

Tanker Safety Panel Secretariat  
330 Sparks Street, Place de Ville Tower C (AAM)  
Ottawa, ON K1A 0N5

June 21, 2013

To Whom It May Concern,

**Re: Strategic Review of Canada's Marine Oil Spill Preparedness and Response Regime**

Environmental staff have reviewed the questions provided by the Tanker Safety Expert Panel and provided comments and suggested solutions. We understand that the federal government is requesting feedback from local governments across Canada on their tanker safety and oil spill response regime and respectfully suggest that some local governments may not be aware of the consultation that is currently underway. Targeted engagement sessions for local governments have not been identified in the Overview of Engagement and would provide an opportunity for information sharing and education for local governments to better understand the key issues such as preparedness, response, liability, compensation and funding. It would be helpful to invite local governments in the Metro Vancouver region to workshops which present background information on the existing marine oil spill preparedness and response regime and provide comments on world class regimes. There are number of projects under consideration in the Metro Vancouver region that have the potential to result in increased numbers of marine vessel movements and the potential for increased risk for oil spills. We recognize that it is the responsibility of the Federal government to provide a coordinated response but feel that the Federal, Provincial and Local Governments would all benefit from improved communication and sharing of information.

- 1. Does the current oil spill preparedness and response regime meet today's needs? What about future needs? What elements of the current regime could be improved to make it world class?*

There have been previous reports and recommendations such as the Auditor's Report (*Report of Commissioner of the Environment and Sustainable Development to the House of Commons, 2010*) which indicates that the current oil spill preparedness and response regime does not meet today's needs. This report outlines the lack of progress in fulfilling the recommendations coming out of the 1990 Brander-Smith Report, and points out the need for further work in various aspects of the spill response regimes set up following the Brander-Smith Report, including:

- Incomplete risk assessment by the lead agencies (Coast Guard and Environment Canada) which hampers the ability to plan an resource based upon actual risk;
- Emergency Management Plans by lead agencies that are not coordinated or up to date;

- No comprehensive inventory of response capability of the Coast Guard, who are meant to be the lead response agency from the Federal government;
- A lack of response tracking, reporting, and record keeping by Federal Agencies, hampering the ability to provide analysis of spills, spill risk, adequacy of response, or level of preparedness;

The 2010 Auditors Report includes nine specific recommendations to improve the Federal spill response regime, all of these recommendations agreed to by the Federal Agency or Agencies with jurisdiction. It would be helpful to understand the status of follow up on these recommendations.

Since the 2010 Auditors Report, there have been significant cuts in staff and funding allocated to two of the three Federal Agencies, including the closing of facilities in Metro Vancouver. This raises concerns on the potential impacts of these reductions to the coordinated response to an oil spill in our region.

It would be helpful to have projections for future needs based on best available information and examples of world class oil spill preparedness and response regimes for comparison to allow better feedback for the elements that require improvement to be considered world class.

2. *Does Canada's current regime, which is based upon a public-private response model in which industry-funded Response Organizations take the lead in preparing for and responding to an oil spill, continue to make sense for Canada? What changes, if any, would improve the model to world class status?*

It would be helpful to have examples of world class oil spill preparedness and response models including any examples of response organizations that have different models.

In ensure that that industry-funded response is effective, there should be an effective regulatory regime and the ability for regulatory agencies to both oversee the operational organization, and make binding, enforceable orders where response does not meet standards. We understand that ultimately the responsibility for the effectiveness of any response in the event of a spill must be upon the Federal Regulatory Agency charged by Canada's Constitution to protect territorial waters and the inherent rights of First Nations to access their traditional resources.

It is suggested that local governments need clarity on who will answer questions and be accountable during emergency response. There needs to be recognition that emergencies involve the local government level and that there could be a need for assistance at the local level for initial hours of response, particularly in remote communities.

