellie Crawford
Ken Minden
Kevin Darcy
Kevin Hughes
Kevin Orme
Kim Cox
Kim Seater
Kimberly Leeper
Kindy Kemp
Kirk Johnson
Kristen Adamson
Kristen Wallway
Kristi Nakata
Kristina Gravette
Kristine Kriner
Kyle Loring
Ladonna Rorabeck
Lakota Crystal
Lara Backman
Larry Keister
Laura Ackerman
Laura Craig
Laura Goldberg
Laura Huddlestone
Laura Ramon
Laura Skelton
Laurel Hughes
Laurette Culbert
Laurice Riekki
Leah Froemsdorf
Lee Musgrave
Lee Stafford
Lee Stone
Lehman Holder
Leonard Houghtaling
Leslie Austin Johnson
Leslie McClure
Lester Thompson
Lew Sikes
Liisa Antilla
Linda Ann Fortune
Linda Avinger
Linda Bahr
Linda Curry
Linda Golley
Linda K Lindquist
Linda Knoll
Linda Kolakosky
Linda Massey
Linda Reilly
Linda Rossi
Linda V
Linda Woodall
Lisa Karas
Lise Grace
Lloyd Hedger
Lloyd Johnston
Lois Guthrie
Lola Schiefelbein
Loreta Wood
Lorraine D. Johnson
Lorraine Hartmann
Lorraine Marie
LouAnn Ballew
Lucia Mack
Lyle Collins
Lyman Griswold
Lynda Cunningham
Lynette Weick
Lynn Brevig,
Lynn Colson
Lynn Offutt
Lynn Rabenstein
Lynn Taylor
M Dulin
M Howell
M. Lou Orr
Madya Panfilio
Mana Iluna
Marcia Brown
Marcia Clarke
Marcia Huey
Marco de la Rosa
Margaret Graham
Margaret Hashmi
Margaret Lyons
Margery Barlow
Margot Voorhies
Marguerite Brown
Marguerite Weis
Marian Wineman
Marianne Edain
Marianne Eddington
Marianne Gordon
Marilyn Flint
Marilyn Mayers
Marilyn Overton
Marjorie Walker
Mark Blitzer
Mark Bradley
Mark Hughes,
Mark Scott
Mark Thomas
Mark Weick
Mark Whitaker
Mark Wirth
Marsha Adams
Marsha Kimball
Marsha Shaiman
Martha Ann Brooks
Martin Englander
Martin Kimeldorf
Marty Adams
Mary & Brian Jokela
Mary Bartholet
Mary Benham
Mary Bicknell
Mary Gleysteen
Mary Guard
Mary Harmon
Mary Holder
Mary Jane Engh
Mary K Johnson
Mary Knoth
Mary Masters
Mary Nye
Mary Paynter
Mary Schleicher
Mary Schreifels
Mary Sebek
Mary Solum
Mary Sprute

Mary Wickwire
Mary-Ann Kirsling
Matthew Anderson
Matthew Boguske
Matthew Evinger
Matthew Logalbo
Matthew Thuney
Maureen T. Lang
Maureen Rawlings
Max DeNise
Maxine Clark
Meghan McCutcheon
Melanie Kenoyer
Melinda Parke
Melissa Craig
Melissa Eriksen
Melissa Thirloway
Melodie Martin
Merna Baker Blagg
Merryl Woodard
Meryle A. Korn
Mia Heavyrunner
Michael & Barbara Hill
Michael Lyman
Michael Reynolds
Michael Smith
Michael Spence
Michael Symonds
Michael Woods
Michele Attwood
Michelle Jacobsen
Michelle Keating
Michelle Stepp
Mike Bessler
Mike Conlan
Minda Thorward
Miranda LeonJones
Mlou Christ
Mollie Smith
Mona McNeil
Morgan Girling
N Lebaron
Nadine LaVonne
Nancy Cubbage
Nancy Ellingham
Nancy Farrell
Nancy Gale
Nancy Henderson
Nancy Katz
Nancy Kilgore
Nancy L Krause
Nancy Lovejoy
Nancy Pope
Nancy Shaw
Nancy Shimeall
Nancy Vandenberg
Nancy White
Navneal Man
Neatha Lefevre
Nic Curtright
Nicholas Johnson
Nicholas Smit
Nichole Acheson
Nick Barcott
Nick Taylor
Nigeala Nigrath
Nikki Jimenez
Noel Barnes
Noel Orr
Norma Silliman
Nova Berkshires
Oleg Varanitsa
Olga Gottlieb
P M
P.E. Crawford
Pam Borso
Pam Ives
Pamela Bar-El
Pamela Clark
Pamela Engler
Pamela Harris
Patricia A Lenzen
Patricia D. Wilson
Patricia Harper
Patricia McGee
Patricia Perron
Patricia Rathbun
Patrick Archer
Patrick Mulcahey
Paul Lantz
Paul Moyer
Paul Potts
Paul Stoner
Paul Talbert
Paul Zurfluh
Paulina Oberg
Pauline Druffel
Penny Derleth
Peggy Page
Peggy Willis
Peter Baird
Peter Holcomb
Peter Marshall
Peter Rimbos
Peter von Christierson
Phil Crawford
Philip Power
Phillip Bernhardt-House
Phyllis Brown
Phyllis Conley
Polly Tarpley
Rachael Black
Rafe Dimmitt
Ramona Owen
Randall Collins
Randi Pewzner
Ravinder Bajwa
Ray Lou
Raymond Ligrano
Raymond Williams
Robert Blumenthal
Rebecca Clark
Rebecca & Tom
McDnoough
Rebecca Em Campbell
Rebecca Robins
Rebecca Teeters
Rhoda Walter
Rich Lague
Richard and Sharon Erspame
Richard Brems
Richard Craven
Richard D Jones
Richard Ellison
Richard Grassl
Richard Johnson
Richard Krahn,
Richard Romito

Richard Whitney
Rick Barrett
Rick Eichstaedt
Riff Millar
Robby Stern
Robert B. Kaplan
Robert Blumenthal
Robert Brandt
Robert Brown
Robert Chang
Robert Connor
Robert Donohoe
Robert Driessnack
Robert Fiebing
Robert Gabriel
Robert Lindberg
Robert Rowe
Robert Sanford
Robert Schmidt
Robert Worley
Robin Boynton
Robin Hirsch
Robin Thomas
Robyn Lowe
Roger Lippman
Roger Oborn
Ron & Marci Moore
Ron DiGiacomo
Ron Slosky
Ronald Krell
Ronda Good
Ronlyn Schwartz
Rose Lagerberg
Roy Baggerly
Rozanne Rants
Russell Wegner
Ruth Darden
Ruth Neuwald Falcon
Ruth Riordan
S Carpenter
S Shaw
S Slayton
Saab Lofton
Sallie Shippen
Sally Hurst
Sally Rodgers
Sandra B-J
Sandra Davis
Sandra Smith
Sandy Petrarca
Sandy Wood
Sanja Futterman
Saphire Blue
Sarah Collmer
Sarah Dallasto
Sarah Sloane
Scott Brown
Scott Buxton
Scott Dungan
Scott Fortman
Scott Levering,
Scott Sledge
Scott Tallman
Scott Whittaker
Sharie Todd
Sharon Kalen
Sharon London
Sharon Lynch
Sharon Mannix
Sharon Miller
Sharon Parshall
Sharon Vander Pool
Shary B
Sharyn Pennington
Shelley Dahlgren
Shemayim Elohim
Sherry Bupp
Sherry E
Sherry McCabe
Sherry Salomon
Sherry Spurling
Sherry Williams
Shirley Jacobson
Sigrid Asmus
Sonja Hinz
Sophia Ressler
Stanley Jones-Umberger
Stephen & Kathleen Hulick
Stephen Craig Rolston
Stephen Curry
Stephen Durbin
Stephen Friedrick
Stephen Nichols
Stephen Shubert
Steve Finch
Steve Hersch,
Steve Thompson
Stewart Lombard
Stuart Mork
Sue Gunn
Sue Wolfe
Susan & Robert Marett
Susan Bill
Susan Blake
Susan Helf
Susan Kane
Susan Kay
Susan Kilgore
Susan Larson
Susan Ring
Susan Wainer
Susan Wilkie
Susan Wilson
Susie Saalwaechter
Suzanne Ward
Svitlana Dyeryabina
Sybille Vital
T J Thompson
T W
T William Booth
Tamara A. Turner
Tamara Saarinen
Tamela Roberson
Taryn Joel,
Ted Matts
Teresa Allen
Teresa Chegin
Teresa Dix
Teresa Lyman
Theresa Schwacke
Thomas Bougher,
Thomas Cox
Thomas Davis
Thomas Friedland
Thomas Gilmore
Thomas Libbey
Thomas Swoffer
Thomas Winn

Tika Bordelon
Tim Biller
Tim Burns
Tim VanderGoore
Tim Wood
Timothy Keeler
Timothy Sherburne
Tina Brown
Tom and Kristi Weir
Tom Devine
Tom Dorosz
Tom Hopkins
Tom Lux
Tom Oliveri
Toni Reineke
Tony Buch
Tonya Stiffler
Tracy Fleming
Tracy Wang
Travis Miller
Trista Kendall
Ty Ouellette
Ursula Neal
Vaclav Tomek
Val Lukens
Vici Duncan
Vicky Matsui
Victor Petertil
Victoria Laughlin Taylor
Victoria Urias
Victorya Redstarr
Virgene Link
Virginia Davis
Wendy Atmore
Wendy Taylor
Wesley Banks
Will Golding
William Koopman
William Looney
William Mcgunagle
William P. Ostrander, Jr
William Persky
William Phipps
Willie Edwards
Willim Keegan
Yonit Yogev
Yvonne Pawtowski

See Comments 6, 22, 32, 33, 34, 36, 42, 45, 59

Washington State Legislators: this is list of 29 members of the Washington State Legislature whom signed and submitted a comment letter.

Senator Kevin Ranker
Senator Reuven Carlyle
Senator Annette Cleveland
Senator Karen Fraser
Senator Cyrus Habib
Senator Pramila Jayapal
Senator Karen Keiser
Senator Marko Liias
Senator John McCoy
Senator Sharon K. Nelson
Senator Jamie Pedersen
Representative Sherry Appleton
Representative Joe Fitzgibbon
Representative Noel Frame
Representative Mia Gregerson
Representative Christine Kilduff
Representative Patty Kuderer
Representative Kristine Lytton
Representative Jim Moeller
Representative Strom Peterson
Representative Gerry Pollet
Representative June Robinson
Representative Cindy Ryu
Representative Tana Senn,
Representative Derek Stanford
Representative Brady Walkinshaw
Senator Jeannie Darneille
Senator Bob Hasegawa
Representative Gael Tarleton

See Comments 6, 14, 16, 18, 21, 23, 25, 27, 34, 37, 42, 44, 45, 46

Other individual written or spoken comments are alphabetized here by first name:

Amber Carter, Government Relations, LLC	See Comments 4, 5, 12, 13, 16, 19, 61
Andy Stephens	See Comments 32, 38
Anne Coxon	See Comment 47
Ben Sobel	See Comment 50
Behnosh Najafi	See Comment 48
Brian Hovis	See Comment 52
Brian La Freniere	See Comments 25, 32, 55
Bob Curcio	See Comment 6
C J Cannon	See Comments 25, 32, 55
Candace Mumm, Spokane City Council	See Comment 46
Chris Nerison	See Comments 38, 58
Chris Wilke, Puget Sound Keeper	See Comments 11, 16, 17, 19, 31, 32, 33, 35, 36, 54, 55, 57
Chris Wooten	See Comments 25, 32, 55
Colleen Gray	See Comments 25, 32, 55
Curt Leslie	See Comment 39
Dan Picton	See Comment 50
Dan Serres, Columbia River Keeper	See Comments 6, 33
Dan Griffith	See Comment 22
Dave Bilsland	See Comment 48
Derek Young	See Comments 25, 32, 55
Debra Olsen	See Comments 25, 32, 55
Don Steinke	See Comments 56, 59

Ed	See Comment 48
Eleanor Wireman	See Comment 22
Elisabeth Benard	See Comments 25, 32, 55
Elizabeth Gulick	See Comments 16, 22, 56
Evelyn Nackman, Assoc. of American Railroads	See Comment 49
Gene E.A. Johnson	See Comments 16, 22, 56
Greg Anderson	See Comment 48
Haley Mathews	See Comments 25, 32, 55
James T. Grant	See Comments 50. 56
James Griener	See Comment 48
Jan and Vincent Zimmer	See Comments 25, 32, 55
Jean Avery	See Comment 45
Jerry White, Spokane River Keeper	See Comment 44
Judi Chelotti	See Comment 45
Karen Jeffery	See Comment 50
Kathryn Kolan, WA State Medical Association	See Comment 6
Kelli Linville, Mayor Bellingham	See Comments 3, 11
Ken Rone	See Comment 33
Kirsten Angell	See Comment 46
Kiwibob Glanzman	See Comment 48
Laura Ackerman, Spokane Lands Council	See Comments 6, 22, 28, 32, 33, 34, 36, 42, 45, 59, 60
Laure Nichols	See Comments 25, 32, 55
Laurie Lawhon	See Comment 32
Leah Boehm Brady	See Comments 38, 48
Linda Garcia	See Comment 48
Linda Fortune	See Comments 25, 32, 55
Liz Spoerri	See Comment 48
Lovel Pratt, Mulno Cove Consulting/Friends of the Earth	See Comments 6, 32, 33, 34, 36, 40, 60
Lynda and George Wessman	See Comment 48
Marilyn Boyd	See Comment 45
Mary Paynter	See Comments 25, 32, 55
Maude A. Laslie	See Comments 25, 32, 55
Melissa Hagan	See Comments 1, 50
Melissa Malott, Citizens for a Healthy Bay	See Comments 25, 32, 51, 55
Michael R. Craven	See Comments 25, 32, 55
Mike Sennett	See Comment 48
Nancy Hansen	See Comment 45
Nancy Newman Chapa	See Comments 25, 32, 55
New Progressive Alliance	See Comments 6, 22, 32, 33, 34, 36, 42, 45, 59
Patrick Brady	See Comments 1, 2, 6, 8, 13, 16, 18, 20, 23, 24, 26, 44, 49
Patsy Tyvand	See Comments 25, 32, 55
Paula Rotondi	See Comments 22, 56

Pauline Druffel	See Comments 22, 48
Phil Brooke	See Comments 25, 32, 55
Pinky Vargas, Council President Bellingham	See Comments 3, 11
Randy S. Gray	See Comment 46
Rebecca Ponzio : Washington Environmental Council, Washington Environmental Council, FRIENDS of the San Juans, Friends of the Earth, Earth Ministry/Washington Interfaith Power & Light, Protect Skagit, The Lands Council, Tahoma Audubon Society, Puget Sound Keeper Alliance, Audubon Washington, RE Sources for Sustainable Communities Oregon Physicians for Social Responsibility, Grays Harbor Audubon Society, STAND earth, Washington Chapter of Physicians for Social Responsibility, Spokane Riverkeeper, Friends of Grays Harbor, Citizens for a Clean Harbor, 350 Seattle, Sierra Club, Futurewise, Friends of the Columbia Gorge	See Comments 6, 9, 22, 28, 32, 33, 34, 36, 40, 55
Richenda Fairhurst, Camas United Methodist Church	See Comments 48, 50
Robert & Karen Mitchell	See Comments 48, 50
Sabrina Ellis	See Comment 53
Sarah Stephens	See Comment 48
Shayne Cothern, Department of Natural Resources	See Comments 46, 54
Sophia Ressler, Puget Sound Keeper	See Comments 11, 16, 17, 19, 31, 32, 33, 35, 36, 54, 55, 57
Stanley Shaw	See Comments 25, 32, 55
Stephen Hellriegel	See Comments 6, 22, 32, 33, 34, 36, 42, 45, 50, 59
Sue Carver	See Comment 48
Sue Joeger, Puget Sound Keeper	See Comments 11, 16, 17, 19, 31, 32, 33, 35, 36, 54, 55, 57
Susanne Marten	See Comments 25, 32, 55
Tana Wood	See Comment 12
T. Jeffrey Johnson	See Comments 9, 20, 30, 32, 43
Thomas G. Johnson	See Comments 9, 20, 30, 32, 43
Tim Kelly, Columbia Basin Railroad and Central Washington Railroad	See Comment 6
Tim Young, Skamania County Fire District 4	See Comment 51
Timothy Doyle, King County LEPC	See Comments 7, 10, 15, 18, 29, 40
Toby J. Van Altvorst, Western Washington Railroad	See Comments 41, 49
Vladimir Shakov	See Comments 25, 32, 55
WJ Hudson	See Comment 50
Walt Hubbard, King County Emergency Management	See Comment 15
Ziggy	See Comment 48

Appendix A: Copies of all written comments

Appendix A organizes comments by how they were received. Written comments received by email, mail, or fax are first. Comments entered directly in the web comment system are found at the end of the Appendix. Comments received in person at public hearings can be found in the transcriptions of the individual public hearing in Appendix B.

Ecology received over 1,192 group comments by email on the proposed rule, containing the following text. Some of the small variations between each individual submission were the inclusion of commenter names and addresses or changing the word "We" to "I" in the first paragraph. Copies of the originals are contained in the rule file and available by request. The name of each person who submitted the content below is included immediately after this page.

"We urge the Department of Ecology to implement the strongest rules for Chapters 173-185, and 173-186 as possible. Communities across Washington are on the front line, experiencing crude oil trains and are at risk of oil spills due to train derailments and pipeline ruptures. We applaud the Department for moving these rules forward. All three rules are an important first start and we strongly encourage Ecology to keep the existing parts of each of the draft rules and to add the following:

For the Rail and Pipeline Notification rule (Chapter 173-185 WAC):

(1) Provide more detailed information on the types of oil, volume of different types of oil, oil spills, etc. consistent with the route segments to understand areas where unique risks or problems exist.

(2) Incorporate language in the final rule that makes it clear that the agency will assume that the route is known and the burden is on the facility to show that they do not know the route taken by an oil-by-rail shipment through documentation. This will prevent the facilities from cutting corners in reporting requirements.

(3) Centralize information for rail, pipeline, and vessel reporting systems so we can have a one stop shop for public information. This includes the TYPE of oil as well as how much oil and how the oil is traveling.

(4) Continue to require facilities to report all oil shipments scheduled to arrive at their facility.

For Railroad Contingency Plan rule (Chapter 173-186 WAC):

(1) Contingency plan requirements for railroads should be comparable with the most rigorous contingency plan requirements for pipelines and vessels. This includes the 1-, 2-, and 4-hour planning standards and aerial surveillance capabilities.

(2) Require planning standards for diluted bitumen that include the recommendations from the National Academy of Sciences' Spill of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects and Response.

(3) Retain the definition of a 'worse case spill.'

(4) Ensure safety of first responders through adequate protective gear.

(5) Update the cost-benefit analysis to include the analysis of insurance expert Robert J. Blackburn, hired by the City of Vancouver, that indicates a worse-case scenario in Vancouver

could cost $6 billion.

(6) Establish a prioritization process for processing and/or paying damage claims if they exceed the money available for compensation.

(7) Identify adequate planning points for the distribution of oil spill response equipment and trained personnel.

(8) Require a public notice, review, and commenting opportunity when there is a significant change of the plans in order to approve the plan."

Abigail Tupper Mitchell, Adam Levine, Adam Udovich, Al Alpert, Alex Abbott, Alexandra Biggs, Alexandra Tufnell, Alfred Colter, Alfred Ferraris, Alice D. Gray, Alice Hibberd, Alice Steijn, Alice Swan, Alice Tobias, Alice Yang, Alan Thiese, Allan Hendrix, Alys Kennedy, Amelia Becke, Amy McKay, Amy Mower, Andrea Avni, Andrea Higgins, Andrea Speed, Andreas Enderlein, Angela Jacobs, Angie Boone, Anita Jahns, Ann Giantvalley, Ann Jones, Ann Lazaroff, Ann Van Buskirk, Anne Elkins, Anne Hall, Anne Kroeker, Anne Wermus, Annette Klapstein, Anngele Vose, Annie Clay, Anthony Gervais, Antonia Wood, Ardeth L. Weed, Arlene Roth, Arnold Martin, Arnold Strang, Audrey Adams, B Davidson, Barbara Bonfield, Barbara Brock, Barbara Brueckner, Barbara Gregory, Barbara Gross, Barbara L. Wood. Barbara Phinney, Barbara Read, Barbara Rosenkotter, Barbara Whitt, Barry Hutchinson, Beatrice Lackaff, Becky Chappell, Ben Rall, Benita Moore, Bergith Kayyali, Berinda Van Cleave, Bernard Walter, Beth Brunton, Beth Call, Beth Jensen, Bette Ann Schwede, Bette Jingling, Betty Karst, Bill Daugaard, Bill Jones, Bill Nerin, Binh Nguyen, Blayney Myers, Bob Zeigler, Bobbi Goff, Bobbi Hickox, Bonnie and Doug Rohrer, Bonnie Miller, Brad Bardwell, Brandie Deal, Brenda S. Bailey, Brenna Taylor, Brett Llewellyn, Brian Baltin, Brian Benson, Brian Flaherty, Brian Huseby, Brian Lewis, Brian Reid, Brian Silverstein, Brianna Kohlenberg, Bruce & Mary Schleicher, Bruce Barnum, Bruce Carter, Bruce Clifton, Bruce Dobson, Bruce Hoeft, Bruce Shilling, Bryan Branson, Bryan Doull, Bryan Gilroy, C Canonica, C Creager, C L Burger, Carissa Daniels, Carla Happel, Carlo Voli, Carlton Ward, Carol Davidek-Waller, Carol Dickinson, Carol Else, Carol Meyer, Carol Stevens, Carol Sword, Carol Torchia, Carol Whitehurst, Caroline Armon, Carolyn Fletcher, Carolyn Treadway, Carolyn Wood, Catherine Adams, Catherine Ross, Cathryn Chudy, Cathy and Craig Spalding, Celine Bressler, Charlene Larsen, Charles Colenaty, Charles Gustafson, Charlie Bakert, Cherie Warner, Cheryl Loucks, Cheryl Mitchell, Cheryl Speer, Chey Thurman, Chris Covert-Bowlds, Chris Dynega, Chris Guillory, Chris Kanit Cottrell, Chris Lykins, Chris Stay, Chris Wooten, Christian & Lea Andrade, Christian Bookter, Christine Landon, Christine Mead, Christopher Key, Christopher King, Christopher Kralik, Christopher Pringer, Christopher Watson, Christy Lewis, Christy Papadakis, Chuck Hanna-Myrick, Chuck Rohrer, Chuck Sheaffer, Claire and Hilkka Egtvedt, Clark Wiegman, Codi Hamblin, Colleen Cunningham, Colleen Curtis, Colleen Hinton, Colleen Lenihan, Colleen McDonald, Constance Lee, Constance Rodman, Corey Elliott, Corinne McWilliams, Cornelia Teed, Craig Britton, Craig Kirby, Curtis Hughes, Cynthia Noble, Cynthia Parker, D R, D Robinson, Dale Birdsell, Dan Freemen, Dan Kegebein, Dan Loucks, Dana Beebe, Daniel Albright, Daniel Anderson, Daniel McMannis, Danne Neill, Danny Dwinell, Darcia Hurst, Dave Popoff, Daveeee Schiesls, David and Geri Turnoy, David and Julie Peha, David Arntson, David Blair, David Groves, David Hand, David Hirst, David Linn, David MacKey, David Perk, David Scheer, David Schiesl, David Stetler, David Thompson, David Todnem, David Winkel,

Dawn Morgan, Dawn Spickler, Deb Bear, Deb Olsen, Debbie Bremner, Debbie Bremner, Debbie Burnup, Debbie Spear, Debbie Thorn, Debby Forbush, Debby Herbert, Deborah Efron, Deborah Gandolfo, Deborah McCoy, Deborah Parker, Debra Vandegeift, Demian, Denis Langhans, Dennis Raymond, Dennis Underwood, Desdra Dawning, Desire LacQuaye, Desiree Mendes, Desiree Nagyfy, Diana Talbott, DiAnne Gabris, Diane Kinnally, Diane Marks, Diane Sullivan, Diane Tait Dong, Diane Thompson, Diane Weyer, Dianna MacLeod, Dianna Maish, Dolores Wiens, Don Ely, Don Lahti, Don McMillin, Don Thomsen, Donald LaMoure, Donna Davis, Donna Hamilton, Donna Hanson, Donna Snow, Dore Richman, Doris Johnson, Dorothy Jane Davis, Dorothy Knudson, Dorothy Lipsky, Dorothy Moritz, Doug Brown, Douglas Boe, Douglas McLemore, Douglas Strabel, Dr. Cairo D'Almeida, Dr. Jeffrey Paul LaGasse M.D., Dr. Michael Berres, Duane Naught, E Ellis, Ed Bennett, Edie Jorgensen, Edward Colley, Edward Laclergue, Edward Mills, Edward Ury, Eileen LeVan, Eleanor Dowson, Elinor Lake, Elizabeth Cross, Elizabeth Lengel, Ellen Henderson, Ellen McCartan, Elyce Woycke, Elyette Weinstein, Emily Krieger, Eric Burr, Eric Dale, Eric Fosburgh, Eric Kuhner, Ericka Berg, Ericka Sjogren, Erik Ebert, Erik LaRue, Erika Thorsen, Estella Mixson, Eugenia A. Pattersons, Evan Callahan, Evelyn Popejoy, Fay Payton, Faye Bartlett, Fayette Krause, Felicity Devlin, Fiona Barrett, Florence Harty, Forrest O'Reilly, Forrest Rupley, Frances Blair, Frances Lawren, Francine Burg, Francis Lenski, Frank Johnsen, Frank Koterba, Franz von Hirschmann, Fred Karlson, Fritz Chess, G D Abbott, G G, Gabriele Bartholomew, Garry Nakayama, Gary Albright, Gary and Laura Rothenberger, Gary McLaughlin, Gary Porter, Gayle Rothrock, Gen Obata, Gena DiLabio, Gene Lawson (2), Geoff Briggs, George and Barbara Rofkar, George Dilg, George Summers, Gerald and Jackie Penningroth, Gerald Patterson, Gerald Stansfield, Giles Sydnor, Gill Fahrenwald, Gina Leone, Gina Pantier, Glen Anderson, Gloria McClintock, Greg & Rebecca Durr, Greg Espe, Greg Goodwin, Greg Marsh, Greg Mueller, Gregory Penchoen, Gregry Loomis, Gunnel Clark, Guy Chan, Gwen Innes, Gwen Nakano, Gwyn Jean, Hal Glidden, Harold Lang, Harris Dunkelberger, Heather Buekw, Heather Hall, Heather Murawski, Heidi Gann, Helen Behan, Helen Bigelow, Helen Curtis, Helen Read, Helene Steinhardt, Helga Aldrich, Helga Burkhardt, Herb Dye, Hilarie Ericson, Holly Hallman, Hope Nastri, Indigo Summer, Irene Willey, Irina Vodonos, Irmgard Conley, Irina Vodonos, Isolde Perry, J Derosia, J Kelly, J Nichols, J. Woodworth, J. Scott MacElveen, Jack Burke, Jack Mackie, Jack Tull, Jackie Cole, Jackie Grove, Jacob Bale, Jacqueline Moskowitz, James Baron, James Cronin, James DeSeranno, James Doyle, James Krieger, James MacRae, James Mulcare, James M. Tandoo, James Wayrynen, Jamie Caya, Jamie Dampier, Jan Gordon, Jan Hadley, Jan Thorne, Jan Verrinder, Jan Zimmer, Jane Hadley, Jane Jaehning, Jane Metcalfe, Jane Steadman, Janelle Witter, Janet Chalupnik, Janet Ferrari, Janet Hedgepath, Janet Marx, Janet Rexroth, Janet Riordan, Janet Way, Janet Wynne, Janice Macarthur, Janis Fensch, Janna Rolland. Jared Howe, Jason Knopp, Jay Russo, Jay Wang, Jean Mendoza, Jean Richardson, Jean Teach, Jean Whitesavage, Jeanette Redmond, Jeanne Kleyn Kleyn, Jeanne Martin, Jeanne Poirier, Jeevake Attapattu, Jeff Freels, Jennifer Calvert, Jennifer Pittman, Jennifer Sprague, Jennifer Westra, Jennifer Woodbridge, Jenny O'Neill, Jeri Harris, Jerome Sullivan, Jerry Chilson, Jerry Kessinger, Jessica Drummond, Jessica Levin, Jill Feuerhelm, Jill Gustafson, Jill Hamilton, Jill Stryker, Jill Timm, Jill Zaklan, Jillian Gallery, Jim Clymer, Jim Strichartz, Jini Fisher, Jo Harvey, Joan Cole, Joan Turpin, JoAnne Cummings, JoAnne Kelly, Joanne Wright, Joe Chasse, Joe Thompson, Joe Wiederhold, Joel Taryn, Johanna Molloy, John and AJ Jittipsopa-Zinner, John Eschen, John Fenker, John Gordon, John Hardy, John Hennessy, John Lambert, John McGovern, John Niendorf, John S, John Sherwin, John Springer, Jolyn Plough, Jon Martin McCallum, Jonathan Walter, Jonny Hahn, Joseph A. Yencich, Joseph and Diane Williams, Joseph LaValle, Joyce Grajczyk, Joyce Lewis,

Joyce Weir, JR Trimble, Jude Armstrong, Judith Bluhm, Judith Fouts, Judith Laik, Judith Landy, Judith Langhans, Judy & Ed Cole-Martin, Judy Turksel, Judyth O. Weaver, Julia Hurd, Julia Glover, June Chaus, Justin Morgan, Kamori Cattadoris, Karen Berntsen, Karen Best, Karen Byrne, Karen Clark, Karen Erlander, Karen Fisher, Karen Hedwig Backman, Karen Howard, Karen Kelly, Karen Pickering, Karen Richter, Karen Soma, Kate Frangos, Katharine Harkins, Katherin Balles, Katherine Alice Tylczak, Katherine Nelson, Kathleen Hunt, Kathleen Lowney, Kathleen Wolfe, Kathlene Croasdale, Kathryn Alexandra, Kathryn Fletcher, Kathryn Plitt, Kathryn Schetzer, Kathryn Vinson, Kathy Kestell, Kathy Schaeffer, Kathy Smith, Kay S, KC Young, Keith Anklam. Keith Cowan, Keith Larson, Kellie Crawford, Ken Minden, Kevin Darcy, Kevin Hughes, Kevin Orme, Kim Cox, Kim Seater, Kimberly Leeper, Kindy Kemp, Kirk Johnson, Kristen Adamson, Kristen Wallway, Kristi Nakata, Kristina Gravette, Kristine Kriner, Kyle Loring, Ladonna Rorabeck, Lakota Crystal, Lara Backman, Larry Keister, Laura Ackerman, Laura Craig, Laura Goldberg, Laura Huddlestone, Laura Ramon, Laura Skelton, Laurel Hughes, Laurette Culbert, Laurice Riekki, Leah Froemsdorf, Lee Musgrave, Lee Stafford, Lee Stone, Lehman Holder, Leonard Houghtaling, Leslie Austin Johnson, Leslie McClure, Lester Thompson, Lew Sikes, Liisa Antilla, Linda Ann Fortune, Linda Avinger, Linda Bahr, Linda Curry, Linda Golley, Linda K Lindquist, Linda Knoll, Linda Kolakosky, Linda Massey, Linda Reilly, Linda Rossi, Linda V, Linda Woodall, Lisa Karas, Lise Grace, Lloyd Hedger, Lloyd Johnston, Lois Guthrie, Lola Schiefelbein, Loreta Wood, Lorraine D. Johnson, Lorraine Hartmann, Lorraine Marie, LouAnn Ballew, Lucia Mack, Lyle Collins, Lyman Griswold, Lynda Cunningham, Lynette Weick, Lynn Brevig, Lynn Colson, Lynn Offutt, Lynn Rabenstein, Lynn Taylor, M Dulin, M Howell, M. Lou Orr, Madya Panfilio, Mana Iluna, Marcia Brown, Marcia Clarke, Marcia Huey, Marco de la Rosa, Margaret Graham, Margaret Hashmi, Margaret Lyons, Margery Barlow, Margot Voorhies, Marguerite Brown, Marguerite Weis, Marian Wineman, Marianne Edain, Marianne Eddington, Marianne Gordon, Marilyn Flint, Marilyn Mayers, Marilyn Overton, Marjorie Walker, Mark Blitzer, Mark Bradley, Mark Hughes, Mark Scott, Mark Thomas, Mark Weick, Mark Whitaker, Mark Wirth, Marsha Adams, Marsha Kimball, Marsha Shaiman, Martha Ann Brooks, Martin Englander, Martin Kimeldorf, Marty Adams, Mary and Brian Jokela, Mary Bartholet, Mary Benham, Mary Bicknell, Mary Gleysteen, Mary Guard, Mary Harmon, Mary Holder, Mary Jane Engh, Mary K Johnson, Mary Knoth, Mary Masters, Mary Nye, Mary Paynter, Mary Schleicher, Mary Schreifels, Mary Sebek, Mary Solum, Mary Sprute, Mary Wickwire, Mary-Ann Kirsling, Matthew Anderson, Matthew Boguske, Matthew Evinger, Matthew Logalbo, Matthew Thuney, Maureen T. Lang, Maureen Rawlings, Max DeNise, Maxine Clark, Meghan McCutcheon, Melanie Kenoyer, Melinda Parke, Melissa Craig, Melissa Eriksen, Melissa Thirloway, Melodie Martin, Merna Baker Blagg, Merryl Woodard, Meryle A. Korn, Mia Heavyrunner, Michael and Barbara Hill, Michael Lyman, Michael Reynolds, Michael Smith, Michael Spence, Michael Sym onds, Michael Woods, Michele Attwood, Michelle Jacobsen, Michelle Keating, Michelle Stepp, Mike Bessler, Mike Conlan, Minda Thorward, Miranda LeonJones, Mlou Christ, Mollie Smith, Mona McNeil, Morgan Girling, Mr. Shelley Dahlgren, N Lebaron, Nadine LaVonne, Nancy Cubbage, Nancy Ellingham, Nancy Farrell, Nancy Gale, Nancy Henderson, Nancy Katz, Nancy Kilgore, Nancy L Krause, Nancy Lovejoy, Nancy Pope, Nancy Shaw, Nancy Shimeall, Nancy Vandenberg, Nancy White, Navneal Man, Neatha Lefevre, Nic Curtright, Nicholas Johnson, Nicholas Smit, Nichole Acheson, Nick Barcott, Nick Taylor, Nigeala Nigrath, Nikki Jimenez, Noel Barnes, Noel Orr, Norma Silliman, Nova Berkshires, Oleg Varanitsa, Olga Gottlieb, P M, P.E. Crawford, Pam Borso, Pam Ives, Pamela Bar-El, Pamela Clark, Pamela Engler, Pamela Harris, Patricia A Lenzen, Patricia D. Wilson, Patricia Harper, Patricia McGee, Patricia Perron, Patricia Rathbun, Patrick

Archer, Patrick Mulcahey, Paul Lantz, Paul Moyer, Paul Potts, Paul Stoner, Paul Talbert, Paul Zurfluh, Paulina Oberg, Pauline Druffel, Penny Derleth, Peggy Page, Peggy Willis, Peter Baird, Peter Holcomb, Peter Marshall, Peter Rimbos, Peter von Christierson, Phil Crawford, Philip Power, Phillip Bernhardt-House, Phyllis Brown, Phyllis Conley, Polly Tarpley, Rachael Black, Rafe Dimmitt, Ramona Owen, Randall Collins, Randi Pewzner, Ravinder Bajwa, Ray Lou, Raymond Ligrano, Raymond Williams, Robert Blumenthal, Rebecca Clark, Rebecca and Tom McDnoough, Rebecca Em Campbell, Rebecca Robins, Rebecca Teeters, Rhoda Walter, Rich Lague, Richard and Sharon Erspame, Richard Brems, Richard Craven, Richard D Jones, Richard Ellison, Richard Grassl, Richard Johnson, Richard Krahn, Richard Romito, Richard Whitney, Rick Barrett, Rick Eichstaedt, Riff Millar, Robby Stern, Robert B. Kaplan, Robert Blumenthal, Robert Brandt, Robert Brown, Robert Chang, Robert Connor, Robert Donohoe, Robert Driessnack, Robert Fiebing, Robert Gabriel, Robert Lindberg, Robert Rowe, Robert Sanford, Robert Schmidt, Robert Worley, Robin Boynton, Robin Hirsch, Robin Thomas, Robyn Lowe, Roger Lippman, Roger Oborn, Ron & Marci Moore, Ron DiGiacomo, Ron Slosky, Ronald Krell, Ronda Good, Ronlyn Schwartz, Rose Lagerberg, Roy Baggerly, Rozanne Rants, Russell Wegner, Ruth Darden, Ruth Neuwald Falcon, Ruth Riordan, S Carpenter, S Shaw, S Slayton, Saab Lofton, Sallie Shippen, Sally Hurst, Sally Rodgers, Sandra B-J, Sandra Davis, Sandra Smith, Sandy Petrarca, Sandy Wood, Sanja Futterman, Saphire Blue, Sarah Collmer, Sarah Dallasto, Sarah Sloane, Scott Brown, Scott Buxton, Scott Dungan, Scott Fortman, Scott Levering, Scott Sledge, Scott Tallman, Scott Whittaker, Sharie Todd, Sharon Kalen, Sharon London, Sharon Lynch, Sharon Mannix, Sharon Miller, Sharon Parshall, Sharon Vander Pool, Shary B, Sharyn Pennington, Shelley Dahlgren, Shemayim Elohim, Sherry Bupp, Sherry E, Sherry McCabe, Sherry Salomon, Sherry Spurling, Sherry Williams, Shirley Jacobson, Sigrid Asmus, Sonja Hinz, Sophia Ressler, Stanley Jones-Umberger, Stephen and Kathleen Hulick, Stephen Craig Rolston, Stephen Curry, Stephen Durbin, Stephen Friedrick, Stephen Nichols, Stephen Shubert, Steve Finch, Steve Hersch, Steve Thompson, Stewart Lombard, Stuart Mork, Sue Gunn, Sue Wolfe, Susan & Robert Marett, Susan Bill, Susan Blake, Susan Helf, Susan Kane, Susan Kay, Susan Kilgore, Susan Larson, Susan Ring, Susan Wainer, Susan Wilkie, Susan Wilson, Susie Saalwaechter, Suzanne Ward, Svitlana Dyeryabina, Sybille Vital, T J Thompson, T W, T William Booth, Tamara A. Turner, Tamara Saarinen, Tamela Roberson, Taryn Joel, Ted Matts, Teresa Allen, Teresa Chegin, Teresa Dix, Teresa Lyman, Theresa Schwacke, Thomas Bougher, Thomas Cox, Thomas Davis, Thomas Friedland, Thomas Gilmore, Thomas Libbey, Thomas Swoffer, Thomas Winn, Tika Bordelon, Tim Biller, Tim Burns, Tim VanderGoore, Tim Wood, Timothy Keeler, Timothy Sherburne, Tina Brown, Tom and Kristi Weir, Tom Devine, Tom Dorosz, Tom Hopkins, Tom Lux, Tom Oliveri, Toni Reineke, Tony Buch, Tonya Stiffler, Tracy Fleming, Tracy Wang, Travis Miller, Trista Kendall, Ty Ouellette, Ursula Neal, Vaclav Tomek, Val Lukens, Vici Duncan, Vicky Matsui, Victor Petertil, Victoria Laughlin Taylor, Victoria Urias, Victorya Redstarr, Virgene Link, Virginia Davis, Wendy Atmore, Wendy Taylor, Wesley Banks, Will Golding, William Koopman, William Looney, William Mcgunagle, William P. Ostrander, Jr., William Persky, William Phipps, Willie Edwards, Willim Keegan, Yonit Yogev, Yvonne Pawtowski

Washington State Legislature

Comments for the Rulemaking Record on the Following Rules:

Oil Spill Contingency Plan - Railroad (ch. 173-186 WAC)
Oil Movement by Rail and Pipeline Notification (ch. 173-185 WAC)

General Comments

Until 2012, virtually no crude oil shipments moved across the state by rail. The decline in production from Alaska oil fields is steadily being replaced by rail shipments of Bakken crude oil from the upper Midwest and tar sands crude from Canada. Because the state had no spill planning standards for rail shipments, and the very minimal requirements under federal law applied only to very large capacity rail cars that are not used at all in this state, the 2015 Legislature directed that the Department of Ecology adopt oil spill contingency planning standards for rail shipments of crude oil, similar to the requirements for tank vessel shipments which have been in place since the early 1990s. The Legislature also required advance notification to Ecology of crude oil-by-rail shipments, including the route of the shipment and the origin of the oil (effectively providing information on the type of oil being shipped). This information would then be available to first responder agencies in communities along the route in order to better prepare in the event that a response to a spill became necessary.

