



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 29, 2015

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

RE: Docket No. TR-151079, Rulemaking to Consider Adoption of Rules Relating to Rail Safety

Dear Mr. King:

The Washington Utilities and Transportation Commission (Commission) has proposed draft rules to update railroad annual reporting requirements on financial responsibility and safety standards for private crossings and to provide opportunities for first-class cities to opt-in to the Commission's crossing safety program. The Washington State Department of Ecology (Ecology) has reviewed the proposed changes to Washington Administrative Code (WAC) 480-62 and respectfully submits this correspondence in response to the draft rule.

As you are aware, the Commission and Ecology, along with the Washington Military Department and the Washington State Department of Transportation, recently collaborated on the *2014 Marine and Rail Oil Transportation Study*. This study analyzed risks to public health and safety and the environment associated with the transport of oil in Washington. The changes proposed in the draft rule reflect several specific recommendations from our study, and inherently have Ecology's support. Washington's ability to directly address rail incident prevention is largely dictated by current federal regulations, but the Commission's effort represents a significant action to protect the safety of our citizens and the unique natural resources of our state. We recognize the importance of these rule changes and believe they will bolster protection of public safety and the environment.

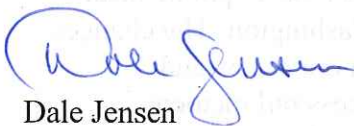
In particular, Ecology would like to express broad support for the Commission's effort to promote and secure a demonstration of financial responsibility from railroad companies for the potential cleanup costs of oil spills in Washington. We respectfully acknowledge the thought and consideration that our sister agency has placed in its proposed definition of a reasonable worst case spill, and concur with the use of the derailment incident in Lac-Mégantic as representative of the *existing*, worst-case rail incident in North America. Ecology places particular emphasis on the term "existing", as the industry's continuing practice of transporting oil in unit trains imposes an ongoing potential for an even greater incident at some future point in time.

It is important to note that the cost of cleanup for the Lac-Megantic incident has been reported to exceed \$400 million dollars.¹ The railroad company involved with the incident, Montreal Maine and Atlantic, had only \$25 million in insurance and promptly declared bankruptcy after the incident occurred, leaving the Canadian federal government and the province of Quebec to cover most of the cost for the cleanup.² It is unacceptable for the government or the citizens of our state to bear such a cost if a similar incident occurs in Washington, and it is vital that railroad companies be required to demonstrate a financial ability to clean up spills resulting from transportation of crude oil by rail.

The rule established an appropriate level of financial responsibility for railroad companies operating in our state. Ecology acknowledges that the industry may seek to reduce the level of this demonstration in the final rule. However, we would emphasize that the current basis for the Commission's proposed demonstration, that is the estimated cleanup cost of \$400.00 per gallon, is only a portion of the overall cost of an oil spill. The potential costs for restoration of property and natural resources, not to mention the potential for loss of life, would be additional costs above and beyond the cost for cleanup of spilled oil. In the event of a worst case spill, the true cost of damages incurred could certainly exceed the level established within the draft rule, and level of financial responsibility required by railroad companies should not be reduced as the Commission finalizes its rule.

On behalf of the citizens of the State of Washington, Ecology encourages the Commission to swiftly adopt the draft rules as proposed. These changes represent a substantial effort to protect the safety of the citizens of Washington and the significant natural and economic resources of our state. The number of trains carrying substantial volumes of crude oil into and through our state is reasonably expected to increase over time, and Washington must continue its efforts to increase the safety and transparency of crude oil transportation by rail.

Sincerely,



Dale Jensen
Program Manager
Spill Prevention, Preparedness and Response Program

cc: Maia Bellon, Director
Robert Duff, Policy Advisor
Jason Lewis, UTC Policy & Research
Peter Antolin, EMD Assistant Director

¹http://www.thestar.com/news/canada/2014/06/16/quebec_claims_400_million_for_lacmgantic_train_disaster.html.

²2014 Marine and Rail Oil Transportation Study, pages 357-360: <https://fortress.wa.gov/ecy/publications/SummaryPages/1508010.html>.