3. *In terms of oil spill preparedness and response, are the current roles and responsibilities for government and industry clear? Are they appropriate? What changes would you suggest to improve roles and responsibilities under the current regime?*

No. We understand that the industry role shifts to shipping line role after vessel leaves loading dock. There should be clear definition of roles and responsibilities for Environment Canada and the Coast Guard/Department of Fisheries and Oceans to ensure there is a clear understanding on how spill response would look like from a local government's Emergency Operations Centre (EOC) perspective. From an EOC perspective, there would be different levels of EOC activation and it would be helpful to have EOC exercises at multiple levels to identify if additional changes are required. Any recommendations that are developed as the result of joint exercises could be used to inform and update the federal oil spill preparedness and response regime. We appreciate that each community is different but there is a common response model and it might provide valuable information even if a sample of communities (different population sizes, different geography, different emergency response capacities) were involved in joint exercises and the information shared with others.

4. *What future trends or emerging developments (for example, new petroleum products, new response techniques or increased vessel traffic) should be taken into account to enhance the current regime to world class status?*

There are currently four major projects in the planning stages which have the potential to significantly increase vessel movement in and around Metro Vancouver:

- The Trans Mountain Pipeline Expansion Project (increasing heavy oil tanker movements),
- the Vancouver Airport Fuel Delivery Project (introducing bulk fuel transport in to the Fraser River for the first time),
- the Roberts Bank Terminal 2 Project (potential to double the number of large container ship movements by 2024), and
- the Fraser Surrey docks Coal Facility project (which will bring bulk coal shipments to the Fraser River for the first time).

Each of these projects are being reviewed separately, and it would be helpful to review the analysis of *cumulative* risk based on the increased traffic of all types.

There is also little information in the consultation guidance document on the variety of petroleum products being moved by bulk (dilbit, syncrude, refined products, etc.) and how response timing, equipment requirements, training, and impacts would vary based on product. It would be helpful to see a federal oversight review of different materials including non-oil products (i.e. chemicals) that are being transported in federal waters and an evaluation of the ability to deal with the response. We have heard differing information on the behavior of dilbit and would like federal assurances that the industry model can adequately respond to the proposed increases in product and traffic..

5. *There are currently six Regional Advisory Councils (RAC) and one National Advisory Council (NAC) which provide advice and feedback to the Government of Canada on the current regime. What could be done to improve this feedback mechanism? Are the roles and responsibilities of the RAC and the NAC clear? Is this structure a best practice?*

In discussions with other local government staff, no one appears to be aware of this structure. In reviewing the membership, it appears that local governments can be representatives but we are unaware of any local government representatives in the Metro Vancouver region.

From a feedback mechanism to the federal government, they are also only advisory in capacity. The primary objectives of the RACs are to share and address issues of mutual concern to the membership and they are to promote public awareness and understanding of the issues. There could be a feedback mechanism developed to share information with local governments and first responders.

6. *Canada's current regime is standardized across the country, with all ports, ship-owners, oil handling facilities and Response Organizations operating under the same legislation, regulations and guidelines. Is this an appropriate model for Canada? What improvements could be made to the current model?*

It should be appropriate that marine spill response operate under the same standards and guidelines if they are world class and include considerations where appropriate to address specific regional considerations that will likely include different risks and impacts.

Example of local considerations include the coastline complexity, West Coast salmonid species, Species at Risk considerations, the designation of Burrard Inlet as an Important Bird Area which is part of the Great Pacific Flyway, the population density in the Metro Vancouver region and importance of tourism to the local economy.

7. *Does the current preparedness and response regime clearly define how it interacts and links with Canada's liability and compensation regime? What changes, if any, would improve the current framework to world-class status?*

It would be helpful to understand how the current framework compares to world class regimes and more clarity is required to understand how the current regime interacts with cost recovery for local communities. It is important that there should be proper consultation with First Nations and local governments to clearly understand the current preparedness and response regime and to provide input on improvements without being in an actual emergency response situation.