These comments are directed to the draft regulations released by the state Ecology Department to implement this legislation. The state legislators submitting these comments do so in the spirit of working to implement the strongest measures of spill preparedness and response for the protection of communities along the shipment routes and to protect the many waterways which these routes cross or run adjacent to. While spill response planning standards are a shared responsibility of federal and state governments under applicable clean water and rail safety laws, it is imperative that our state act now to adopt strong planning standards and not rely solely upon the eventual adoption of federal standards. The very recent derailment and subsequent fire and release from a mile-long crude oil train in the Columbia River gorge illustrates the risks faced by our communities along these shipment routes on a daily basis. The planning and disclosure standards must be as strong as possible, adopted in final form without delay, and swiftly implemented.

The following consolidated comments address both the oil spill contingency plan rules and the oil movement notification rules, for ease of reference. They will be submitted as part of both rulemaking dockets.

Comments on Draft Rules: Oil Spill Contingency Plan - Railroad (ch. 173-186 WAC)

1. "Worst Case Spill" Definition and Planning Standard (WAC 173-186-40; 173-186-310; and 173-186-400). It is vitally important that the final rule reflect the draft rule's requirement that rail contingency plans include equipment and resources necessary to respond to a release of the entire oil cargo, based upon an assumption that each rail car may be carrying its capacity of 714 barrels. The oil trains now transiting the state are typically mile-long trains of nearly 100 tank cars. The train that derailed in the Columbia Gorge (with Tacoma as its destination), consisted of 96 rail cars. Given the volatility of Bakken crude oil and the potential for a release caused by a catastrophic fire, it is entirely appropriate to

require that contingency plans address the resources needed to respond to a "worst case spill" that would involve a release of a train's entire oil cargo. Maintaining this standard in the final rules may prove to be the most important element of these rules.

2. Public accessibility to contingency plans (WAC 173-186-100). This section on submitting contingency plans is an appropriate section in which to make it clear that the plans will be publicly accessible through the agency's website from the time they are submitted. The rule should also be clear that if the entity submitting the plan claims that portions of the plan must be kept confidential and not disclosed to the public, the legal basis for the claim of confidentiality must be set forth and that the Ecology director will make a final determination regarding whether the information must be kept from public disclosure.

3. Phase-in dates for this chapter (WAC 173-186-120). The draft rule's requirements that contingency plans be submitted within 90 days of the effective date of the final rules must be maintained in the final rule. It is important that the plans be in place and implemented as soon as possible, and in most cases railroad companies have stated that they already have contingency plans. Making the necessary revisions to meet the state's standards within this time period should not pose a hardship.

4. Spill response equipment transfers (WAC 173-186-140(2)(c). The draft rules require notification to Ecology of significant changes in plans, including transfers of response equipment for out-of-region spills. This provision should be revised to require notification as well to Ecology of significant transfers of equipment within the region. It is important to coordinate response equipment locations along the main shipment lines among rail operators as well as local, state and tribal first responder agencies. Significant transfers of response equipment within the region by a plan holder or its contractors should be submitted to Ecology as a change to an approved plan.

5. Binding agreement (WAC 173-186-210). The draft rules require a written statement binding the plan holder to its use. The agreement is to be signed by the plan holder as well as the owner or operator of the railroad. It is common for other railroad companies to operate their equipment on lines owned by another company. So the final rule should be made clear that the binding agreement must also be signed by any owner or operator of trains carrying oil as cargo on the line to which the plan applies.

6. Contingency plan content - include locations of oil cargo transfers (WAC 173-186-220(3)(e). The draft rules require the plan to include a list and map of expected rail routes as well as locations where fueling occurs and inventory of above ground tanks and their storage capacities. The final rule should also require listing of the locations of expected **transfers of oil cargo, either** loading or offloading of cargo.

7. Contingency plan content - description of sensitive areas (WAC 173-186-220(3(n). The draft rules require the plan to include information on a lengthy list of sensitive areas, resources, and facilities. However, it appears to omit several. In addition to drinking water intakes along the shipment routes, important water supply intakes for irrigated agriculture as well as commercial and industrial uses should also be identified. And in addition to "significant economic resources" to be protected in the geographic area covered by the plan, there should be identified those facilities near to the shipment

lines in which there are vulnerable or sensitive populations, such as hospitals, schools, day care centers or senior assisted living facilities.

8. Field document (WAC 173-186-230). The draft rules require a field document listing critical information on the initial emergency phases of a spill and this document be available to personnel who participate in oil handling operations. The final rules should also require making this field document available to all first responder agencies in communities through which the shipment lines run.

9. Group 5 oils (WAC 173-186-330). The draft rules require plan holders to have a contract with spill response contractors with resources and/or capabilities to respond to a spill of Group 5 oils. While this likely refers to persistent oils such as Canadian tar sands that present new challenges when spilled to the marine environment, the term "Group 5 oils" is not defined in the draft rules. The final rules should include a definition of this term.

10. Planning standards for wildlife rescue and rehabilitation (WAC 173-186-370). The draft rules require the plan to identify applicable requirements for wildlife rescue and rehabilitation, and that response resources have the capability to arrive on scene within 24 hours of the spill. The final rules should add that the plan identify how these resources will include or coordinate with appropriate federal, state and tribal wildlife management agencies and authorized wildlife rescue and rehabilitation centers.

11. Enforcement - noncompliance (WAC 173-186-610(4). The draft rules provide that Ecology may assess a civil penalty of up to $100,000 for any violation of the rules and that each day of noncompliance be considered a separate violation. The final rules should make clear that this penalty for violation of the planning rules is in addition to and separate from any damages or liability that may incurred for natural resources damages or damages or injury to persons or property, or penalties incurred for violation of any other laws relating to a spill.

Comments on Draft Rules: Oil Movement by Rail and Pipeline Notification (ch. 173-185 WAC)

1. Disclosure - The public (WAC 173-185-100). The 2015 legislation requiring disclosure to the public of "statewide" aggregated quarterly information on crude-by-rail shipments requires information on the routes of the shipments and type of oil shipped. The draft rules reflect an appropriate balance of "aggregated" information that will not disclose proprietary information while at the same time providing an important statewide picture of the frequency, routes and types of crude oil being shipped by rail. The draft rule language should be maintained in the final rules.

2. Disclosure of the shipment route (WAC 13-185-100). The 2015 legislation requires facilities receiving oil to provide Ecology advance notification information on the route taken "if known," and this information is subsequently aggregated on a quarterly basis for public disclosure. It is plain that facilities expecting crude oil deliveries track these shipments closely and are aware of the route of the shipment, as the scheduling of offloading is critical to their operations. The final rules should provide that it is assumed that reporting facilities have knowledge of the route of a shipment and any claim to the contrary for a specific shipment must be clearly demonstrated by the reporting facility.

3. Disclosures -- Type of crude oil shipped (WAC 173-185-100). The final rules should maintain the draft rules requirement that the type of oil received over a quarterly period of oil at a facility be aggregated on a statewide basis. It is very important that the public have reliable information about the type of oil being shipped through their communities.

4. Disclosures -- Emergency management division and county, city, tribal, port and local government emergency response agencies (WAC 173-185-090). The draft rules simply provide that first responder agencies may request advance notification information via a request by email. The final rules should reflect a more concerted effort by the agency to centralize this information for easy access, using the model of its advance notification system used for vessel oil cargo transfers. This could be combined with such vessel information into a central website on transportation, with a tab specific for advance notification of rail shipments accessible **only by** these first response agencies. A separate weblink could be provided at the same website for the quarterly aggregated information available to the general public.

5. Public notification of website update (WAC 173-185-100). The draft rules and 2015 legislation direct Ecology to update the website on a quarterly basis. The final rules should specify how the public will be notified of website updates and identify significant differences in statewide shipments from prior quarters.

Signed,

Senator Kevin Ranker 40th District

Senator Reuven Carlyle 36th District

Senator Annette Cleveland 49th District

Senator Karen Fraser 22nd District

Senator Cyrus Habib 48th District

Senator Pramila Jayapal 37th District

Senator Karen Keiser 33rd District

Senator Marko Liias 21st District

Senator John McCoy 38th District

Senator Sharon K. Nelson 34th District Senator Jamie Pedersen 43rd District Representative Sherry Appleton 23rd District

Representative Joe Fitzgibbon 34th District Representative Noel Frame 36th District Representative Mia Gregerson 33rd District

Representative Christine Kilduff 28th District Representative Patty Kuderer 48th District Representative Kristine Lytton 40th District

Representative Jim Moeller 49th District Representative Strom Peterson 21st District Representative Gerry Pollet 46th District

Representative June Robinson 38th District Representative Cindy Ryu 32nd District Representative Tana Senn 41st District

Representative Derek Stanford 1st District Representative Brady Walkinshaw 43rd District

Senator Jeannie Darneille 27th District

Senator Bob Hasegawa 11th District

Representative Gael Tarleton 36th District

AMBER CARTER
GOVERNMENT RELATIONS LLC

June 10, 2016

Ms. Linda Pilkey-Jarvis
Department of Ecology Spills Program
PO Box 47600
Olympia WA 98504-7600
By Email Linda.Pilkey-Jarvis@ecy.wa.gov

RE: Proposed Railroad Oil Spill Contingency Plan Rule, Chapter 173-186 WAC

Dear Ms. Pilkey-Jarvis:

On behalf of my client, the Portland Vancouver Junction Railroad (PVJR), I am pleased to submit comments on the proposed oil spill contingency plan rules for railroads. DOE has made an extra effort to reach out to shortline railroads affected by this rule and the discussions have been very helpful in understanding its impact. My comments include those specific to my client while also incorporating generalized concerns raised by other shortline railroads during our stakeholder meeting.

PVJR is the freight operator for the Clark County owned Chelatchie Prairie Railroad, a 33-mile short line from Vancouver to Amboy, and provide freight service from milepost 0.0 to 18.58. They are a Class III Railroad with operational speeds of 10 miles per hour or less. The proposed rule affects the PVJR operation for the movement of transformer oil to the Bonneville Power Administration. The railroad moves a single tanker once annually out of the more than thousand carloads transported. For a small railroad operator, the rule would have substantial cost impacts for the less than 0.1% of non-crude oil product moved out of the total annual carloads. This could have the effect of making transport by rail unaffordable and force movement of non-crude oil products on our streets and highways instead. Other shortline railroads in Eastern Washington are faced with similar problems in the movement of non-crude oil that is less than 1% of their carloads and for biological oil that is less than 9% of their total carloads. While the specific examples change for each shortline, Class III railroads are particularly at risk for a substantial investment for de Minimis non-crude and biological oil transport. Non-crude and biological oils have significantly different risks and flash points than crude oil and should be regulated and planned for differently.

120 41st Avenue NE
Olympia WA 98506
360-561-4861
amber.carter@comcast.net

The authorizing legislation, HB 1449 from 2015 directs DOE to determine the contingency plan requirements for railroads transporting oil in bulk. The underlying law places an emphasis on crude oil and mainline traffic. Non-crude oil transported by short line railroads will bear the brunt of the compliance costs despite the very different operational speeds and distances traveled. Furthermore, the financial starting point for short line railroads is greatly different than mainline railroads. While the underlying law directs rule development for railroads, it does not preclude the ability of DOE to provide exemptions. For these reasons we ask that DOE provide a blanket exemption for Class III railroads that do not transport crude oil.

Absent an exemption for Class III railroads that do not transport crude oil, DOE should consider a less burdensome alternative for shortlines that:

(1) Exempt railroads that transport non-crude oil at speeds of 10 miles per hour or less;
(2) Exempt railroads that transport non-crude oil at distances of less than 5 miles;
(3) Exempt railroads that transport non-crude oil that is less than 1% of total annual carload volume;
(4) Exempt railroads that transport non-crude biological oil that is less than 10% of total annual carload volume;
(5) Allow railroads to have umbrella coverage under the plan of their Class I partner;
(6) Allow railroad operators to have umbrella coverage under the plan of the rail owner;
(7) Allow railroads to have umbrella coverage under the plan of their customers;
(8) Allow railroads to share costs and resources by forming a group plan with other railroads, ports or marine terminals;
(9) Require risk appropriate boilerplate plans to be available before the timeline for compliance begins;
(10) Extend the boilerplate plan to oils other than biological oils and accommodate lower risk factors;
(11) Extend phase-in dates to allow Class III railroads additional time for compliance; and
(12) Ensure that risk appropriate boilerplate plans provided by ecology that are used by rail plan holders shall be deemed in compliance.
(13) Allow rail plan holders to submit their federal oil spill response plans created pursuant to 33 U.S.C. Sec. 1321 in lieu of contingency plans described in this rule.

Specific requests for language changes include:

APPLICABILITY, WAC 173-186-020
(2) This chapter does not apply to:
(a) A railroad that is owned and operated by the state.
(b) Pipelines or facilities other than railroads. Contingency planning regulations for pipelines and facilities other than railroads are described in chapter 173-182 WAC
<u>(c) A railroad that transports non-crude oil at speeds of 10 miles per hour or less;</u>
<u>(d) A railroad that transports non-crude oil at distances of less than 5 miles;</u>
<u>(e) A railroad that transports non-crude oil that is less than 1% of total annual carload volume;</u>
<u>(f) railroads that have less than 10% of total annual carload volume that is biological oils;</u>

AUTHORITY TO SUBMIT CONTINGENCY PLAN, WAC 173-186-100

A plan may be submitted by any of the following:

(1) The owner, ~~or~~ operator, or owner for the operator of the railroad.

(2) A person who has contracted with the railroad to provide containment and clean-up services and who has been approved by ecology. The person may submit a single integrated plan for more than one railroad provided that all requirements of this chapter are met. A contingency plan prepared for an agency of the federal government or another state that satisfies the requirements of this chapter may be accepted by ecology.

(3) A Class I railroad for a Class II or III railroad owner or operator.

(4) A railroad customer.

(5) A group of railroads.

(6) A port.

(7) A marine terminal.

(8) A local government.

(9) A tribe; or

(10) Any other method approved by ecology.

PHASE-IN DATES, WAC 173-186-120

(1) Existing railroads: Plan holders for Class I and II railroads~~, and Class III railroads~~ if they transport crude oil, currently operating in Washington, shall submit plans to ecology no more than ninety days after the effective date of this chapter. Plan holders for Class III railroads if they transport crude oil, currently operating in Washington, shall submit plans to ecology no more than one hundred twenty days after the effective date of this chapter and upon the availability of a boilerplate plan described in section 173-186-200. Plan holders for Class III railroads, unless they transport crude oil, currently operating in Washington, shall submit plans to ecology no more than one hundred ~~twenty~~ eighty days after the effective date of this chapter and upon the availability of a boilerplate plan described in section 173-186-200.

(2) Phase-in for the equipment planning standards found in WAC 173-186-310. If ecology determines that there is insufficient access to equipment described in WAC 173-186-310, Class I and II rail plan holders shall have eighteen months after the effective date of this chapter to reach full compliance with the equipment planning standards. Class III rail plan holders shall have ~~twenty-four~~ thirty-six months after the effective date of this chapter and upon the availability of a boilerplate plan described in section 173-186-200 to reach full compliance with the equipment planning standards.

(3) Access to equipment for Class III railroads: A letter of intent with a contractor shall initially be sufficient to meet WAC 173-186-220 (3)(g). Class III rail plan holders shall have an additional ~~twelve~~ eighteen months to secure a contract with a PRC after initial plan approval and shall update the plan with the contract no later than ~~twelve~~ eighteen months after approval.

ANNUAL PLAN MAINTENANCE, WAC 173-186-130
At least once annually, rail plan holders shall review the entire plan for accuracy and ~~either: (1) Update~~ update and submit the amended page(s) of the plan to ecology for review and approval~~; or (2) If no plan changes are needed, provide a letter to ecology confirming that the existing plan is still accurate~~.

SIGNIFICANT CHANGES TO APPROVED PLANS, WAC 173-186-140
(1) At any point during the five-year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the rail plan holder shall: (a) Notify ecology in writing within ~~twenty-four hours~~ one week of the change; and

CONTINGENCY PLAN FORMAT REQUIREMENTS WAC 173-186-200
(3) ~~Where provided by ecology,~~Ecology shall provide an easy-to-use risk appropriate boilerplate plan for Class III rail plan holders that transport crude oil, for Class III plan holders that transport non-crude oil and for rail plan holders ~~exclusively~~ transporting biological based oils~~ may be used~~. Boilerplate plans used by rail plan holders shall be deemed in compliance. Rail plan holders may submit their federal oil spill response plans created pursuant to 33 U.S.C. Sec. 1321 in lieu of contingency plans described in this rule.

Rail continues to be one of the safest modes of transporting oil products. The proposed rule will present substantial financial, recordkeeping and reporting obligations on short line railroads. Small railroads will need greater time to understand the final rule and make the necessary adjustments for compliance while DOE needs enough time to provide technical assistance through the development of risk appropriate boilerplate plans for railroads beyond those just transporting biological fuel.

Class III railroads are substantially smaller than their mainline counterpart, have fewer miles of track and move at a greatly reduced speed. Additionally, the financial ability of a Class III railroad to absorb the costs of compliance with these proposed rules should be given greater accommodation when considering least burdensome alternatives. For all these reasons, please accept these proposed changes to the oil spill contingency plan rules.

Again, I want to thank you and the department for your outreach, listening and willingness to consider risk appropriate alternatives for shortline railroads that do no transport crude oil. You can reach me at 360-561-4861 or at amber.carter@comcast.net if you have questions. Thank you.

Sincerely,

Amber Carter
President

Regarding planning standards for responding to oil spills and BAP planning requirements, I recommend that the railroads meet comparable standards as the marine industry where oil train spills could enter the Columbia River from the lower Columbia to Pasco.

Andy Stephens

I would like to submit comments in regards to the "Oil By Train" rulemaking [**[http://www.ecy.wa.gov/programs/spills/rules/main.html], as follows:**

What is the mitigation and recovery plan for a derailment along the Puget shoreline from Seattle northward? What happens when oil and coal are dumped into the Puget Sound when the tracks are located on the seawall next to the water. How does the railroad intend to pull the rail cars out of the Sound? What will happen to the bluff stability if impacted by a rail car or the energy released by the resulting explosion? What is the mitigation and response plan for a bluff fire? What happens if the derailment and resulting explosion/fire happens in the rail tunnel under downtown Everett. Please provide the public with the risk planning documents , if they exist. If they do not exist, then they need to be developed/approved with mitigation and recovery plans in place before further shipments of oil/coal/combustibles/hazardous shipments are allowed to be shipped via rail.

Last week, an oil train derailed in Moser, OR. We can learn a lot from this accident and apply the knowledge to WA state. Mosier is located in the Columbia River National Scenic area. Tinder dry high desert with sustained 30mph+ winds. Towering basalt cliffs funnel the winds - westerlies in the summer and easterlies in the spring/fall - through the Gorge making it world renown for windsurfing and kiting. Its a vacation destination, but its also home for a lot of hard working, decent people who are busy tending their wineries, their farms and their businesses. No one wanted to write letters and squeak the wheel.

Before the coal and oil train risk, the main train related risk was either hitting a windsurfer crossing the tracks or starting a grass fire from a train spark. Several years ago, there was a huge wildfire in Lyle, WA. Initially, the railroad took no responsibility for the wildfire until a video clearly showed the fire was started by a spark from the train wheel into the dry grass and the winds fanned the fire. Bingen, WA had a fire that started at the base of a steep basalt bluff (much like the one below our homes) that was not controllable because of the terrain and the winds - the fire shot up the bluff and burned the decks off of the homes along the bluff. Therefore, proximity of the rail lines to the water, and topography can create catastrophic risks.

When the oil and coal train traffic increased, there were concerns raised among the locals about coal dust and environmental risks. Then came the destructive oil car derailment in Quebec. In 2014, the mayor of Hood River wrote and published an open letter addressing the risks to the community http://www.hoodrivernews.com/news/2014/jun/21/another-voice-exponential-increase-hazards-train-t/ Despite acknowledging that no risk evaluation has been conducted and no mitigation/reliable recovery plans existed, nothing happened.

It didn't take long for the predicted derailment to occur. The oil train that derailed last week was adjacent to the elementary school, the Interstate I-84, adjacent to the Columbia River and on top of the water/sewage treatment plant in Mosier. It was also at the base of a grass covered basalt slope. Fortunately, it was a calm wind day...

- The school administration arranged for the children to be bused into The Dalles (east of Mosier) because there was no other place to go.
- The interstate was closed westbound (Hood River to Portland). You could not drive through Hood River as the surface streets were gridlocked with people trying to get home and around the accident scene in Mosier.
- The rail line was closed both directions, but were reopened within days by simply "pushing" the derailed cars to the side to give the coal and oil trains enough room to move through the crash scene. These tanker cars are STILL full of volatile oil, except for the ones that exploded/burned/leaked into the Columbia River.
- The residents of Mosier were evacuated because of the explosions/fire/smoke and danger. They are still evacuated because the derailed train broke through the sewage treatment pipeline and dumped 10,000 gallons of oil into the sewage treatment plant and then it flowed with the untreated sewage into the Columbia River. Theft and burglaries are expected with the evacuation, so the residents are now needing escorts to visit their homes. There are not enough hotels/lodging and people have been left homeless in the excessive heat (105F).
- The interstate has been reopened but the exit/on ramps to Mosier are still closed. The old Columbia River highway has been opened to locals who live west of the crash scene because there is no other way to their homes. This means that the tourists/bikers/runners are no longer able to access the bike only Columbia River highway. The river is not a friendly place to be with E-coli and oil pollution. As a tourist, how would you feel if you booked a week long vacation to do nothing that you came to do? The tourism industry is not looking good this summer.

In summary, there is a high probability and associated risk that an oil/coal train will derail along the shoreline between Seattle and Everett which will cause irreparable damage to our communities and the environment, with blatantly lacking mitigation and recovery plans:

1. Probability of an Everett train derailment is 1 [https://www.youtube.com/watch?v=2bIm62Hpo68][http://blogs.seattletimes.com/today/2013/04/southbound-amtrak-train-derailed-near-everett/]
2. Track inspections were not adequate to prevent derailments (the Mosier tracks were highly inspected - six times since March '16) and the derailment occurred despite the inspections. Why did the train derail if the tracks and inspections were adequate?
3. Upgraded oil cars did not prevent the explosions/fire and are, therefore, inadequate in mitigating the risks associated with "oil by train" shipments.
4. The same train or a similar train would have been traveling along the Puget Sound shoreline under our Everett bluffs and downtown had it not derailed.

Respectfully,

Anne Coxon

Additional Comments of Anne Coxon:

Komo ran the following article yesterday [http://komonews.com/news/local/oil-train-derailment-fire-damaged-oregon-city-water-system-06-05-2016]. Interesting that the fire chief for Mosier commented that the train derailment would have burned to Nebraska if the normal winds had existed before the fire was extinguished. Shame he didn't point out that Hanford is between Mosier and Nebraska....Equally disturbing is that the loss of one tie bolt is the difference between normal and catastrophic failure. Clearly, the railroad inspection process is not adequate to prevent a repeat occurrence. Sounds like the railroad track design is unable to carry the applied loads. Please add these comments to both areas of rule making as well.

Respectfully,

Anne

Track failure likely cause of oil train derailment

By DONNA GORDON BLANKINSHIP - Associated Press Sunday, June 5th 2016Train oil cars burn in the Columbia River Gorge Friday, June 3, 2016 after a train derailed near the town of Mosier. (Photo: Chopper 2/KATU)

SEATTLE (AP) - Track failure was likely the cause of the oil train derailment in Oregon, an official with Union Pacific Railroad said Sunday.

A failure of the fastener between the railroad tie and the line was likely the problem, but more investigation will be required before railroad officials know for sure, Raquel Espinoza said Sunday.

Union Pacific inspects the tracks that run through Mosier, Oregon, twice a week, and the most recent inspection took place on May 31, Espinoza said. Union Pacific had completed a more detailed and technical inspection of this section of track at the end of April and found no problems.

The railroad is focused on removing the crude oil from the damaged cars as safely and quickly as possible, Espinoza said. Its priority is to bring people home safe to Mosier, where 16 of 96 tank cars train derailed Friday and started a fire in four of the cars.

"We're doing everything we can to get you back home, but we're not going to risk your safety," Espinoza said at a news conference. When asked if she knew how much the cleanup was going to cost the company, Espinoza said, "I don't know and it doesn't matter."

"Our priority here is bringing people home. Nothing else matters," she added. Repairs to a water treatment system, which runs under the tracks, would need to be completed before people could return to their homes, the railroad said.

About a hundred people - a quarter of the town's population - have been evacuated from their homes since Friday in an area about a quarter mile around the train.

Mosier's mayor and fire chief said Sunday the derailment and fire in their town could have been a lot worse.

Fire Chief Jim Appleton says the usual amount of wind in Mosier - about 25 mph - could have turned this incident into a major disaster, destroying the town and sending flames across state lines.

"My attention was focused on the incident that didn't happen," Appleton said. "It probably would have burned its way close to Omaha, Nebraska. That's how big it would have been."

Mayor Arlene Burns said the people of Mosier were "incredibly lucky."

"I count myself lucky that we dodged a bullet," Burns said, after noting that her own child was at school within a few blocks of the derailment. "We hope that this is a wake-up call."

The fire and derailment damaged essential city services in the small Oregon town, authorities said Sunday.

The Mosier waste water treatment plant and sewer system were not operational Sunday. Residents were told not to flush their toilets and advised to boil any water before they drank it or cooked with it. Mosier exhausted its water reserves fighting the fire and cooling the trains. Burns said the aquifers were completely depleted.

Officials have been conducting continuous water and air monitoring since plumes of black smoke filled the sky near the scenic Columbia River Gorge.

"Today's priority is focused on safely restoring essential services to the community of Mosier as soon as possible," incident spokeswoman Judy Smith of the U.S. Environmental Protection Agency said in a statement.

Authorities were working to clean up an oil sheen in the Columbia River near the scene of the derailment, while the oil inside the remaining tank cars was being moved to trucks.

No injuries have been reported. But Oregon health officials are asking people with questions or concerns to call a hotline to talk to a health expert at 888-623-3120.

Including Friday's incident, at least 26 oil trains have been involved in major fires or derailments during the past decade in the U.S. and Canada, according to an Associated Press analysis of accident records from the two countries. The worst was a 2013 derailment that killed 47 people in Lac-Megantic, Quebec. Damage from that accident has been estimated at $1.2 billion or higher.

Hello-

Oil/Coal train transport represents a major environmental hazard in our beautiful PNW. We need to consider all possible outcomes and weigh the risk of environmental destruction against any funding that is generated from this (most of which of course goes to the oil/coal industry).

Of course we need contingency planning, but we also need to minimize (even stop) oil/coal transport in our beautiful natural settings from which so many rely on for their livelihoods, their diversion and as a form of recluse.

Thank You.

Behnosh Najafi

Hi, this may be a little far afield from the comments you are soliciting, but I am wondering whether we should be planning for contingencies in case BNSF ever decides it is economically beneficial to reopen the old Milwaukee Road between Ellensburg and Lind. They have considered it in the past. The statutes have been on the books for quite awhile and have been extended twice without much debate. I expect that the statutes will be up for renewal next Legislative session.

The extension is still out there a ways, but BNSF keeps trying to keep it extended. Maybe it is at least worth a mention as a possibility in contingency planning.

Brian Hovis
3949 Holladay Park Loop SE
Lacey WA 98503-6984

RCW 79A.05.115

Cross-state trail facility. (Contingent expiration date.)

(1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019.

[2009 c 338 § 1; 2006 c 160 § 1; 1999 c 301 § 1; 1996 c 129 § 2. Formerly RCW **43.51.112**.]

Notes:

Effective date -- 2009 c 338: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2009." [2009 c 338 § 5.]

Effective date -- 1999 c 301: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 1999]." [1999 c 301 § 6.]

Intent -- 1996 c 129: "The legislature intends to complete a cross-state trail system while maintaining long-term ownership of the Milwaukee Road corridor. In order to accomplish this, it will be beneficial to change the management and control of certain portions of the Milwaukee Road corridor currently managed and controlled by several state agencies and to provide a franchise to establish and maintain a rail line. It is the intent of the legislature that if a franchise is not agreed upon, no changes in the current management and control shall occur." [1996 c 129 § 1.]

Effective date -- 1996 c 129: "This act takes effect July 1, 1996." [1996 c 129 § 10.]

Severability -- 1996 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 129 § 12.]

RCW 79A.05.120

Cross-state trail — Transfer of lands in Milwaukee Road corridor. (Contingent expiration date.)

(1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia river that are managed by the parks and recreation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia river and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation;

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission as of June 7, 2006; and

(d) Portions owned by the state between Lind and Marengo are transferred to the department of transportation.

(2) The department of natural resources may, by mutual agreement with the parks and recreation commission, transfer management authority over portions of the Milwaukee Road corridor to the state parks and recreation commission, at any time prior to the department of transportation entering into a franchise agreement.

(3) This section expires July 1, 2019, and no transfers shall occur unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019.

[2009 c 338 § 2; 2006 c 160 § 2; 1999 c 301 § 2; 1996 c 129 § 3. Formerly RCW **43.51.1121**.]

Notes:

Effective date -- 2009 c 338: See note following RCW **79A.05.115**.

Effective date -- 1999 c 301: See note following RCW **79A.05.115**.

Intent -- Effective date -- Severability -- 1996 c 129: See notes following RCW **79A.05.115**.

RCW 79A.05.125

Cross-state trail — Rail line franchise negotiations by department of transportation. (Contingent expiration date.)

(1) The department of transportation shall negotiate one or more franchises with rail carriers to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Marengo. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right-of-way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019.

[2009 c 338 § 3; 2006 c 160 § 3; 2005 c 319 § 134; 1999 c 301 § 3; 1996 c 129 § 4. Formerly RCW

43.51.113.]

Notes:

Effective date -- 2009 c 338: See note following RCW 79A.05.115.

Findings--Intent--Part headings--Effective dates -- 2005 c 319: See notes following RCW 43.17.020.

Effective date -- 1999 c 301: See note following RCW 79A.05.115.

Review and approval of franchise -- Report to the legislature: "(1) Before entering into a final agreement to issue a franchise negotiated in accordance with RCW 43.51.113, the department of transportation shall submit the franchise to the legislative transportation committee for review and approval.

(2) If the department of transportation has not entered into a final agreement to franchise a rail line over portions of the Milwaukee Road corridor by December 1, 1998, a report of the progress and obstacles to such an agreement shall be made. The report shall be submitted by December 15, 1998, to appropriate committees of the legislature." [1996 c 129 § 6.]

Intent -- Effective date -- Severability -- 1996 c 129: See notes following RCW 79A.05.115.

RCW 79A.05.130

Cross-state trail account — Land acquisition — Rules describing trail. (Contingent expiration date.)

(1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of natural resources as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW **47.76.250**. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail. Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter **43.88** RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, 2019, unless the department of transportation enters into a franchise agreement for a rail line over any of the portions of the Milwaukee Road corridor between Ellensburg and Marengo by July 1, 2019.

[2009 c 338 § 4; 2006 c 160 § 4; 1999 c 301 § 4; 1996 c 129 § 5. Formerly RCW **43.51.114**.]

Notes:

Effective date -- 2009 c 338: See note following RCW **79A.05.115**.

Effective date -- 1999 c 301: See note following RCW **79A.05.115**.

Intent -- Effective date -- Severability -- 1996 c 129: See notes following RCW **79A.05.115**.

June 9, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC:Oil Spill Contingency Plan – Railroad. I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

BRIAN LaFRENIERE
4611 N 9th St
Tacoma, WA 98406
253-988-6424

Railroads should be held to the same standards as other forms of transportation. The trucking and marine industries have had to have response equipment and response plans in place for many years through Federal, State, and local laws. These plans must account for the entire shipment to be the emergency response planning standard, even though both industries mitigate risks by using compartments within the truck/barge/vessel. The railroads should be held to the same standards of planning and response. Given the magnitude of recent crude by rail incidents, and consistent with requirements for other modes of transportation, it is appropriate for the entire crude by rail shipment to be considered the planning standard for response and cleanup preparedness for spills. With 2.7MM gallons of crude per unit train, the proposal to have this amount be the planning standard for response is consistent with the planning standard methodology used in other forms of transportation (trucking, marine).

Bob Curcio

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

As a Tacoma resident who loves the Pacific Northwest's natural beauty, I am greatly concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. The Puget Sound and our own Commencement Bay is a source of joy and pride for both myself and the Tacoma community and it deserves strong protection.

The proposed rule does not adequately protect our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, the draft rule would not fulfill the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,
Cynthia Cannon

CITY OF SPOKANE
CITY COUNCIL
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3335
(509) 625-6255

Candace Mumm
Council Member District 3

To whom it may concern,

In my prior career, as a news reporter, I have covered many train crashes. I have witnessed the devastation of these derailments and have seen the detrimental impact, especially to smaller communities that are not prepared to handle that type of emergency. Mosier, Oregon is a perfect example. These situations put pressure on nearby large cities, such as Spokane, to deliver emergency response.

A derailment could also happen in the Spokane area where elevated trains are in the heart of our city, near schools, high rise buildings, and our greatest natural asset, the Spokane River. I support the two rule changes. I believe they are reasonable to protect communities, like Spokane, that would bear the cost and risk.

Thank you for giving me the opportunity to comment.

Sincerely,

Candace Mumm

June 7, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tacoma resident who has lived near Commencement Bay for over thirty years. I am extremely concerned about the destruction a potential oil spill would have on my family, my community and our incredible natural environment that we are so lucky to live in. Commencement Bay is a source of pride for both myself, my neighbors and the surrounding community. It deserves the strongest possible protection.

I do not believe that the proposed rule adequately protects our natural resources and community from a spill. Crude-by-rail is rapidly increasing, as are rail accidents, spills and explosions. The Dept. of Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The potential for spills and spoilage of our environment and harm to people is alarming. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many, many incidents, which adds all the more urgency to ensure that rules such as this one go "above and beyond" what is necessary to protect the environment and communities in the inevitability of a spill. I find three major deficiencies in the proposed rule:

4. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
5. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
6. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I assert that the draft rule is not fulfilling the mission of the Dept. of Ecology's spills program to maintain the best achievable protection. I strongly encourage the Dept. of Ecology to establish a more stringent rule for railroad contingency plans that makes sure the issues outlined above are resolved. Thanks for your consideration as you work to protect our shared natural resources.

Sincerely,
Chris Wooten
253-952-4091
chriswooten@earthlink.net

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. As a Tacoma resident who loves the Pacific Northwest's natural beauty, I am greatly concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. The Puget Sound and our own Commencement Bay is a source of joy and pride for both myself and the Tacoma community and it deserves strong protection.

The proposed rule does not adequately protect our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

7. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
8. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
9. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, the draft rule would not fulfill the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,
Cynthia Cannon

PUGET SOUNDKEEPER®

June 10, 2016

Protecting and Preserving Puget Sound

130 Nickerson Street, Suite 107
Seattle, WA 98109

P 206.297.7002
F 206.297.0409

www.pugetsoundkeeper.org

Linda Pilkey-Jarvis
Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

RE: Puget Soundkeeper's Comments on WAC 173-186 Oil Spill Contingency Plan - Railroad

Dear Ms. Pilkey-Jarvis,

Puget Soundkeeper Alliance (hereinafter "Soundkeeper") is a water quality focused grassroots citizen's organization founded in 1984. Soundkeeper's mission is to protect and preserve the waters of Puget Sound. Representing over 3000 members, supporters, volunteers and activists, Soundkeeper works to meaningfully decrease pollutants reaching the Sound by actively monitoring Puget Sound water quality, enforcing clean water laws, improving policies and regulations, preventing pollution and cleaning up waterways. . Soundkeeper is profoundly concerned with the potential for catestrophic crude oil and other hazardous material spills from rail cars that have the potential to directly affect the integrity of the Puget Sound and the health of our communities.

A comprehensive Oil Spill Contingency Plan for transportation by rail is a step in the right direction. However, the Department of Ecology's (hereinafter "Ecology") draft rule as it currently stands (WAC 173-186) has some major deficiencies. The most recent disaster in Mosier, OR highlighted the difficulties emergency responders face when dealing with an oil train derailment. It is imperative that Washington State has a detailed plan that includes procedures for all types of incidents and doesn't exclude necessary details and action steps. The poor safety record of rail shippers around North America demonstrates that the chance of a spill in our beautiful state is high and it's likely not a matter of "if" spill plans will be used, but "when." We urge

Ecology to take our comments into consideration when finalizing the Oil Spill Contingency Plan for railroads (WAC 173-186).

PUGET SOUNDKEEPER®

Protecting and Preserving Puget Sound

130 Nickerson Street
Suite 107
Seattle, WA 98109

P 206.297.7002
F 206.297.0409

www.pugetsoundkeeper.org

I. THE OIL SPILL CONTINGENCY PLAN FOR VESSELS (WAC 173-182) SHOULD BE USED AS A BASELINE FOR THE RAILROAD CONTINGENCY PLAN (WAC 173-186)

A cursory comparison of WAC 173-182 and draft WAC 173-186 should immediately cause alarm. The vessel contingency plan is a significant 37 pages longer than the draft railroad plan and contains many applicable sections and definitions that have been omitted from the draft railroad plan. Soundkeeper believes that spill response for the two different scenarios can have many similarities and is concerned that several vital pieces, as highlighted below, are left out of the draft railroad plan.

a. Definitions

The vessel plan includes a considerable number of definitions that are relevant to the rules at hand, but are not included in the railroad spill plan. For example, the definitions of "best achievable protection", "boom", "biological based oils", "cascade", "Ecology", "group five oils", "incident command system", "plan", "primary response contractor" and "WRIA", are excluded from the railroad contingency plan along with many others. Any word used in the draft plan that requires a definition in order to be understood should be defined in WAC 173-186-040. Unless there is an explanation for excluding definitions for applicable terms Ecology should at a minimum refer directly to the definitions section of WAC 173-182-030 in reference to terms used in the railroad plan. Ideally, Ecology would include all relevant terms in the definition section of the railroad plan so cross referencing is not necessary. If there is a reason pertinent definitions were excluded please provide Soundkeeper with an explanation.

b. Plan Implementation Procedures

Chapter 173-182-145 of the contingency spill plan for vessels regards plan implementation procedures. This chapter requires that facilities and vessels "implement the Washington approved plan in any response to a spill and drill." This language is not found in the draft chapter for railroad spills. The language from Chapter 173-182-145 should be added to Chapter 173-186. If Ecology does not believe this language is necessary in the rail spill plan please provide Soundkeeper with an explanation as to why and how Ecology came to this determination.

c. Initial Response Actions

The Oil Spill Contingency Plan for vessels includes a section on initial response actions (WAC 173-182-250). This section requires plans to include forms for initial spill

documentation, description of the equipment to be used in initial spill assessment, description of how initial safety assessment will be conducted and the procedures used to confirm the occurrence and estimate the quantity and nature of the spill. A substantial portion of these requirements are missing from the requirements for contingency plan content in Chapter 173-186-220. Initial response is a vital part of successfully reacting to an oil spill incident and Ecology should require spill plans to include a detailed section on initial response that mirrors the chapter in the vessel spill plan.

d. Aerial Surveillance Requirement

There are two sections of the Oil Spill Contingency Plan for vessels that cover aerial surveillance capabilities. These sections require both facilities and vessels to describe aerial surveillance ability as well as plan requirements having to do with aerial surveillance capacity. The vessel plan includes this because aerial surveillance is a helpful way to spot spills in water and can assist in more quickly containing those spills. The risk of railroad spills into water is substantial. Railroad tracks all over Washington State run over, along or near water bodies, indeed it is often the preferred route and a railroad spill could easily enter a large body of water and spread. Why did Ecology omit any mention of aerial surveillance from the railroad spill plan? Soundkeeper urges that railroads also be required to comply with aerial surveillance planning standards such as the ones included in the vessel spill plan.

II. WAC 173-186 SHOULD INCLUDE DEADLINES OR TIMELINES THAT ARE NOT CURRENTLY OUTLINED IN THE PLAN

a. Annual Plan Maintenance

The chapter outlining annual plan maintenance (WAC 173-186-130) states that rail plan holders must review the plan and send any updates to Ecology at least once annually. If no changes are needed in the plan, the plan holder must send a letter to Ecology stating that the existing plan is still accurate. This section does not outline any deadline for these requirements. A date or timeline of some kind should be added to this section so that plan holders know when they are required to submit this information in order to be in compliance with these regulations.