8. *Canada currently has two regimes for marine oil pollution: one for ship-source oil pollution and one for oil pollution from oil exploration activities and offshore platforms. What are the benefits to having two separate regimes? What are the risks to having two separate regimes?*

The two separate regimes relate to their differences in the international regulatory framework. We understand that the marine shipping industry is regulated by the IMO which is international and addresses changes to requirements at that level and that changes can take considerable length of time. It is important that the regimes are reviewed to ensure that they work together and that

the review includes the potential risk that the two separate regimes could delay response to a marine oil spill pollution event.

There is currently no offshore oil development in British Columbia and we expect that any consideration of a change would involve comprehensive and meaningful stakeholder engagement.

***Preparedness***

- 1. Are the preparedness requirements for ports, ship-owners, oil handling facilities and Response Organizations adequate? What changes, if any, would improve the system to make it world-class?*

Similar to previous questions, it would be helpful to provide examples of world-class preparedness requirements. The preparedness requirements should be reviewed against all projected marine traffic and updated on a regular and mandatory basis to ensure that it remains world class. It is suggested that the resources be reviewed with consideration to expanded shipping traffic through a cumulative assessment and review of new products to ensure that the preparedness meets the actual conditions. Time of response is of the essence in spill response and it is important to have more rapid response times than the specified response times. It would be reasonable to expect a very rapid initial response time (i.e within the hour) in easily accessible locations such as the Metro Vancouver region.

Emergency plans and preparedness requirements should be regularly updated and shared with stakeholders to ensure information is current and contact information is up to date.

- 2. Does research and development play a strong enough role in the current regime? Who should be responsible for funding and conducting research and development related to the oil spills?*

It would be helpful to provide information on how the current regime in Canada compares to world class regimes. The Federal Government should provide a comprehensive review of the current state of research and development in Canada regarding spill response and evaluate if there is any impact as a result of the recent reductions in research and scientific staff in the Federal Agencies that may perform this type research (Environment Canada, Fisheries and Oceans Canada, etc.).

The industry should provide an updated list of all products types on a regular basis and a gap analysis should be conducted to ensure there is coordinated information, research to look at impacts of these products on the receiving environment (including our local conditions i.e. water temperature, salinity are different in different water bodies). The responsibility should be for federal oversight and management of the research and funded by the industry (polluter pays).

- 3. Is there a need for a greater degree of coordination between government departments, between different levels of government (federal, provincial, municipal and international) and between government and the industry in respect to training, exercises and research and development? What could be done to make the coordination of these activities more effective? What steps should be taken?*

Yes. In the Metro Vancouver regional district there are multiple local authorities, First Nations and other jurisdictions. Panel response to date has been focused on federal departments; there is a need for increased integration with provincial, First Nations and local governments on emergency planning and response.

To make the coordination more effective, it is recommended that there should be inter-agency training, simulation exercises. Best practices would ensure that industry led exercises invite the different levels of government to participate in EOC exercises. Integrated exercises provide the opportunity to identify items for improvement and support an adaptive management model. The effectiveness would be improved through the strengthening of relationships. It is noted that there have been significant recent changes to key departments such as the Department of Fisheries and Oceans who have traditionally relying on as technical experts in our region. It would be helpful to review current regional resources that could assist in the event of a catastrophic oil spill response to ensure that they are world class.

- 4. How should risk information related to the potential for an oil spill and its possible impacts be used to inform the elements of the regime? What other information should be taken into consideration when government and industry formulate their preparedness and response plans?*

In order to fully assess the potential impacts, there needs to be an inventory of potentially impacted parties and natural resources. There needs to be available for the preparation of planning, response and training elements and should include a wide range of stakeholders (i.e. sports fisherman, ecotourism industry, recreational users i.e. kayakers, park users for local beaches, local residents, local industry).

Available field data should be reviewed by a coordinating body similar to the Burrard Inlet Environmental Action Plan and the Fraser River Environmental Action Plan which was recently closed down due to lack of funding. It is important to have current information on critical habitat for species (i.e. critical habitat for species at risk) to help guide response plans and actual recovery operations.

The Metro Vancouver region is currently experiencing significant growth which should be included in the analysis of risks related to population size and where density is located.