Furthermore, chapter 173-186-130 does not include any language stating that annual plan maintenance documents are available to the public. Will these documents be available to the public? If so, language stating such should be added to this chapter. If Ecology is not planning on making these documents available to the public, why not?

b. Post-spill review and documentation procedures

Chapter 173-186-150 outlines the procedures that rail plan holders must conduct post-spill. This includes debriefs with Ecology and other applicable agencies. The purpose is to allow for plan holders to review the effectiveness of their plan and make improvements. There is no timeline as to the occurrence of these procedures. Ecology should include language in this section that demonstrates how soon after a spill this review process must occur and the timeline in which necessary changes must be made to the plan after the review process. A final review should include and quantify any impacts that have not been fully mitigated and why full mitigation or clean up was not possible.

c. Process for plan approval

Chapter 173-186-420(3) provides that Ecology can review a plan after a spill and require revisions. Ecology should add language that details the amount of time Ecology has to review the plan and how long after Ecology's review the plan holder has to make revisions.

III. WAC 173-186 SHOULD INCLUDE ALL HAZARDOUS MATERIAL

Soundkeeper has spent a considerable amount of time observing and documenting hazardous material transport by rail. Many substances that Soundkeeper has observed traveling on the Burlington Northern Santa Fe (BNSF) mainline are explicitly left out of this spill plan. Specifically, the plan excludes substances from Table 302.4 in 40 C.F.R. Part 302. Soundkeeper staff and volunteers have personally observed propane, ethanol, methanol, chlorine, sulfur dioxide and other hazardous substances included in 40 C.F.R. Part 302 traveling on the BNSF mainline tracks.

Although this chapter is identical to the one in the vessel spill plan, limiting the spill contingency plan for railroads to just "oil" or "oils" leaves the Puget Sound and the public at a significant risk. Why did Ecology leave out all other hazardous substances transported by rail from this spill contingency plan? Are rail operators currently required to have separate spill plans that cover non-oil hazardous substances? Soundkeeper urges Ecology to include all hazardous substances presently transported by rail in Washington State in this plan. Currently, it is unclear as to whether a railroad would be required to be prepared to address spills of non-oil hazardous material and that should not be a risk our communities and ecosystems should be subject to.

IV. WAC 173-186 SHOULD ADDRESS THE POSSIBILITY OF A SPILL TO COMBINED SEWER SYSTEMS, SANITARY SEWER SYSTEMS AND STORMWATER SYSTEMS

Chapter 173-186-220(l) requires each plan to describe the methods to be used to assess spills with a potential impact to groundwater. However, this section makes no reference to spills into a combined sewer system, a sanitary sewer system or a stormwater system. The derailment in Mosier, OR displayed that oil getting in to a public sewer system is a very probable outcome of a major oil spill in any urban area. Spills into storm drains that enter the combined sewer system and flow to sewage plants are a significant risk. In the city of Seattle, oil or other hazardous substances could enter the system and end up at the West Point Sewage Treatment facility. This possibility exists in cities throughout Washington. This threat should not be overlooked. Rail plan holders should be required to describe methods and notifications needed to address spills to these sewer systems and immediate countermeasures to reduce the risk of a complete shutdown or eventual discharge to surface waters. Soundkeeper sees this omission as a grave oversight.

V. WAC 173-186-220 SHOULD INCLUDE HUMAN IMPACT AND EVACUATION PLAN REQUIREMENTS

Chapter 173-186-220 does not mention protection or evacuation of human population. Each plan should be required to provide a description of how the significant human population will be protected from a spill. Furthermore, plans should contain evacuation plans for humans living on land as well as those living on live-aboard vessels in marinas. Soundkeeper urges Ecology to add a requirement to include such procedures in each plan.

VI. IN SITU BURNING

The oil spill contingency plan for vessels lays out certain size requirements for booms used for in situ burning and requires the plan holder to describe the method of transportation for all equipment involved with in situ burning to potential sites where this would occur (WAC 173-182-330). These requirements are noticeably absent from the oil spill contingency plan for railroads (WAC 173-186-340). How does the situation in which in situ burning would be used for an oil spill from a rail car any different than if it were used for a vessel? It is Soundkeeper's understanding that in situ burning is only a viable option in very specific circumstances. What are the risks of in situ burning as they pertain to waterbodies, shorelines, benthic communities and sensitive areas in Washington state? Soundkeeper urges that, at minimum, the additional requirements from WAC 173-182-330 be added to the rail spill plan. Soundkeeper also urges that mechanical collection occur whenever possible before in situ burning is resorted to.

VII. WAC 173-186-350 SHORELINE CLEANUP

The chapter on shoreline cleanup should also include marinas, port facilities, net pens, combined sewers, wetlands, beaches, riparian areas and all other impacted resources.

VIII. EQUIPMENT STORAGE AND ACCESS FOR REMOTE AREAS

Rail lines are often routed along rivers and shorelines for the most even grade available, and often the rail line is in accessible to roadways wither because it is on a far bank, a remote section of shoreline or on a section of river with no road access. For example, there is a significant and ongoing history of landslides blocking or derailing trains between Seattle and Everett. In the event of a spill, equipment access, deployment and timelines would be significantly affected because much of this area is only accessible by vessel. Ecology needs to add language addressing this issue to the regulations.

IX. MISCELLANEOUS

a. Phase-in dates

Chapter 173-186-120 provides that Class I and II railroads are given 90 days to submit a contingency plan to Ecology and Class III railroads are provided 120 days. Chapter 173-182-130 of the vessel spill plan gives plan holders only 65 days prior to beginning operations in Washington State and requires that Ecology "will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date." Railroads pose a similar or heightened risk for catastrophic oil spills as compared to other facilities or vessels and there is no reason to provide railroads with more time to submit their contingency plans. The regulations should state that Ecology has 65 days to approve plans or plan updates.

b. Boilerplate contingency plan

The source of the boilerplate contingency plan referred to in WAC 173-186-200 should be identified.

c. Air monitoring

Soundkeeper supports the requirement of air monitoring for non-oil products.

d. Public comment

Soundkeeper appreciates the opportunities for public comment that have been included in the regulations.

Thank you in advance for your thorough review and response to the above comments. To reiterate, oil spills from train derailments are a severe threat to our region. A strong and detailed spill contingency plan is necessary if the dangerous practice of oil

transport by rail is to continue. We urge Ecology to implement the necessary changes outlined above in order to protect people living by rail lines as well as the water bodies, wildlife and ecosystems that could be severely impacted by a devastating oil spill.

Sincerely,

Chris Wilke, Executive Director and Puget Soundkeeper

Sue Joerger, Field Director

Sophia Ressler, Executive and Administrative Coordinator

Dear Ms. Pilkey Jarvis:

I am using a draft letter provided by Citizens for a Healthy Bay but that does not mean I am any less passionate about trying to reduce the damage that might be caused by rail transported oil spills, explosions, etc.

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection. I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

- 1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
- 2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
- 3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Colleen Gray

Colleen Gray
Idea Hamster
AnythingCreativeLLC
3818 South 9th Street
Tacoma WA 98405
253.666.2446

From: Dan Picton [mailto:dantrnwrk@hotmail.com]
Sent: Thursday, April 07, 2016 6:03 PM
To: Pilkey-Jarvis, Linda (ECY) <JPil461@ECY.WA.GOV>
Subject: Derailment Prevention

Ms. Pilkey-Jarvis,

I am a former Locomotive Engineer for BNSF and operated trains on the Northwest Division. During my career I became aware of train derailments that were caused by undetected track failures. Track washouts, sink holes, blocked culverts, landslides, track buckles, side scour and bridge impacts occur without activating the signal system to stop the approaching trains.

To prevent derailments I invented a track monitor that is installed in Critical Areas subject to failure. The Armored Ballast Integrity Sensor should be installed on the designated routes for the Crude By Rail trains in Washington State to add an additional degree of protection. I have attached a product sheet and photo.

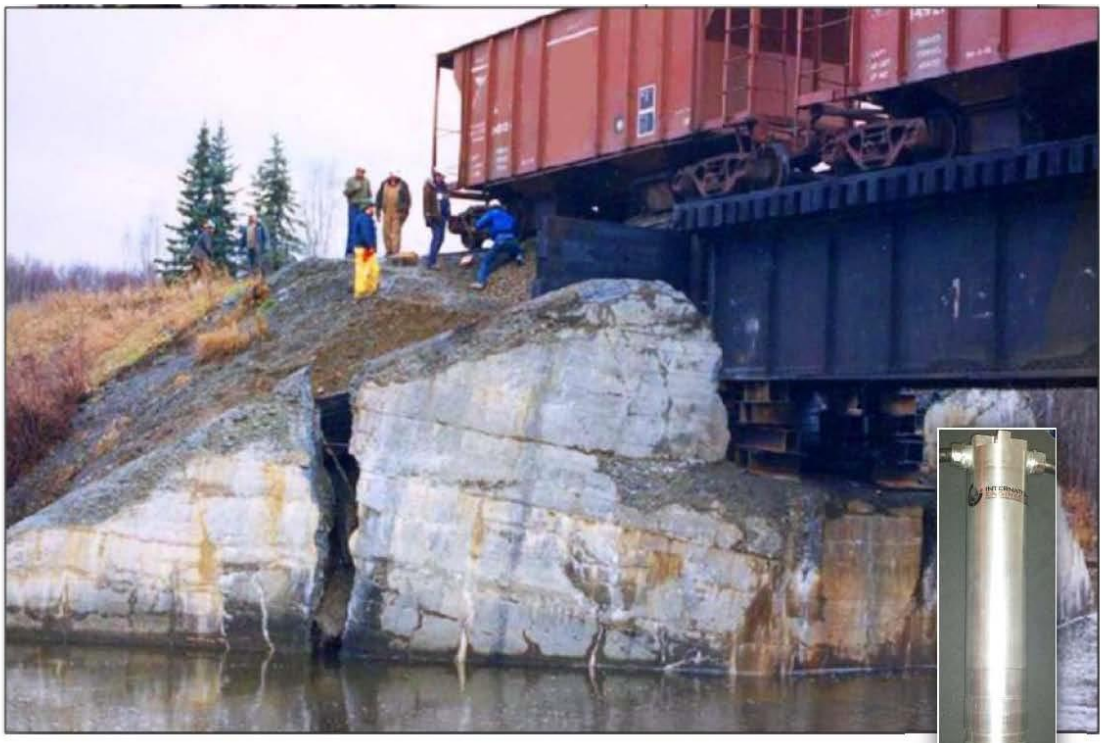
Kind Regards,

Dan Picton
Chelan, WA
509-669-0591

Ballast Integrity Sensor
Product Overview

INTERNATIONAL ENGINEERING
TECHNOLOGIES & GLOBAL CONNECTIONS

– Turn the Signals Red when System Detects Scouring, Washouts, Lateral or Vertical Movement –



PROTECT INFRASTRUCTURE & ASSETS

- Washouts
- Landslides
- Earthquakes
- Groundwater Changes
- National Security Infrastructure
- Hazmat & Passenger Routes
- Scour
- Sinkholes
- Communications Lines
- Bridges & Abutments
- Thermal Rail Expansion
- Aging Infrastructure
- Dark Territory Rail
- Water Lines

INTERNATIONAL ENGINEERING • info@i-engr.com
314 W. Pitkin Ave. • Pueblo, Colorado • 81004 USA • Ph. +1 (719) 337-5852 • Fax: +1 (719) 362 4257

BALLAST & SUBGRADE MOVEMENT SENSOR SPECIFICATIONS

Monitors earth slip & Alerts when subgrade is compromised.

- ***Weight*** *- 9 lbs (4kg)*
- ***Dimension*** *- 18" x 3.5" (46cm x 9cm)*
- ***Connector*** *- Cable or Rigid*
- ***Material*** *- Aluminum (coatings available)*
- ***Indicator*** *- Visual, Email, Text, Voice*
- ***Sensitivity*** *- Adjustable to application*
- ***Temp Range*** - -50C to +80C
- ***System Surge Rating*** *- 3A @ 250V*
- ***Power*** - 12V Solar or *Existing Line Supply*

Communications & Solar Equipment shown above
* Text, Email, Voice, Audio, & Visual Alerts Available

- Alerts on structure movement
- Alerts on earth movement
- Alerts on shift or tilt conditions

www.RailAdvisor.com/products/BallastIntegritySensor

The Ballast Integrity Sensor is comprised of two sensor sections which are sited together & become displaced upon activation.

Installation is accomplished by pressing the sensor into the subgrade with a backhoe (or similar equipment) or alternatively by digging or drilling a small hole for sensor placement. With the active section of the sensor backfilled / anchored in the earth, the sensor core is attached to the structure (Bridge support, ties (sleepers), etc) via a simply anchored (1 or 2 bolt) industrial cable. Movement, in any direction activates the 2 internally redundant (fail-safe) systems.

Communications Options are also available as stand-alone systems, existing track signal systems, voice radios, & acoustic/visual alarms. Complete Turnkey or Modular Systems.

International Engineering provides TECHNICAL SOLUTIONS & GLOBAL CONTACTS to the professional railway community.

INTERNATIONAL ENGINEERING • info@i-engr.com
314 W. Pitkin Ave. • Pueblo, Colorado • 81004 USA • Ph. +1 (719) 337-5852 • Fax: +1 (719) 362 4257

Best Achievable Protection planning should include the use of liquid CO2 for fire suppression, and the use of train air brake pipes to move the suppressant to the fire site.

It should also include high temperature suits for local responders for close in suppression. In other words, Ecology should simply adopt the protocols used by the U. S. military and worldwide oil fire contractors for these fires. Your present efforts are not only not good enough, they are simply not credible.

For further information please contact PRAXAIR Corp.

Curt Leslie

Dear Ms. Pilkey-Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

I am a Tacoma resident concerned about the destruction a potential oil spill would have on our community, our natural environment, and our local economy.

Commencement Bay is a sensitive resource and it deserves strong protection. I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing. Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035.

The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency to these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:
1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established. Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills
program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,
Debra Olsen
Tacoma, WA
deb@luth.org

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: Application No. 2013-01 TESORO SAVAGE, LLC VANCOUVER ENERGY DISTRIBUTION TERMINAL	CASE NO. 15-001 **PREFILED TESTIMONY OF ROBERT J. BLACKBURN FILED BY THE CITY OF VANCOUVER**

Q: Please state your name, place of employment and title, and address.

A: Robert J. Blackburn, CPCU, Managing Principal
Blackburn Group, Inc.
1173 Pittsford Victor Road, Ste. 250
Pittsford, New York, 14534

Q: What does Blackburn Group do?

A: I founded Blackburn Group, Inc. in 1991 as a company specializing in marketing products and services for the risk, insurance, and claim management fields.

The company provides enterprise risk management and claim settlement solutions. We assist companies in identifying risks and insuring against those risks. The company maintains and manages over 8,100,000 claims valued at over $550 billion in our proprietary databases.

Q: What types of businesses have you worked with?

A: Energy production and distribution, manufacturing, retail, real estate, construction, etc.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

1 Q: Can you briefly describe your work at Blackburn Group, Inc.?

2 A: Enterprise risk management, claim management and settlement solutions.

3 Q: What other positions have you held?

4 A: Prior to founding Blackburn Group, Inc., I established and managed a risk management
5 and retention company for Jamesport Associates. As Vice President and Chief Operating
6 Officer, I developed and managed the strategies for the combined company assets of over
7 $2.5 billion and $500 million in annual sales in the aviation and real estate industries. I
8 have also held senior management positions at Home Properties, Inc., Deloitte and
9 Touche, LLP, Wilmorite, Inc., Citibank, N.A., Page Avjet Corporation, and Harris
10 Corporation. Additionally, I have served as an advisor and consultant to FM Global
11 Insurance Company and other insurance companies.

12 Q: What is your educational background?

13 A: I graduated from St. John Fisher College in Pittsford, NY in 1978 with a BS in
14 Management, Finance, and Economics, and have completed graduate studies at the
15 University of Rochester Simon Business School. I have served as a risk management
16 guest lecturer at both institutions and as a guest speaker at numerous risk and claim
17 management industry events. I am a Chartered Property Casualty Underwriter, Certified
18 Adjuster, Property and Casualty Insurance Broker (NY Resident License; reciprocal
19 ability in all 50 states); Independent General Adjuster (NY Resident License; reciprocal
20 ability in all 50 states); Life and Health Insurance Broker (NY Resident License;
21 reciprocal ability in all 50 states).

22 Q: What organizations are you a member of related to insurance/risk management?

23

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

- Association for Cooperative Operations Research and Development (ACORD), Member, 1985-2001.
- Chartered Property and Casualty Underwriters (CPCU) Society Member, 2011-present.
- Diocese of Rochester, NY, Stewardship Council and Risk Management Committee Chairperson, 2010 - present.
- Hillside Children's Center, Insurance Committee Member, 1992-2004.
- Institute of Management Accountants, Member, 1980-2001.
- Insurance Accounting and Systems Association, Member, 1991-2001.
- New York Self Insurers Association, Member, 2012 - present.
- New York State Center for Advanced Technology in Electronic Imaging Systems, Member, 1996-2001.
- Risk and Insurance Management Society, Member, 1996-2010.
- Risk and Insurance Management Society, Society Director and Officer, 1988-1996.

Q: Have you written on the topic of insurance?

A: Yes. Papers and reports have included:

- Claim and Litigation Management Processes, January 1995.
- Enterprise Risk Management Development, February 1995.
- The Risk Management Program Development Methodology, April 1996.
- The Benefits of Establishing a Captive Insurer or Other Alternative Risk Finance Vehicles, June 1996.
- The Limitations of the Traditional Approach to Risk and Insurance Management, May 1997.
- The Benefits of N-tier Applications in Managing Risk, February 1998.
- The Need for Reduced Risk Costs and Improved Quality, July 1998.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

- The RiskPro Manual for the Enterprise, February 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2007.
- Management of Risks for the New Millennium, January 2000.
- The New Insurance Distribution Model, June 2001.
- Global Risk in Today's Business Environment, July 2001.
- The Risk Management Network - Straight through Processing for an Interconnected World, July 2001.
- Biometrics – How they are Changing the World of Operational Risk Management, October 2001.
- September 11th has Changed Everything in the World of Risk Management, November 2001.
- Security Risks – How Organizations are Responding to New Vulnerabilities, November 2001.
- Risk Management for Real Estate and Retail Businesses, December 2001.
- Confronting the Risks – The New Utility Organization, January 2002, September 2003.
- The Risk Report, Home Properties, 2002-2008.
- Six Key Risk Management Strategies for 2009, Various National Newsletters, January 2009.
- The RiskPro Monthly Newsletter, January 2009 to present.
- Various Articles and Presentations for Enterprise Risk Management and Claim Settlement Solutions, January 2010 to present.

Q: What is a Maximum Foreseeable Loss (MFL) estimate?

A: An MFL or Maximum Foreseeable Loss is an estimate of a worst case operational risk scenario. In other words, the financial risk or total dollar amount associated with a worst case incident. An MFL is not limited to one type of cost, but includes costs associated

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

with loss of life, injury to persons, destruction of property, loss of use of property, first responder costs, and cleanup expenses.

Q: Did the City of Vancouver ask you to consider: (1) the financial risks; and (2) whether insurance or other financial assurances are available to address those risks, associated with a proposal to transport and handle Bakken crude oil and diluted bitumen, within the City of Vancouver, WA?

A: Yes.

Q: In assessing risk levels, what types of considerations are useful?

A: Well, first the commodity itself. I am not a petrochemical engineer. However, I look at what is being handled and whether catastrophic accidents have occurred elsewhere for similar risk profiles. For purposes of estimating a maximum foreseeable loss, or MFL, the analyst attempts to measure the worst loss that is likely to occur because of a single event. In this case, I was told that the proposal involved the transport and handling of 15 million gallons of Bakken crude oil and diluted bitumen per day or four HHFTs per day. I have been told that "HHFT" stands for "High-Hazard Flammable Train" and is the term used by the federal government (USDOT-PHMSA) to describe freight trains carrying 20 or more tank cars of crude oil in a block.[1] This is a highly volatile compound which has been involved in a number of catastrophic accidents. Another consideration is where the commodity is located. In this instance, the proposal is within the City of Vancouver, which has a population base of about 170,000, making it the fourth largest city in Washington. Another factor is the presence of environmentally sensitive features. That

[1] 49 CFR § 171.8.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

informs estimates of environmental clean-up and infrastructure replacement costs. Here, it is my understanding that the proposal is located proximate to the Columbia River.

Q: What do you believe is a reasonable MFL to remedy damages flowing from a catastrophic accident?

A: It is reasonable to estimate an expected MFL for a catastrophic accident in the region at approximately $5-6 billion. That is a rough figure.

Q: What is the basis for a $5-6 billion rough estimate?

A: This estimate is derived from considering costs associated with other major accidents and insurance reports. As an example, the Lac Megantic incident, involving a small town of roughly 6,000 in Quebec Province, Canada, was a catastrophic accident. It occurred in 2013, killed 47 people, and destroyed the downtown. Damage estimates are now at about $3 billion according to recent media reports. Compensation has been a major issue with that incident. The short-line railroad hauling the crude oil filed for bankruptcy because it didn't have enough insurance to pay the claims.

That the total risk values are into the billions is not surprising. BNSF has been up front that even available railroad liability insurance (apart from the applicant) tops out at "about $1.0 Billion" and "[i]nsurance is not commercially available to sufficiently protect us against catastrophic loss."[2] In a U.S. Dept. of Transportation Report, titled "The Transportation of Hazardous Materials: Insurance, Security, and Safety Costs" (December 2009), this level of insurance was documented as:

[2] Attached is a true and correct copy of excerpts from a BNSF Power Point (Attachment 1).

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

> well short of the $5-$6 billion that Class I railroads estimate would be necessary in a 'nightmare scenario,' e.g., an accidental release of TIH gas in close proximity to a large number of people. Once their primary insurance has been exhausted, carriers would be held liable for the balance, forcing even the largest railroad into bankruptcy.[3]

The City of Vancouver, with its considerably larger population, has higher risks for loss of human life and physical injury, along with considerably higher infrastructure values.

Q: Are you aware of other high profile rail accidents involving the release of flammable materials?

A: Of course. The City has retained experts to address those incidents, but they have garnered considerable media attention. True and correct copies of photos of such incidents pulled from media coverage are at Attachment 3.

Q: Could the MFL be calculated with greater precision?

A: Yes. The $5-6 billion figure is, as I have mentioned, a rough estimate. To have greater certainty requires more data on actual investments made within the area, what it would take to reconstruct those investments, along with calculated blast zones and their locations relative to infrastructure and people. To obtain a more precise number is a fact intensive exercise. Of course, even with those factors, insurance risks cannot be quantified with absolute precision for any single event. The costs of any incident would vary, depending on the severity of the incident, number of lives lost, proximity to areas with environmental sensitivity, etc. So, we have to also look at other events which have in fact happened.

[3] Attached is a true and correct copy of report excerpts (Attachment 2), p. 21.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

Q: Based on what you have reviewed so far, assuming an MFL of $5-6 billion, can the applicant look to the commercial markets to provide that insurance, whether through traditional or non-traditional insurance instruments, to cover that risk?

A: No. There is no market to cover that entire risk at present. Further, based on what I have been provided from the application, Draft EIS excerpts, and lease requirements, the proposed financial security is minimal in terms of covering worst case scenarios. It certainly would not cover an MFL event. The lease with the property owner requires the tenant to have $10 million per occurrence and $15 million aggregate liability insurance, coupled with $25 million in environmental pollution coverage. Very little is documented at this point confirming what the applicant is assuming and would pay over to injured parties, in the event of a catastrophic accident. That analysis has been postponed.

Q: What insurance could the applicant obtain?

A: It would be expected that the applicant could, in theory, purchase insurance of up to $1 billion. Thus, a shortfall of $4-5 billion toward the estimated MFL is anticipated. (Of course, how the injured parties would access the funds which may be available is an entirely separate question.)

Q: So, does the proponent have the capability - from a dollars perspective and through the commercial markets - to fully remedy impacts resulting in injury and casualties, natural resource and property damage, emergency responder resource impacts, and infrastructure damage?

A: No. Given how high the MFL is, those products are not commercially available.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

Q: OK. Let's turn to the application and the types of insurance the applicant states will be provided. Can you read from the application at Section 1.3, Assurances, p. 1-7, subsection 1.3.1 - Commercial General Liability Insurance, last paragraph?

A: Yes. "Tesoro Savage Petroleum Terminal LLC will purchase insurance policies to cover liabilities arising from environmental, casualty, and other major incidents. The insurance industry views facilities such as the Tesoro Savage Vancouver Energy Distribution Terminal as low to moderate risk. Therefore, high coverage limits are available at reasonable cost."

Q: Is that an accurate assessment?

A: Only if one assumes there are caps/exclusions on insurance so there is no MFL pay-out exposure. There are various insurance companies with diverse opinions about current risk taking and transfer. With the above assumption in mind, this statement may be true for certain insurers, but untrue for others. An appropriate way to approach the subject would be to complete applications for insurance to multiple insurers to determine the insurers current underwriting appetite for risk taking and premium quotation.

Q: Ok. What about property insurance? Can you read from Section 1.3, Assurances from the application, subsection 1.3.3 - Property Insurance?

A: "Tesoro Savage Petroleum Terminal LLC will obtain and maintain at all times during the term of construction and operation of the Facility, physical damage insurance on the buildings and improvements that are to be erected on the premises on an "all risk" basis, including coverage against damage or loss caused by earth movement and flood in an amount sufficient to cover any expected loss or damages. Upon completion of project

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

design, insurance underwriters will evaluate the design and estimate maximum potential damage due to failure. In some cases, design changes may be implemented to reduce the damages. Insurance would then be purchased to cover the maximum expected damages."

Q: What does that language mean?

A: That statement means that insurers will underwrite the facility considering the potential damages. They would take into consideration loss control and safety factors built into the facility. However, there are no "all risk" policies sold for this type of risk at this time. Commercial property insurance in the United States is written in one of two ways: on a "Named Peril" basis or on a "Special Peril" basis. If the risks are covered by a "Named Peril" policy, it will only cover those perils named in the policy. A typical broad form named peril policy would cover fire, windstorm, hail, aircraft, riot, vandalism, explosion and smoke. When coverage is written on a named peril basis, it is up to the insured to prove that one of the named perils caused the loss. Otherwise, if the risks are covered by a "Special Peril" Policy, then the insurance company must prove that the peril causing the damage is not excluded.

Q: Let's turn to Environmental Impairment Liability Insurance, subsection 1.3.5.1 on p. 1-8. Can you read that section?

A: "Tesoro Savage Petroleum Terminal LLC and its operator(s) will be responsible, as required by law, for acts of environmental impairment related to the ownership and operation of the Tesoro Savage Vancouver Energy Distribution Terminal. Such losses may, in some circumstances, be covered by general liability insurance, which Tesoro Savage Petroleum Terminal LLC and the construction contractor will carry. In addition,

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

Tesoro Savage Petroleum Terminal LLC and/or its contracted operator(s) will obtain environmental impairment liability insurance to the extent such coverage is available on a commercially viable basis. This insurance will cover the acts of Tesoro Savage Petroleum Terminal LLC and its operator(s) at the site, consistent with or in excess of then-prevailing industry standards for such insurance in the petroleum transportation industry. Commercial viability will be determined by reference to the norm of the industry."

Q: Are there some caveats here? What does it mean to say that the applicant - a Delaware LLC - will obtain "environmental impairment liability insurance" but only to the extent "such coverage is available on a commercially viable basis?" And, what does it mean to determine such viability "by reference to the norm of the industry?"

A: At the time of commencement of the project, Tesoro and its contractors will complete several applications for environmental impairment and other commercially available liability insurance. They will access the worldwide insurance markets through brokers to obtain the most advantageous terms, conditions, and premiums for transferring risks to insurers during a specified period of time, most likely for one year. Thereafter, they will assemble all quotations to determine what is available to them for all liability risks. Similar facilities with a responsibility to maintain insurance for their operations would have previously gone through the same process and obtained the most advantageous terms, conditions, and premiums. Their industry-experienced brokers will be able to report the state of the insurance market at that time for reasonableness of the terms, conditions, and premiums.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

Q: Is the applicant in effect admitting it cannot obtain insurance against an MFL event?

A: At the current time, yes. Presumably for a similar operation, they may be able to obtain $1 billion of coverage. If the MFL is $5-6 billion, then there will be a $4-5 billion insurance shortfall.

Q: Let's turn to subsection 1.3.5.2, p. 1-8 of the application. Can you read that paragraph starting with "In accordance....?"

A: "In accordance with RCW 88.40.025, the Applicant will demonstrate financial responsibility in an amount determined by the Washington State Energy Facility Site Evaluation Council (EFSEC) as necessary to compensate the state and affected local governments for damages that might occur during a reasonable worst-case spill of oil from the Facility into the navigable waters of the state. The amount of financial responsibility will consider such matters as the amount of oil that could be spilled into the navigable waters from the Facility, 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 accordance with RCW 88.40.030, the financial responsibility required may be established by any one of, or a combination of, the following methods acceptable to EFSEC: (1) evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility."

Q: So, what are we looking at here as a dollar amount for clean up and is there an insurance market to cover that?

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

A: It would appear at this time that perhaps Tesoro could obtain $1 billion of insurance. Otherwise, surety bonds, self-insurance, or other financial responsibilities would be required to cover the presumed MFL shortfall of $4-5 billion.

Q: One last question about the application. Can you read the first sentence of subsection 1.3.6, Site Closure Bond (Ch. 463-72 WAC)?

A: "No set-aside from operating funds is anticipated for site abandonment, but Tesoro Savage Petroleum Terminal LLC will obtain a site closure bond in an amount to be determined by EFSEC upon approval of an initial site restoration plan."

Q: Do you have a comment on that?

A: It would appear that the applicant does not intend to fund a site abandonment, but instead provide a site closure bond after a site restoration plan is submitted and approved. The two should be clearly linked, meaning whether abandoned or closed, adequate bonding is provided. I would recommend that their engineer submit a "deconstruction" plan so that the measurement of all known risks and compliances is determined for evaluation. That way at least an engineer would have to consider all of the issues to mitigate risks of adverse events and final compliances back to a pre-operations condition. The idea is to secure sufficient funding guarantees at each step the risk profile changes (i.e., from "existing conditions," through "operation," back to "existing conditions").

Q: Turning now to the applicant's lease with the Port, can you summarize insurance levels identified in summary form on pgs. 5-6?

A: Yes. The document provides for: (1) property insurance ($1 million and five percent of values per location); (2) liability insurance ($10 million per occurrence/$15 million

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

aggregate, with specific requirements for employer liability and automobile liability of $1 million each); and (3) pollution legal liability insurance ($25 million as an extension of the commercial general liability insurance or a separate policy).

Q: Would these insurance amounts be adequate to cover an MFL event?

A: No, the figures proposed are well short of that. And, as I have explained, such insurance is not available at this time.

Q: Would it be expected, for the type of insurance policies we have been discussing, that there would be exclusions for intentional sabotage or acts of terrorism?

A: Absolutely.

Q: So, for an intentionally caused MFL it is probable that for most, if not all, of the insurance policies the applicant holds there would be no pay-out?

A: Correct.

Q: Turning to Section 1.1, p. 1-3 of the Proponent's Application, can you read: (1) paragraph 1, sentence 2; (2) subsection 1.1.2; (3) subsection 1.1.3, first sentence; (4) subsection 1.1.3, last sentence; and, (5) subsection 1.1.4, first sentence?

A: Yes.

1. The Applicant is Tesoro Savage Petroleum Terminal LLC (Applicant).

2. Tesoro Savage Petroleum Terminal LLC is a Delaware limited liability company that is qualified to do business in the state of Washington. Its members are Savage Companies and Tesoro Refining & Marketing Company LLC.

3. Tesoro Corporation, a Fortune 150 company, is an independent refiner and marketer of petroleum products.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

4. Tesoro Refining and Marketing Company LLC is a subsidiary of Tesoro Corporation.

5. Savage Companies is a privately held operator that provides supply chain management solutions.....

Q: So, in summary, the applicant is a Delaware LLC which includes as members a second LLC and a "privately held operator?"

A: That is what the application states.

Q: What type of financial information is publicly available for this Delaware LLC, the second LLC, and the "privately held operator?"

A: For the applicant, the Delaware LLC, I am not aware of any publicly available information regarding its financial standing. That is the same for Tesoro Refining and Marketing Company, LLC. And, since Savage Companies is a private company, it may have financial statements to verify its income and assets, but that is not publicly available. However, Tesoro Corporation financial information is available from the U.S. Securities and Exchange Commission (SEC) EDGAR System. The information is required to be filed periodically with the SEC depending upon the types of transactions for public corporations. For example, Tesoro Corporation filed its most recent 10K on February 25, 2016.

Q: So, we do not know the assets and liabilities of this Delaware LLC - which is the applicant - or even the location of such assets, assuming they exist?

A: Correct regarding the Delaware LLC, and its two members, a second Delaware LLC and Savage Companies, the private corporation. The Tesoro Corporation assets and liabilities

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

are enumerated in its 10K and other reports found at https://www.sec.gov/Archives/edgar/data/50104/000005010416000055/0000050104-16-000055-index.htm.

Q: OK. So if an MFL event occurs, is compensation from what one presumes is the parent company a possibility?

A: I did look at the Tesoro Corporation 2015 10K Financial Statement Risk Factors and Capitalization. The Risk Factors section acknowledges insufficient insurance to cover known risks of their operation. They did report maintenance of $20 million in marine terminal operator's liability coverage, subject to a $150,000 deductible, and an additional $650 million in umbrella coverage for a total of $670 million in coverage for sudden and accidental pollution events and liability arising from marine terminal operations. Copies of insurance policies would verify coverage. As of December 31, 2015, the total equity of the organization is $7,740,000,000, total debt is $4,073,000,000, with combined total capitalization of $11,813,000,000. (This is based on a February 25, 2016 filing, which updated the earlier December 31, 2015 10K Report.)

However, by utilizing the Delaware LLC structure, and without evidence of contractual indemnifications, I do have a question as to whether the applicant can shield the parent company from liability exposure from this project, including an MFL event. I presume they would be required to provide a contractual indemnity for this project, effectively providing their combined capitalization for uninsured obligations.

Q: Are you familiar with the term "black swan event?"

A: Yes.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

Q: How do you interpret that phrase?

A: A black swan event is a large-scale occurrence that is difficult to predict; however it has a huge impact on the region or world. It presents itself when seemingly disparate expected events occur in the same place at essentially the same time. The single black swan event is not within the insurance industry's historical loss experience, nor was it anticipated.

Q: While the insurance markets base risks on average daily events, do they also limit their exposure to what some might refer to as black swan events?

A: They attempt to, certainly. But the MFL outlined in this testimony is not representative of a black swan event, as the insurance markets are already aware of this type of risk. As addressed above, oil train accidents have been covered in the media, with video footage widely available.[4] As the insurance industry is aware of the risks, it has to account for them.

Q: So is it a fair assessment that given the insurance market has to account for the MFL risk by not insuring against it, and the applicant is using a Delaware LLC to also avoid that same risk, that the applicant is effectively asking local citizens here in Washington to shoulder their MFL risks?

A: Yes.

[4] For example, footage from the derailment in Casselton, North Dakota on December 30, 2013, is posted at https://www.youtube.com/watch?v=CxkUhVswF5U; footage from the derailment in Lac Megantic, Quebec, July 6, 2013, is posted at http://youtube.com/watch?v=tVI6r7tQVeo; and, footage from the derailment in Lynchburg, Virginia, April 30, 2014, is posted at http://youtube.com/watch?v=c15d1JSFQPg.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 10 th day of May, 2016 at Pittsford, New York.

Robert J. Blackburn, CPCU
Managing Principal, Blackburn Group, Inc.

CITY ATTORNEY'S OFFICE
PO BOX 1995
VANCOUVER, WA 98668
Tel: (360) 487-8500
Fax: (360) 487-8501

ATTACHMENT 1

BNSF Power Point Excerpt

BNSF Railway Company

Ex Parte No. 677(Sub-No.1)
Common Carrier Obligation of Railroads-Transportation Of Hazardous Materials

BNSF

July 22, 2008

VE_INF_0028706

Policy Issues Raised By Transport of These Commodities

- The risks associated with these commodities we are required to assume as common carriers are unquantifiable and uncontrollable.
- The potential for an accident cannot be fully eliminated.
- Insurance is not commercially available to sufficiently protect us against catastrophic loss.
- There are limits on the availability of insurance, at ever-increasing cost. Our insurance costs increased substantially after 9/11.

BNSF

VE_INF_0028711

Insurance Markets

- The market for railroad liability insurance has contracted substantially over the past several years.
- Five years ago, rails were able to purchase in excess of $1.5 Billion in coverage; today, available coverage is about $1.0 Billion.
- Number of insurance companies willing to write freight railroad insurance has decreased, while the price charged for remaining coverage has increased dramatically.
- Required self retention levels have also increased.

BNSF

ATTACHMENT 2

US Dept. of Transportation,
The Transportation of Hazardous Materials,
(December 2009), Excerpt

The Transportation of Hazardous Materials: Insurance, Security, and Safety Costs

A report to Congress as required by Section 1555(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53)

Prepared by:

U.S. Department of Transportation
December 2009

While $1 billion is more than sufficient to cover losses from "routine" TIH-related incidents, it is well short of the $5-$6 billion that Class I railroads estimate would be necessary in a "nightmare scenario," e.g., an accidental release of TIH gas in close proximity to a large number of people.[45] Once their primary insurance has been exhausted, carriers would be held liable for the balance, forcing even the largest railroad into bankruptcy.

Class II and III railroads that haul TIH commodities claim that their situation is especially precarious, as they cannot acquire, or would have a difficult time acquiring, adequate insurance coverage. According to Keith Borman, Vice President and General Counsel for the ASLRRA, small railroads cannot afford premiums for "meaningful" amounts of insurance coverage, necessary to protect against ruinous liability.[46] Based on a conversation we had with another ASLRRA representative, Class II railroads would likely be content with $200 million in coverage and Class III carriers would likely be satisfied with $100 million in coverage. While there is sufficient capacity within the rail insurance market to satisfy this demand, many short line haulers simply do not have the cash-flow to pay for such insurance coverage. As such, Class II and III railroads that haul TIH material only maintain $10 to $100 million in coverage.

3.5 Liability Sharing Controversy

Railroads, particularly Class I carriers, assert that they are forced to "bet the farm" with every TIH movement because the liability from a catastrophic incident can potentially be in the billions of dollars – well beyond what carriers can protect against through current means (i.e., commercial insurance). Given that this level of risk is derived primarily from TIH movements, which only account for about 0.3% of total annual carload haulage, rail carriers are attempting to establish a liability sharing arrangement with TIH shippers. They hope to achieve this by either (1) requiring shippers to indemnify liability costs; (2) requiring shippers to maintain a second layer of insurance for "catastrophic coverage;" or (3) establishing a *Price-Anderson*-like arrangement in which shippers would contribute into a secondary liability coverage pool. The *Price-Anderson* model is derived from the Price-Anderson Nuclear Industries Indemnity Act, which was enacted in 1957 for the nuclear power industry as a means of indemnifying nuclear power producers against excess liability.[47] Under this arrangement, nuclear power reactor licensees are required to carry the maximum amount of insurance available to them in the insurance market to protect against the liability of nuclear-related incidents. Any monetary claims that fall within this insurance coverage would be paid by the insurance company. In the event that an individual power producer's primary insurance has been exhausted, a liability pool, funded by a contribution of $95.8 million from each of the U.S. nuclear power producers, could be tapped to cover the balance of its liability. Should this liability pool

[45] This figure was derived from testimony by Class I carriers in STB Ex Parte No. 677 (Sub-No. 1).
[46] Based on the written testimony of the ASLRRA, submitted to the STB in Ex Parte No. 677 (Sub-No. 1).
[47] See Pub. L. 85-256.

ATTACHMENT 3

Photographs, Rail Accidents

V

GOGAMA, ONTARIO

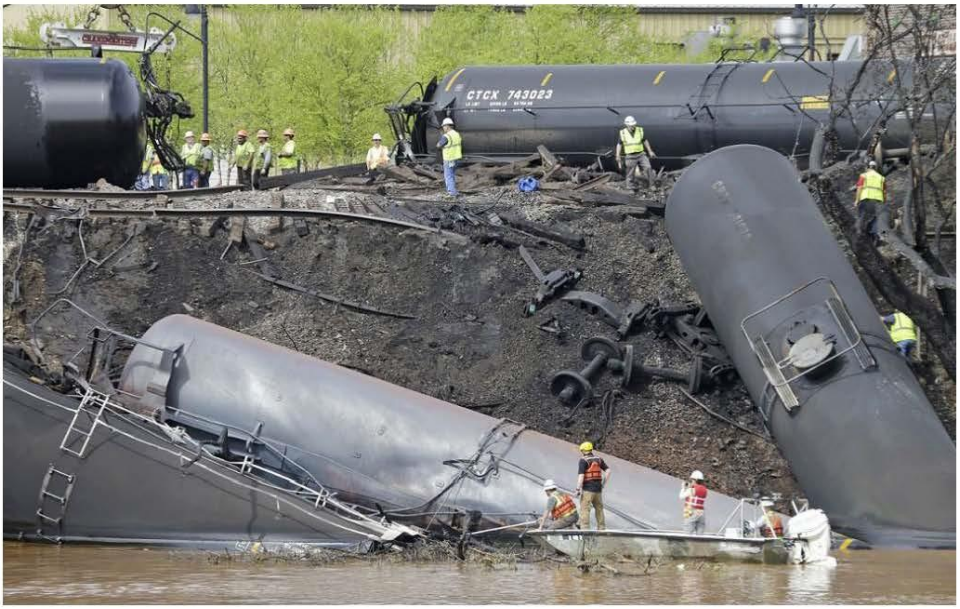
March 7, 2015

Gogama Photograph 1[1]

[1] Gogama Photograph 1 published May 6, 2015, at http://www.sightline.org/2015/05/06/oil-train-explosions-a-timeline-in-pictures/.

LYNCHBURG, VIRGINA

April 30, 2014



Lynchburg Photograph 1[2]

[2] Lynchburg Photograph 1 published February 24, 2015, at http://thinkprogress.org/climate/2015/02/24/3626212/csx-fined-for-lynchburg-virginia-derailment/.

Lynchburg Photograph 2[3]

[3] Lynchburg Photograph 2 published May 2, 2014, at http://news.nationalgeographic.com/news/energy/2014/04/140430-oil-train-derails-in-lynchburg-virginia/.

Lynchburg Photograph 3[4]

[4] Lynchburg Photograph 3 published April 30, 2014 at http://www.desmogblog.com/2014/04/30/breaking-csx-railroad-bomb-train-carrying-crude-oil-explodes-lynchburg-virginia

CASSELTON, NORTH DAKOTA

December 30, 2013

Casselton Photograph 1[5]

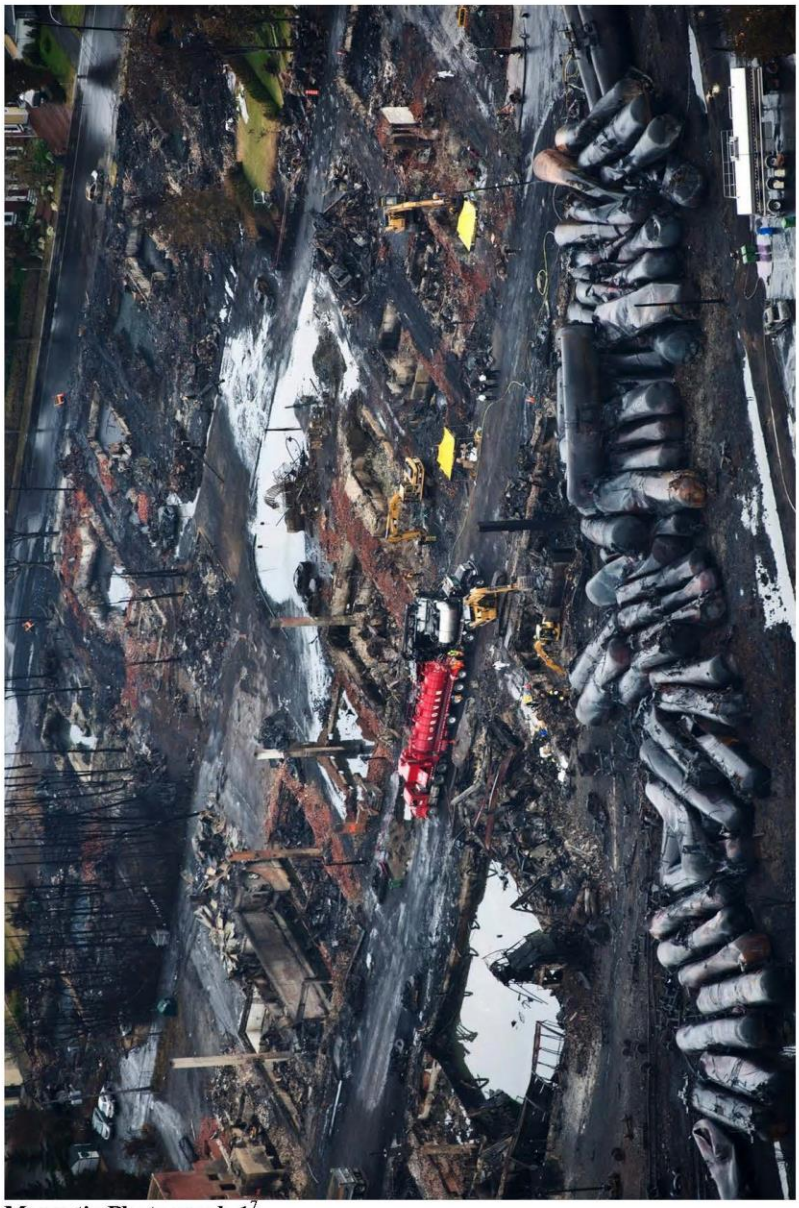
[5] Casselton Photograph 1 posted at http://www.ntsb.gov/investigations/pages/casselton_nd.aspx.

Casselton Photograph 2[6]

[6] Casselton Photograph 2 published December 30, 2013, at http://usnews.nbcnews.com/_news/2013/12/30/22113442-mile-long-train-carrying-crude-oil-derails-explodes-in-north-dakota.

LAC MEGANTIC, QUEBEC

July 6, 2013



Lac-Megantic Photograph 1[7]

[7] Lac Megantic Photograph 1 published August 19, 2014, at http://www.theguardian.com/world/2014/aug/20/lac-megantic-oil-train-disaster-inquiry-finds-string-of-safety-failings.

Lac-Megantic Photograph 2.[8]

[8] Lac-Megantic Photograph 2 published July 13, 2015, at http://globalnews.ca/news/2107803/judge-rejects-canadian-pacifics-challenge-of-lac-megantic-lawsuit/.

Lac-Megantic Photograph 3[9]

[9] Lac-Megantic Photograph 3 published May 6, 2015 at http://www.sightline.org/2015/05/06/oil-train-explosions-a-timeline-in-pictures/

I may have submitted another comment on this but as part of notifications and planning I want to add another school which is not yet on some public maps. Rosalind Franklin STEM school in Pasco should also be on the notification list.

I want to know who is responsible for planning evacuations and who would pay for them?

In particular, I'm concerned about the town of Cheney and Eastern Washington University Students.

Somebody should know: How many students do not have a car on campus. What mechanisms exist to evacuate students without a car? What emergency preparedness planning would be used and drills should be held for the community considering the student population.

About half of campus is within the DOT evacuation zone for derailments, and al of campus and most dorms are within the 1 mile DOT potential impact zone in case of fire.

My student will be renting a place within the .5 mile zone. He has a car, but what is the notification procedure for students who may not be on campus during an incident? Would the university have the responsibility to notify students or does the city or Cheney or RR company?

Thank you for the opportunity to comment.

Eleanor Wireman

Pierce County
Office of the County Council
Derek Young
Councilmember
930 Tacoma Avenue South, Room 1046 District No. 7
Tacoma, WA 98402-2176
(253) 798-6654
FAX (253) 798-7509
TDD (253) 798-4018
1-800-992-2456
E-mail: dyoung2@co.pierce.wa.us
www.piercecountywa.org/council

June 10, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

As a member of the Pierce County Council, I represent both sides of the Puget Sound including Fox Island, Gig Harbor, Key Peninsula, Ruston, and parts of North and West Tacoma. The train carrying Bakken Crude that recently derailed and exploded in Mosier, Oregon was destined to travel through my district.

While I appreciate your efforts to adopt more appropriate regulation for shipping crude by rail, I am concerned that any measure will be inadequate to the demonstrate danger these shipments pose to our community and Puget Sound. DOE has estimated traffic will triple by 2020 and again by 2035. With that volume an incident is inevitable and the consequences potentially disastrous.

Given the gravity of this decision, and the recent demonstration of the risk, I ask that you consider a moratorium on crude shipments by rail in Washington. This time could be used to more fully consider a cost benefit analysis of these shipments.

Short of that, I have three concerns with the rule:

The spill evaluation and response planning requirements are inferior to vessel spills in Commencement Bay (WAC 173-182-380). At a minimum they should be commensurate.
There is no reference to critical response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.

It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

I appreciate your work to protect our natural resources and trust you will do everything in your power to ensure our community and Sound are safe.

Thank you,

Derek Young
Councilmember, District 7
Pierce County Council
(253) 798-6654 office
Email dyoung2@co.pierce.wa.us

Hi Kim,

It is more than clear and obvious, especially after the train derailment on the Columbia River last week , where many cars carrying oil came off the tracks and much oil spilled, causing a fire to burn and the citizens to evacuate, that the we do not need more trains moving along the rail transportation corridors, nor do we need a oil terminal to be built near Vancouver. This incident proves just how dangerous hauling oil by rail is, so adding more shipments would potentially increase the dangers, and we definitely do not need a pipeline either. Because this was a major spill, we should have a moratorium on all rail shipments so that no further disasters will occur. There have been many other oil spills in this country in the last decade or so and in other countries as well, so adding more shipments and a terminal would be unsafe and an unacceptable solution.

Sincerely, Ed

June 10, 2016

Linda Pilkey Jarvis

WA Dept. of Ecology Spills Program

PO Box 47600

Olympia, WA 98504-7600

Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection. I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).

2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.

3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Elisabeth Benard

ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, SW, Suite 1000
Washington, D.C. 20024

Evelyn R. Nackman
Associate General Counsel

Phone: (202) 639-2509
Fax: (202) 639-2868
E-mail: enackman@aar.org

June 10, 2016

VIA EMAIL

Linda Pilkey-Jarvis
Dale Jensen
Spill Prevention, Preparedness and Response Program
WA Department of Ecology Spills Program
PO Box 47600
Olympia, WA 98504

Re: April 6, 2016 WA Ecology Office of Spill Prevention and Response (Ecology)--Preliminary Draft Language: Chapter 173-186, Washington Administrative Code (WAC). (Regulations Implementing House Bill (HB) 1449)

Dear Ms. Pilkey-Jarvis and Mr. Jensen:

The Association of American Railroads (AAR) submits the following comments in response to the Preliminary Draft language: Chapter 173-186, WAC implementing ESHB 1449 ("Proposed Regulations").

The Association of American Railroads ("AAR") is a national, non-profit trade association that represents the nation's major freight railroads. AAR's membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR's membership also includes passenger railroads that operate intercity passenger trains and provide commuter rail service. AAR is the Nation's leading railroad policy, research, standard setting, and technology organization. AAR and its members are committed to operating the safest, most efficient, cost-effective, and environmentally sound rail transportation system in the world.

AAR represents railroads that transport crude oil in the State of Washington, and, therefore, has a substantial interest in this Proposed Regulation. AAR, on behalf of itself and its member railroads, submits the following comments in response to the above notice of Proposed Regulations.

The authority of the federal government to regulate rail operations is well established. The United States Supreme Court noted that federal regulation of railroads is "among the most pervasive and comprehensive of federal regulatory schemes." Chi. & NW Transp. Co. v. Kalo

Brick & Tile Co., 450 U.S. 311, 318 (1981). "Congress and the courts long have recognized a need to regulate railroad operations at the federal level. Congress' authority under the Commerce Clause to regulate the railroads is well established." City of Auburn v. United States Government, 154 F.3d 1025, 1029 (9th Cir. 1998), cert. den. 527 U.S. 1022 (1999). As discussed in detail below, there are two federal statutes that preempt the Proposed Regulation.

I. The Proposed Regulations Will Be Preempted by ICCTA.

The Proposed Regulations will be preempted by the ICC Termination Act (49 U.S.C. §10501 et seq.) (ICCTA). Except in specific instances not applicable here, ICCTA preempts state and local regulation of rail operations like the Proposed Regulations.

A. ICCTA Preemption.

ICCTA contains an express preemption provision which states that the jurisdiction of the Surface Transportation Board over "transportation by rail carriers" is "exclusive." 49 U.S.C. § 10501(b). The statute defines "transportation" expansively to encompass "a locomotive, car, yard, property, facility, instrumentality, or equipment of any kind related to the movement of... property ... by rail" as well as "services related to that movement." 49 U.S.C. § 10102(9). Section 10501(b) further provides that "the remedies provided under [49 U.S.C. §§10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under federal or state law."

The result of this regulatory scheme is that Section 10501(b) is intended to prevent "a patchwork of local regulations from unreasonably interfering with interstate commerce." *See* Norfolk S. Ry.--Pet. for Declaratory Order, FD No. 35701, slip op. at 6 & n. 14 (STB served Nov. 4, 2013); H. R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 808 ("[T]he Federal scheme of economic regulation and deregulation is intended to address and encompass all regulation and to be completely exclusive. Any other construction would undermine the uniformity of federal standards and risk the balkanization and subversion of the federal scheme of minimum regulation for this intrinsically interstate form of transportation.").

Federal courts also have interpreted ICCTA to achieve uniformity of laws governing rail transportation. *See*, e.g., Fayus Enters. v. BNSF Ry. Co., 602 F.3d 444, 452 (D.C. Cir. 2010) (finding that application of state antitrust laws to rail transportation would "subject [shipments] to fluctuating rules as they cross state lines" and therefore "directly interfere" with the purpose of §10501(b)); CSX Transp., Inc.--Pet. for Declaratory Order, FD No. 34662, slip op at 11 (STB served Mar. 14, 2005), recon. denied (STB served May 3, 2005) (finding local regulation regarding routes for rail transportation of hazardous materials through the District of Columbia preempted because such regulation would interfere with interstate commerce and lead to piecemeal regulation, subverting the purpose of §10501(b)).

B. The Proposed Regulations Will Be Categorically Preempted Under ICCTA.

ICCTA may categorically preempt State action affecting rail transportation or may preempt that action "as applied." U.S. EPA--Pet. for Declaratory Order, FD No. 35803 (STB served Dec. 30, 2014); Grafton & Upton R. R.--Pet. for Declaratory Order, FD No. 35779, slip op. at 4-5 (STB served Jan. 27, 2014). A law or regulation is categorically preempted "regardless of the context or rationale for the action." CSX Transp., Inc.--Pet. for Declaratory Order, slip op. at 3 (STB served May 3, 2005). State laws or regulations are categorically preempted if they impose requirements that, by their nature, could be used to deny a rail carrier's ability to conduct rail operations. By way of example, such categorically preempted laws or regulations include any permitting or preclearance requirement, including zoning ordinances and environmental or land-use permitting requirements. *See* Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005). See also City of Auburn v. United States Government, 154 F.3d 1025, 1029 (9th Cir. 1998), cert. den. 527 U.S. 1022 (1999) (finding preemption of local environmental review of rail line acquisition and operation, though city claimed environmental review was a local police power).

In the Proposed Regulations, Section 173-186-610, Enforcement—Noncompliance Sections 3 through 5 state that:

> (3) Any violation of this chapter may be subject to enforcement and penalty sanctions.
>
> (4) Ecology may assess a civil penalty of up to *one hundred thousand dollars* against any person who is in violation of this chapter. Each day that a railroad is in violation of this chapter shall be considered a separate violation.
>
> (5) Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

These sections provide a substantial monetary penalty, up to $100,000 per day, and potential criminal penalties if railroad operators operate without prior approval. This substantial monetary fine, in addition to the accompanying possibility of criminal penalties, is in effect, a bar to railroad operations unless those operations are pre-approved by the state. *See* South Dakota v. Burlington Northern & Santa Fe Ry., 280 F.Supp.2d 919 at 934 (D.S.D. 2003) ("The power to punish with huge monetary penalties is the most stringent 'regulation' possible.") Under Federal law, however, railroads must operate because they are common carriers. Subjecting railroads to

heavy penalties and potential criminal penalties when they must operate is clearly in contravention to ICCTA. *See* 49 U.S.C. § 11101.

Such pre-approval requirements run directly contrary to the preemptive effect of ICCTA. In an analogous case, the California Court of Appeals held that "civil penalties are inherently regulatory, not remedial," and that to impose a civil penalty upon an incident or event "is to regulate the activity that gave rise to the incident or event." People v. Union Pacific R.R., 141 Cal. App. 4th 1228, 1258 (3rd Dist. 2006). The court continued by explaining:

> Here, the People assert that civil penalties became payable immediately when, and due to the mere fact that, calcium oxide was spilled. We agree ... that there is a distinction between ... laws about the transportation of hazardous substances [and] laws that govern what happens after a material has been spilled from a train. However.. the civil penalties sought by the People are not addressed to what defendants did or did not do after the spill; rather, they seek the imposition of penalties for the mere fact of the spill itself. A civil penalty imposed for the fact of a spill does not govern what happens after the spill, it regulates the activity that gave rise to the spill. In this case, it constitutes regulation of the transportation of calcium oxide.

The same can be said of the Proposed Regulations. Through the imposition of a daily $100,000 fine, the approval process could stop railroad operations. The State of Washington's Proposed Regulation effectively regulates rail transportation of hazardous substances and is therefore preempted as applied.

The pre-approval process is onerous, as outlined in the Proposed Regulations, and involves a public notice and comment process where the public and Ecology have final say in plan approval. WAC 173-186-420 Sections 1 and 2 state:

> (1) Upon receipt of a plan, ecology shall evaluate whether the plan is complete, and if not, the rail plan holder shall be notified of any deficiencies within five business days. The public review and comment period does not begin until a complete plan is received.
>
> (2) Once a plan has been determined to be complete, ecology shall notify interested parties, including local and tribal governments and make the plan available for public review and comment. Ecology will accept comments on the plan no later than thirty days after the plan has been made publicly available. No later than sixty-five days from the date of public notice of availability, ecology will make a written determination that the plan is disapproved, approved, or conditionally approved. The written determination will be provided in the form of an order and subject to appeal as specified in chapter 43.21B RCW.

As written, the Proposed Regulations indicate that Ecology may, in its discretion, deny the plan or delay its approval, and, therefore, block rail operations in the State of Washington. The Proposed Regulations attempt to undermine federal law and create preconditions to the ability of a railroad to meet its common carrier obligation to serve its customers. *See* 49 U.S.C. §11101. The Proposed Regulations are, therefore, categorically preempted.

C. The Proposed Regulations Will Unlawfully Impact Railroad Operations "As Applied."

Even if a rule or regulation is not categorically preempted, it may be preempted "as applied" if the law or regulation has the effect of unreasonably burdening or interfering with rail transportation. *See* NY Susquehanna & W Ry. v. Jackson, 500 F.3d 238, 253 (3d Cir. 2007) (federal law preempts "state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation").

The Proposed Regulations will be preempted on an "as applied" basis because they would unreasonably burden and interfere with rail transportation and create the potential for a patchwork of regulations that could result in a railroad's being subject to several different and possibly conflicting state and local regulations. *See* Ass'n of Am. Railroads, 2007 WL 2439499, at *8 (finding rules targeting unnecessary idling to be "exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a 'patchwork' of such local regulation from interfering with interstate commerce"); CSX Transp., Inc. v. Williams, 406 F.3d 667, 673 (D.C. Cir. 2005) ("localized regulations would likely have a 'practical and cumulative' impact rail operations on the national rail network.").

II. The Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) Existing Rules Regarding Oil Spill Response Plans Preempt the Proposed Rules Under FRSA.

The Proposed Regulations will also be preempted by the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20106. The Pipeline and Hazardous Materials Safety Administration (PHMSA) oil spill response plan rules are in 49 CFR Part 130. PHMSA is in the process of supplementing those rules per the advanced notice of proposed rulemaking (ANPRM). 79 FR 45079.[1] As

[1] The current PHMSA rulemaking for oil spill response plans will be released this month. On August 1, 2014, PHMSA published its advanced notice of proposed rulemaking entitled, *Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains*. 79 FR 45,079. On September 30, 2014, AAR submitted detailed comments addressing PHMSA's proposed rule. PHMSA has indicated to Congress that its proposed rule will be released this month and that the final rule will be published in June 2017. In Section 7307 of the Fixing America's Surface Transportation Act, Pub. L. 114-94, Congress required PHMSA to report its progress on these regulations every 90 days until the final rule is issued, clearly showing Congress' intent that these response plan requirements be established at the Federal level.

such, PHMSA has asserted its jurisdiction over oils spill response plans by virtue of the Part 130 and the ANPRM. PHMSA-2014-0105.

The FRSA seeks to make laws or regulations uniform related to railroad operations. A state may only adopt or enforce laws related to railroad safety until the Department of Transportation does so. Such a law or regulation may not be more stringent than the federal law or regulation. 49 USC § 20106 (a) (2) (a state may only adopt or enforce a more stringent law if criteria are met that are not applicable here). § 20106 says that:

> A state may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation…prescribes a regulation or issues an order *covering* the subject matter. (emphasis added)

The United States Supreme Court in CSX v. Easterwood, thoroughly analyzed when federal regulations "cover" the subject matter of a state requirement. Noting that "cover" was a somewhat restrictive term, the Court held that "[the party asserting preemption] must establish more than that [the regulations] 'touch upon' or 'relate to' the subject matter … preemption will lie only if the federal regulations substantially subsume the subject matter of the relevant state law." 507 U.S. at 664-65 (citations omitted).

PHMSA has substantially exercised its statutory authority over oil spill response plans in 40 CFR Part 130.31, which lists the requirements for railroad oil spill response plans. PHMSA has published its intent in the Federal Register to expand the requirements, many of which overlap with the current Proposed Regulation. Burlington N. & Santa Fe Ry. Co. v. Doyle, 186 F.3d 790 at 795 (7th Cir. Wis. 1999) ("For preemption, the important thing is that the FRA considered a subject matter and made a decision regarding it"). Through the PHMSA rulemaking, the Federal government is taking a comprehensive look at how railroads should report their contingency plans for accidental release of crude oil, taking into account all potentially affected stakeholders across the United States.

Given that the Proposed Regulation conflicts with PHMSA's jurisdiction over oil spill response plans, and their clear exercise of authority over that subject, the State of Washington must stop the current Proposed Regulation rulemaking.

III. The Proposed Regulations have the Effect of Favoring Non-Rail Transport.

The Proposed Regulations would also discriminate against railroads in favor of other companies and modes of transportation. The Washington State statute authorizing rail contingency plans (90.56.210(3)) says that the State will not accept federal contingency plans once the State issues its own regulations, recognizing that the state requirements will be inconsistent from the federal requirements. However, the same statute also says that contingency plans for non-railroads must be consistent with federal law requirements to the extent possible (*see* 90.56.210(5)). Thus, the State has set up a discriminatory regime: railroads must comply

with state regulations that are inconsistent with federal regulations while *non*-railroad industries are free from the burden of inconsistent state and federal requirements. If the Regulations are inconsistent with federal law, which will be promulgated shortly, then railroads will be potentially at a significant disadvantage.

IV. Conclusion

For the reasons set forth above, the State of Washington should discontinue these proceedings and withdraw the Proposed Regulations.

Sincerely,

Evelyn R. Nackman

Gene E. A. Johnson
5565 E Evergreen Blvd # 3339
Vancouver, WA 98661
04/15/165

Comments on Requirements For Contingency Planning Receiving Crude Oil By Rail And Pipeline

Linda Pilkey
Department of Ecology
Spills Program
PO Box 47600
Olympia, WE 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov
Dear Official:
Between Pasco, WA and Vancouver, WA, there are four dams on the Columbia River.
Please consider impacts when a spill occurs. There current runs between 1.5 to 6.0 mph.
Consider what happens because of an oil spill to:
the generating capacity of the dams,
recreational users—boaters, sailboarders. kite boarders, and swimmers,
the young salmon going downstream so they can reach maturity,
the mature salmon returning to procreate,
When there is a spill, then the river and the fish that are born, live and reproduce in the river will become DEAD FOREVER.
With the inevitable spills, the Columbia River will be lost forever. IT WILL NEVER BE ABLE TO EVER RECOVER.
What is the economic value of these activities?
Are you willing to let the river die forever?
I most strongly recommend that you make the requirement for contingency planning for facilities receiving crude oil by rail or pipeline as rigorous as possible with them being implemented NOW.
If you approve the requirement for facilities receiving crude oil by rail or pipeline as robust, at the very least, have the proposers as a firm and as individuals are liable for the damage they will cause.
Make ALL the proponents including transporter and receivers Vancouver's post bonds covering three times the estimated damages.
Why should the taxpayers be on the hook for cleaning up the mess? Those who will profit from the transporting the oil should bear the ENTIRE COSTS of the damages they will create.
The damages will happen. It is not a question of will the damage happen but when.
With the inevitable spills, the Columbia River will be lost forever. It will NEVER be able to ever recover.
Do you want this on your conscience?
Sincerely,

Gene E. A. Johnson

June 9, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan- Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan- Railroad.

I am a Tacoma resident concerned about the destruction a potential oil spill would have on the natural environment. Commencement Bay is an important ecosystem, and an important part of our watershed. Our environment deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing- Ecology has estimated that crude-by-rail traffic will triple in Washington by 202 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency to these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Hayley Mathews
Hayley.m.mathews@gmail.com
(253) 886-3326

June 9, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.
I find three major deficiencies in the proposed rule:
1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Jan and Vincent Zimmer
1838 Pointe Woodworth Dr Ne
Tacoma, WA 98422
Janet.zimmer@hotmail.com

From: jgrant006@centurytel.net [mailto:jgrant006@centurytel.net]
Sent: Tuesday, May 17, 2016 3:20 PM
To: Morley, Kim (ECY) <kmor461@ECY.WA.GOV>
Subject: Proposed rules for oil shipments by rail or pipeline

1. First and foremost is the oil companies admission that they do not have adequate insurance to cover the cost of a catastrophic oil spill. The oil companies should be required to carry adequate insurance in such an instance.
2. Secondly, and just as reasonable if not more so, is the fact that the northwest coast is long overdue for a huge magnitude earthquake which will be the largest in recent history. Facilities and pipelines carrying oil will only add to the devastation and long term recovery.
3. The oil companies should be required to ship all oil in double hulled rail cars. I also think that they should required to pipe oil in doubled hulled pipes. Older single hulled rail cars should be prohibited and old singled hulled pipe lines should be replaced by doubled hulled pipe lines when ever and wherever the single hulled pipe lines break or spring a leak.
4. The need to anticipate and adapt to environmental change should over ride the desire to protect the oil companies bottom line.
5. Part of anticipating and adapting to environmental change should require oil companies to provide opportunities for their employees to retrain in other jobs as part of their responsibility to care for and protect their employees.

James T. Grant
15005 W Silver Lake Road
Medical Lake, WA., 99022-9555
5092993128
jgrant006@centurytel.net

James Griener
PO Box 683
Camas, WA 98607

June 9, 2016

Dear Linda Pilkey-Jarvis,

Even implementing the strongest possible rules for Chapters 173-185, and 173-186 are NOT ENOUGH!!!!

Providing information and having contingency plans is giving into the oil companies and the railroad. They haven't given a damm in the past. They won't now. They are interested in PROFIT only, regardless of the damage to my environment, my river, my schools, my towns! To me: I live in Camas, WA.

NO OIL TRAINS along the Columbia River. NO OIL TRAINS through Washington State. Stop this insanity! NOW!

Damm Mad
James Griener

Jean Avery
13314 SE 19th St.
Vancouver, WA 98683

June 10, 2016

Dear Kim Morley,

I am writing as a resident of Vancouver, Washington, and someone who hikes regularly in the Columbia River Gorge.

As you know, Washington State is seeing more oil trains coming through our cities and our beautiful Gorge -- which is troubling for the environment and frightening for our safety.

Communities across Washington are on the front line, experiencing crude oil trains and are at risk of oil spills due to train derailments and pipeline ruptures.

I urge the Department of Ecology to implement the strongest rules for Chapters 173-185, and 173-186 as possible.

Sincerely,
Jean M. Avery

Hello:

I am pleased to see that the Washington Department of Ecology is proposing rules to improve oil transportation safety.

As a resident of Vancouver, WA, my comment is to **make the rules as stringent as possible -- for safety of the public and the environment.**

Also, I am interested in attending the meeting on June 3 in Vancouver.

Thank you.

Jean M. Avery
13314 SE 19th St. - Apt. T4
Vancouver, WA 98683

June 10, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program PO Box 47600
Olympia, WA 98504-7600 Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Judi Chelotti
Tacoma resident

I understand the Dept of Ecology is taking public input on the safety issues involved with the rail transport of fuel in tanker cars in Washington. I don't think there is any guaranteed method of transporting fuels whether by rail, tanker ships, pipelines or truck that can be free of accidents, spills or fire. But maybe any one train should have a limit to how many tankers can be included in any one train. The more rail cars there are, the bigger the potential for a massive fire or explosion. This would help minimize a massive disaster with maximum number allowed in each shipment. I don't know an ideal quantity, but perhaps spread out through the line to lessen the chance of one car igniting others.

We cannot be overly cautious with respect to life or nature. This is my only suggestion. In perfect world, all fuel would be replaced by solar or electric power.

Karen Jeffery
319 E. 34th St.
Tacoma, WA 98404

Washington State Medical Association | WSMA
Physician Driven
Patient Focused

2001 Sixth Avenue, Suite 2700
Seattle, Washington 98121
(206) 441-9762
(800) 552-0612
Fax: (206) 441-5863
Email: wsma@wsma.org

1800 Cooper Point Road SW
Bldg 7, Suite A
Olympia, Washington 98502
(360) 352-4848
(800) 562-4546
Fax: (360) 352-4303

Ray Hsiao, MD
President

Brian Seppi, MD
Past President

Shane Macaulay, MD
President-Elect

Donna Smith, MD
1st Vice President

Tom Schaaf, MD
2nd Vice President

Bill Hirota, MD
Secretary-Treasurer

Nathan Schlicher, MD, JD
Assistant Secretary-Treasurer

Jennifer Hanscom
Executive Director/CEO

June 10, 2016

Kim Morley
Department of Ecology
P.O. Box 47600
Olympia, WA 98504

Dear Ms. Morley:

Please see our comments below on the proposed rules addressing oil movement by rail WSR 16-08-117 (oil spill contingency planning for railroads) and WSR 16-08-118 (oil movement by rail and pipeline notification).

The Washington State Medical Association (WSMA) urges you to set rules for oil transportation through our state that recognize the serious public health and safety concerns that exist around this process. We recommend that the rules guiding the transportation of oil through our state should work to prevent or seriously minimize potential deleterious health effects, which have been well documented. These include impacts on water quality, air quality, and public safety in the event of a catastrophe.

We know there are many health and safety risks associated with transporting crude oil by rail, including:

- **Increased air pollution**, specifically diesel related air pollution. Diesel particulate matter increases rates of heart attack and stroke, as well as the risk for asthma. It accounts for air toxic cancer risk in the Puget Sound area.
- **Increased water pollution** from both oil spills and slow leaks, which threatens drinking water supplies and fishing. Crude oil components are known to be associated with cancer, reproductive health problems, and other health problems.
- **Oil fires, spills, explosions and train derailments**, which pose a particularly significant public health risk to Washington residents who live within recommended evacuation zones. Also, rescue and cleanup crews face risks of toxic exposures.

For **WSR 16-08-117**, we support "worst case spill scenario" planning. We recommend that the final rule include appropriate protective equipment for oil spill responders. Protecting those who will be on the front lines of such an emergency should be a top priority. The final rule should also ensure that owners, operators, and all parties will be held accountable for prevention and health-related consequences of accidents which may occur.

For **WSR 16-08-118**, we support rules for advanced notification, including notification to public safety agencies, as well as public access to timing and contents of shipments. As previously mentioned, this final rule should also ensure that owners, operators, and all

parties will be held accountable for prevention and health-related consequences of accidents which may occur.

We urge the Department of Ecology to ensure these new rules governing oil transportation by rail are protective to public health, and take into account the serious concerns of doctors across Washington State and to members of the Washington State Medical Association.

Sincerely,

Kathryn Kolan
Kathryn Kolan, JD
Director of Legislative and Regulatory Affairs

cc: Jennifer Hanscom, Executive Director/CEO
WSMA Executive Committee

MAYOR'S OFFICE
Kelli Linville, Mayor
City Hall, 210 Lottie Street
Bellingham, WA 98225
Telephone (360) 778-8100
Fax (360) 778-8101

RECEIVED
Department of Ecology
MAY 09 2016
Spills Program

May 6, 2016

Linda Pilkey-Jarvis
Department of Ecology, Spills Program
PO Box 47600
Olympia, WA 98504-7600

Dear Ms. Pilkey-Jarvis:

Below please find the comments from the City of Bellingham in regard to the proposed new rule, Chapter 173-186 WAC, Oil Spill Contingency Plan - Railroad.

The City is supportive of the effort to establish regulations for an oil spill contingency plan, drill and equipment verification requirements, and provisions for inspection of records for owners and operators of railroads. The adoption of this rule will require railroads to develop and maintain contingency plans approved by the Department of Ecology, and the comments below reflect a desire for the City to participate in the process, both on the planning side, and in how the contingency plan is communicated with local agencies and stakeholders.

- **Specific comment to WAC 173-186-010 Purpose**

  Local agencies, such as the City of Bellingham and our partners at Whatcom County (as Whatcom Unified Emergency Management) currently plan for a variety of emergency scenarios including oil spills. Please include "local" in section (1)(c) to reflect that local agencies are a component of the coordinated approach to emergency planning efforts.

- **Specific comment to WAC 173-186-110 Submitting a railroad contingency plan**

  Please include details on how the contingency plan is shared with other stakeholders.

Thank you for the opportunity to comment. If you have any questions please contact Brian Heinrich, Deputy Administrator, at 360-778-8117, bmheinrich@cob.org

Sincerely,

Mayor Kelli Linville

Council President Pinky Vargas

I understand the Dept of Ecology is taking public input on the safety issues involved with the rail transport of fuel in tanker cars in Washington. I don't think there is any guaranteed method of transporting fuels whether by rail, tanker ships, pipelines or truck that can be free of accidents, spills or fire. But maybe any one train should have a limit to how many tankers can be included in any one train. The more rail cars there are, the bigger the potential for a massive fire or explosion. This would help minimize a massive disaster with maximum number allowed in each shipment. I don't know an ideal quantity, but perhaps spread out through the line to lessen the chance of one car igniting others.

We cannot be overly cautious with respect to life or nature. This is my only suggestion. In perfect world, all fuel would be replaced by solar or electric power.

Karen Jeffery
319 E. 34th St.
Tacoma, WA 98404

Please require railroads transporting crude or refined oil to submit oil spoil response plans to the state for approval. Contingency plans show that railroads are prepared to respond to an oil spill immediately and effectively. The Notice Requirements for facilities that receive bulk deliveries of crude oil by rail or pipelines that transport crude oil would help affected communities ensure a rapid, coordinated response in the event of an oil spill.
I live in Spokane, where the rail goes right through our downtown. After the derailment that just occurred in Mosier, we need to be better prepared for the possibility/likelihood of a derailment. Railroads need to put in the leg work on this. Please help our communities prepare by requiring response plans?

Thanks,

Kirsten Angell

Kiwibob Glanzman
1220 NE 90th
Seattle, WA 98115

June 9, 2016

Dear Linda Pilkey-Jarvis,

IT'S TIME TO BAN RAIL TRANSPORTATION OF CRUDE OIL FOR PUBLIC SAFETY. "REGULATING" SUCH TRANSPORTATION WILL ALWAYS LEAD TO DISASTER AFTER DISASTER AND "CRYING OVER SPILLED MILK" ONLY TO HAVE IT HAPPEN AGAIN!!!

Sincerely,
Kiwibob Glanzman

June 8, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad.

I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. I live near the water and train tracks. As such I strongly believe that the Tacoma community deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Laure Nichols
2703 North Yakima Avenue
Tacoma, WA 98406

date: June 10, 2016
to: Linda Pilkey Jarvis (linda.pilkey-jarvis@ecy.wa.gov)
from: Laurie Lawhon, Lakewood, WA

Our country does not have the infrastructure in place to safely run trains. (Admittedly, plans have been made for improvements -- retrofitting older cars that will carry crude oil; positive train control -- but the government and industry are historically slow to implement costly changes, however worthy.)

Problem tracks are everywhere. (Just ask anyone who commutes to Everett using the Amtrak line.) Equipment is aging. Computers can be hacked or may malfunction. I believe our fire departments can speak to the dangers of many items being shipped on trains, especially the oils and chemicals. In the event of derailment or leaks, there is "fallout"-- sometimes lethal and sometimes damaging to the area for the foreseeable future. The products explode, they catch fire, they contaminate the nearby waters, the water table, and even the sewer systems. They contaminate the soil, they kill the plants, the animals, the salmon (which this state has spent so much effort and money in protecting). The luckier people are inconvenienced by having to evacuate their homes.

On a more profound level, making energy using the carbon plan, is outdated and endangering. (Just ask the people of Oklahoma, whose kitchen tap water may emerge in flames and who now live in a lively earthquake area due to the fracking.) http://www.livescience.com/49785-oklahoma-earthquake-risk-hidden-faults.html

Yes, our country does not have the infrastructure in place to safely run trains. Thus, any action plan for assisting at derailments and spills must be effective and rapid. I believe the present draft plan for railroads is not, at all, enough.

LESS PROTECTION:

Regarding the proposed spill contingency plan, Ryan Cruz at Citizens for a Healthy Bay on June 7, 2016 states:
(Note: the underlining, i.e., emphasis, is mine. - lbl)

"Citizens for a Healthy Bay has reviewed their rule and found several alarming deficiencies. Overall, the proposed rule would allow a <u>slower and less extensive spill evaluation and response planning</u> than is currently required for vessel spills."

To paraphrase my understanding of CHB's examination of the plan:

TOO SLOW: No required action until hour six. (Whereas vessel leaks in Commencement Bay require action with 1.5 hours.)

NO EQUIPMENT: Equipment that responds to vessel leaks, such as aerial surveillance and containment equipment, is not required.

SENSITIVE HABITATS NOT IDENTIFIED: The rail plan does not require that all traversed areas be studied and a protection plan for any sensitive habitat be established. (The vessel plan does.)

HAZARDOUS SPILLS FROM TRAINS
-- RECENT EXAMPLES:

(Note: the underlining and/or bolding, i.e.., emphasis, is mine. - lbl) (Excerpts:)

(1) June 3, 2016, Mosier, Oregon: (last week)

On June 3rd along the Columbia River Gorge near Mosier, Oregon, **eleven cars carrying Bakken crude oil** derailed. I'm sure you're aware of all of the "fallout."
Hearsay, from a Portland friend: Residents and authorities in Mosier now say they want no shipping of oil by train through their area. The product was headed to a refinery in Tacoma.

(2) March 1, 2016, Ripley, New York

http://news.yahoo.com/train-leaks-ethanol-derailing-n-y-safety-technology-134248457.html
"A 16-car train went off its tracks near Lake Erie on Wednesday, and more than 50 homes in Ripley, N.Y., were evacuated as officials worked to contain leaking fuel.

The Norfolk Southern train was carrying fuel, and **two of the 16 derailed cars began leaking ethanol** when a patched puncture and gasket gave way. The sheriff reported no injuries, and crews from Norfolk Southern were preparing to remove any soil contaminated by the fuel leak, spokesman Dave Pidgeon told Reuters."
http://www.wcyb.com/news/containment-effort-after-train-derails-in-new-york/38296114

No injuries or fires were reported, but emergency responders were on the scene to contain the spill. "This could have been catastrophic, " Gerace said.

He added that crews were working to transfer the ethanol off of the affected train cars and remove it from the scene. "We are also testing and removing impacted soil in the area," Pidgeon said.

Gerace said crews were also trying to prevent the ethrom *(sic: ethanol from)* leaking into the sewage system and a nearby lake.

(3) Two in South Dakota (Tulare and Aberdeen) on June 9, 2016: (yesterday)
http://www.ksfy.com/content/news/Train-carrying-chemicals-derails-near-Tulare-382433651.html

". . . The train went off the tracks around 5:30 p.m. Thursday. No one was hurt. According to BNSF Public Affairs Director Amy McBeth, nine cars derailed. Six of those were ethanol cars, the other three were grain loads . .

"Another BNSF train derailed in the area earlier in the day, McBeth says. 7 grain cars derailed at the BNSF yard in Aberdeen. No one was hurt in that derailment."

MORE SPILLS (INCREASED TRAIN TRAFFIC):

As stated by Ryan Cruz of CHB:

" . . . **Washington's crude-by-rail traffic is expected to triple by 2020, and triple again by 2035.**"

As stated in the article about the Ripley, NY spill:http://news.yahoo.com/train-leaks-ethanol-derailing-n-y-safety-technology-134248457.htm "The accidents have occurred as **the number of trains transporting fuel around the country has increased by 4,000 percent since 2008**, according to the Association of American Railroads, a sometimes unnoticed side effect of the growing domestic oil industry."