- 5. What other preparedness requirements should be incorporated into the regime?*

Public health authorities and First Responders who may be providing Hazardous Materials response should be consulted for their requirements. There should be a review to ensure air and water quality objectives meet human health requirements to inform local government decisions. It is noted that public expectations often requires a local authority will often respond to reduce the impact regardless of jurisdiction.

The preparedness of equipment for response should be reviewed regularly and there should be a model for continual improvement. Consideration should be given to a funded model for local government and First Nations who may be the first responders, particularly in remote locations.

## **Response**

### *1. What could be done to make the response to oil spills more effective and efficient?*

It would be helpful to understand how the federal government monitors, reviews and reports spill responses and the protocol for making improvements as needed. It would be world class to share information and ensure that all potentially affected parties are afforded the opportunity for input and suggestions.

It would be helpful to understand the communication strategy for spill response that may impact local governments. We tend to be more familiar with the BC Provincial Emergency Program (PEP) communication protocols and maintenance of response database and do not have a similar understanding of the Canadian Coast Guard response process, documentation, etc.

### *2. Is there adequate oversight of the Response Organizations under the current regulatory framework? Are the current Response Organizations Standards adequate? What, if any, changes should be made? Is the certification process for Response Organizations adequate and is there sufficient expertise present during this process?*

The current frequency of review of the Response Agencies should be reviewed to ensure it keeps up with changing marine traffic and types of products. The oversight provided by Transport Canada should be available in an annual report, including feedback mechanisms for impacted or potentially-impacted third parties.

### *3. Is the current regulated response capacity of 10,000 tonnes sufficient or should it be increased? What could be done to improve on this current model for regulated response capacity?*

It is suggested that this be reviewed, particularly with the proposed Kinder Morgan Pipeline Expansion based on Westridge Terminal accommodating an Aframax ship (up to 115,000 dwt) every day and the proposed Vancouver Airport Fuel Facility accommodating Panamax ships (up to 80,000 dwt) up to several times a week. The current model should address the catastrophic loss of this size of marine vessel. This should be based on a model that includes all current and future projections and updated on a regular basis to ensure the response capacity is adequate.

There is a concern with our understanding of the current criteria which indicates the response materials must be on site (not deployed) within 72 hours in the event of a 10,000T spill. This does not seem adequate for the Metro Vancouver region setting with the complexities of Fraser River estuarine conditions, the water exchange and flushing rates for sections of Burrard Inlet, the anticipated marine vessel traffic through the Gulf Islands, and exposure of globally-significant wetlands which vary widely over the tide cycle. The 72 hours response time could potentially include multiple tidal cycles with a tidal range of more than 3m within these sensitive wetlands. It is staffs concern that there will be no effective response after 72 hours of tidal, wind, and wave dispersal of more than 10,000 tonnes of oil. The speed of response can greatly reduce the impact of a spill which would be an improvement.

There should be a transparent science-based review of the response capacities requirements which is publicly available for review and comment.

- 4. What could be done to increase the capacity to respond to spills of unconventional oil products (e.g. diluted bitumen)?*

Based on information provided at the Trans Mountain Expansion Project Marine Engagement Workshop, there is an identified need for additional research to provide more information on the products. Based on the research on the spill response for unconventional products, the industry should provide an enhanced plan that relates to the response requirements for unconventional product which should be reviewed and approved by federal authorities.

- 5. What role should the Canadian Coast Guard take during the response to an oil spill?*

They should be the lead agency. Given the reduction in the Canadian Coast Guard resources, there should be a review to ensure there are adequate resources.

- 6. What improvements could be made to better integrate government and non-government stakeholders into the overall management of a response?*

Communications is one of the main failures during emergencies. There needs to be an understanding and technical review of the communications protocols, equipment, etc. to ensure there will be adequate management of a response. As an example, in the Metro Vancouver area BCAS and RCMP and many of the fire departments are on ECOMM radio system. The coast guard and provincial ministries are not on this system.

There should also be outreach from industry to all potentially impacted communities and First Nations to invite them to exercises, improve communication, ensure clarity of roles and responsibilities, etc. First Nations and local government need information and transparency and integration is needed to ensure world class spill response.