IN SUM:

More . . . Hazardous Spills . . . but Less Protection.

Your proposal provides assistance, but at a low standard: it should be more effective and more rapid.

Please ensure that our railroad plan will at least have the functionality of our vessels plan.

Thank you

Laurie Lawhon

I am writing to give comment to the Oil Contingency Plan you are developing.

We all know that oil trains running through communities are bombs waiting to go off, and that our natural resource, oil, is being exported to benefit foreign countries, corporations, and the rich.
It is time to force this practice to stop.

BUT, in regard to the legislation being worked on now, there are several alarming deficiencies. Overall, the proposed rule would allow a slower and less extensive spill evaluation and response planning than is currently required for vessel spills.

But, please go beyond this as well. These trains should NOT be allowed to travel under the city of Seattle, for example. The risk is far too great. An accident like the one in Oregon a few days ago would devastate the city. Please change the rules so industry must travel around cities. Too bad if it costs them extra. They are making billions, they should have to build infrastructure projects to allow their profits.

Thank you,

Sincerely,

Leah Boehm Brady

I'm Linda Garcia. I'm a resident of Fruit Valley. The neighborhood that Port of Vancouver is located in, and listening to I'm probably going to echo a lot of what Dan and Don have already said but I felt that is important to repeat. Some of the Q&A that I listened in on earlier mentioned… there seemed to be an alarming disconnect and so I appreciate all of the effort and time that Ecology has put into this that the disconnect that I picked up on was… there's a lot of attention given to spills in the river that as Dan mentioned rivers can be on fire, and so, with oil spills if a fire occurred, there's also a huge concern particularly downtown Vancouver and the Fruit Valley neighborhood where there are no emergency evacuation plans in place at this point that if we were to work on it, we only have one main exit point that doesn't go directly near where any spills would occur but it also still goes over the railroad track. So if there were any type of incident there, we're stuck. I live exactly right between the railroad tracks and where the proposed Tesoro facility would be located. So the other concern is air quality itself. If there were spill to occur and there were fire regardless of whether it's on land or on water the toxins that would be released are deadly and so if we're stuck there, there is no chance of survival. That's a huge concern for those of us who do live in Fruit Valley. I guess I'll close it quickly just to say that there's so much talk here today about worst case scenario and I appreciate everybody looking into the worst case scenario but I think we need to flip that and be positive and say the best case scenario would just be not to have that terminal built at all and not have the oil trains coming through at all. Thank you.

Linda Garcia

As the recent derailment, spill and explosion in Mosier OR demonstrates, oil by rail is not safe. The derailment occurred at an intersection that was recently inspected. To extinguish the fire, 1.500 gallons of water/ min for over 8 hours. BNSF estimates a more severe catastrophe could cost $775 million and exceed their insurance coverage. How much can our state cover? How much should we be willin to cover? We need to prevent this from happening by not transporting oil by rail. This type of catastrophe can't be mitigated.

Liz Spoerri

June 9, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC:Oil Spill Contingency Plan – Railroad. I am a Tacoma resident and feel deeply about protecting our beautiful area from damage as I see so many oil tankers pass through our city and along our waters every day. I am concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035.

The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Linda Ann Fortune. ED.D.
4114 N 30th St.
Tacoma, Washington 98407

We are living in the midst of Coal, Oil, and Chlorine Gas (Mustard Gas) cars that are side-tracked for hours below our home in the Plat of Aspen, Marysville, WA, sometimes for days, the coal trains leaving a daily dusting of coal on our decks, and very concerned that an oil spill, along with coal, lumber and Chlorine Gas in a heavily populated area, would do irreprable damage, causing potentially many deaths of people and wildlife, when a train falls off the tracks. We are situated so that we can smell coal, oil, lumber and hopefully Chlorine Gas isn't seeping out, but whenf a spill occurs, it could very well kill hundreds if not thousands of people. Where are the Chlorine Gas tankers going, and why does the State permit them on our railway system, along with commodities that will burn, and we have had more than one train derailment in the Everett area? I contacted the State to put a particulate monitor in our yard, with no response. We as citizens are extremely upset about coal, oil, and Chlorine Gas being sent via rail past our homes. We also no longer wish to hear the government discuss "Global Warming," when the government contributes to this problem. Stop sending coal, oil and Chlorine Gas to Canada and to Anacortes (oil) and allowing Canada to use our rail system that contributes to what government calls Global Warming. The noise from the staging trains below us is also deafening, and as Marysville is an "at ground" RR crossing, the danger becomes massive WHEN there is a derailment, not if. Thank you.

Lynda and George Wessman

DEPARTMENT OF ECOLOGY STATE OF WASHINGTON

Thank you for addressing the safe transport of oil across our state by rail and pipeline. These guidelines are necessary to ensure the safety of railroad workers & citizens, our waterways and aquatic species, our farmlands, terrestrial and avian species,and our businesses and infrastructure. Rail & pipeline safety measures are long overdue and it is imperative to implement and stringently enforce these measures.

After the recent derailment in Mosier, Oregon, this is even MORE URGENT!

WAC 173-185-040 Enforcement and penalties.

Any violation of this chapter 'may' be subject to enforcement and penalties under RCW 90.48.140 and 90.48.144. To ensure accountability, I believe this wording should be changed to 'any violation of this chapter WILL be subject to enforcement and penalties under RCW 90.48.140 and 90.48.144.'

WAC 173-185-070 advance notice 2(c)

Railroad route taken to the facility within the state, 'if known'

I have serious doubts that the railroad would not know which routes are used for these shipments. Once again, to ensure accountability, Ecology should incorporate language in the final rule assuming the route is known and require the facility to provide full documentation if unknown.

The infrastructure supporting the heavy loads of both coal and oil trains needs to be seriously addressed before continuing to allow the transport of these hazardous cargo.

I live on an unstable bluff within the blast zone. There have been numerous slides and at least one train derailment.

Passenger trains are not allowed on the tracks after a slide, but freight, including coal and oil trains, is allowed. These extremely heavy trains cause more vibrations than passenger trains and should be delayed the same as passenger trains.

I belong to the Snohomish Train Watch group, which formed to monitor the transport of coal and oil across the region, and to educate ourselves and get answers to multiple questions regarding safety and response plans. Unfortunately, BNSF and our fire chief were unable to give us their response plans specific to oil train derailment, fire, explosion because there were none.

Neither infrastructure nor tank car design had been addressed prior to these shipments.

I urge the Department of Ecology to implement the MOST STRINGENT prevention, preparedness and response rules applicable to transporting oil by rail.

Thank you,

Marilyn Boyd

1620 Hoyt Avenue

Everett WA 98201-2012

June 8, 2016

Linda Pilkey-Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey-Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I live near Tacoma and have family in Tacoma; I am concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for me and the Tacoma community and it deserves strong protection. I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of sixteen cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency to these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).

2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.

3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Mary Paynter
27220 10th Avenue South
Des Moines WA 98198

June 8, 2016

Linda Pilkey-Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Dear Ms. Pilkey-Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

The proposed rule does not adequately protect our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, the draft rule would not fulfill the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Maude A. Laslie
5346 Broad View Ave NE
Tacoma, WA 98422

UNION PACIFIC RAILROAD COMPANY
13181 Crossroads Parkway North, Ste. 500
City of Industry, CA 91746

Melissa B. Hagan National Environmental Counsel &
Senior Counsel–Environmental Law

June 10, 2016

Department of Ecology Spills Program
Linda Pilkey-Jarvis
P.O. Box 47600
Olympia, WA 98504-7600

Submitted via email: Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Union Pacific Comments regarding Washington Ecology Office of Spill Prevention and Response ("Ecology") Preliminary Draft Language: Chapter 173-186 Washington Administrative Code (Wash. Admin. Code), Oil Spill Contingency Plan – Railroad, implementing House Bill (HB) 1449.

Dear Ms. Pilkey-Jarvis:

This comment responds to the Proposed Regulations ("Regulations") implementing Washington's House Bill 1449 ("Statute") circulated on April 20, 2016 by the Department of Ecology ("Ecology").

The safe transportation of oil by rail is a paramount concern for Union Pacific. Union Pacific has an interest in preventing any rail-related accident involving oil and in ensuring a swift and effective response to any such incident should it occur. These regulations cover subjects that Congress has chosen to regulate at the federal level, rather than the state level. The Secretary of Transportation has promulgated detailed regulations covering the same subject matter as HB 1449, so the Federal Railroad Safety Act preempts those state requirements. In addition, the ICC Termination Act will also preempt the regime.

I. The Regulations Will be Preempted by the ICC Termination Act.

Any effort to regulate railroad operations necessarily requires a discussion of federal preemption. Congress' assertion of federal authority over the railroad industry has been recognized as "among the most pervasive and comprehensive of federal regulatory schemes." *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981). The ICCTA confers exclusive jurisdiction over licensing and economic regulation of interstate railroad operations on the Surface Transportation Board ("STB").

The federal courts have repeatedly recognized that these provisions broadly preempt state laws regulating transportation operations. See, e.g., *City of Auburn v. United States*, 154 F.3d 1025, 1031 (9th Cir. 1998) (describing language of § 10521(b)(2) as "broad" and giving [Surface Transportation Board] "exclusive jurisdiction over . . . operation . . . of rail lines"); *CSX Transp.,*

Inc. v. Ga. Pub. Serv. Comm'n, 944 F.Supp. 1573, 1581 (N.D. Ga. 1996) ("It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority."). The STB observed that "[e]very court that has examined the statutory language has concluded that the preemptive effect of Section 10501(b) is broad and sweeping, and that it blocks actions by states or localities that would impinge on . . . a railroad's ability to conduct its rail operations." *CSX Transp., Inc.—Pet. for Declaratory Order*, 2005 WL 584026, at *6 (STB served Mar. 14, 2005).

Over the years, federal courts and the STB have found two types of state regulations of railroads to be so pernicious as to be "categorically" preempted, without any inquiry into the State's reason for the regulation or burden on the railroad industry. First, States are categorically prevented from intruding into matters that are directly regulated by the Board (e.g., railroad rates, services, and licensing). *See 14500 Limited LLC—Pet. For Declaratory Order*, FD 35788, slip op. at 4 (served June 5, 2014) (citing *City of Auburn*, 154 F.3d at 1029-31). Second, States cannot impose permitting or preclearance requirements.

The STB has reasoned that these kinds of regulation, by their nature, can be used to deny a railroad's ability to conduct rail operations that the STB has authorized. *Id.* Thus, state permitting or preclearance requirements—including environmental and land use permitting requirements—are categorically preempted. *City of Auburn*, 154 F.3d at 1029-31. Otherwise, state authorities could deny a railroad the right to construct or maintain its facilities or to conduct its operations, which would irreconcilably conflict with the STB's authorization of those facilities and operations. *14500 Limited* at 4 n.5 (*citing City of Auburn*, 154 F.3d at 1031; *CSX Transp., Inc.—Pet. For Declaratory Order*, FD 34662, slip op. at 8-10 (STB served Mar. 14, 2005)).

Federal law requires Union Pacific to transport all commodities, including crude oil, upon reasonable request. Union Pacific cannot stop transporting crude oil through Washington State. It has a federal common carrier obligation under 49 U.S.C. § 11101 to provide transportation for commodities that have not been exempted from regulation pursuant to 49 U.S.C. § 10502. Crude oil has not been exempted from this obligation. "The common carrier obligation," the Board thus explained, "requires a railroad to transport hazardous materials where the appropriate agencies have promulgated comprehensive safety regulations." *See Union Pacific R.R. Co.—Pet. For Decl. Order*, FD 35219 (STB served June 11, 2009).

The Regulation's proposed substantial monetary fine and threat of imprisonment, is in effect, a bar to railroad operations unless those operations are pre-approved by the state. *See South Dakota v. Burlington Northern & Santa Fe Ry.*, 280 F.Supp.2d 919 at 934 (D.S.D. 2003) ("The power to punish with huge monetary penalties is the most stringent 'regulation' possible."). Subjecting railroads to heavy penalties and potential criminal penalties when they must operate is clearly in contravention to ICCTA. See 49 U.S.C. § 11101. As written, the Regulations indicate that Ecology may, in its discretion, deny the plan or delay its approval, and, therefore,

block rail operations in Washington. The Regulations create preconditions to the ability of a railroad to meet its common carrier obligation to serve its customers. See 49 U.S.C. §11101.

Federal law also preempts "state laws that may be reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation." *See NY Susquehanna & W Ry. v. Jackson*, 500 F.3d 238, 253 (3d Cir. 2007).

The Regulations will be preempted on an "as applied" basis because they would unreasonably burden and interfere with rail transportation and create the potential for a patchwork of regulations that could result in a railroad's being subject to several different and possibly conflicting state and local regulations. *See Ass'n of Am. Railroads*, 2007 WL 2439499, at *8 (finding rules targeting unnecessary idling to be "exactly the type of local regulation Congress intended to preempt by enacting the ICCTA in order to prevent a 'patchwork' of such local regulation from interfering with interstate commerce"); *CSX Transp., Inc. v. Williams*, 406 F.3d 667, 673 (D.C. Cir. 2005) ("localized regulations would likely have a 'practical and cumulative' impact rail operations on the national rail network.").

II. The Federal Pipeline and Hazardous Materials Safety Administration (PHMSA) Existing Rules Regarding Oil Spill Response Plans Preempt the Regulations Under FRSA.

The Regulations will also be preempted by the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20106. The Pipeline and Hazardous Materials Safety Administration (PHMSA) oil spill response plan rules are in 49 CFR Part 130. PHMSA is in the process of supplementing those rules per the advanced notice of proposed rulemaking. 79 FR 45079.[1]

The FRSA seeks to make laws or regulations uniform related to railroad operations. A state may only adopt or enforce laws related to railroad safety until the Department of Transportation does so. Such a law or regulation may not be more stringent than the federal law or regulation. 49 USC § 20106 (a) (2) (a state may only adopt or enforce a more stringent law if criteria are met that are not applicable here). § 20106 says that: "A state may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation…prescribes a regulation or issues an order *covering* the subject matter. (emphasis added) "

[1] The current PHMSA rulemaking for oil spill response plans will be released this month. On August 1, 2014, PHMSA published its advanced notice of proposed rulemaking entitled, Hazardous Materials: Oil Spill Response Plans for High-Hazard Flammable Trains. 79 FR 45,079. In Section 7307 of the Fixing America's Surface Transportation Act, Pub. L. 114-94, Congress required PHMSA to report its progress on these regulations every ninety days until the final rule is issued, clearly showing Congress' intent that these response plan requirements be established at the Federal level.

The United States Supreme Court in *CSX v. Easterwood*, thoroughly analyzed when federal regulations "cover" the subject matter of a state requirement. Noting that "cover" was a somewhat restrictive term, the Court held that "[the party asserting preemption] must establish more than that [the regulations] 'touch upon' or 'relate to' the subject matter … preemption will lie only if the federal regulations substantially subsume the subject matter of the relevant state law." 507 U.S. at 664-65 (citations omitted).

PHMSA has substantially exercised its statutory authority over oil spill response plans in 40 CFR Part 130.31, which lists the requirements for railroad oil spill response plans. PHMSA has published its intent in the Federal Register to expand the requirements, many of which overlap with the current Regulation. *Burlington N. & Santa Fe Ry. Co. v. Doyle*, 186 F.3d 790 at 795 (7th Cir. Wis. 1999) ("For preemption, the important thing is that the FRA considered a subject matter and made a decision regarding it"). Through the PHMSA rulemaking, the Federal government is taking a comprehensive look at how railroads should report their contingency plans for accidental release of crude oil, taking into account all potentially affected stakeholders across the United States.

III. Discussion of Washington Regulation

The Draft Regulations implementing HB 1449 confirm that Washington intends to regulate railroads' conduct in a variety of respects that federal law prohibits. The Statute imposes three types of impermissible obligations, specifically concerning: (1) *oil spill prevention*, (2) *oil spill emergency response*, and (3) *pre-clearance mandates*. The Regulations leave no doubt that the State's implementation of the statute will violate federal law as to each of those categories.

Spill Prevention

With respect to oil spill prevention, the Regulations require a Union Pacific to include in its oil spill contingency plan the prevention measures it will use to reduce or mitigate potential hazards, including inter alia the schedules, methods, and procedures for testing, maintaining, and inspecting equipment and other structures. See Wash. Admin. Code §§ 173-186-220; 310; 320; 330; 340; 350; 360; 370; 380.

Emergency Response

With respect to emergency response, the Regulations contain numerous requirements that regulate the actions a railroad must undertake in the immediate aftermath of a spill. For example, the regulations require facilities to take action within specified hours of a spill, which include air monitoring, conducting a site and safety assessment, deploying containment resources, responding to in situ burning, shoreline cleanup and wildlife rescue and rehabilitation. *See id.* §§ 310; 330; 340; 350; 370.

The Regulations also prescribe a containment and recovery timeline that requires railroads to contain specified percentages of a worst case scenario spill. *See id.* § 310. In addition, the

Regulations impose drilling obligations on railroads in order to ensure that railroad personnel and contractors are able to quickly respond in the event of a spill. *See id.* §§ 500; 510; 520. The Regulations detail numerous drill objectives a railroad must satisfy. *See id.* § 520; compare 49 C.F.R. § 130.31(b)(5) (prescribing oil spill response drilling and training requirements under federal law). Through these and other provisions, the State has imposed its own oil spill prevention and emergency response requirements on railroads—precisely what federal statutes prohibit.[2]

Pre-Clearance Mandates

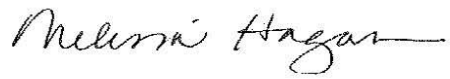
In addition, the Regulations implementing HB1449 also contain unlawful preclearance mandates. The rules require that Union Pacific must submit its oil spill contingency plans for the Administrator's review and approval within ninety days of the Regulations' effective date. See Id. § 120. This requirement is preempted under the Interstate Commerce Commission Termination Act. Failures to comply with this regime can result in criminal sanctions including fines and imprisonment, in direct contravention of federal law, see id. § 610(4), (5)—and the Regulations only compound these legal infirmities.

IV. Conclusion

Union Pacific is committed to safely transporting oil throughout the United States, and consistent with that commitment will continue to implement the highest degree of care and diligence in adhering to, and surpassing, its federal obligations in these areas. Washington may not, however, enforce its own regulations addressing the subjects discussed above. Nor may the State impose pre-clearance requirements on Union Pacific that interfere with its ability to discharge its federal common carrier duties or usurp the authority of the Surface Transportation Board to regulate railroad operations.

Regards,

UNION PACIFIC RAILROAD COMPANY



Melissa B. Hagan

[2] This comment does not catalogue every draft regulation that would be preempted by federal law. With respect to each category of preempted obligation, the examples provided are illustrative rather than exhaustive.

Citizens for a Healthy Bay

June 10, 2016

535 Dock Street
Suite 213
Tacoma, WA 98402
Phone (253) 383-2429
Fax (253) 383-2446
chb@healthybay.org
www.healthybay.org

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Executive Director
Melissa Malott

Board of Directors
Jeff Barney
Bonnie Becker
Cheryl Greengrove
Kathleen Hasselblad
Bett Lucas
Melissa Braisted Nordquist
Marco Pinchot
Lee Roussel
Angie Thomson
Sheri Tonn

A tax-exempt
501(c)(3) Washington
nonprofit corporation

Dear Ms. Pilkey Jarvis:

Thank you for providing Citizens for a Healthy Bay the opportunity to review and comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad (hereinafter sometimes the "rail rule" or "rail regulation").

Citizens for a Healthy Bay (CHB) is a 25-year-old environmental organization whose mission is to represent and engage citizens in the cleanup, restoration and protection of Commencement Bay, the surrounding waters and natural habitat. We are a 501(c)3 nonprofit providing practical, solutions-based environmental leadership in the Puget Sound area. We work side-by-side with local citizens, businesses and governments to prevent water pollution and make our community more sustainable.

Staff and expert members of the Policy and Technical Advisory Committee with CHB have attended the WA State Dept. of Ecology (Ecology) public hearing and reviewed the proposed rule and related information. Overall, we find the proposed rule to be inadequate in the protection of our waters and natural resources. Our comments are outlined below.

Background

The Oil Spill Contingency Plan – Railroad rule (the rail rule), proposed by Ecology, would apply to railroad facility owners or operators, or any representative of the regulated facilities, to establish railroad oil spill contingency plan requirements, drill and equipment verification requirements, and provisions for inspection of records, effects of noncompliance and enforcement in the state of Washington.

Ecology has estimated that future crude-by-rail traffic in Washington will triple by 2020 and triple again by 2035. Following the 2015 legislative session, Ecology was directed to develop rules establishing contingency planning requirements for railroads transporting oil in bulk. These plans facilitate first responders with awareness of the locations of oil transport, oil response equipment and response training.

General Comments

CHB has significant concerns related to the effectiveness of this proposed rule, particularly when compared with the oil spill contingency plan rule for vessels (the vessel rule).[1] The proposed rail regulation allows much slower and less extensive spill evaluation and response planning than is currently required for vessel spills. This proposed rule is a massive step backwards from Ecology's preliminary proposed rail rule[2], which would have avoided several of the problems with the current draft. We think the preliminary proposed draft is much stronger in protecting the public and property.

Specific Comments

CHB is concerned about three major deficiencies in the proposed rule: planning standards, response equipment and geographic response plans. Our main concerns are detailed below.

Planning Standards

The existing vessel rules provide a planning standard for Commencement Bay/Quartermaster Harbor[3] and the proposed rail rules propose a planning standard for Tacoma.[4]

The proposed rail rule allows slower and less extensive spill evaluation and response planning than is currently required for vessel spills in Commencement Bay.[5]

The existing Commencement Bay standards for vessels provide that on-site assessment and appropriate air monitoring occur and 1,000 feet of boom arrive within 1.5 hours. Additional boom arrives within both two and four hours. In comparison, the proposed rail planning standards provide for no conduct until hour six.

Clearly, there is a major discrepancy in the speed and magnitude of the planned response to an oil spill depending on its mode of transportation. This gap in planning does not allow for adequate protection of Commencement Bay, its surrounding waters and natural

---

[1] WAC 173-182-380.
[2] http://www.ecy.wa.gov/programs/spills/rules/DraftLanguage1514.pdf.
[3] WAC 173-182-380.
[4] WAC 173-186-310.
[5] WAC 173-182-380.

habitat. Rail transport is adjacent to Commencement Bay as well as significant rivers and streams.

These stark differences between Commencement Bay vessel planning standards and the proposed rail standards are especially inappropriate in areas of Puget Sound where rail runs alongside Puget Sound, and any rail spill necessarily drains into Puget Sound. Under the proposed rail rule, if a tank vessel runs onto the rock bulkhead along a rail line and spills oil, the planning standards provide for response by 1.5 hours; but, if a train spills the identical amount of the identical product at the identical location, all of which drains into Puget Sound, the proposed standards provide for planning for a response by six hours. From the standpoint of protecting and cleaning up our waters, there seems no justification for this difference.

As with Commencement Bay, there seems no justification for slower and lesser planning standards for rail than for vessels elsewhere in Washington State.

CHB urges Ecology to revise the rail planning standards to incorporate the vessel planning standards for Commencement Bay.[6] For the same reason, it should also incorporate the stricter vessel planning standards for all other areas of Washington State.

Response Equipment

The proposed draft rule does not reference all response equipment that is required by the vessel rules, including aerial surveillance, high current boom and planning for dispersants.[7]

Aerial Assets: The existing vessel rules require aerial surveillance including documentation of aerial surveillance capabilities and the requirement of thermal, infrared and multispectral equipment.[8] This rule states, "In order to provide best achievable technology for aerial oil surveillance, vessel plan holders must also provide for access to a helicopter or fixed wing asset, under contract or other approved means, with the capability to provide a strategic picture of the overall spill; assist in location of slicks when they are not visible by persons operating at, or near, the water's surface or at night; extend the hours of clean-up operations to include darkness and poor visibility; identify oceanographic and geographic features toward which oil may migrate."[9] These sections were added to provide some capability to detect and track spills at night or in fog, when on-the-water visibility is limited. Comparable sections do not appear in the proposed rail regulations.

---

[6] WAC 173-182-380.
[7] WAC 173-182-380.
[8] WAC 173-182-320.
[9] WAC 173-182-321(3).

CHB requests that a provision parallel to WAC 173-182-321(3) be added to the rail rules to assure the availability of aerial assets.

High Current Boom: The Commencement Bay planning standard for vessel requires "additional boom… capable of encountering oil at advancing speeds of at least two knots in waves. This boom shall be of a type appropriate for the operating environment."[10] Comparable language does not appear in the proposed rail rules.

CHB requests that language comparable to WAC 173-182-380 be added to the rail rules to assure the availability of boom adequate for conditions in the operating environment.

Dispersants: Vessels carrying group two or three persistent oil transiting an area where use of dispersants has been preapproved or can be approved on a case-by-case basis must plan for possible use of dispersants.[11] Comparable language does not appear in the draft rail rules.

CHB suggest that language parallel to WAC 173-182-325 be added for trains operating along waters where dispersants may be useable.

Geographic Response Plans

The purpose of a geographic response plan (GRP) is to identify "sensitive areas and develop strategies to protect the resources, including information on natural resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics;(c) Identification of public resources, including public beaches, water intakes, drinking water supplies, and marinas;(d) Identification of shellfish resources and methods to protect those resources;(e) Identification of significant economic resources to be protected in the geographic area covered by the plan…".[12] GRP's are set forth in the Northwest Area Plan and rail contingency plans may refer to that area plan to meet this requirement.

Under vessel regulations, if "approved GRPs do not exist in the [area plan], plan holders will work with Ecology to determine alternative sensitive areas to protect."[13] The proposed rail rules require plans to refer to and be consistent with the Northwest Area Plan[14], and provide identification and protection of sensitive areas.[15] However, they do not appear to include the language of WAC 173-182-510(3), requiring a plan holder to work with Ecology to identify GRPs for areas where they have not been established.

---

[10] WAC 173-182-380
[11] WAC 173-182-325.
[12] WAC 173-182-510(2)(b).
[13] WAC 173-182-510(3).
[14] Proposed WAC 173-186-220(2).
[15] (WAC 173-186-220(3)(n).

Since rail may traverse areas that have not traditionally been reviewed for GRPs, CHB requests that language parallel to WAC 173-182-510(3) be added to the final rail rule.

Derailment and Fire Response

The Mosier derailment and fire identifies an omission in the proposed rail rules – there is little or no mention of fire, smoke or firefighting equipment or personnel.

The planning standards should provide for the arrival of water pumping equipment sufficient to cool tank cars not on fire as quickly after a crash as possible – sooner than 1.5 hours, much less six. Water sources should be pre-identified and pre-planned. Foam and equipment for suppressing an oil fire should be planned to arrive on the same expedited basis if needed. Ecology should evaluate the impact of fire suppressing foam on waters and aquatic life and develop guidelines on when, where and how foam can be used. Rail spill responders need proper firefighting training and equipment.

All fire departments along track, both professional and volunteer, need proper equipment and training. Railroads should not be permitted to defer firefighting to public or volunteer fire departments (although such departments may, of course, respond first), but should be required to include firefighting as part of their spill response, and should be prepared to take over from local fire departments within hours.

The response equipment rules need to require adequate water-pumping equipment, including, perhaps, fireboats; firefighting foam and equipment for ground and aerial application.

Washington's oil spills program seeks to "maintain the best achievable protection that can be obtained through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable."[16] The proposed rail rules do not meet this standard since they contemplate slower and less extensive spill evaluation and response planning than is currently required for vessel spills and do not reference certain response equipment required by and available under the vessel rules.

There are two facilities are receiving or have the capacity to receive crude-by-rail within the Port of Tacoma: U.S. Oil Refinery and Targa Sound Terminal. CHB has a direct interest in ensuring that the transport of oil to these facilities does not result in any environmental damage to local waterways. Due to the predicted increase in the volume of crude-by-rail traffic headed to Tacoma facilities, the recent history of derailments and spills within the U.S. and Canada, and the hazardous nature of crude oils, we strongly encourage Ecology to implement the changes outlined above to establish a more stringent rule for railroad contingency plans.

---

[16]RCW 90.56.005(4)(i) (emphasis added). See also WAC 173-182-010(1)(e).

Please contact our office if there are questions regarding our comments. Thank you for the opportunity to provide comments on the proposed rule.

Sincerely,

Melissa Malott
Executive Director, Citizens for a Healthy Bay

June 9, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600 Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I live in Puyallup and am concerned about the destruction a potential oil spill would have on my family, my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill. I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above. Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Michael R. Craven
1535 27th Ave. SE
Puyallup, WA 98374

RECEIVED
Department of Ecology
JUN 16 2016
Spills Program

new progressive alliance
NewProgs.org

June 12, 2016

Department of Ecology

Washington state

PO Box 47600

Olympia, WA 98504-7600

Subj: Chapter 173-185 WAC Oil Movement by Rail and Pipeline Notification and Chapter 173-186 WAC Oil Spill Contingency Plan – Railroad.

The dangers of most of our rail infrastructure being over a century old are illustrated by the 47 people who died in the Quebec explosion of 2013. Since then there have been 12 train explosions so far and about 15 derailments a year, including on the newer supposedly safer CPC-1232 rail cars. Most recently, a crude oil train derailed and caught fire in Mosier, Oregon. The New Progressive Alliance at http://newprogs.org/ urges the Washington state Department of Ecology to adopt increased safety rules to deal with this danger.

There has been a huge expansion in other pipelines and dangerous fuel transportation by rail and truck. Even more than transportation, the problem is we are not leaving fossil fuels and dirty Tar Sands oil in the ground in the first place.

See references 7, 8, 11, 13, 18, 19, 24, 31, 47, 55, 57, 62, 138, 154, 165, 214, 304, 310, 319, 331, 335, 337, 338, 341, 381, 383, 384, 395, 427, 447, 457, 487, 501, 508, 510, 512, 530, 536, 538, 539, 543, 548. 549, 566, 567, 568 - 574, 577, 578, 586 - 588, 596 - 598, 605, 606, 640, 721 - 724, 734 - 736, 778 - 780, 784, 849 - 855, 891, 974 - 981, 1081, 1082 - 1093, 1120, 1204 - 1212, 1354, 1389 - 1430, 1564-1565, 1603-1619, 1695-1697, 1734-1737, 1742, 1743, 1775, 1792-1809, 1978-1986, 2155-2175, 2242, 2251, 2320, 2459-2468, 2575-2579, 2812, 2825-2834 of the document at http://www.newprogs.org/the_environment_under_the_democratic_republican_uniparty

2025 to meet even this small improvement. Since 47 people died in the Quebec explosion of 2013 there have been 12 train explosions and about 15 train derailments a year. This is an unacceptable risk.

- ES-17 says the applicant will "conduct a study to identify an appropriate level of financial responsibility for the potential costs for response and cleanup of oil spills, natural resource damages, and costs to state and affected counties and cities for their response actions to reduce the risks and impacts from an oil spill." It is difficult to imagine a statement more naïve or unfamiliar with what repeatedly happens in fossil fuel spills and accidents. Fossil fuel companies say they will be responsible and then leave the jurisdiction or declare bankruptcy resulting in leaving tax payers and the government to clean up their messes after they have absconded with the profits.

Recommendations:
We join other organizations in making the following recommendations.

For the Rail and Pipeline Notification rule (Chapter 173-185 WAC):
(1) Provide more detailed information on the types of oil, volume of different types of oil, oil spills, etc. consistent with the route segments to understand areas where unique risks or problems exist.
(2) Incorporate language in the final rule that makes it clear that the agency will assume that the route is known and the burden is on the facility to show that they do not know the route taken by an oil-by-rail shipment through documentation. This will prevent the facilities from cutting corners in reporting requirements.
(3) Centralize information for rail, pipeline, and vessel reporting systems so we can have a one stop shop for public information. This includes the TYPE of oil as well as how much oil and how the oil is traveling.
(4) Continue to require facilities to report all oil shipments scheduled to arrive at their facility.
For Railroad Contingency Plan rule (Chapter 173-186 WAC):
(1) Contingency plan requirements for railroads should be comparable with the most rigorous contingency plan requirements for pipelines and vessels. This includes the 1-, 2-, and 4-hour planning standards and aerial surveillance capabilities.
(2) Require planning standards for diluted bitumen that include the recommendations from the National Academy of Sciences' Spill of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects and Response
(3) Retain the definition of a 'worse case spill.'
(4) Ensure safety of first responders through adequate protective gear.
(5) Update the cost-benefit analysis to include the analysis of insurance expert Robert J. Blackburn, hired by the City of Vancouver, that indicates a worse-case scenario in Vancouver could cost $6 billion.
(6) Establish a prioritization process for processing and/or paying damage claims if they exceed the money available for compensation.
(7) Identify adequate planning points for the distribution of oil spill response equipment and trained personnel.

Patrick M. Brady CIH, CSP
General Director Hazardous
Materials Safety

BNSF Railway Company
2500 Lou Menk Drive
AOB-3
Fort Worth, TX 76131
817-352-3652
817-821-1325 (Cell)
Patrick.Brady@bnsf.com

June 10, 2016

Linda Pilkey-Jarvis /Dale Jensen
Spill Prevention, Preparedness and Response Program
WA Department of Ecology Spills Program
PO Box 47600
Olympia, WA 98504

VIA EMAIL to: jil461@ecy.wa.gov

Re: April 6, 2016 WA Ecology Office of Spill Prevention and Response-Preliminary Draft Language: Chapter 173-186, Washington Administrative Code (WAC). (Regulations Implementing House Bill (HB) 1449)

Dear Ms. Pilkey-Jarvis and Mr. Jensen:

BNSF Railway Company ("BNSF") submits the following comments in response to the Proposed Draft Language: Chapter 173-186, WAC dated April 6, 2016 implementing HB 1449 ("Proposed Regulations").

At the outset, BNSF reminds you that as an interstate rail common carrier, BNSF's operations are governed by the Interstate Commerce Commission Termination Act [49 U.S.C. §10501 et seq. (ICCTA)], which generally preempts state and local regulation of rail operations. The Proposed Regulations appear to be an improper attempt to usurp the federal control of this field and thus are an impermissible exercise of the state's power. The Proposed Regulations also appear to intrude impermissibly on the uniform regulation of rail safety and hazardous materials transportation under, among other federal statutes, the Federal Rail Safety Act (FRSA), 49 U.S.C. § 20106 and the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. § 5125. Although these issues will likely be ultimately adjudicated, BNSF is also providing substantive comments on some aspects of the pending regulations for your consideration. In providing these comments, BNSF is not acquiescing to the state's ability to regulate in this way or otherwise waiving our concerns over the preemptive effect of federal law.

A 2015 amendment to RCW § 90.56.210(3) provides that "the department by rule shall determine the contingency plan requirements for railroads transporting oil in bulk." This direction, however, is tempered by the legislature's instruction that "the department shall ensure that to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law." RCW § 90.56.210(5).

In addition to an existing framework of federal laws and regulations on spill contingency planning, the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) has announced proposed rulemaking associated with Oil Spill

Planning. A Notice of Proposed Rulemaking from PHMSA is likely to issue in June 2016. Ecology should defer its adoption of a final rule until after the PHMSA rule issues.

As an initial matter, BNSF objects to the pending regulations as imposing a more stringent burden on selected transporters of oil by rail than that imposed on other forms of transportation moving oil to and through Washington.

To the extent Ecology seeks to proceed with issuing the rule despite the issues identified above and without waiving BNSF's objections and reservations, BNSF believes the rule would be improved in clarity and consistency with existing laws and regulations by implementation of the following modifications:

WAC 173-186-010 Purpose

BNSF proposes that WAC 173-186-010 be amended as follows:

Just as the planning standards do not equal clean-up standards, the proposed rule should also be clear that planning standards are not performance guarantees. To that end, paragraph 2(a) should be modified to provide that "The planning standards described in this chapter do not constitute "performance guarantees" for the purposes of imposing administrative, civil, or criminal penalties under any other law."

WAC 173-186-020 Applicability

According to legislative notes, the Railroad Oil Spill Contingency Plan regulation was the direct result of observations of crude oil moving by rail in unit trains. These trains are classified as High Hazard Flammable Trains (HHFT). Given the stated issue that the Proposed Regulations are purported to address, the Proposed Regulations should be tailored to planning relating to crude oil moving in HHFT.

To the extent ECY moves forward with the Proposed Regulation, BNSF recommends the language should be tailored as follows:

(1) This chapter applies to:

(a) Owners and operators of railroads moving oil in high hazard flammable trains and only includes track were the high hazard flammable trains are being transported.

(b) Any person submitting a contingency plan on behalf of a railroad regulated under this chapter.

(c) Primary response contractors under contract to rail plan holders.

(2) This chapter does not apply to:

(a) Railroads not transporting oil in High Hazard Flammable Trains (HHFT)

(b) Pipelines or facilities other than railroads. Contingency planning regulations for pipelines and facilities other than railroads are described in chapter 173-182 WAC.

WAC 173-186-040 Definitions "Oil" as Cargo and "Worst Case Spill" Volume

The definition of a HHFT per the United States Department of Transportation (USDOT) (49 CFR 171) is "a continuous block of 20 or more tank cars loaded with a flammable liquid or 35 or more tank cars loaded with a flammable liquid dispersed through a train."

For purposes of the Proposed Regulation, the definition of oil should include only oil being transported in commerce and therefore would not include locomotive and vehicle diesel and lube oil. "Oil as bulk cargo" is referenced in RCW § 90.56.010 (12)(b) which states "for the purposes of oil spill contingency planning, a facility also means a railroad that is not owned by the state that transports oil as bulk cargo".

The definition of oil or oils should be tailored as follows:

"Oil" or **"oils"** for purposes of applicability of the Act means oil of any kind that is liquid at twenty- five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 102(a) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499 nor does it include oil not being transported in commerce.

In the draft WAC 173-186-040 language, BNSF observes that ECY has incorrectly applied a "worst case spill" volume for a "vessel" to a railroad "Facility" transporting oil in bulk. RCW § 90.56.010 (12) (a) defines a "Facility" described as "any structure, group of structures, equipment, pipeline, or device, <u>other than a vessel</u>". Under the existing statutory and regulatory structure, railroads would be defined as an "onshore facility." RCW § 90.56.010 (20). Therefore, to be consistent with RCW § 90.56.010(28)(b), BNSF requests ECY revise WAC 173-186-040 "Definitions" to confirm that a "Worst case spill" in the case of a railroad would be no different than that defined for other onshore facilities and that is the largest foreseeable spill in adverse weather conditions"

Moreover, the proposed ECY definition of a railroad "worst case spill" is unreasonable and is incongruent with even other state calculations. *See e.g.,* Washington Attorney General's Report "Potential Fishing Impacts and Natural Resource Damages from Worst-Case Discharges (WCD) of Oil on the Columbia River" dated May 12, 2016 and the Utilities and Transportation Commission's (UTC) WCD. ECY's WCD would be essentially 6 times higher than any crude oil or ethanol unit train incident in North American involving CPC1232 or DOT117 tank cars.

RCW § 90.56.210(5) states that ECY "shall ensure to the greatest extent possible, requirements for contingency plans under this section are consistent with the requirements for contingency plans under federal law." As such, BNSF proposes to be able to submit "worst case spill" or "largest foreseeable spill in adverse weather conditions" volume engineering calculations to ECY for review that are consistent with PHMSA (49 CFR 130), US EPA (40 CFR 112.20) and pending PHMSA HM-251B rule regarding oil spill planning. This is consistent with WAC 173-182 for "onshore facilities" that allows an operator to determine "foreseeable" discharge based on a reasonable methodology, including a worst case spill volume calculations, used to arrive at the volume".

WAC 173-186-100 Authority to submit contingency plan

For consistency, BNSF proposes that this section be amended to include submission by nonprofit corporations established for the purpose of oil spill response and contingency plan coverage and of which the railroad owner or operator is a member as provided for in WAC 173-182-110.

WAC 173-186-120 Phase-in dates for this chapter

For consistency, BNSF proposes that WAC 173-186-120 be amended as follows: "(1) Existing railroads: Plan holders for Class I, II, and III railroads, if they transport crude oil, currently operating in Washington, shall submit plans to ecology no more than 120 days after the effective date of this chapter." to allow time for railroads to establish binding agreements with primary response contractors.

WAC 173-186-140 Significant changes to approved plans

BNSF proposes that WAC 173-186-140(a) be amended as follows: "(a) Notify ecology in writing within five days of the change". "Twenty-four" hour notification creates an excessive bureaucratic burden on the plan holder while providing no safety benefit to the state.

BNSF proposes that WAC 173-186-140(f) be deleted. Railroads and receiving facilities already are required to report changes in oil types shipped in Washington under federal rules and the pending WAC 173-185. Redundant notification requirements creates an excessive bureaucratic burden on the plan holder with no safety benefit.

WAC 173-186-210 (4) (a) Binding Agreement Statement

BNSF proposes to amend Section 173-186-210(4)(a) as follows: "Verify acceptance of the plan and commit to a safe and timely response to spills and to the substantial threats of spills that occur in, or could impact Washington waters or Washington's natural, cultural, or economic resources."

BNSF proposes to amend Section 173-186-210(4)(b) as follows: "Commit to having a Qualified Individual as defined in National Preparedness for Response Exercise Program (NPREP) on site within 6 hours after notification of a spill." Section (e) already requires plan holders to commit to working in unified command within ICS.

WAC 173-186-220 Contingency Plan General Content

Since "Facility" as defined in RCW § 90.56.010(12)(a) does not include tanks unless they transfer oil in bulk to or from a tank vessel or pipeline, BNSF proposes that WAC 173-186-220(3)(e) should be modified as follows: "Each plan shall provide a list and map of expected rail routes in Washington and a description of the operations covered by the plan, including locations of where bulk fueling occurs and an inventory of above ground storage tanks, if those tanks transfer oil in bulk to or from a tank vessel or pipeline."

As a common carrier the USDOT requires shippers to provide carriers with the basic description of a hazardous material. The basic description consists of the UN number, proper shipping name, hazard class, packing group, and an emergency contact telephone number. Rail carriers are not provided with the density, API gravity, oil group number and sulfur content of oil offered into transportation. However, during a hazardous materials emergency this information can be obtained from a shipper by calling the emergency contact number listed on the shipping documents.

As a practical matter, the requirements of this section should not differ from the requirements imposed on other industry under WAC 173-182.

WAC 173-186-220(n) Contingency Plan General Content -Requirements for Sensitive Area and Environmental Protection

Since development of quality and comprehensive GRPs within the 90-day (or proposed 120-day) period between when regulations are promulgated and Plan are submitted is infeasible, BNSF proposes that Section 173-186-220(n) be revised as follows:

> (n) Each plan shall include a description of the sensitive areas and a description of how environmental protection will be achieved, including containment, enhanced collection and diversion tactics or reference ecology and existing NWACP "Geographic Response Plans" (GRPs) or sensitive site databases.
>
> (n) (i) The plan shall include a summary listing of existing information on natural, cultural and economic resources, coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species, and presence of commercial and recreational species, physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics; public beaches, water intakes, drinking water supplies, and marinas; shellfish resources and significant economic resources to be protected in the geographic area covered by the plan.
>
> (n) (ii) If GRPs have been developed to meet these requirements, the plans may refer to the NWACP to meet these requirements. If railroad "facilities" occur in areas where description of the sensitive areas and a description of how environmental protection will be achieved do not exist, railroad plan holders will submit summary descriptions of the

sensitive areas and prepare booming strategy "control points" for major waterways in the vicinity of the railroad tracks.

WAC 173-186-610 Enforcement-Noncompliance

The proposed penalty of up to $100,000 per day for technical administrative-type violations of this regulations is excessive and, as drafted, this section purports to impose greater criminal liability for rail and otherwise appears inconsistent with the enforcement direction provided by statute in RCW 90.36.

BNSF appreciates ECY consideration of the above comment(s) and is willing to meet with you to resolve any remaining issues.

Sincerely,

Patrick M. Brady

As a resident of Bellingham.WA I am often in the blast zone of the RR tracks along the waterfront. The threat posed by the oil trains is present & real, & has been re-enforced by the Mosier.OR derailment. Despite the precautions taken along that rail line & the supposed pre-rip treatment of the Bakken crude's volatile components, the accident & subsequent fire occurred. This incident proves to me that all the oil trains are accidents waiting to happen, and could happen anywhere. The passage of the oil trains cannot be prohibited so the State of Wa must put in place all possible precautions,The sped limits should be lowered for oil trains, The Mosier train was doing 30 mph- obviously too fast. I don't know what the speed limits are here; the oil trains should go no faster than 20 mph.The tracks in OR had supposedly been inspected- every oil train should be preceded by a machine that would be checking the tracks as it moves along. The oil trains should be required to include a fire fighting unit following each oil train as local FDs such as Mosier's are not equipped to handle the conflagrations of burning Bakken crude.Every community the oil trains pass through is at unacceptable risk, & the State of WA must do all it can to lessen that risk.

Mike Sennett, Bellingham WA

Implement standards that are the strongest that can legally be set up.

We need to be on a path to clean energy. It is unfortunate that so much time, money, and energy needs to be spent on an outdated way of doing things.

1- But, safety for people and the environment is encouraged in the meantime. The number of humans in Seattle near train tracks is significant. Trains should not be running as close as they do, to begin, since spills can be predicted to happen, according to past spill records. (These are probably deflated records, also.)

So, protect to the maximum possible.

2-The costs in areas with less conspicuous living material - waters particularly - is as high, just not as politically noticeable. Protect as it is politically possible.

3 -True abilities to mitigate need to be defined. I am of the opinion that mitigation is not possible in order to prevent major human and wildlife costs. Include any data on this topic within this plan.

Nancy Hansen

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tacoma resident concerned about the destruction a potential oil spill would have on my family, my community and our natural environment.

Tacoma has grown into a community of common ground regarding protection of our environment. Our beautiful Commencement Bay is a focal point of our protection.

The proposed rule does not protect our community and natural resources from a spill. As you know, Crude-by-rail is rapidly increasing and traffic is expected to triple in Washington by 2020 and triple again by 2035. The recent derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is one of many incidents that adds urgency to our attention. Spills are inevitable.

Three major deficiencies in the proposed rule are: 1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380). 2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants. 3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

The draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. Nor does it meet the standards we, in Tacoma, want for our quality of life. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that will protect our water and the lives of the people of Tacoma. Thank you for your consideration. Please work to protect our shared natural resources.

Sincerely,

Nancy Newman Chapa

5302 N 46th St

Tacoma, Wa 98407

As a resident of Pierce county, I am concerned that the proposed oil-by-rail contingency plan has the deficiencies detailed below and ask you to ensure that these concerns are addressed.

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Kindest regards,
Patricia Tyvand
3804 N. 33rd St
Tacoma, WA. 98407
253-307-3614

The plan should include clearly delineated fiscal responsibility for the costs associated with spills. The plan should designate the specific corporations that produced the spilled oil and the specific corporations that loaded and transported the oil as being responsible for fully reimbursing every public agency, business, non-profit organization, and private individual who participated in spill response, or harmed or inconvenienced by the spill and its aftermath. The corporations must obtain and show proof of bonds sufficient to cover the full extent of these costs. The bonds must be from an independent insurance agency/entity with holdings certified and guaranteed to fully cover and dedicated to specific oil shipments for specified date ranges. The oil producing, loading and transporting corporations should not be allowed to "self-bond" including amongst themselves or with affiliated or financially linked corporations.

To a large extent, this financial responsibility plan could be designed by "reverse engineering" the financial responsibility plan established and implemented after the BP Deepwater Horizon spill that devastated ecosystems and lives of the Gulf Coast. The plan should establish a website now so that when a spill occurs the public agencies, businesses, non-profits, volunteers and harmed individuals can immediately log in to the site and submit records for their time, costs, and damages.

We must end the practices that allow the corporations that profit enormously from oil production and transportation to saddle the public and individual victims with the costs of cleaning up these toxic spills. In many cases these corporations (and their executives) pay no taxes - either because of their special tax loopholes or unscrupulous manipulation of tax codes. These corporations will only truly commit to preventing oil spills when they cannot escape paying for the full financial consequences of their actions.

Paula Rotondi

Hi Linda:
Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. I am a Tenino, WA resident concerned about the destruction a potential oil spill would have on my community and our natural environment.

I do not believe the proposed rule adequately protects our communities and natural resources from a spill.

Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.
4. It ignores the simple fact NOT A SINGLE first responder in Washington State is able to fight an oil train derailment and fire. Add to this, small towns like Tenino are served by all-volunteer fire departments.

Given these inadequacies, I contend the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. My strong preference is to halt ALL Bakken crude by rail shipments immediately. Outside of this, I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources.

Sincerely,

Phil Brooke
oldbrickhousefarm@yahoo.com
Tenino, WA

Dear L.P.J. of the D.E.S.P. 4.12.16

RECEIVED
Department of Ecology
APR 15 2016
Spills Program

Hello! my name is Dan Griffith and i am concerned about the "oil trains" that roll through the greater Spokane area. For many years i worked for sub-contractors for the oil industry in Alaska. T'was very nice for the bank account! Unfortunatly i noticed a trend toward the end of my career. That is oops! ~~that~~ it be cheaper to pay out to the legal profession than spend the money to be truly ready for a large ecological disaster. Because the L.L.C. and the ability of a holding company to file bankruptcy! Thus leaving the clean-up to the tax-payer, ie, corporate welfare. Also, what is the blast radius for 100+ rail car bleve? yikes!!

P. D. Griffith pardon my rotten spelling, Dan Griffith

MARTIN MARIETTA

Mr. Dan Griffith
3406C Beitey Rd.
Valley, WA 99181

SPOKANE WA 990
APR 2016 PM 3L

Linda Pilkey-Jarvis
Dept. of Ecology Spills Program
P.O. Box 47600
Olympia, Wash.
98504-7600

RECEIVED
Department of Ecology
MAY 04 2016
Spills Program

Comment on Oil Spill Contingency Plan -

It does seem very wise for our officials to be ready for a train derailment which resulted in an oil spill. I take no issue with this action. However, trains transport a number of nasty materials. They transport acids, bases, and other chemicals besides oil. Trains transport landfill. One can smell these trains coming a mile away. There must be ten landfill trains a day, each carrying who knows what.

I feel our officials should also be trained to respond to these other nasty materials in addition to oil. A ship should be made ready to respond to a spill along our waterways. The ship should be stocked full of all the needed equipment and ready to depart at a moments notcie.

One issue has come to my attention which should lesson the risk of a spill along most of our waterway. The Amtrak trains will soon be rerouted to a track not associated with freight traffic. This should reduce the chances of a derailment.

Sincerely, Randy S. Gray
30-APR-2016

June 10, 2016

Submitted via email: Linda.Pilkey-Jarvis@ecy.wa.gov and Kim.morley@ecy.wa.gov

Kim Morley
WA Department of Ecology, Spills Program
PO Box 47600
Olympia, WA 98504-7600

Linda Pilkey-Jarvis
WA Department of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600

RE: Comments on Chapter 173-185 WAC Oil Movement by Rail and Pipeline Notification and Chapter 173-186 WAC Oil Spill Contingency Plan – Railroad.

Dear Ms. Morley and Ms. Pilkey-Jarvis,

Thank you for this opportunity to submit comments on the draft rulemaking language for Chapters 173-185 WAC, Oil Movement by Rail and Pipeline Notification and 173-186 WAC, Oil Spill Contingency Plan – Railroad. These two rules represent important components of the state's overall safety mechanisms to protect communities and waterways from oil spills, derailments, and other such disasters related to oil transportation. We have decided to combine our comments on these two rules because they are different parts of the same overall issue. Overall, we applaud the Department of Ecology's draft rules and we strongly encourage Ecology to keep the existing parts of the rules and add the following:

Chapter 173-185, Oil Movement by Rail and Pipeline Notification

During the 2014 and 2015 legislative sessions, state leaders weighed what actions the state should take in the face new risks posed by oil transportation changes and the regulatory gaps that needed to be addressed to protect the public and the environment. After failing to pass legislation during the 2014 session, the Legislature directed the Department of Ecology (Ecology) and the Utilities and Transportation Commission (UTC) to conduct a thorough assessment of oil transportation safety risks and make recommendations to address these risks. The study included a long list of recommended actions including requiring facilities receiving oil to notify the state and enhancing contingency planning to improve spill response.[1]

A consistent issue of focus throughout the study process, legislative debate, public comment periods, and press coverage was the need for enhanced transparency with information reported to Ecology and available to the public on the volume, type, route, mode of transport, oil spills, and other related information on oil moving by rail and pipeline. Supporters of ESHB 1449 regularly pointed in testimony to the need to have all

[1] "Washington State 2014 Marine and Rail Oil Transportation Study", recommendation 10, p. 22, recommendation 30 on p. 126, https://fortress.wa.gov/ecy/publications/documents/1508010.pdf

modes of transporting oil treated similarly and the advance notice of transfer reporting system for vessels provided a good model for how to approach information and transparency on the rail and pipeline modes of transport.[2] Through improved transparency, the state and the public have a better understanding of oil transportation patterns, pinch points in the systems, areas where oil spills tend to occur en route to the facility, and types of oil being transported, which carry unique risks depending on the type of oil (e.g., oil sands v. Bakken).

Given the high public safety risks associated with oil transportation, the advance notice system was also intended to provide information, before oil arrives, to local governments and first responders. Once again, the unique and significant risks posed by the types and quantities of oil transported through our communities and the lack of transparency prior to the passage of ESHB 1449 put firefighters and emergency responders at a greater risk should a derailment, spill, or fire occur.

The substance of the current rulemaking process for rail and pipeline notification is rooted in the existing advance notice of transfer system. In fact, RCW 90.56.560 authorizes Ecology to adopt rules for advance notice of rail transport and ensure consistency with the existing advance notice of transfer over water system in RCW 88.46.165. "(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165."[3]

With this context, the below organizations provides the following comments to be incorporated into the final rule:

1. **Statewide aggregation** – as ESHB 1449 moved through the legislative process, the bill was amended to direct Ecology to aggregate oil transportation data at a statewide level. The final rule regarding notification and the new oil transportation website, often referred to as the "Community Right to Know" provision in the law, must strike the right balance of aggregation at the statewide level and providing sufficient information so that local residents and leaders understand the transportation patterns in their area and the risks presented to public safety and the environment.

   To help strike this balance, Ecology provided a sample map of statewide aggregation with route segments identified. The map is helpful for understanding how information may be presented on a website. We strongly support agency's proposal to provide aggregated information at the statewide level and with route segments to show patterns of oil transportation including information on the number of trains, type of oil, oil spills, etc. Aggregating information helps protect proprietary

[2] *See* Senate Bill Report, available at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bill%20Reports/Senate/1449-S.E%20SBR%20WM%2015.pdf/; Environmental Community Comments on Oil Transportation Study
[3] RCW 90.56.560(6)

information and providing information broken into route segments allows the law to fulfill it's purpose – specifically improving transparency and identifying pinch points or areas most at risk of a derailment or spill of dangerous types of oil.

2. **Route "if known"** – The final rule language in WAC 173-185-100 should clarify that it will be assumed that the route is known unless the facility required to report the information shows Ecology that the information is truly not known and require the facility to provide some documentation to verify that the route is in fact unknown. As currently drafted, the rule language is too broad and could be used to cut corners on reporting by facilities receiving oil. We believe that the flexibility allowed on reporting the route should be for very unusual or select circumstances where reporting the route would be unreasonably burdensome.

3. **Notification process** – We strongly support the draft rule's language that a facility must provide notice for all scheduled crude oil deliveries. The primary purpose of the reporting requirement and website is to provide the public and local communities with reasonable transparency and information on oil moving through the state. In order to accomplish this objective, it is essential for accurate information to be submitted to Ecology. The draft rule provides needed clarity for facilities reporting information to understand what is expected and protects against errors in reporting procedures that would prevent complete information from being disclosed to the state and the public.

4. **Easy access to vessel, rail, and pipeline transportation information** – Communities across the state are concerned about the risks they face including public safety, economic impacts from an oil spill, and/or threats to cultural resources. Given the policy goal of consistency between the new rail and pipeline reporting requirements and the long-standing advance notice of transfer for vessels, we recommend that Ecology incorporate some information from the established advanced notice of transfer and vessel information system to a central website on oil transportation. This could take the form of tabs such as the existing oil transportation website form on Ecology's website.[4] The goal for that type of information consolidation is to avoid creating silos between oil vessel information and oil arriving from rail or pipelines and providing the public with the broad information they need to understand transportation patterns and how they change over time. It would also help the public be informed if they weigh in on future oil spill related issues or processes like Vessel Traffic Risk Assessments, contingency planning, etc.

5. **Ensure accessible information on the type of oil arriving at facilities** – We support the draft rule's inclusion of the type of oil as one of the website reporting

[4] https://fortress.wa.gov/ecy/coastalatlas/storymaps/spills/spills_sm.html?CustomMap=y&BBox=-14083010,5497472,-12792753,6241663&Tab=nt3&Opacity=1&Basemap=esriLightGray&StartDate=7_1_2011&EndDate=3_31_2015

obligations. A foundational goal in ESHB 1449 and the proposed rules is to reveal the types of oil moving through the state. For example, there is inconsistent information on the facilities receiving heavy oil sands crude. The 2014 Marine and Rail study included information that oil sands was being transported by barge to the US Oil refinery in Tacoma, but inquiries to the refinery disputed that assertion.[5] This lack of transparency and clarity is a key reason why legislation was introduced and eventually passed. The core value of a website and reporting system is to improve transparency and educate the public on the full picture of oil transportation in Washington.

6. **Public notification of website update –** The rule and authorizing legislation directs Ecology to update the new website on a quarterly basis. Ecology should notify the public when these updates occur and language on the notification process should be included in the final version of WAC 173-185-100.

Chapter 173-186 WAC, Oil Spill Contingency Plan – Railroad

Oil spills from railroads can cause devastating impacts to the immediate and down-stream environments and species; the region's economy; and the quality of life for residents, visitors, and businesses. It is imperative that this rulemaking address the safety and environmental risks from the transport of crude oil by rail as directed by the Legislature in ESHB 1449:

- "The movement of crude oil through rail corridors and over Washington waters creates safety and environmental risks."
- "The sources and transport of crude oil bring risks to our communities along rail lines."
- "In order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil, it is the purpose of this chapter: (i) To maintain the best achievable protection that can be obtained through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable."

The draft rule's contingency plan requirements are less rigorous as compared with contingency plan requirements for pipelines and vessels. It might be reasonable for small rail companies that transport small volumes of refined products for agricultural use to have different contingency plan requirements than those for large rail companies that transport large volumes of crude oil. There are different impacts from different types of oil, when spilled, as a result of the oil's persistence and volatility. Crude oil is more persistent than

[5] "Washington State 2014 Marine and Rail Oil Transportation Study", p. 277 and Sause Brothers use of articulated tug barges to transport Canadian oil sands to US Oil refinery in Tacoma; US Oil assertion that no tar sands is coming to there Tacoma Refinery at the end of this press article: http://crosscut.com/2016/01/should-washington-get-tougher-on-oil-shipping/

refined products, and especially in the case of Bakken crude, more volatile than refined products. Contingency plan requirements that are any less rigorous than those required for pipelines and vessels would be unacceptable given the extreme consequences from rail accidents involving crude oil that communities and natural and economic resources along these rail routes are exposed to.

WAC 173-186-010 Purpose (1)(d) is unequivocal:

> Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills[.]

It is imperative that this rulemaking address the risks from the transport of oil by rail to public safety and our state's environmental, cultural, and economic resources, as directed by the Legislature. With this context, we urge Ecology to update the rule via the following items:

1. **Railroads Require Rigorous Regulations to Comply with Legislative Intent**
   - Require 1-, 2-, and 4-hour planning standards to avert or minimize oil spills into waterways and corresponding environmental and economic damage. Railroad companies, particularly those that transport large volumes of crude oil, should be obligated to respond immediately to spills, as is required in contingency plans for pipelines and vessels.
   - Require Group 5 planning standards for all nonfloating oils. This would include Canadian crude oil which is also known as diluted bitumen or dilbit. See the United States Coast Guard's May 29, 2014 report to Congress, *Risk Assessment of Transporting Canadian Oil Sands*, the National Academy of Sciences' *Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*, and the USCG's update to the Oil Spill Removal Organization (OSRO) Guidelines (March 2016) that created the OSRO classification guidelines for nonfloating oils (https://www.uscg.mil/msib/docs/007_16_4-1-2016.pdf).
   - Require planning standards for diluted bitumen that include the recommendations from the National Academy of Sciences' *Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response*.
   - Require planning standards to include aerial surveillance capabilities (as is required in WAC 173-182-321 Covered vessel planning standards for aerial surveillance).

2. **Retain Definition of "Worst-Case Spill"**
   The draft rulemaking's definition of "Worst-Case Spill" is appropriate ("a spill that includes the entire cargo capacity and fuel capacity of the largest number of cargo rail cars carried by the railroad complicated by adverse weather conditions"). This definition is consistent with other worst-case spill definitions in the WAC and complies with the legislative intent in ESHB 1449.

3. **Ensure the Safety of First Responders**
ESHB 1449 is the Oil Transportation safety bill which emphasizes the safe transport of oil by rail and the safety of our State's first responders. Requiring appropriate protective equipment, including respirators, for first responders and oil spill responders is necessary to ensure spill response safety.
   - Amend the definition of "Spill Assessment" as underlined:

   "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring <u>and identification of appropriate protective equipment, including respirators, for oil spill responders</u>.
   - Amend New Section WAC 173-186-430 Planning standards for air monitoring to protect oil spill responders and the public as underlined:

   WAC 173-186-430 Planning standards for air monitoring to protect oil spill responders and the public. This may include but is not limited to:
   (1) A description of how work area air monitoring will occur;
   (2) A description of how community air monitoring (area wide monitoring) will occur;
   (3) A description of how site characterization will occur;
   (4) A description of air monitoring instruments and detection limits that will be used by responders when monitoring for public safety;
   (5) A description of action levels for various oil constituents of concern based on products handled by the railroad (benzene, H2S, etc.);
   (6) A description of data management protocols and reporting timeframes to the unified command;
   (7) A description of communication methods to at-risk populations;
   (8) A description of how evacuation zones are established; and
   (9) A description of how shelter-in-place criteria is established.
   <u>(10) A description of how oil spill responders will be protected with appropriate equipment (e.g., respirators) while responding to spills with adverse air quality.</u>

4. **Revise the Draft Cost-Benefit and Least Burdensome Alternative Analysis**
BNSF has submitted *Schedule 2 Additional filing requirements for companies transporting crude oil by rail* to the Energy Facility Site Evaluation Council (EFSEC) which includes a calculation for a reasonable worst case spill cost of $775,623,195.27. However, insurance expert Robert J. Blackburn, who was hired by the City of Vancouver, WA, has testified before the EFSEC estimating the maximum foreseeable loss due to a single event in Vancouver at $5 billion to $6 billion (see The Columbian article, "Worst-case scenario: Vancouver oil disaster could cost $6 billion: Insurance expert testifies to EFSEC that no policy could cover those costs" by Dameon Pesanti, published on June 5, 2016, 6:05 AM http://www.columbian.com/news/2016/jun/05/worst-case-scenario-vancouver-oil-disaster-could-cost-6-billion/).

The Cost-Benefit and Least Burdensome Alternative Analysis describes the likely costs of the proposed rule in far more detail than it describes the costs of spills and other costs associated with the likely benefits of the proposed rule. The language identifying the benefits of this rule needs to be expanded. Table 7 (pages 29-31) includes the populations on or near rail lines that transport oil. Similar tables are needed to document the benefits of this rule's "requirements that support more immediate, appropriate, and comprehensive response to spills from rail" which reduce the impacts related to:

- Health: Describe the costs to the potentially affected populations for the treatment of burns and injuries from fires and/or explosions, adverse air quality and/or toxic chemical exposure, drinking water and food contamination.
- Property damage and contamination (which include fire, explosions, and evacuation related costs): Describe properties and businesses on or near rail lines that transport oil; their values, descriptions of business districts and/or neighborhoods, property taxes, etc.
- Environmental impacts: Include information on the Natural Resource Damage Assessment process as well as valuation data for all environmental resources on or near the rail lines used to transport oil.

Revise Section 1.6 Risk from Class 5 oils with the current cost of the 2010 diluted bitumen spill in the Kalamazoo River, Michigan. Note that diluted bitumen is not a Class 5 oil but can be a nonfloating oil (see above request to require Group 5 planning standards for all nonfloating oils).

In Section 4.2 Costs of Spills, revise Table 6: Example Oil Train Spills and Impacts to include the most current rail derailments/accidents/spills and their costs to date.

5. **Identify prioritization process for responding to damage claims**
   Contingency plans are now required to include procedures for managing claims for damage. If damage claims exceed funds available for compensation, this rule should include a process for prioritizing the processing and/or payment of damage claims.

6. **Retain preliminary draft rulemaking language regarding "Shorelines of statewide significance" and ensure appropriate placement of Planning Points**
   The current draft rulemaking language omits "shorelines of statewide significance" as defined in the Shoreline Management Act RCW 90.58.030, which had been included in the preliminary draft rulemaking language. ESHB 1449 states (Sec. 1 (1)) "the state has an obligation to ensure the citizens of the state that the waters of the state will be protected from oil spills."

   Shorelines of statewide significance require particular protection and as such should inform the location of Planning Points. To address legislative intent, this rule must identify adequate Planning Points for the distribution of oil spill response equipment and trained personnel in order to ensure a rapid, aggressive, and well-

coordinated response and to "Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills" (WAC 173-182-010 Purpose. (1)(d))

The number and location of Planning Points must be expanded to protect shorelines of statewide significance.

7. **Require appropriate contingency plans for rail cars that are used for storage**
   The definition of tank car is specific to transportation, not storage:
   "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.
   Given the definition of "Facility," (see below) idled tank cars that are used as storage need to have an appropriate contingency plan per their use as a storage facility. The exception in (c) (i) specifies "rolling stock while transporting oil…"
   "Facility" means:
   (a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.
   (b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.
   (c) Except as provided in (b) of this subsection, a facility does not include any:
   (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

8. **Requirements Re. Significant Changes to Approved Plans**
   Require a public notice, review and commenting opportunity in WAC 173-186-130 Significant changes to approved plans. Greater transparency is essential for public trust when significant changes are made to contingency plans.

9. **Require appropriate contingency plans for rail cars that are used for storage:**
   The definition of tank car is specific to transportation, not storage:
   "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.
   Given the definition of "Facility," an argument could be made that tank cars used as storage would need to have their own CP. The exception in (c) (i) specifies "rolling stock while transporting oil…"
   "Facility" means:
   (a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.
   (b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.
   (c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

Thank you for addressing these comments in finalizing Chapter 173-185 WAC Oil Movement by Rail and Pipeline Notification and Chapter 173-186 WAC Oil Spill Contingency Plan – Railroad. If you have any questions, please contact Rebecca Ponzio at (206) 240-0493 / rebecca@wecprotects.org.

Sincerely,

Washington Environmental Council
1402 Third Avenue # 1400
Seattle, WA 98101

FRIENDS of San Juans
P.O. Box 134
Friday Harbor, WA 98250

Friends of the Earth
7001 Seaview Ave NW
Ste 160-233
Seattle, WA 98117

Earth Ministry/Washington Interfaith Power & Light
6512 23rd Ave NW, Suite 317
Seattle, WA 98117

Protect Skagit,
14451 Ashley Place
Anacortes, WA 98221

The Lands Council
25 W Main Ave
#222 Spokane 99201

Tahoma Audubon Society
2917 Morrison Road W
University Place WA 98466

Puget Soundkeeper Alliance
130 Nickerson Street, Suite 107
Seattle, WA 98109

Audubon Washington
5902 Lake Washington Blvd S
Seattle, WA 98118

RE Sources for Sustainable Communities
2309 Meridian St.
Bellingham, WA 98225

Oregon Physicians for Social Responsibility
1020 SW Taylor St, Suite 275
Portland, OR 97205

Grays Harbor Audubon Society
P.O. Box 470
Montesano, WA 98563

STAND earth
1329 N State St., Suite 302
Bellingham, WA 98225

Washington Chapter of Physicians for Social Responsibility
4500 9th Ave NE Suite 92,
Seattle, Washington 98105

Spokane Riverkeeper
35 West Main, Suite 300
Spokane, WA 99201

FOGH (Friends of Grays Harbor)
P.O. Box 1512, Westport
Washington 98595-1512

Citizens for a Clean Harbor
PO Box 35
Hoquiam, Washington, 98550

350 Seattle
210 NE 92nd St, #307
Seattle, WA 98115

Sierra Club
180 Nickerson Street # 202
Seattle, WA 98109

Futurewise
816 Second Avenue, Suite 200
Seattle, WA 98104-1530

Friends of the Columbia Gorge
522 SW 5th Avenue, Ste 720
Portland, OR 97204-2100

Dear Ms. Kim Morley + the Spills Rules Making Dept. at the WA state Dept. of Ecology:

If your email is NOT the proper place to lodge a comment on the three (3) Chapter 173's:

-182 WAC Oil Spill Contingency Plan Rule;
-185 WAC Oil Movement by Rail and Pipeline Notification; +
-186 WAC Oil Spill Contingency Plan-Railroad

notify us asap, so we can get our beliefs to the right spot before the Friday, June 10, 2016, cut-off date & time.

As a result, short of NO fossil fuel transports-PLS. only allow the following, IF cars laden w/killer highly volatile Bakken crude have to used: rail cars called DOT-120's.

Though Tesora which operates out of Anacortes announced in 2015 that it had added 210 DOT-120 cars to its tiny fleet, the estimated 400,000 rail cars our nation currently has & uses coupled with the increasing demand to feed refineries and an export market now allowed by a Congress which is in the pockets of corporate lobbyists- makes it obvious that those older cars cannot be replaced FAST enough!

Additionally, WA's Sen. Maria Cantwell in 2015 called for rules that 'would require the volatile gases contained in Bakken crude be removed before being transported by rail' AND Sen. Ron Wyden of Oregon proposed 'charging a fee for the use of the older tank cars providing a tax break for use of the newer cars' so the speed of the cars' replacement would have a two-path incentive. *** Put these incentives into the new laws, please.

We suggest, however, NO oil cars, no pipelines, no barges with fossil fuels-coal, oil, gas-nothing be transported on or near the Salish Sea. Emergency spill response plans need to be iron-clad & those who break them made immediately financially accountable. All trains must have GPS transponders reporting their whereabouts every 10 minutes to a fully funded in 2016 state emergency response center where the actual volume of oil is reported daily.

If our local government agencies must knuckle under to the corporate titans as the ecological clock ticks towards the point-of-no-return for our planet-then the safeguards we've detailed above must be in place immediately. The corporate giants have had enough time to gamble with our planet's health and safety; what a polluted charred mess we are bestowing upon our children and the rest of Earth's inhabitants-like what's left of endangered salmon, et al. Have the moral courage to do the 'right thing' for the future children / species from whom we borrow our Earth,

Robert & Karen Mitchell
3110 Mission Beach Rd.
Tulalip, WA 98271
#425-238-7754
wolfgangsglass.66@gmail.com

Daily Herald's, Opinion page A9, "In Our View", T., 06.07.2016

June 6 2016

Department of Ecology

Comments Regarding New Rules Oil Transport

PO Box 47600

Olympia WA 98504-7600

I would like to comment on the state's provisions for transporting oil via rail throughout Washington State.

The recent oil spill along the Columbia River has brought into focus the problems with transporting dangerous, flammable materials including oil, chemicals and coal by rail. I've been worried about this problem since I lived a block from the train tracks in Puyallup, and since the incident at Lac Magantic. I live several blocks further away from the tracks in Puyallup at present, and I'm still concerned about it. Explosive materials moved via trains through populated areas is a dangerous situation that is almost certainly going to end in catastrophe sooner or later. Advance notice of movement won't make what's moved any less dangerous, and contingency plans can only go into effect after disaster has struck. I think Washington can and must do better than to settle for those weak plans.

Right now, explosive materials travel by train on 100+ car trains through areas where the explosive materials are feet from houses and businesses. I think we have proof that whatever measures the rail workers put in place are not sufficient to eliminate accidents and make those nearby safe. I'd also like to ask you to think seriously about another aspect of this problem.

Right now, train company workers monitor and inspect the tracks from above, from vehicles and on-foot, which is great. They've been doing a good job of that. But they can't possibly keep up with the shifting material above and under the tracks. We have had repeated landslides (not mudslides as reported in the media) in the Everett area above the tracks. One deep concern of mine is how the areas the tracks are built on are being undermined from below by tidal action. Take Meadowdale Marine for one example: For years the bay waves at high tide have been literally eating away the substructure under the tracks and it needs to be shored up, which they've been doing, and that's

Hello, my name is Sarah Stephens, I'm a freelance multimedia journalist and citizen activist. It's 2016 in th richest country in the world. Is there not a less risky technology that can be used and implemented instead?

May 25, 2016

Department of Ecology Spills Program
Linda Pilkey-Jarvis
P.O. Box 47600
Olympia, WA 98504-7600

To Whom It May Concern:

Washington State Department of Natural Resources (DNR) appreciates the opportunity to comment on the proposed rules for Railroad-Oil Spill Contingency Plans. This letter provides a brief overview of DNR management authorities, identifies key concerns regarding potential impacts of railroad oil transport to DNR managed lands, provides comments on the rules proposed, and identifies gaps in planning that need to be addressed either by revising this Plan or working with the Utilities and Transportation Commission (UTC) to address as a related but separate effort.

DNR sustainably manages over 3 million acres of trust lands comprised of forest, range, commercial, and agricultural lands, and 2.6 million acres of state-owned aquatic lands for the people of Washington State. As steward of the State's navigable waters, bedlands, beaches, and shores, we protect their continued commercial, recreational, and habitat values. DNR serves as the State's geological survey, and informs citizens, businesses, and government of geological risks and impacts across the State. DNR is also the State's largest on-call fire department, responding to fires on over 13 million acres of land under our protection and assisting local fire districts across the State.
DNR has been monitoring the development of the Crude by Rail (CBR) safety discussion as it evolves in Washington State as well as across the country. Railroads pass near and across state trust lands and state-owned aquatic lands. Crude by rail poses a threat to DNR managed upland from risk of spills as well as fire that can result from derailed trains. The main concern for impacts to DNR-managed aquatic lands are spills.

General comments on proposed rule:

This rule is well written and addresses many concerns DNR has with increasing use of railroads for oil transport. It sets firm standards in a format that is similar in content to those used for oil handling facilities' contingency plans so consultants familiar with the process hired to assist railroads should have an easy time developing and implementing these new plans.

The proposed rules present an aggressive but fair implementation schedule, hold plan holders accountable for keeping plans up to date (yearly review), allow for adaptive management to incorporate lessons learned as further research is conducted and more is known about responding to spills of Bakken and tar sand oil, and addresses impacts to smaller railroads that may otherwise be impacted non-proportionally by the use of rail for oil transport.

With this said use of rail for oil transport poses a new and unprecedented risk to our state's resources. We need to reach beyond current planning procedures and standards where it is prudent and necessary to do so.

From a DNR perspective the proposed Plan is lacking in addressing four key areas:

1) Setting a standard for evaluating and monitoring the condition of rails used to transport this oil and reporting in Plan how a standard is established and maintained before and while rails are being used for oil transport;
2) Enhancing planning requirements listed under WAC 173-186-340 to provide a more detailed assessment of not only equipment to implement in situ burning but also decision making process IC will use to assess risk to cause wildland fire, notification to pertinent local and state responders to allow for preparation for repercussions of an escaped burn, identifying liable party should this escape occur, and identifying who will represent railroad in occurrence of an in-situ burn caused wildfire;
3) Properly assessing geological risks along rail route developing BMPs to minimize and respond to risk as well as plan to enhance BMPs as lessons are learned; and
4) Developing an adequate Natural Resource Damage Assessment and Restoration (NRDAR) Plan.

Items #1 and #2 are self-explanatory.

<u>Regarding #3</u> DNR recommends a requirement that Plan holders analyze the potential for geologic hazards along railroad routes using the following methodology:

a) Identify both shallow and deep-seated landslide hazards using DNR's GIS Statewide Landslide database and then create a geologic map of railroad based hazards. In areas with no existing landslide inventory, create a shallow landslide database using historic aerial imagery and other spatial data in a GIS.
b) Evaluate riverbank sloughing and subaqueous landslide hazards using bathymetry or similar DEM data.
c) Identify potentially unstable slopes above and/or adjacent to railroad using DNR's Shalstab model or other comparable slope stability modeling program in a GIS.
d) Identify slope hazards associated with slope modification or vegetation removal for areas that may be impacted by future maintenance, modification and/or enhancement as use of rail for oil transport increases.
e) Evaluate earthquake hazards including earthquake-induced ground failures.

**Plan holders should address in Plan what BMPs have or will be implemented to address risks identified from this geological assessments work.

Item #4 is not merely a deficiency of the Railroad Oil Spill Contingency Plan but to NWACP spill response planning process in general. This deficiency is magnified in risk posed by crude by rail transport and cannot be left out.

Railroads cross many streams and rivers and spills impacting these areas will often move quite quickly away from source. Although response times listed in plan are comparable to existing plans in the state and understandable considering the large expansive area these railroad plans address it is quite likely that there will be significant distribution of oil by the time a proper response arrives and a majority of oil will escape responders' containment. Little can be done at that point other than to properly track and monitor impacts to ensure resource damages are properly compensated for.

We recommend the State take a more proactive stance in assuring that a comprehensive damage assessment is implemented with the same rapid, aggressive and well-coordinated response level as is committed to for spill response. NRDA cannot wait days, weeks or perhaps even months before a plan is developed and implemented with no significant baseline to work from.

Baseline monitoring plans need to be developed and implemented by Plan Holders with oversight from Resource Trustee Agencies. As risk imposed increases so should frequency and intensity of baseline monitoring and understanding of the risk posed to resources.

It is a harsh fact that 20% is the maximum we can hope to recover from a large spill-probably much less in a riverine system. With this understood a more thorough analysis of damage assessment must be taken to ensure that we are fully prepared to assess and ensure proper compensation in form of restoration for these damages. Those that pose risk should fund this level of preparation and therefore this requirement needs to be included in the Plan.

Should you have any questions regarding this letter, please do not hesitate to contact me, at (360) 902-1064.

Sincerely,

Shayne Cothern
DNR Spill Response Coordinator

In addition to the standard form letter, I strongly suggest that legislation be passed which requires safe railbed. I would much rather we eliminate the source of the spill before it happens than have strong cleanup requirements after the fact.

Specifically:
Any railbed used for passage by carriage of more than 25 tanker cars must be on concrete based bed ties.

This simple to enforce requirement ensures that the excessive wear due to the vibratory/sloshing side loads that oil cars put on the railbed cannot repeat the accident that just happened in Mosier.

We urge the Department of Ecology to implement the strongest rules for Chapters 173-185, and 173-186 as possible. Communities across Washington are on the front line, experiencing crude oil trains and are at risk of oil spills due to train derailments and pipeline ruptures. We applaud the Department for moving these rules forward. All three rules are an important first start and we strongly encourage Ecology to keep the existing parts of each of the draft rules and to add the following:

For the Rail and Pipeline Notification rule (Chapter 173-185 WAC):
(1) Provide more detailed information on the types of oil, volume of different types of oil, oil spills, etc. consistent with the route segments to understand areas where unique risks or problems exist.
(2) Incorporate language in the final rule that makes it clear that the agency will assume that the route is known and the burden is on the facility to show that they do not know the route taken by an oil-by-rail shipment through documentation. This will prevent the facilities from cutting corners in reporting requirements.
(3) Centralize information for rail, pipeline, and vessel reporting systems so we can have a one stop shop for public information. This includes the TYPE of oil as well as how much oil and how the oil is traveling.
(4) Continue to require facilities to report all oil shipments scheduled to arrive at their facility.

For Railroad Contingency Plan rule (Chapter 173-186 WAC):
(1) Contingency plan requirements for railroads should be comparable with the most rigorous contingency plan requirements for pipelines and vessels. This includes the 1-, 2-, and 4-hour planning standards and aerial surveillance capabilities.
(2) Require planning standards for diluted bitumen that include the recommendations from the National Academy of Sciences' Spill of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects and Response
(3) Retain the definition of a 'worse case spill.'
(4) Ensure safety of first responders through adequate protective gear.
(5) Update the cost-benefit analysis to include the analysis of insurance expert Robert J. Blackburn, hired by the City of Vancouver, that indicates a worse-case scenario in Vancouver could cost $6 billion.
(6) Establish a prioritization process for processing and/or paying damage claims if they exceed the money available for compensation.

(7) Identify adequate planning points for the distribution of oil spill response equipment and trained personnel.
(8) Require a public notice, review, and commenting opportunity when there is a significant change of the plans in order to approve the plan.

Stephen Hellriegel
10654 NE Byron Drive
Bainbridge Island, WA 98110

To put it bluntly, I am not in favor of oil trains in our state or the Columbia Gorge. This is folly to spend money cleaning up after these spills and fires in order to further pollute our environment with fossil fuels.

Sue Carver

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

I am a long time, Tacoma resident seriously concerned about the destruction a potential oil spill would have on my family, (since we live near several railway crossings) my community and our natural environment. Commencement Bay is a source of pride for both myself and the Tacoma community and it deserves strong protection.

I do not believe that the proposed rule adequately protects our community and natural resources from a spill. And I know we are understaffed and underprepared for a disastrous toxic/oil spill.