- 7. Is there a role for other parties to play in the response to an oil spill, particularly in more remote areas of the country? What factors would need to be considered if there is an increased role for them?*

This should be explored further in consultation with First Nations and local communities. It would be equitable to ensure that they are provided with training and equipment and compensated commensurate with responsibility.

- 8. The current response regime is based around mechanical recovery. Are there alternate response techniques that should be considered in addition to mechanical recovery for spill response? What are the pros and cons of these alternative mechanisms? How could these additional methods be included into the current regime?*

The mechanical recovery is limited to floating products; unconventional products that can sink may require alternative mechanisms. The alternate recovery techniques should be reviewed and tested to ensure their effectiveness and safe use in sensitive ecosystems and various habitat types such as marshlands, gravel and sand beaches and rocky shorelines.

Other alternative mechanism that should be evaluated for potential use includes bioremediation which depends on location, habitat, terrain and chemical treatment. It would be prudent to use science based research (industry funded) to stay current on new alternative mechanisms and ensure there is a full environmental impact evaluation for their safe use and pre-approval of products that are appropriate.

### **Liability, Compensation and Funding**

- 1. How should a world-class oil spill preparedness and response regime be funded?*

The world class oil spill preparedness and response regime should be fully funded by industry. This should be referred to as “user-pay” rather than “polluter-pay” to clarify that spill prevention and preparedness are included.

- 2. Is the current fee structure fair, reasonable and transparent, and does it meet the current regime's requirements?*

There is not enough information in the policy intentions paper to properly comment. The fair and efficient funding mechanism needs to ensure that there is industry based funding for prevention, preparedness and response capacity at all levels of government that have a role in oil spill response which could include cost recovery mechanisms to an industry spill response fund for "orphan" spills where the responsible party cannot be located.

- 3. Canada's liability and compensation regime provides coverage for the costs associated with responding to an oil spill from a ship. Are there specific costs where the coverage for responding to an oil spill is potentially not adequate? Are there current limitations on the coverage that may impact a response to a spill?*

There should be clarification around the rules applied to its use to ensure there is not a delay in response due to uncertainty.

There should be funding to ensure federal resources are in place to support spills that could impact on local municipalities and the receiving environment and there needs to be a reasonable threshold to ensure that funds are disbursed for smaller spills. The development of rules should ensure that the process is easily understood and involve stakeholder input.

We reference the Provincial Disaster Financial Assistance program which includes a task # for tracking costs, an understanding of extraordinary resources, differentiation between response and recovery and understanding of mechanism for cost recovery. The threshold should be low enough to address small spills if local authorities are expected to respond. The fees should be collected based on the contribution to the overall spill risk assessment and include consideration of the materials hazard level, risk probability of a spill, impact and projected cost of cleanup for an impacted ecosystem. Stakeholder consultation with a review of how the natural resource damage assessment policies are utilized is required to fully understand how restorative work would be undertaken.

- 4. There exist several models for funding the preparedness costs to an oil spill as well as providing access to emergency funds during an ongoing response. Would the dedication of a set amount of emergency funds similar to what is in place in the United States be an improvement to the capability to effectively manage a large spill? What improvements should be made?*

We understand that there is already an emergency fund in place for Canada. The US approach could be an improvement subject to a full review of its applicability under Canadian context and subject to further information. We understand that for the US models baseline information on the receiving environment is critical to ensuring adequate cleanup and determining when cleanup

is completed. It would be helpful to provide background information on the other models to allow for comments on improvements.

5. *Could the Ship-Source Oil Pollution Fund be used more effectively for the purposes of preparedness and response?*

It would be helpful to have information on how the Ship-Source Oil Pollution Fund is administered at this time. Without this information, it is difficult to ascertain how it can be used more effectively. Preparedness should be expanded to include spill prevention and this should be reviewed and updated following adaptive management principles.

Please contact me at 604.990.2445 if you require additional information.

Yours Sincerely,

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