Crude-by-rail is rapidly increasing – Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many incidents, adding urgency these plans by demonstrating the inevitability of a spill.

I find three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of Ecology's spills program to maintain the best achievable protection. I strongly encourage Ecology to establish a more stringent rule for railroad contingency plans that resolves the issues outlined above.

Thank you for your consideration as you work to protect our shared natural resources!

Sincerely,

Stanley Shaw
hey@drawstanley.com

I am a Tacoma resident and I also own property in Seattle and Spokane. I am very concerned about the safety of rail transport of oil. The recent spill on the Columbia River is absolutely unforgiveable.

Given the dramatic increase in crude oil rail transport it is imperative that the State of Washington establishes sound policy and procedures with added oversight of Federal regulations governing rail transport of crude oil.

My review of the proposed rule has identified three major deficiencies:

1. Spill evaluation and response planning is not comparable to standards set forth for vessel spills in Puget Sound (WAC 173-182-380)

2. The proposed ruling does not identify response equipment to include aerial surveillance, high current boom and planning for dispersed contaminates.

3. The proposed ruling does not require a plan holder to complete the identification of Geographic Response Plans for all affected geographies.

I further recommend that the State of Washington invests adequate staff resources to establish a more measured and stringent rule for railroad disaster planning and emergency implementation. It is further suggested that if improvements are not made to manage this very risky transport program, local officials (such as what has occurred in Spokane) will need to respond.

Sincerely,

Susanne Marten

Before I list my comments I want to make clear that I have absolutely no ties or connections to the oil industry or railroads—no stock, no relatives working there, no history with them. I also live a block from a main BSNF track and feel perfectly safe. Thank you for receiving my input in this form:

- Notification to ecology on crude oil delivery by train: If this is a onetime notification it probably isn't bad, although the communities are already aware of the use of the tracks for oil trains. Those with which I am familiar have plans or are working on consortiums to address potential spills. To require a notification for each delivery is unnecessary and an unsupportive burden on all. It might even be a safety/security risk. Communities need to have response plans in place for any kind of hazard, not a case by case reaction. This looks like additional staff work for Ecology and the railroads and the refineries that is not justified by benefit. Seriously, this is the type of regulatory abuse that causes backlash on all fronts. Not needed, period.
- Railroads required to have contingency plans: I find it hard to believe that BNSF (for example) doesn't already have such plans in place. Is another rule (and another bureaucratic hurdle) really necessary? Perhaps, just require them to file copies of their plans with Ecology (or whomever) on a periodic basis (5 year intervals unless major revisions are made). And even saying that, what will the department do with them? Hopefully not micromanage or build another layer of staff to "review".

Thank you for the notification and letting us respond. Please don't listen to the mob hysteria of so called activists or protestors---keep our state budget lean and effective. Regulate and inspect only what is truly necessary and for which there is a clear benefit.

Tana Wood
Burlington, WA

American Environmental Services
Environmental Consulting and Training
5130 135th Street SE
Everett, Washington 98208
Phone: (206) 852-6820
Email: Jeffrey@AmericanEnvironmental.US

June 9, 2016

Department of Ecology Spills Program
Linda Pilkey-Jarvis
P.O. Box 47600
Olympia, WA 98504-7600
Re: Comments on proposed WAC 173-186

Dear Linda Pilkey-Jarvis,
Thank you for the excellent help your people have provided to aid our research of the extant WAC and other DOE documents so that our comments on this draft rule can be more helpful.

We see that you have incorporated many of our comments and suggestions submitted (9 February 2016) in response to the Preliminary draft. We hope the comments below will help refine the extant proposal to be a more effective and efficient rule.

WAC 173-186-010(1)(e) Purports the purpose of this WAC is to "provide the highest level of protection." It clearly fails to do this by not requiring contingency plans to identify the training and skills which would prepare involved and impacted workers and leaders to be properly qualified to deal with the tasks of an oil spill. For example, the train crew will always be the first to know of a spill but no level of knowledge or skill is required for them. Without adequate training they will have no idea of the right thing to do. While this WAC deals only with oil spills 24hour HAZWOPER training will prepare the train crew on how differently they should act if their train has 95 cars of crude and one tank car of chlorine. Sometimes the most important thing is to know how far to isolate or protective action distances before the explosion or BLEVE (for a 1000 gallon tank at least 1800 meters). Likewise, a contingency plan requires a "team leader" but without a definition, the team leader could be a drum major and meet the WAC requirements. WAC 173-182-820 spells out training required for a Primary Response Contractor (PRC) and lists many requirements of HAZWOPER but requires no training for personnel employed by the rail road, hired directly by the rail roads as pick up labor, secondary responders, etc.. HAZWOPER training for all personnel should be spelled out or incorporated by reference.

Failure of this WAC to require adequate preparation as codified in 29 CFR 120 (q) or WAC 296-824-30005 for HAZWOPER training and Properly qualified ICS (Incident Command System) leaders mean that this WAC requires a paper pushing exercise with no assurance that when boots must hit the ground that the response will be adequate to provide the protection which is the stated purpose of this WAC.

173-186-040 "facility" be modified by the deletion shown "(…) other than a vessel, ~~located on or near the navigable waters of the state~~ that transfers (…)."

173-186-210(4)(b) Insert (…) to having an appropriately ICS trained incident commander (…)."

Insert a new section **173-186-210(4)(a),** renumbering the following sections, which reads: "Commit to having personal who may be exposed to hazardous material (train crews, certain railyard personal, initial and prolonged response team members, etc.), HAZWOPER trained at appropriate levels for their assigned duties. The plan will identify the HAZWOPER training level of all response team positions, including local responders, rail road company responders non OSRO's certified personnel etc."

173-186-310 (1) Insert additional description as shown: "The equipment and trained personnel to address (…)

173-186-310 (2) Insert additional description as shown: "(…) to calculate the equipment and personnel access and (…)."

173-186-310 (3) Insert additional description so that the heading of column 2 in the table reads: "Situationally Appropriate Boom/Assessment."

173-186-350 Insert additional language as shown: "(…) cleanup operations per WAC 173-182-317 (as applicacable) and WAC 173-182-522 capable of being (…)."

173-186-430 The planning standard shall include provisions for initial responders (including local fire and police) to be trained at the 24 hour HAZWOPER level as well as provision for Rail Road crews and other onsite personal (railyard, terminal, and facility) to be trained at the 24 hour HAZWOPER level.

Sincerely,

T. Jeffrey Johnson BS BS&H,
President, Owner Operator

Thomas G. Johnson, PE
Vice-president, Owner Operator

COLUMBIA BASIN RAILROAD

CW
Central Washington Railroad

June 10, 2016

Ms. Linda Pilkey Jarvis
Department of Ecology Spills Program
PO Box 47600
Olympia WA 98504-7600
By Email

RE: Proposed Railroad Oil Spill Contingency Plan Rule, Chapter 173-186 WAC

Dear Ms. Pilkey Jarvis:

On behalf of the Columbia Basin Railroad and the Central Washington Railroad, I am pleased to submit comments on the proposed oil spill contingency plan rules for railroads. I want to thank you and other staff members for meeting with us and other stakeholders in Ellensburg a few weeks ago to discuss some of our concerns on these proposed rules. The proposed rules are of some concern to us, as they were mainly intended to address railroads hauling crude. The inclusion of biological oils and other oils places a burden on our two railroads even though we do not haul loaded crude oil rail cars.

In 2015 the Central Washington Railroad handled a total of 25 cars which fall within the scope of the proposed rules. 4 cars of soybean oil which moved 29.2 route miles at a speed of up to 25 mph. 21 cars of mineral moved 1.5 route miles at a speed of up to 10mph. Both of these commodities serve the Agricultural Industry in our service territory. The 4 cars of soybean oil were blended for cattle feed and the mineral oil is used as a carrying agent for spraying on tree crops. These 25 cars are out of a total of 7698 total loaded cars handled.

In 2015, the Columbia Basin Railroad handled a total of 670 carloads of Canola Oil, 178 carloads of Soybean Oil and 21 carloads of other oil that falls within the scope of the proposed rules. We did not haul any loaded crude oil cars. All 872 cars travel at speeds up to 25 MPH. These products serve many phases of the Agricultural economy in the area including Canola Oil production, and Potato Processors in our service territory. Total loaded cars handled for 2015 was 10050.

Combined, both railroads handled 897 carloads covered by the proposed rules. Of this total only 4 carloads of Soybean Oil came within proximity of a Natural Waterway. Most of the terrain traveled past irrigated desert. It is suggested that Class III railroads that do not handle loaded crude oil cars be exempted if they do not operate in proximity to Natural waterways, or operate at speeds of 10 MPH while in such proximity be exempt.

The issue of biological oils being included in the proposed rules ignores their lower volatility, as they are not classified as a hazardous material under other regulations.

While we do not have a full understanding of what the final rules will be, we have early indications that the cost of implementing these new rules will exceed the total revenue that we receive from handling the covered commodities for at least one of our railroads. We strongly encourage that the rules be scalable to the size of the enterprise involved. Exempting Class III railroads that do not haul loaded crude oil cars from these rules would be an effective way to deal with this issue.

The time lines for implementation are rather tight to deal with. If we are to develop the most cost effective method to deal with the new rules such as a shared plan or umbrella plan, then it seems that it will be nearly impossible to meet the proposed deadlines. There will need to be considerable collaboration between a Contractor, the Department of Ecology and Railroads to come up with an acceptable Umbrella plan. We request that the Departments rules adopt a plan formulation period and implementation period that all parties can agree upon so that the deadlines can be met. More time is needed for all the parties involved to come to a common understanding.

These comments are submitted for your consideration in formulating the final rules.

Respectfully

Timothy M Kelly
Chief Operating Officer

Oil Spill Contingency Plan - Railroad

Railroad Rulemaking – Chapter 173-186 WAC

Written comments to: Washington State Department of Ecology

June 6, 2016

Timothy W. Young - Chairman
Board of Commissioners
Skamania County Fire District #4
10042 Washougal River Rd
Washougal, WA 98671
tyoung@skamaniafd4.org
Cell: 201-247-3361

Skamania County Fire District #4 provides Fire Protection and Emergency Medical Services to the west end of Skamania County which includes a portion of the Columbia River Gorge National Scenic Area. There are approximately 7 miles of BNSF Railway Company tracks in the Fire District starting at the Clark County - Skamania County line in the west to Smith-Cripe Rd in the east. BNSF tracks are used for the transport of Bakken Crude Oil. In many locations, the tracks are directly adjacent to the Columbia River.

In July of last year, owing to the dangers associated with Oil By Rail, the District adopted a resolution that states in part:

Skamania County Fire Protection District No. 4 hereby requests that Senators Murray and Cantwell and Representative Herrera Beutler work immediately with The Pipeline and Hazardous Materials & Safety Administration, National Transportation Safety Board and the Federal Railroad Administration to stop Bakken Oil Train traffic through the District, Skamania County and the Columbia River Gorge at large while concurrently developing Federal Legislation requiring that railroads, as a condition of transporting Bakken Crude Oil through the Columbia River Gorge, establish and demonstrate the capability to provide required Hazardous Materials Response including Fire Suppression of Bakken Crude Oil fires in the Columbia River Gorge.

Your efforts are to be commended. Nothing meaningful has been developed at the federal level concerning this issue.

The danger of Bakken Oil Train derailment and subsequent fires has been clearly demonstrated in Quebec: 63 cars derailed with subsequent fire – 47 fatalities; Aliceville, Alabama 30 derailed, 12 caught fire; Casselton, North Dakota 34 derailed, 20 caught fire; Lynchburg, Virginia 15 derailed, 3 caught fire; Galena, Illinois 21 derailed, 5 caught fire and Mount Carbon, West Virginia 27 derailed, 15 caught fire and burned for 4 days.

In the incidents in the Unites States, a minimum of 3 rail cars have burned with each derailment, with an average of 11 per incident. According to the Sightline Institute which has done substantial research on this issue, derailments and subsequent fires have occurred in a variety of conditions including warm weather, cold weather, new track, old track, new rail cars (current federal standard) and old rail cars.

Railroad Rulemaking – Chapter 173-186 WAC

The recent derailment and subsequent fire in Mosier, Oregon serves to highlight the issue. In this case, 3 or 4 (according to various accounts) of the newer designed rail cars burned in a 16 car derailment.

The proposed rulemaking addresses part of our concerns. However, there is a significant piece still missing. History tells us that Bakken Oil Train derailments result in large scale fires. There is insufficient Class B foam in the region to help extinguish these types of fires. In our District, water must be trucked in for fire suppression. Even with statewide resources provided under State Mobilization, it is not possible to provide sufficient water for fire suppression through over the road water tender operations.

It has been estimated that a minimum of 1000 gallons per minute of water flow would be required to protect exposures and to cool non-burning cars. At the Mosier, Oregon fire, the flow rate reached 1500 gallons per minute. It would require 23 water tenders running continuously from sources within the district to achieve 1500 GPM. There would need to be an additional 10 water tenders staged for foam application, for a total of 33. Guidelines for foam use (see attached New York State Homeland Security and Emergency Strategic and Tactical Guidance) recommend 1500 gallons of foam on hand for a 3 train car fire, possibly applied in two applications. BNSF has 250 gallons of foam in Vancouver, WA (available 2 hours after the request is made to the PRC) and 750 gallons in Pasco, Washington (available 5 hours after the request is made to the PRC).

On paper, there are 28 water tenders available under State Mobilization. There is no guarantee they would be available when needed or when they might arrive on scene.

In the Mosier, Oregon fire, foam was available but could not be applied until ten hours into the fire due to the need to have a reduction in temperature that would allow the foam to be applied successfully. That meant 10 hours of *in situ* burning, not by choice. Fortunately in this case, the winds were much calmer than usual and the fire did not spread.

In our district, 5 of the 7 miles of track are not accessible by fire apparatus. The attached pdf *SCFD#4 BNSF Track* shows the track in the fire district with roads overlaid as well. There are only three locations in the district where fire apparatus has direct access to the tracks. Where access is available, only the smallest fires could be extinguished. In locations lacking fire apparatus access, *in situ* burning would be mandatory, presenting and unmitigated wild land fire risk in heavily forested areas subject to high winds. The results would be disastrous.

Skamania County Fire District #4's official position is "After careful analysis, it has been determined that with the exception of the smallest fires in accessible locations, it is not possible for Fire Service resources to extinguish Bakken Oil Train fires in the Western Columbia River Gorge". BNSF cannot guarantee that a derailment and subsequent fire will not occur. When it does, it will be devastating to the Columbia River Gorge National Scenic Area.

As reported by Oregon Public Broadcasting, Jim Appleton, the fire chief in Mosier, Oregon, has been quoted as saying " I hope that this becomes death knell for this mode of shipping this cargo. I think it's insane," he said. "I've been very hesitant to take a side up to now, but with this incident, and with all due respect to the wonderful people that I've met at Union Pacific, shareholder value doesn't outweigh the lives and happiness of our community." Appleton said that foam was of relatively little use for the first 10 hours after the spill in Mosier. It couldn't be directly applied to the main rail car that was on fire. "The rationale that was explained to me by the Union Pacific fire personnel is that the metal is too hot, and the foam will land on the white hot metal and evaporate without any suppression effect," he said. "That was kind of an eye opener for me." Appleton said crews spent 8 to 10 hours cooling down the adjacent rail cars with water before the final burning car was cool enough to be extinguished using the firefighting foam. Fire tenders drew water from the Columbia River using a nearby orchard supply line, and applied 1500 gallons of water per minute to the white hot rail cars.

We believe that to "Provide for the protection of Washington waters, and natural, cultural and significant economic resources by minimizing the impact of oil spills*"* as the rule states, that the rule must be expanded to include provisions that require the railroads demonstrate their capability of extinguishing oil train fires not simply arrange for their burn out *in situ*. The likelihood that this can be demonstrated is remote.

Despite having water and foam on the scene in Mosier, Oregon, to quote Chief Appleton per Oregon Public Broadcasting, "If the same derailment had happened just 24 hours earlier, there would have been 35 mph gusts blowing the length of the train," he said. "The fire very easily could have spread to some or all of the 96 cars behind, because they were in the line of the prevailing wind. That would have been the catastrophe."

The use of rail for the transportation of Bakken Oil has out paced any meaningful safety regulations or standards and the practice should be stopped immediately. Events in the United States and Canada including our own Columbia River Gorge make this perfectly clear.

Timothy W. Young
Chairman
Board of Commissioners
Skamania County Fire District #4

Strategic and Tactical Guidance for Rail Incidents Involving Crude Oil

SIZE UP/INITIAL PROTECTIVE ACTIONS:

Verify Product: UN ID# 1267 Petroleum Crude Oil. See 2012 NAERG Guide 128.
Note placards and obtain a train consist from crew or RR. Are cars loaded or empty?

Notify NYS DEC, the State Watch Center (OEM, OFPC), the National Response Center and the railroad involved (see contact information on reverse).

If SPILL but NO fire:
SMALL Spill: Isolate **150 ft.** in all directions. **LARGE Spill:** Also evacuate **1,000 ft.** downwind.
Secure potential ignition sources; use air monitoring; apply foam for vapor suppression; and begin spill confinement operations (diking, damming and boom deployment) to limit spread of spilled product.
(See **FIRE SUPPRESSION** for foam and air monitoring guidance).

If FIRE: Isolate **½ MILE** in all directions and shelter downwind.

EXTINGUISH vs. LET IT BURN: Do you need to extinguish the fire?

- Evaluate life hazard, property/critical infrastructure at risk and environmental impact (in that order).
- If **a life hazard exists**: Focus available foam operations or use water fog patterns on oil fires to protect rescue operations. Conduct structural firefighting as necessary and from uphill and upwind if possible. Beware of any running spill or spill fed fire which may cut off routes to safe zones. Consider defensive operations once life hazard is addressed.
- If **NO life hazard** and **more than 3** tank cars are involved in fire OFPC recommends **LETTING THE FIRE BURN** unless the foam and water supply required to control is available (See **FIRE SUPPRESSION**). Withdraw and protect exposures, including cooling exposed tank cars with unmanned monitors if possible (See **FIRE SUPPRESSION**).
- If **3 tank cars or fewer are involved**, do you need to extinguish the fire? (Evaluate hazard to property and environment.)
- If **YES**, are foam and water resources available to extinguish the fire? (See **FIRE SUPPRESSION**)

FIRE SUPPRESSION:

Estimate the foam and water requirements for vapor suppression, extinguishment and post fire security.
OFPC **estimates** for crude oil rail scenarios are listed below. These estimates are based upon applying Class B foam at 3% concentration and can be adjusted as needed.
Polar solvents such as Ethanol may require greater amounts of foam and water and higher application rates (0.2gpm/ft^2).

- **1 tank car** on fire = **600 gallons** of foam concentrate; apply solution at a target rate of **660 gpm** for **15 minutes**; and reapply as necessary to maintain foam blanket;
  - **Total water supply required = (+/-) 38,000 gallons** for foam and cooling water.
  - **NOTE:** Stream reach for single 600 gpm foam nozzle = **150' max**
- **3 tank cars** on fire = **1,500 gallons** of foam concentrate; apply solution at a target rate of **1,680 gpm** for **15 minutes**; and reapply as necessary to maintain foam blanket;
  - **Total water supply required = (+/-) 80,000 gallons** for foam and cooling water.
  - **NOTE:** Stream reach for single 1000 gpm foam nozzle= **200' max**
- Use cooling water on exposed and involved cars; minimum rate = **200 gpm** applied to the exterior of the vapor space of **each car during extinguishment and maintain for 30 minutes thereafter.** Note water application may interfere with the foam blanket. Continue to re-apply foam as needed to maintain post-fire security (vapor suppression).
- **ALL RESOURCES MUST BE AVAILABLE PRIOR TO BEGINNING SUPPRESSION (FOAM OPS)**

USE AIR MONITORING. Withdraw at **10% LEL (Combustible Gas Indicator).** See **AIR MONITORING** on page 2 for additional guidance.

The following information is provided to assist with determining pump discharge pressures needed to provide required inlet pressure at foam master stream appliances:

- Friction loss for 4" LDH at flows noted above: 7 psi/100' at 600 gpm; 19 psi/100' at 1000 gpm.
- Friction loss for 5" LDH at flows noted above: 3 psi/100' at 600 gpm; 7 psi/100' at 1000 gpm.

To determine Foam requirements for a specific crude oil surface spill use the following formula:

Spill Area (ft^2) X Application Rate (0.10 gpm/ft^2)= GPM Foam Solution x 15 mins. 1.

NOTE: Large storage tank fires require higher application rates for longer duration.

AIR MONITORING:

All personnel inside exclusion zone should wear structural PPE and SCBA.

Air monitoring should be conducted to protect personnel operating within the exclusion zone and to verify isolation and protective action distances established are effective.

- Lower Explosive Limit (LEL) at or above 10% = **WITHDRAW FROM AREA.**

For unprotected personnel:
- Photoionization Detector (PID) reading above 10ppm = withdraw or don SCBA and PPE.
- Hydrogen Sulfide (H_2S) reading above 10ppm = withdraw or don SCBA and PPE.
- Oxygen (O_2) reading below 20.8% = withdraw or don SCBA and PPE.
- Colormetric tube for benzene (if available): any color change = withdraw or don SCBA and PPE.

In addition to the ½ mile isolation distance, evacuate the public downwind in areas impacted by smoke and particulates.

Note: These action levels are intended to provide basic, quick reference guidance for the initial phase of emergency operations. As any crude oil release will likely include other hazards detailed guidance should be obtained and a complete air monitoring plan implemented. Additional information is available here:

EPA Emergency Response Air Monitoring Guidance Tables (see Table 10 - Oil):
www.epaosc.org/sites/0001/files/US%20EPA%20Air%20Tables%20Edition3_FINAL%202.pdf

NIOSH Pocket Guide to Chemical Hazards: www.cdc.gov/niosh/npg/

NOTIFICATIONS/CONTACT INFO:

• **DEC Spill Response:**	1-800-457-7362
• **New York State Watch Center (OEM):**	518-292-2200
• **OFPC 24 hr. Technical Assistance/Response:**	518-474-6746
• **National Response Center (EPA/USCG):**	1-800-424-8802
• **Chemtrec:**	1-800-424-9300
• **CP Rail:**	1-800-716-9132
• **CSX Transportation:**	1-800-232-0144
• **Norfolk Southern (NS):**	1-800-453-2530

NEW YORK STATE | Homeland Security and Emergency Services | Fire Prevention and Control

1220 WASHINGTON AVENUE, BUILDING 7A, FLOOR 2 • ALBANY, NY 12226
PHONE: 518.474.6746 • FAX: 518.474.3240 • WEB: WWW.DHSES.NY.GOV/OFPC

Skamania County Fire District #4
West Boundary: Skamania County Line - East Boundary: Smith-Cripe Rd.
Roads: Yellow
BNSF Tracks: Black

Skamania County Fire District #4
Skamania County Line to Cape Horn Rd.

Skamania County Fire District #4
Cape Horn Rd. to Prindle Rd.

Skamania County Fire District #4
Prindle Rd. to Smith-Cripe Rd.

June 8, 2016

Linda Pilkey-Jarvis /Dale Jensen
Spill Prevention, Preparedness and Response Program
WA Department of Ecology Spills Program
PO Box 47600
Olympia, WA 98504

DELIVERED VIA EMAIL to: Linda.Pilkey-Jarvis@ecy.wa.gov

Re: April 6, 2016 WA Ecology Office of Spill Prevention and Response-Preliminary Draft Language: Chapter 173-186, Washington Administrative Code (WAC). (Regulations Implementing House Bill (HB) 1449)

Dear Ms. Pilkey-Jarvis and Mr. Jensen:

Please accept this letter as Western Washington Railroad, LLC's (WWR) submission of public comment in response to the Proposed Draft Language: Chapter 173-186, WAC dated April 6, 2016 implementing HB 1449 ("Proposed Regulations").

WWR believes all or a significant part of the proposed rule is subject to federal preemption on account it attempts to regulate common carrier railroads operating in interstate commerce and places an undue burden on those operations. By commenting on the proposed rule, WWR does not acquiesce that the State of Washington has the authority to implement or enforce the proposed rule.

WWR is deeply concerned that the State of Washington is taking action to regulate railroad operations in a way that could restrict interstate commerce. Even though WWR operates entirely within the State of Washington, there is substantial case law that extends the protection of federal preemption to railroads that are part of the general system of United States railroads under the Interstate Commerce Commission Termination Act even if the physical operation of the railroad exists entirely within one state.

Ecology's own Small Business Economic Impact Statement suggests that creation and implementation of a plan may cost between $244,262 and $786,247. The latter number is greater than WWR's annual gross revenue. This cost burden alone could cause irreparable financial damage to WWR threatening its ability to fulfill its common carrier obligation as authorized by the Surface Transportation Board. This is directly in conflict with federal transportation policy.

WWR currently does not handle loaded cars requiring compliance with the proposed rule. However, as a common carrier, at any time a shipment that would require compliance could be made. Refusing or delaying a shipment in order to allow time for the railroad to come into compliance with the state regulation imposes an unnecessary burden on interstate commerce and therefore should logically be preempted by federal law.

Likewise, requiring a small railroad to create and maintain a plan as a contingency for traffic that may never materialize is also an undue burden on the shortline railroad.

Western Washington
Railroad LLC
541.912.1261

PO Box 6720
Aloha, OR 97007
www.wwrailroad.com

Because of this WWR suggests Ecology create a threshold volume of carloads that would protect small railroads from financial damage while recognizing that small shipment volumes pose minimal risk to the residents and the environment of the State of Washington. WWR would propose that the threshold be set at 500 annual carloads.

It should also be recognized by Ecology that speed plays a significant factor in the probability that a spill will occur, and the resulting magnitude of that spill. WWR would suggest that railroads operating trains containing commodities subject to this proposed regulation at speeds of not greater than ten miles per hour (10 mph) be exempted from the regulation.

It is unreasonable that the definition of a worst case spill accounts for the entire contents of the train and the locomotive's fuel capacity. There has been no incident where an entire train's contents have spilled as the result of a derailment. There are derailment experts that using scientific method can create a reasonable formula to determine worst case spill taking into account speed, equipment, track conditions and topography. A reasonable scientifically developed volume to be expected from a realistic worst case incident is a far more fair and prudent way of determining what that volume might be.

In section 310 the capacities required in the equipment table are unreasonable and need to be reduced, especially given that Ecology's definition of a works case spill is unreasonable given experience with real world incidents.

Finally, WWR finds the civil and criminal penalties as proposed by the rule to be beyond excessive, to the point of being vindictive. This is especially troublesome given that this rule as currently proposed will likely have to be adjudicated in federal court if the state attempts to enforce it.

Respectfully submitted,

Toby J. Van Altvorst
Managing Member

Western Washington
Railroad LLC
541.912.1261

PO Box 6720
Aloha, OR 97007
www.wwrailroad.com

June 7, 2016

Linda Pilkey Jarvis
WA Dept. of Ecology Spills Program
PO Box 47600
Olympia, WA 98504-7600
Linda.Pilkey-Jarvis@ecy.wa.gov

Re: Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad

Dear Ms. Pilkey Jarvis:

Thank you for providing the opportunity to comment on the proposed new rule, Chapter 173-186 WAC: Oil Spill Contingency Plan – Railroad. My wife and I are long time Tacoma residents living near Commencement Bay. We are extremely concerned about the destruction a potential oil spill would have on our community and our incredible natural environment that we are so lucky to live in. Commencement Bay is a source of enjoyment and pride for us, our neighbors and the community. We recreate, live on and enjoy it daily and it deserves the strongest possible protection.

I do not believe that the proposed rule adequately protects our natural resources and community from a spill. Crude-by-rail is rapidly increasing, as are rail accidents, spills and explosions. The Dept. of Ecology has estimated that crude-by-rail traffic will triple in Washington by 2020 and triple again by 2035. The potential for spills and spoilage of our environment and harm to people is alarming. The derailment of eleven cars carrying highly flammable Bakken crude oil near the Columbia River last week is just the most recent of many, many incidents, which adds all the more urgency to ensure that rules such as this one go "above and beyond" what is necessary to protect the environment and communities in the inevitability of a spill.

There are three major deficiencies in the proposed rule:

1. It would require slower and less extensive spill evaluation and response planning than currently required for vessel spills in Commencement Bay (WAC 173-182-380).
2. It does not reference key response equipment required by the vessel rule, including aerial surveillance, high current boom and planning for dispersants.
3. It does not require a plan holder to work with Ecology to identify Geographical Response Plans for areas where they have not been established.

Given these inadequacies, I contend that the draft rule is not fulfilling the mission of the Dept. of Ecology's spills program to maintain the best achievable protection. I strongly encourage the Dept. of Ecology to establish a more stringent rule for railroad contingency plans that makes sure the issues outlined above are resolved. Thanks for your consideration as you work to protect our shared natural resources.

Sincerely,
Vladimir Shakov
vladshakov@gmail.com

RECEIVED
Department of Ecology
JUN 09 2016
Spills Program

June 3, 2016
2400 NE 100th Street
Vancouver, WA 98686-5743

Department of Ecology Spills Program
O.P. Box 47600
Olympia, Washington 98504

Dear Sirs:

As a Railroad Conductor of 35 years on the SP&S and BN Railroads, my primary trips went through the Columbia River Gorge.

I hope you will view my comments and suggestions as being concerned.

There are many variables on the railroad that are unpredictable and unavoidable; slides, washouts, sun-kinks and equipment failures. It is doubtful that a tank care can be constructed that can withstand all the forces in a rail accident.

The focus on Bakken Crude Oil trains seems to be directed mostly at the railroads. The extreme volatility of Bakken Crude Oil has shown to be a significant problem to Emergency Response, the ecology and town evacuations.

These suggestions are offered for your consideration:

1. Work to further reduce volatility of Bakken Crude before shipping.
2. BNSF and Teroso fund and retain highly mobile and specialized Emergency Response Unit to coordinate with local Response until they can be on the scene, similar to the US Coast Guard Unit.
3. Reduce train speed through towns to 30 mph, or less.
4. In inclement weather in known slides areas, reduce speed to 30 mph, as slides have occurred after trains pass the "proceed" sign.
5. In 90 degree weather sun-kinks are most likely to occur, reduce speed to 30 mph.

Thank you for the opportunity to express my views.

Sincerely,

W. J. Hudson

King County

Office of Emergency Management
Department of Executive Services
3511 Northeast Second Street
Renton, WA 98056
206-296-3830 TTY Relay: 711
www.kingcounty.gov/prepare

June 9, 2016

Kim Morley
Linda Pilkey-Jarvis
Department of Ecology Spills Program
P.O. Box 47600
Olympia, WA 98504-7600

RE: **Proposed rulemaking on transportation of crude oil - Chapter 173-185/186 WAC**

Dear Colleagues:

As I write this, the people of Mosier, Oregon are just beginning to recover from the fire and mass evacuation caused by the 16-car train derailment and spill of Bakken crude oil. The accident in Mosier is the latest in a string of incidents involving transportation of this volatile substance that have threatened the life and safety of people living along rail routes, as well as the economic stability and natural environment we all share.

In King County, our region's north-south rail lines carry oil train traffic through the State's most densely populated area and the heart of our commercial and industrial centers. These rail lines flow the Puget Sound shoreline, cross rivers and estuaries, and along heavily used recreation areas and sports facilities.

As Director of King County Emergency Management, protection of the health and safety of the public is my paramount duty. A derailment, fire and explosion could have catastrophic impacts. Even smaller leaks and spills can have lasting and costly damage to health and water quality.

While we have very little control over oil moving through our communities by rail, we face significant burdens in emergency management and preparedness. Leaders of local governments and Tribes, emergency managers, and first responders need to have accurate and timely information about hazardous oil coming through our communities.

I want to thank the Legislature for adopting and funding stronger standards for oil transport safety and disclosure of hazards, and Ecology for developing the proposed rules under review. The action of the Legislature last year was a good first step.

I also want to recognize the state's establishment of four regional Hazardous Materials Planners who are now in place and serving the emergency management community. Their work will help to ensure that local plans meet best practices standards and give our emergency responders better tools to respond to incidents involving crude-oil-by-rail, barge and pipeline.

Chapter 173-185 WAC, Oil Movement by Rail and Pipeline Notification

Transparency about the capacity and makeup of existing and forecasted oil train traffic is essential for developing emergency plans and understanding the full range of impacts of existing and proposed oil export facilities. We strongly support the proposed notification provisions. However, the proposed rules don't require disclosure of the actual volumes of oil being transferred – especially for transfer by rail. This is critical information for emergency planning and for incident response.

Notification protocols should be developed for transport of any quantity of oil and not have a minimal quantity or units. This will enable local, county and regional jurisdictions adequate preparation for potential spills.

Chapter 173-186 WAC, Oil Spill Contingency Plan – Railroad

Local Emergency Planning Committees play a critical role in developing response plans in collaboration with stakeholders and the general public. We ask that the rulemaking consider a higher level of engagement with these Local Emergency Planning Committees and their counterparts among Tribal nations throughout the planning process.

On behalf of King County, I want to thank you for this opportunity to provide comments.

Sincerely,

Walt Hubbard, Director
King County Emergency

Cc: King County Executive Dow Constantine
Caroline Whalen, King County Administrative Officer
Megan Smith, Director of Climate & Energy Initiatives, King County Executive
Michael Charles, External Relations Specialist, King County Executive
Harold Taniguchi, Director King County Department of Transportation
Marty Grisham, Chair, King County Local Emergency Planning Committee

Appendix B: Transcripts from public hearings

Public Hearing – Spokane, WA – May 17, 2016
Hearing Transcription

Speaker 1: I'm Erica Bronson, Hearing Officer for the rule proposal for Washington Administrative Code Chapter 173-186 Oil Spill Contingency Plan Railroad. Let the record show that it is 2:12 on May 17th, 2016 and this hearing is being held at the Ramada at the Spokane International Airport in a lower level ballroom located at 8909 West Airport Drive Spokane Washington 99224. Legal notice of this hearing was published in the Washington State Register on April 20th, 2016 as number WSR 16-08-117. In addition, notices of the hearing were mailed to 36 tribal governments, emailed to about 1,100 interested people posted on Ecology's website for the rule, posted on social media including Facebook, Twitter, and Ecology's blog and a statewide news release on the rule making and hearing was issued on April 6th, 2016. I will be calling people up to provide testimony in the order in which your name appears on the sign-in sheet. Once everyone has indicated that they would like to testify has had the opportunity, I will open it up for others. At this time because we have six people signed as comment and this is scheduled to last until five. I'm not putting a time limit on comments but do please try to avoid repetition and extremely lengthy comments and of course you can always submit comments and writings as well and we consider them equally. So when I call your name as I mentioned please come up to the front here and I will give you the microphone. Please do state your name. If you want to state any organizational affiliation, you can do that as well. It looks like everyone has provided contact information on the signing sheet so you do not need to date your comment or your contact information for the record. So please speak clearly so that we can get a good recording of your testimony. We will begin with Laura Ackerman and she will be followed by Pauline Druffel and I do apologize in advance if I mispronounced anyone's name, please correct it when you state your name for the record and if I do happen to mispronounced.

Speaker 2: Thank you. I'm Laura Ackerman of the Lands Council here in Spokane and my comments are brief. I'm submitting more extensive written comments. The first thing I want to comment is on the draft cost benefit and least burdensome alternative analysis. This is table 7 and it's on pages 29 through 31. I really like this table. It's the Washington populations on or nearby the oil rail lines. That's really good to include but I'd like to see more context and details needed

because I think it will help the public understand this better since most people don't usually consider this bedtime reading. If they have access… if they can see more detail in this cost benefit analysis, I think they'll understand it better. So I'd like to see properties on the rail lines or near them that transport oil which are at risk of damage and contamination and include the property values and the tax revenues. For water state wide significance as the term has used on or near the rail lines that transport oil. Please include resources that these waters provide like in the Spokane River you know aquifer and the river mix so there's drinking water. We have a lot of recreation; there are tribal resources, tourism, fisheries, wildlife habitat, endangered species, etcetera. Please include that shorelines state wide significance to identify planning points use to calculate equipment access and timelines and for response for spills from rail, we want to make sure that it's comprehensive, it's appropriate, it's immediate so please make sure that you require one, two and four for our planning standards to avert or minimize oil spills into the water ways and the corresponding environmental and economic damage. I see on page 12 we have the group five planning standards for all non-floating oils, please require that. And there's a study that's done by the National Academy of Sciences Spills of Diluted Bitumen from pipelines. It's a comparative study and we would like to see that requires planning standards for diluted bitumen. That includes the recommendation from that study and require planning standards to include aerial surveillance capabilities. I think that's going to be able to tell us a lot if there is a spill for future plans and helping to clean them up better. Also real good protected equipment for oil spills responders like respirators. Retain the definition of worst case spills that you have and I think the plan needs to look at contingency plans specifically for oil tank cars that are used for storage. Those are all my quick comments, thank you for the opportunity to speak.

Speaker 1: All right, thank you Laura. So next we have Pauline Druffel and she will be followed by Jerry White.

Speaker 3: Hi I'm Pauline Druffel. Thank you for this opportunity and I appreciate Laura's comments, many more details that I am able to come up with. I'm a local citizen who lives near the railroad tracks and so I want to just comment about how that is for me. I watched the trains that come in from the west and go out from the east to west. So whenever a train goes by that has these oil tanker cars, I say a little prayer that they'll be safe and that we soon change to renewable clean energy. So I'm conscious of the impact that a derailment could cause if there were a

derailment near Brown's Addition and or crossing High Bridge going over Latah creek. That's where I see the trains. If there were to derail over high Latah creek, oil that go into the creek and then into Spokane River and then eventually into Columbia and into the ocean so all the contamination. So that's a big concern for all of the various possibilities as relates water from those bodies that are needed for consumption, for our drinking water, although we in Spokane are not so dependent upon it for drinking water so another localities are but all of the fish populations and other species and animals that are dependent upon clean water. But I'm also concerned about wildfires and so I will mention that here. I saw a fire out by the junction of I90 and highway 195 Sunday night, not from the train but a fire. And I quickly called 911 and they came and it was put out. But if a train derailment caused leakage of oil or the inferno… does one lady mentioned earlier today… it could cause extreme wildfires in our forested areas of Washington, anywhere along the track. And I'm not so sure just how the water ways would be damaged by that but I think there always so much there would be, the ash going into the water if nothing else. So I'm really concerned about this oil trains going through Spokane and I find it… I just want to say to Department of Ecology that I'm glad for all the work that you're doing and I hope that you will keep industries feet to the fire so to speak to make them really responsible to carry the cost for damage of this cause if there is any oil spill and I applaud what you are already doing, thank you.

Speaker 1: Thank you. Okay so next we have Jerry White and he will be followed by Elizabeth Gulick.

Speaker 4: Hello, my name is Jerry White Jr., the Spokane River Keeper. I would also like to say I appreciate the effort of the Department of Ecology in response to Governor Inslee and legislator's directives to create this WAC. I do have grave concerns around the incredibly challenging nature of preventing damage from an oil spill across our Spokane River. There are conditions and I'll briefly outline those. There are conditions that that transport finds itself under that I think that going to be very very challenging. One is for much of the year in high water the river runs very very quickly. It can be up to 25,000 cubic feet per second even up to 30,000 cubic feet per second if oil spills on to that river moving so fast there's really no way to keep that from moving downstream nor I would guess and I will look at the geographic response plans but I can't imagine how you will deployed booms across the river moving at that rate of speed with that velocity. So this gets to my point that really there is no practicable way to move that volume of oil or seeing

88 going across the river without at some point incurring permanent damaging impacts that are left to
89 the public to sort of pay for both intangible and tangible ways. I also have some concerns on the
90 WAC 173-186-610 enforcement and non-compliance. I don't know how Ecology can sort of
91 prevent back sliding and we've seen this in other areas and seeing this enforcement crumble under
92 political pressure and wants to keep that from happening in a way that would compromise the
93 contingency planning. I guess the last thing I would say kind a circling back is a river is home to
94 Columbia Basin redband trout. There are species of concern to Washington State Department of
95 Wildlife and Federal Fish and Wildlife Service. No amount of planning can really prevent the loss
96 and damaged to that species and it's possible that if something happens certainly with diluted
97 bitumen that sinks, those populations could be damaged in a way that we would never get them
98 back. And so that's a deep concern of mine. Anyway, thank you for the opportunity to testify.

99 **Speaker 1:** So thank you Jerry. Next we have Elizabeth Gulick who will be followed Chris
100 Nerison.

101 **Speaker 5:** Thank you. Hi everybody, my name is Elizabeth Gulick. I was born and raised in
102 Spokane. I'm a student of Environmental Science. I'm here today to learn more about how the
103 legal frame work and everything works with these issues and it's really kind a confusing… it's
104 extremely confusing actually. But I do have some comments, they are general and I would like to
105 read over this plan because I haven't actually read it and submit it in writing. So one of my
106 concerns is the 24 month period that's been talked about, there is a time period in which resources
107 can be obtain in case of emergency. That's two years and I just have to say I completely disagree
108 with that. I think that there is no amount of time that should be allowed for obtaining the resources
109 that we need to cleanup a spill. As we saw in the Gulf Coast it's very possible that companies
110 aren't prepared to deal with disasters and I think that we should really learn from history and not
111 allow any time frame of being unprepared. When you're dealing with water in 2016 I think you
112 should take all measures that you possibly can to preserve and protect that resource and
113 Washington State is extremely blessed with water and Spokane is extremely blessed with clean
114 water and a single source aquifer. Some of the cleanest drinking water around and there is
115 probably no amount of money that could be reprimanded to replace that if a train were to spill in
116 Spokane area and contaminate the aquifer. How could that possibly be fixed? So that brings me to
117 my other point of… I don't know, I don't have the answer to this and hopefully somebody could

118 help me. Where is the money going to come from in case that were to happen? I would just like to
119 say for the record that it should be on the backs of those who are profiting out of these risks. If
120 you are going to a risk contaminating the life blood of an entire city, you need to have money to
121 clean up after yourself. If you don't have that money you shouldn't be able to risk contaminating
122 the aquifer. That's my logic. I'm just saying that for the record. So thank you for doing your part
123 to protect our environment and I will be writing some more after I learn more about this process.
124 Thank you.

125 **Speaker 1:** All right, next up is Chris Nerison and he will be followed by Dave Bilsland.

126 **Speaker 6:** Hi, my name is Chris Nerison. I was present at the Exxon Valdez about this oil spill as
127 a commercial fisherman and live in an adjacent community. So I have a couple of comments that
128 the mechanical equipment that cleans up spilled oil is… there was no advances between
129 technological advances between Exxon Valdez and the deep water horizon oil spill. The industry
130 has just not invested any money. I'm kind a curious to know what's going on like since the
131 Deepwater horizon because I kind a doubt they have. Reflecting back on my experiences and I
132 actually work on oil spill for a while and looking at the equipment that was available and trying to
133 apply that and that very crude technology to things like rivers and stuff like that. I mean it
134 absolutely is not going to work. It just won't work. Absorbent material might work, we have
135 enough of it but I'm going to take a closer look at this plans that they come up with when they
136 come out. The other thing that's great concern to me is… so there's a line of logic were…okay the
137 mechanical equipment doesn't work so let's use dispersants. Dispersants are exceedingly toxic.
138 They're actually as toxic as the oil they disperse and they are mostly a PR ploy on the part of the
139 spillers so that it doesn't look as bad as television. And I hope that when they come out with these
140 plans that the use of dispersants is only used in the most dire situations. I hate to say it but… and a
141 dear friend, a Marine Toxicologist been involved in this type of stuff all of her life says it's
142 actually better to just let the oil grab sediment, sink and sand in than it is to put dispersants on it.
143 Because dispersants just… in addition to toxic nature of the dispersants, then you just spread the
144 toxic elements of the oil and it invades the environment more effectively than if it was left as oil.
145 The refined products evaporate. So the use of dispersants is just a horrible idea and I hope that'll
146 be kept in mind. And another thing that we learned from Exxon Valdez was that there is no
147 effective mechanism in this country to compensate for the economic losses incurred by the people

that sustain economic loss as result to these oil spills. The juridical system is simply doesn't work because in the case of Exxon Valdez the civil case against them by the plaintiff was… it took five years to actually get to trial and you have not ability to discuss damages that occur after the trial. So that in a long term effect of an oil spills, dramatic long term effects in Prince William Sound you can still go to the beaches in Prince William Sound. You can dig a foot into the gravel and the water that rises in that hole that you dug will have oil on it. You can see it as plain as day. You can smell it. It persists for a long, long time and for eternity in human scale. And so like I said, those are my concerns that in these plans, that there is effective mechanical clean up and that the plans are actually real. That they have stringing a boom across a river to stop the oil isn't going to work. It just doesn't work. I'll be curious to see what those plans are. Thanks.

Speaker 1: All right, next up we have Dave Bilsland and he will be followed by Ziggy.

Speaker 7: My problem with the oil trains is that if we have an explosion at Division and Sprague we will lose the two major hospitals that are there to take care of people in this situation. If we have an explosion, the size in the one in Quebec, at that point, we will lose not only both those hospitals but a multitude, approximately 3,000 housing units downtown will also be affected, not to mention the Spokane River. That whole area is so sensitive because of the hospitals that I have a real problem when having all the coal trains] and the oil trains going through. So if we have a problem there, it's going to destroy half of the town. So we need to be a lot more careful about it. I've also have a chance for the last two months to watch the trains and I have seen maintenance comes through once in the last two months checking those trucks. But you see what? 35, 40 trains a day. I'm really worried about the maintenance and that worst case scenario happening in downtown Spokane. What are we going to do if that happens?

Speaker 1: So next we have Ziggy.

Speaker 8: Okay let see, it's all about oil spill contingency plan. I don't want any oil spill contingency plan. I just don't want these trains come through my city. I just spent three days in Anacortes, some of it on the tracks making sure these oils doesn't get where it supposed to go. Over fifty of my friends were arrested over the weekend, they are all out, we are going to be out there again and again everywhere we need to be stopping these trains as long as we need to stop

them. We will not give up, there's no reason for Spill Contingency Plans. The trains just need to stop. Period.

Speaker 1: Okay so that concludes the people who have indicated that they wanted to give testimony. Is there anyone else who would like to at this time?

[silence]

Speaker 1: Okay well if you change your mind, we are here until five and at that time I will read the remainder of the information that goes on to the record but for now we will just put on hold. Thanks everyone for coming if you are taking off at this point.

Speaker 1: Okay, so we have completed the formal comment period. If you would like to send ecology written comments, please remember they must be received by June 10th, 2016. Send them to Department of Ecology Spills Program, Linda Pilkey-Jarvis PO Box 47600 Olympia Washington 98504-7600. You can email them to linda.pilkey-jarvis@ecy.wa.gov or fax to 360-407-7288. Or you may use our online comment form on Ecology Spills Program rule making website at www.ecy.wa.gov/programs/spills/rules/main.html. You may also provide comments at additional public hearings that will be held Monday, May 23rd, 2016 at 7 PM at the Holiday Inn Downtown Everett Ballroom 1, 3105 Pine Street, Everett Washington 98201, Wednesday, June 1st, 20156 at 1 PM by webinar. Webinars are online meeting forum that you can attend from any computer with internet access, instructions for joining the webinar or on our public involvement webpage for the rule at www.ecy.wa.gov/programs/spills/rules/1514inv.html. Friday, June 3rd, 2016 from 8 AM to noon at Double Tree by Hilton Vancouver, The Columbia Room 12712 South East Second Circle Vancouver Washington 98684. All testimonies received this hearing as well as other hearings to be held in Everett Vancouver and view webinar along with all our written comments receive no later than June 10th, 2016 will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement or CES publication in which we respond to formal comments to everyone that provided written comments or oral testimonies on this rule proposal and submitted contact information. Everyone that signed in for today's hearing that provided an email address, other interested parties and other agencies mailing list for this rule. The CES among other things contain the agencies response to questions and issues of concern that were submitted during the public comment period. If you would like to

receive a copy but did not give us you contact information, please let one of these staff of this hearing know or contact Linda Pilkey-Jarvis at the contact information provided for submitting comments.

The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for August 31st, 2016. If the propose rules should be adopted that day and filed with a code reviser it will go into effect 31 days later. If we can be a further help to you, please do not hesitate to ask the staff members today or you can contact Linda Pilkey-Jarvis if you have questions later. On behalf of Department of Ecology thank you for coming. I appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 5:03 PM.

Public Hearing – Everett, WA – May 23, 2016

Hearing transcription

Speaker 1: I'm Bari Schreiner Hearing Officer for this hearing. This evening we are to conduct a hearing on the rule proposal for Chapter 173-186 Washington Administrative Code Oil Spill Contingency Plan Railroad. Let the record show that it is 7:46 PM on May 23, 2016 and this hearing is being held at the Holiday Inn Downtown Everett Ballroom One, 3105 Pine Street, Everett Washington 98201. Legal notice for this hearing was published in the Washington State Register on April 20th, 2016, Washington State Register number 16-08-117. In addition, notices of the hearing were mailed to 36 tribal governments, emailed to about 1,100 interested people posted on ecologies website for the rule making and posted on social media Facebook, Twitter and Ecology's blog. A state wide news release on the rule making and hearings was issued on April 6th and May 19th, 2016. At this time, I will be calling people up to testify, please remember to state your name for the record and if you haven't already provided me contact information please either provide it on the record or you can see one of the staff after the hearing so that we can get that down. We need the contact information so that we could send you notice when the response to comments is available or other next steps in the process are being taken. At this time, I showed that there's one person who's already indicated they want to provide testimonies so I may calling Lovel Pratt to give comments first.

Speaker 2: Good evening, for the record my name is Lovell Pratt with Mulno Cove Consulting and I'm here this evening representing the Friends of the Earth. I want to start with reading some of the language in the Bill 1449 which illustrates the legislative intent. The legislature recognized that "the movement of crude through rail corridors and over Washington waters creates safety and environmental risks and the sources transport of crude oil bring risk to our communities along the rail lines. Further, this bill states that in order to establish a comprehensive prevention and response program to protect Washington's waters and natural resources from spills of oil. It is the purpose of this chapter to maintain the best achievable protection that can be obtained through the use of the best achievable technology and the staffing levels, training procedures and operational methods that provide the greatest degree of protection achievable. So I just want to start by thanking Ecology for implementing contingency plan regulations for railroads as it does already

247 for vessels and facilities. In order for these regulations to be successful and implementing
248 legislative intent, there's a couple of things that I think that are need to be added to the current
249 draft of the regulation. So WAC 173-186-010 purpose states that to provide for the protection of
250 Washington waters and natural and cultural and significant economic resources by minimizing the
251 impact of oil spills. And to do that, these regulations should require the one, two and four hour
252 planning standards to avert or minimize oils spills into waterways and corresponding
253 environmental and economic damage. Also to require the group five planning standards for all
254 non-floating oils not just for group five oils and this will include Canadian crude oil, also known as
255 diluted bitumen or dilbit. And also to require planning standards for diluted bitumen that include
256 the recommendations from the National Academy of Sciences recent report the spills of diluted
257 bitumen from pipelines a comparative study of environmental fate, effects and response. Also to
258 require planning standards to include aerial surveillance capability as is required in WAC 173-182-
259 321, the cover vessel planning standards for aerial surveillance. I want to applaud ecology for
260 including the definition of worse case spill that's consistent with the definition applied to the other
261 contingency plan requirements in the state and hope to see that in the final rule. This Bill 1449 is
262 the Oil Transportation Safety Bill. To ensure safety towards first responders it's very important
263 that we require appropriate protective equipment including respirators. This can be done by
264 amending the definition of spill assessment so that there's an added line at the end of the definition
265 which would state an identification of appropriate protective equipment including respirators for
266 oil spill responders. Also an amendment to the new section of the WAC 173-186-430, the
267 planning standards for air monitoring, to protect the oil spill responders and the public and it would
268 be to add a number ten, a description of how oil spill responders will be protected with appropriate
269 equipment. For example, respirators while responding to spills with adverse air quality. I ask for
270 revisions to the draft cost benefit and least burdensome alternative analysis. In the current draft the
271 likely cost of the proposed rule are described in far more detail than are the costs of spills and the
272 other costs associated with the likely benefits of the proposed rule. So the language identifying the
273 benefits of this rule need to be expanded in that document. Also in that document is Section 1.6,
274 risk for class five oils and that includes some cost information on the 2010 diluted bitumen spill in
275 the Kalamazoo River in Michigan and the cost identified in current draft is not the current cost,
276 and so I ask that that be updated. And also to note and here this gets to my example of how not all
277 non-floating oils are group five oils so the oil in the spill in 2010 Kalamazoo River is not a group

five oil but it did sink and that was a huge problem and huge basis for the excessive cost of that spill. Next, I ask this rule ensure the accuracy of planning points for rapid, aggressive and well-coordinated response and to provide for the protection of Washington waters and natural, cultural and significant economic resources by minimizing the impact of oil spills. So in the preliminary draft language there was definition included and reference included to the shorelines of state wide significance and this has been dropped in the current draft and when you look at the map of planning points there are significant gaps where waters of state wide significance are located. And I ask that the final regulations include shorelines of state wide significance and planning points that ensure the coverage of those shorelines of state wide significance. I think this is well identified in the intent of the legislations. Finally, with regard to requirements for significant changes to approved plans I ask that there be public notice and a review and commenting opportunity in WAC 173-186-130 significant changes to approved plans. And thank you very much.

Speaker 1: Thank you. At this time is there anyone who has change their minds who would like to come up and provide comments? Please remember to state your name for the record.

Speaker 3: Hi, my name is Ben Sobel. I'm a student in an Environmental Law class that and our teacher had us attend these environmental assessment hearings. I was just going to say like kind of as a minor comment. I overheard some people talking about how there were these regulations that prevented coal trains from running in the immediate aftermath like 24 hours after landslides or something along those lines and how that type of thing would be beneficial for oil spills and for those kind of immediate like kind of stuff [inaudible] I don't know it just seemed kind of like an intelligent sort of idea that should be in the record so that's my two cents.

Speaker 1: Is there anyone else who has changed their minds who would like to come up now? Now I'll read some information into the record and I'll ask again one more time. If you'd like to send the ecology written comments please remember they must be received by June 10th, 2016. You can send them to the Department of Ecology Spills Program. Before I continue, this information is also available on some of the focus sheets on the back tables. You don't have to write it down as I talk even though I'm reading it into the record. Make sure you get one of those if you want the information. But you can mail them to Department of Ecology Spills Program Linda Pilkey-Jarvis, PO Box 47600, Olympia Washington 98504-7600. You could email them to

linda.pilkey-jarvis@ecy.wa.gov or they can be faxed to 360-407-7288. You can also submit comments through our online comment form which can be found on Ecology Spills Program rule making website at www.ecy.wa.gov/programs/spills/rules/main.html. We are also holding additional public hearings, the next one on this proposal will be Wednesday, June 1st, 2016 at 1:00 PM and this is by webinar. Webinars are online meeting forum that you can attend from any computer using internet access. Instructions for joining the webinar can be found on our public involvement webpage for the rules at www.ecy.wa.gov/programs/spills/rules/1514inv.html, there's a backslash between rules and that number one in case somebody is writing it. We are also holding one more hearing on this proposal on Friday, June 3rd, 2016 from 8 AM to noon at the Double Tree by Hilton in Vancouver, the Columbia room 12712 Southeast Second Circle Vancouver Washington 98684. So check one more time, is there anyone who has change their minds who would like to come up to provide comments for the record? Let the record show that no one else would like to provide comments at this time. So all testimonies and comments received at this hearing as well as the hearing held in Spokane on May 17th, 2016 and the other hearings to be held in Vancouver and by webinar along with all written comments received no later than June 10th, 2016 will be part of the official record for this proposal. Ecology will send notice about the concise explanatory statement or CES to everyone who provided written comments or oral testimony at on the rule proposal and also submitted contact information. Everyone who signed in for today's hearing that provided an email address and other interested parties on the agency's mailing list for this rule. The CES among other things contains the agency's response to comments and issues of concern that were raised during the public comment period. If you want to receive one and you didn't give us your contact information please see one of the staff after the hearing and we'll get you added to those mailing list. The next step is to review comments and make a determination about whether to adopt the rule. Ecology's Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for August 31st, 2016 and if the proposed rule should be adopted that day and filed with the code reviser it will be going into effect 31 days later. If we could be any further help to you today, please let us know. Thank you very much for coming. Let the record show that this hearing is adjourned at 8:01 PM. Thank you very much.

Public Hearing – Webinar – June 1, 2016
Hearing Transcription

Speaker 1: I'm Bari Schreiner, Hearing Officer for this hearing. This afternoon we're to conduct the public hearing on the rule proposal for Chapter 173-186 Washington Administrative Code-Oil Spill Contingency Plan-Railroad. Let the record show that it is 1:50 PM on June 1st, 2016 and this hearing is being held via webinar broadcast from the Department of Ecology Headquarters Room 1F08, 300 Desmond Drive Southeast, Lacey, Washington 98503. Legal notice of this hearing was published in the Washington State Register, April 20th, 2016, Washington State Register Number 16-08-117. In addition, notices of the hearing were mailed to 36 tribal governments, emailed to about 1,100 interested people, posted on Ecology's website for the rule, and posted on social media: Facebook, Twitter, Ecology's blog, and a state-wide news release on the rulemaking and hearings was issued on April 6th, 2016. At this time I'd like to ask, is there anyone who would like to provide oral comments for the record? Please use the raise your hand icon on the upper right hand corner. Okay, let the record show that no one has indicated they would like to provide testimony. If you would like to send Ecology written comments, please remember they must be received by June 10th, 2016. This information is now being displayed on the screen for you, and is also available on the link that was sent out to you earlier in the chat feature. You can send the comments to Department of Ecology Spills Program, to Linda Pilkey-Jarvis, PO Box 47600 Olympia, Washington 98504-7600. Or you could email them to linda.pilkey-jarvis@ecy.wa.gov or fax them to 360-407-7288. You could also submit comments on our online comment form which can be found on Ecology Spills program rulemaking website at www.ecy.wa.gov/programs/spills/rules/main.html. We are also holding an additional public hearing that will be Friday, June 3rd, 2016 from 8:00 AM until noon at the Double Tree by Hilton in Vancouver, the Columbia River Room, 12712 South East Second Circle, Vancouver, Washington, 98684. Check one more time, is there anyone who has changed their mind and would like to provide testimony? Please use the raise your hand icon. No one has indicated they would, so all testimony received at the public hearings, other hearings that were held in Spokane on May 17th, 2016 and Everett on May 23rd, 2016, and the hearing being held in Vancouver on June 3rd, 2016 along with all written comments received no later than June 10th, 2016 will be part of the official record for this proposal. Ecology will send notice about the Concise Explanatory Statement or CES publication to everyone that provided written comments or oral testimony on this rule proposal and submitted contact information. If you'd like to receive a copy of that, please use the chat feature to send us your name and contact information, either an email address or mailing address. We will also be sending it to other interested parties that are on the agency's

mailing list for this rule. The CES will among other things contain the agency's response to questions and issues of concern raised during the public comment period. The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for August 31st, 2016. If the proposed rule should be adopted that day and filed with the code reviser, it will go into effect 31 days later. If we can be of further help to you, please do not hesitate to ask or you can contact Linda Pilkey-Jarvis if you have other questions. On behalf of Department of Ecology, thank you for attending the meeting. We appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 1:55 PM.

Public Hearing – Vancouver, WA – June 3, 2016
Hearing transcription

Speaker 1: I'm Elena Guilfoil, the Hearings Officer for this hearing. This morning, we are to conduct a hearing on the proposed rule Chapter 173-186 WAC Oil Spill Contingency Plan Railroad. Let the record show it is 9:07. This hearing is being held at the Double Tree Inn Vancouver, the Columbia Room 12712 Southeast Second Circle Vancouver Washington 98684. Legal notice of the hearing was published in the Washington State Register on April 20th, 2016, the register number is 16-08-117. In addition, notices of the hearing were mailed to 36 tribal governments, emailed to about 1,100 interested people, posted on Ecology's website for the rule, posted on social media Facebook, Twitter, Ecology's blog and the news release on the rule making and hearing was issued on April 6th, 2016 and May 31st, 2016. I will be calling people up to provide testimony based on the order your name appears in the signing sheet. Once everyone who has indicated they would like to testify has had the opportunity I will open up for others. So let's begin with Tim Young. Please come on up and we'll have you sit here and give your testimony.

Speaker 2: I'm Tim Young, Chairman of the Board of Commissioners of Skamania County Fire District 4. The district provides fire protection and emergency medical services at the West end of Skamania County which includes a portion of the Columbia River Gorge National Scenic Area. There are approximately seven miles of BNSF Railway Company tracks in the fire district starting at the Clark/Skamania county line in the west to Smith Crack Road in the east. BNSF tracks are used for the transport of bakken crude oil. In many locations the tracks are adjacent to the Columbia River. In July of last year, owing to the dangers associated with oil by rail, the district adopted a resolution that states impart: Skamania County Fire Protection District 4 hereby requests that Senators Murray and Cantwell and Representative Herrera Butler work immediately with the pipeline and hazardous materials and safety administration, National Transportation Safety Board, and the Federal Railroad Administration to stop bakken oil train traffic through the district, Skamania county, and the Columbia River Gorge at large while concurrently developing federal legislation requiring that railroads, as a condition of transporting bakken crude oil through the Columbia River Gorge establish and demonstrate the capability to provide required hazardous materials response including fire suppression of bakken crude oil fires in the Columbia River Gorge. This is directed to Ecology your efforts are to be commended. Nothing meaningful has been developed on this issue at the federal level. The proposed rulemaking addresses part of our concerns, however, there is a significant piece still missing. History tells us that bakken oil train derailments result in large scale fires. There is insufficient class B foam in the region to extinguish

these types of fires. In our district water must be trucked in for fire suppression. Even with statewide resources provided under state mobilization, it is not possible to provide sufficient water for fire suppression through over the road water tender operations. In addition, five of the seven miles in track in our district are not accessible by fire apparatus. So if you look at this by the numbers and this is based on references in the Tesoro DEIS, the New York Department of Homeland Security Emergency Services was cited as a reference for a three car fire. Now understand that in the last 2013-2014 four major derailments that resulted in fire. And in these four derailments there were an average of 11 cars that burned. The minimum number of cars burned was three. So if you look at the requirements for three burning rail cars with bakken crude oil, according to the guidelines that I just referred to, you would need 80,000 gallons of water in order to protect your exposures as well as extinguish the fire. Now, 80,000 gallons of water would require 32 water tenders if you had all the water available at one time. There are only 28 water tenders available under the state mobilization program. And those tenders are available on paper only. So the reality of it is you simply do not have enough foam. You do not have enough water to extinguish one of these fires. Burlington Northern maintains an inventory of 250 gallons of foam in Vancouver, 500 gallons of foam in Pasco. The Vancouver foams is two hours away. The Pasco foam is five hours away and in addition to not having enough foam, we need 1500 of gallons of foam to deal with a three car fire and remember now the average of those four I cited is eleven cars. So you can see that there is insufficient foam in the region and there is a lack of water to deal with this issue. So as a result of that, in situ burning referred to in the proposed rule will not be an option but will be an unacceptable reality allowing these fires to burn out on of their own exposes the district, Skamania county, and the Columbia River Gorge National Scenic Area at large to great wildland fire risk in an area that is heavily wooded and experiences extremely high winds. We believe that to provide for the protection of Washington waters and natural, cultural and significant economic resources by minimizing the impact of oil spills, as the rule states, that the rule must be expanded to include provisions that require railroads demonstrate their capability of extinguishing oil train fires.

Speaker 1: Thank you very much. Thank you. Next we have Don Steinke.

Speaker 3: Good morning. I added a few notes while… to my written notes. These are not typed up but not printed out yet. Just for a background, I believe the consulting firm that was hired to write the marine and rail oil transportation study was the same one hired to help write the EIS for the Tesoro Savage oil terminal. They have a conflict of interest and that… on their website, they list BNSF as one of their clients. The city of Vancouver legal team say that the draft EIS is useless for decision makers. And the city of Spokane Valley said that the consultants omitted stuff that was

important and readily available on the National Transportation and Safety Board website and our state attorney general Ferguson said that the EIS was inadequate particularly in fire preparedness. Regarding your best achievable protection, a vice president of northwest natural gas said that best achievable protection might be the highest standards possible for every rail crossing. I would like to encourage you not to say the word "clean up", I've heard that the word clean up… well there's no such thing, in fact Scott Ferguson, your spill response man [inaudible] that at best 20% of the oil is recovered in a spill and so I hope that we come up with another word besides clean up. And then let's see, [inaudible] pipelines and you need to address the cascading subduction zone possibility and now I quote the notes I prepared before. I believe I testified on your rulemaking in the past regarding worst case scenario online or telephone call. I know this is not about that testimony but worst case scenario would affect response planning and I think there is new information on the issue that even though today's hearing is not exactly about worst case scenario contingency planning to be included for that. The city of Vancouver had paid for an insurance consultant to compute the risk of a maximum foreseeable loss in the event of a crude oil by rail accident. The consulting firm is the Blackburn Group of New York. It specializes in enterprise Risk Management, claim management and settlement solutions and the energy distribution sector. The report is pre-filed with EFSEC so I don't have a copy to give you but it's on… I believed it's on their website. It's pre-filed with EFSEC three weeks ago for adjudication and I'll read excerpts from that report. I try to identify my remarks separate from the report's remarks. Regarding an oil train accident in Vancouver the consultant says, "It is reasonable to estimate an expected maximum foreseeable loss for a catastrophic accident in the region at approximately five to six billion dollars." That's a rough estimate. Speaking for myself, as I recall, the dollar amount in your previous worst case scenario that we testified on before was way too low. Back to the consultant's report. The total risk values are into the billions… the fact that they are into the billions is not surprising. BNSF has been upfront that even available railroad liability insurance apart from the applicants, tops out at about one billion dollars and insurance is not commercially available to sufficiently protect us against catastrophic loss. The only way we can prevent catastrophic loss is not to build more facilities and not to have the trains going through at all. In a US Department of Transportation report the transportation they say, this level of insurance was documented as well short at the five to six billion dollars that class I railroads estimate would necessary in a nightmare scenario. Once their primary insurance has been exhausted, carriers will be held liable for the balance. Forcing… this is a key percent, forcing even the largest in railroad into bankruptcy. Now this is back to me, that contingency planning should include a real worst case scenario. And here are some testimony back and forth between the city of Vancouver's legal team

and the consultant because this is going to be in the EFSEC hearing in three weeks down the street a few blocks. Would it be expected for the type of insurance policies we have that discussing that there will be exclusions for intentional sabotage or acts of terrorism. Answer from the insurance consultants: absolutely there will be exclusions for intentional sabotage or terrorism. So for an intentionally caused, maximum foreseeable loss, this is the city now speaking, it is probable that most, if not all of the insurance policies the applicant holds, there will be no payout. Correct. There are no all-risk policies, solve for this type of risk at this time while insurance markets base risks on average daily events. Do they also limit their exposure to what some might refer to as a black swan event? A black swan event is something that insurance companies couldn't have foreseen. I don't know if that insurance company knows about our subduction zone. And I just read within last week that it will be a worst case, worst disaster in history in America if we have major subduction zone event and the FEMA says we assume that everything west of I-5 would be toast. And the odds of it happening were overdue. The odds of it happening are one in three in the next 50 years for a partial subduction zone event and one and ten for a full rupture subduction zone event which would be a toast situation. And the trains run of west of I-5 for much of their route going up to north Puget Sound. The insurance markets are already aware of various types of risk and as addressed above oil train accidents have been covered in the media with video footage widely available. As the insurance industry is aware of the risks it has to account for them. This is for regular things, not for black swan things. So is it a fair assessment that given the insurance market has to account for the maximum foreseeable loss, risk is… their way to respond is to not insure against it. And the applicant is using an LLC, to all this is for Tesoro but they operate also in Anacortes …so that the applicant is using an LLC to avoid the same risk. And the applicant is effectively asking local citizens here in Washington to shoulder their maximum foreseeable loss risk. Answer "yes". So the expert is saying that the applicant Tesoro which operates in Anacortes as well us here is part of an LLC and they're asking the local citizens here in Washington to shoulder the risk of a maximum foreseeable loss. The only way to be prepared for this is to not do it at all. The Blackburn group is the name of this consulting company and I don't think that they were aware of the potential of earthquakes. Everything they've said, they've said not knowing about the potential of an earthquake. The Blackburn group was focused on Vancouver and I don't think they considered the Tacoma and Seattle area. So that would be maybe more than five or six billion dollars. I know you tried to write a better bill than the one you got through and I provided testimony in November of 2014 and in the legislature in 2015 and what came out of the legislature is the usual sausage and water down. We urge ecology to provide and this gets to my afternoon testimony. Make the contingency planning

more complete. Include fire and be upfront with people. We had some people from spill response come to a public meeting with OPB radio last fall in Vancouver and I appreciate that. They're proud of a good work they do. And they want to do a good job and so they emphasize how good a job they do. But they don't emphasize the fact that it's impossible to do a good job. Basically admit there is no such thing as clean up. Thank you.

Speaker 1: Thank you. Next we have Richenda Fairhurst

Speaker 4: Thank you. So yes my name is Richenda Fairhurst and I'm with Camas United Methodist Church. And Don mentioned that we have to be careful with words and words like clean up in this case can be misleading. My notes have pulled out the word safety. The word talked about, the word safety as if it would make us safe if we have this contingency plan, but it won't. In fact, when the railroads first came in, there was so much excitement around that. We were opening up the west as an enterprising American people. These trains that would come along the Columbia River, they had building supplies for the growing cities. They had sacks of grain and food and seeds that people would plant for their gardens. They had things that people would order from the Sears catalog, farming supplies and it was just an occasion to have the train go by. People don't realize that you could literally stand by the tracks and flag the train down and it would stop and pick you up and you could be a passenger on the train. I mean this is the nostalgic wonderful view we have of our ancestral memory of the train. What an occasion it was. What a grand thing. What it showed that we were people on the move. That's not what's happening now. Once we've changed the kind of cargo that those things carry, when they come through small towns… Camas is not such a small town anymore. It's grown so much, but Washougal and Camas and many of these other small towns like Bingen and places like that. When you are carrying wheat and stuff from Sears, it's a celebration when it comes through town. When you are carrying cars and cars full of millions of gallons of explosive oil, where you are literally putting citizens at risk, it's no longer a celebration. It's not even neutral. It becomes an everyday threat to the lives and well-being of the people who live there. So safety in that context becomes a word that just doesn't, and in the words of the Princess Bride it doesn't mean what you think it means. We can't even begin to use that word. I was impressed with the 80,000 gallons of water it would take…have we factored in water harm using 80,000 gallons of water? What happens to that water when you use it to suppress the fire? Where does that run off go? I mean there's…we are right along the river. There are 10,000 school children in Camas and Washougal…that's just school children. That's not kids under five and there's lots and lots of those. These trains that go right through the downtown, they go right across what is for us major roadways, they go right by the river and so in a worst case scenario… and not even a worst case, I'm sorry, in

a medium case scenario first responders are literally have to stage rescues from the river. I brought some of these pictures, these are not of course pictures from a spill in Camas but these are examples of how rescues from a river might look. Where you have stretchers and you have… and we're going to bring… how exactly are we going do that? Bring fire boats up into the edge. Are people just going to be dodging fumes and oil and crunched up cars or are they going to be dodging flames as well? How on earth are we going to rescue people that way? How soon can we get the boats there? What are we going to tell our school kids about how we are going to do this? What kind of duck and cover drills do you think that we really need? Can we duck and cover? This is the problem. And the problem just simply cannot be mitigated. That's the hard thing. All this wonderful work… you guys have worked so hard and I appreciate that so much and yet nowhere in any of these plans is there the reality that we can actually mitigate the harm. No longer do we need this sort of substance in order to truly help power our cities. So we're accepting a tremendous amount of harm for almost no common good. It makes no sense. As communities, we shoulder harm together for a greater common good. This common good doesn't exist in this case. We no longer need to draw things like bakken crude… fracking…what on earth is that? We no longer have to draw this stuff out of the earth. And the minute we do, the minute we pull that stuff out and decide this is a commodity we are tasked with how do we get this explosive commodity to market? We are forced to put it on trains. We are forced to create terminals to ship it and hold it because you got to do something with it. The only real solution is to leave it in the ground. You have to leave it in the ground because it is truly not a commodity that helps the common good. It's actually so destructive and harmful that there's no way to clean it up and there's no way to make it safe. And I'm, that's just the truth. It would be great if we lived in fantasy land where we can pull up all this stuff and it does doesn't matter and look how cool it is. It just doesn't work like that. I wish it did. So I'm asking… I'm thanking you actually for how much work that you've put into doing as much as you've done. That we are starting to really look at the risk and not blink is to the credit of everyone. It's hard to look at real risks when we talk about this. It's really hard. I don't want to look at one of my little five year olds in the face and say that I didn't do my best to make sure they were actually really safe and not just pretend safe. So let's not make our kids pretend safe. Let's make them really safe and that's keeping it in the ground. Thank you.

Speaker 1: Now we have, let's see Dan Serres.

Speaker 5: I'll be short. First thing is… I should say Dan Serres, I'm Conservation Director with Columbia River Keeper. We support ecology in trying to take a look at the contingency planning for a worst case scenario. So that's defined in the proposed rule… I think the definition makes sense

to look at the maximum cargo being carried per each train three million gallons plus per train. I think the second thing, that kind a jumped out is maybe the potential need to add more study points or more reference points between Bingen and Tri-Cities, that's a long stretch that includes some rugged territory that can be very vulnerable in the case of an oil spill and train derailment and spill. And to the extent that it's possible to add more places and the larger gaps and some those rural areas… just thinking of places like it's not too far from Tri-Cities but Wallula Gap where it's just extraordinarily difficult to address an oil train derailing and spilling to very very sensitive habitat and the hydropower system. There is a real challenge in trying to develop contingency plans for stuff that ranges almost from asphalt to gasoline. We recognize challenge you're facing there. I think some of the testimony that's already been brought up, that oil that sinks versus oil that's so volatile that it produces high enough levels of benzene that first responders have to be wearing protective gear. There's going to be nexus between the folks we already heard from here, from fire departments and others who'll be in the area and the spill response planning so to the extent the rule can force that conversation to happen. I think 24 months is a very long time for them to be addressing the equipment gaps when every train that runs down the Columbia right now is like playing Russian roulette that keeps… of all the issues that keep us up at night at Columbia River Keeper, Hanford being a close one right there with it. Oil trains coming at the Columbia River such a potential catastrophe that 24 months is a very very long time to continue rolling the dice and to continue having big equipment gaps. So shortening those times in the front to: one make contingency plans effective and secondly to make sure those gaps are being filled. The last thing that I want to say is… in previous testimony, the idea that in situ burning is the reality with potential oil spills. You can look at what happened in Lynchburg, Virginia where the river was on fire, Mount Carbon, West Virginia, again, a big fire associated with a spill into the [inaudible] River and obviously, Lac Megantic, Quebec which is the most catastrophic. There are many many examples we can see of where fire and derailments and spills go together. I guess I would echo what Don Steinke said earlier which is from our perspective the only way to make sure that we don't have huge catastrophic train-related oil spills in the Columbia River is not to have huge unit trains full of oil barreling down the Columbia River. The number one way we can accomplish that as a community is not allowing these terminals to be established. We're going to continue obviously most of the public is really focused right now on the arduous task of making sure that the state comes to the right conclusion when it comes to the Tesoro Savage project. But for us we do support Ecology in trying to take a hard look at this. We do hope Ecology in its role on EFSEC will help us reach the right conclusion on that project. Thank you.

Speaker 1: Thank you. That ends up everyone who signed up to testify. Is there anyone else who would like to give comment? Come on up then. And you are? Great, ok. Just say your name.

Speaker 6: I'm Linda Garcia. I'm a resident of Fruit Valley. The neighborhood that Port of Vancouver is located in, and listening to I'm probably going to echo a lot of what Dan and Don have already said but I felt that is important to repeat. Some of the Q&A that I listened in on earlier mentioned… there seemed to be an alarming disconnect and so I appreciate all of the effort and time that Ecology has put into this that the disconnect that I picked up on was… there's a lot of attention given to spills in the river that as Dan mentioned rivers can be on fire, and so, with oil spills if a fire occurred, there's also a huge concern particularly downtown Vancouver and the Fruit Valley neighborhood where there are no emergency evacuation plans in place at this point that if we were to work on it, we only have one main exit point that doesn't go directly near where any spills would occur but it also still goes over the railroad track. So if there were any type of incident there, we're stuck. I live exactly right between the railroad tracks and where the proposed Tesoro facility would be located. So the other concern is air quality itself. If there were spill to occur and there were fire regardless of whether it's on land or on water the toxins that would be released are deadly and so if we're stuck there, there is no chance of survival. That's a huge concern for those of us who do live in Fruit Valley. I guess I'll close it quickly just to say that there's so much talk here today about worst case scenario and I appreciate everybody looking into the worst case scenario but I think we need to flip that and be positive and say the best case scenario would just be not to have that terminal built at all and not have the oil trains coming through at all. Thank you.

Speaker 1: Thank you, would anyone else would like to testify? Well hearing no one then we will put a pause in the hearing for now. We will be here until noon in case anyone else shows up after we concluded this and will take testimony until noon and then at one o'clock will start the next hearing. So thank you very much for coming.

Speaker 1: Good morning. I'm restarting the hearing for the Contingency Plan Railroad Rule. It is 11:55 and we have another person who would like to testify. So please just give your name and it will pick up from there.

Speaker 7: Sure. Okay, my name Ken Rone. I live at 11508 Northwest 43rd Ct Vancouver Washington. I'm here representing myself and my wife who if I submitted written testimony she would be a signatory to that and I'm here to comment on the proposed rule for the Oil Spill Contingency Plan at the first hearing, right? Start in and just tell you what's on my mind?

Speaker 1: Exactly.

Speaker 7: Our concern for the contingency plans that we have heard expressed continue to circle back to the repeated testimony by first responders throughout the Columbia River Gorge and the Eastern Washington rail corridors, that the accessibility for them to oil spills and other catastrophes along the rail line in many many cases is absolutely impossible and there are extended stretches of open rail which are indeed inaccessible via road, only accessible by air or water for all practical intent. The response required in order for a responsive action that is the deployment of those crews and services and equipment that would be needed in response to a catastrophic event would be unable to reach in a variety of locations throughout the rail corridor. We feel that the rail corridor map should be color coded and published with those stretches that do not have overland access to them, and that should be published. I think that's the extent of my concern.

Speaker 1: Thank you very much. All right, then I will finish up. So let the record show that it is now 11:57, we'll be closing this public hearing. If you would like to submit written comments, you can send them to Ecology. They must be received by June 10th, 2016. Send them to the Department of Ecology Spills Program, Jase Brooks or Kim Morley, PO Box 47600 Olympia Washington 98504-7600 or email kim.morley@ecy.wa.gov or by fax at 360-407-7288. You can also submit comments online through the online comment form that is found on the Ecology Spills program rule making website. That's www.ecy.wa.gov/programs/spills/rules/main.html. In closing, all testimony received at this hearing as well as from the previous hearings held in Spokane, Everett, and via the webinar, along with all the written comments received no later than June 10th, 2016 will be part of the official hearing record for this proposal. Ecology will send a Concise Explanatory Statement notice to everyone that provided written comments or oral testimony on this rule proposal and submitted contact information. As well as everyone that signed in for today's hearing that provided an email address and other interested parties on their distribution list for this rule. The Concise Explanatory Statement will, among other things, contain the agencies responses to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but you did not give us your contact information, please let one of the staff know.

The next step is to review the comments and make a determination on whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for August 24th, 2016. If the proposed rule should be adopted that day and filed with the code reviser it will go into effect 31 days later which would be October 1st, 2016. If you have any other questions, please don't hesitate to ask or contact staff. On behalf of that Department of Ecology thank you for coming and

I appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 12:00 PM.

If you would like to send Ecology written comments, please remember they must be received by June 10th, 2016. Send them to Department of Ecology Spills Program Linda Pilkey-Jarvis PO Box 47600 Olympia Washington 98504-7600. Her email address is linda.pilkey-jarvis@ecy.wa.gov. The fax is 360-407-7288. You can comment online through the Ecology Spills Program rule making website at www.ecy.wa.gov/programs/spills/rules/main.html. All testimonies received at this hearing as well as the other hearings that were held in Spokane on May 17th, 2016, Everett on May 23rd, 2016 and via webinar on June 1st, 2016. Along with all written comments received no later than June 10th, 2016 will be part of the official hearing record for this proposal. Ecology will send notice about the Concise Explanatory Statement to everyone that provided written comments or oral testimony on this rule proposal and submitted contact information. Everyone that signed in for today's hearing that provided an email address and other interested parties on the agency's mailing list for this rule. The Concise Explanatory Statement will among other things contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but not give your contact information, please let one of the staff know or contact Linda Pilkey-Jarvis at the contact information provided for submitting comments. The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director Maia Bellon will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal. Adoption is currently scheduled for August 31st, 2016. An adopted rule goes into effect 31 days after it is filed with the code revisers office. If we can be of further help to you do not hesitate to ask or contact Linda Pilkey-Jarvis if you have other questions. On behalf of the Department of Ecology, thank you for coming. I appreciate your cooperation and courtesy. Let the record show that the hearing is adjourned at 12:04 PM on Friday, June 3rd.