

**United States Senate
Committee on Commerce, Science, and Transportation
Subcommittee on Fisheries and Coast Guard**

**Testimony of Dale Jensen, Program Manager
Spill Prevention, Preparedness, and Response Program
Washington Department of Ecology**

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**Committee on Commerce, Science, and Transportation
Field Hearing of the Subcommittee on Fisheries and Coast Guard
Port of Seattle, Commission Chambers
Pier 69, 2711 Alaskan Way, Seattle WA**

Senator Cantwell and members of the Subcommittee, welcome to our beautiful state, and thank you for this opportunity to testify today on the state of oil spill prevention, preparedness and response in Washington.

First, on behalf of the staff at the Ecology Spills Program, I would like to thank Senator Cantwell and other members of the Senate for including in the Energy Policy Act the fix for the Oil Spill Liability Trust Fund. I would also like to express the gratitude of the members of the Pacific States/BC Oil Spill Task Force. The long-term sustainability of the Fund is a priority issue for the Task Force. Your passage of the funding provision will ensure that oil spill response and cleanup actions will continue to be done in a timely manner, safeguarding our valuable natural resources. Again, thank you for your efforts on this issue.

We have a proud tradition in our state of active citizen and state agency involvement in oil spill prevention. Washingtonians demand that we are not only vigilant in our efforts to prevent oil spills, but that we are also prepared for a rapid and aggressive response in the event of a spill. Our citizens have very high expectations for an active state oil spills program, and we are meeting those expectations.

As a leader in state oil spill prevention, preparedness and response we work closely with our U.S. Coast Guard partners, industry and stakeholders to develop a comprehensive and innovative oil spill program. And I'm proud to report that these efforts have been successful.

Over the past two years, Department of Ecology vessel inspectors have conducted over 2,500 inspections. In one case, an Ecology inspector identified a problem onboard an Evergreen International vessel and worked closely with the Coast Guard and federal investigators leading to a \$25 million settlement with the company.

We have also seen a decline in the number of spills in the 25 to 10,000 gallon range. And we are now responding to 99% of all reported spills within the first 48 hours.

These successes have come from the dedication of a highly skilled and trained staff at the Ecology Spills Program, and from the commitment of many companies and stakeholders who all share a pride in ensuring the highest degree of prevention and preparedness possible.

But with these successes we still are faced with many challenges:

1. The need for adequate spill response capacity to stage an aggressive spill response in the event of a spill.
2. Concerns regarding new pressures on the Coast Guard – increased emphasis on Homeland Security and budget limitations – and how these will impact decisions.
3. New information on oil transfers and the risk they pose to our environment.
4. Limitations placed on the state in the *Intertanko* decision, while at the same time Washington’s citizens expect an aggressive program to prevent spills, prepare for the potential of a spill, and a rapid and effective response in the event of a spill.

Spill Response Capacity

Immediately following the Dalco Passage spill in October 2004, then-Governor Locke and the U.S. Coast Guard established the Oil Spill Early Action Task Force. Consisting of representatives of environmental groups, industry, spill response organizations, local communities and local government, and tribes, the Task Force examined our spill response and planning procedures focusing on the first hours of response. Working in a very short time frame, the Task Force produced eleven recommendations for improving our response capabilities. But they also recognized that “full implementation of the recommendations

is outside the funding currently available to Ecology and the Coast Guard for these activities”.

In a recent report for Ecology, Glosten Associates studied the possibility of utilizing commercial fishing vessels to assist in oil spill response. As part of this report, Glosten conducted a “scenario-based” approach to determine the adequacy of spill response vessels in the event of a hypothetical spill in the San Juan Islands in the amount of approximately 500,000 gallons of oil. The scenario identified the number of vessels for an ideal response to such a spill, and evaluated the actual number that would be available. This analysis revealed a shortfall of available response vessels for this scenario. The report concluded that although current Oil Spill Response Organizations (OSROs) could provide all the on-water resources necessary for them to meet their current basic obligations, they could not meet the shortfalls identified in the report in addition to their current obligations.

Our experience in the Dalco Passage spill demonstrated the need to have the appropriate response equipment on the scene quickly. This recent report emphasizes that there is much that still needs to be done to ensure that we can respond quickly with the most effective spill containment and cleanup resources available.

We learned many things as a result of the Dalco Passage spill:

- a. We partnered with the USCG to create and work with the Oil Spill Early Action Task Force
- b. We capitalized on the incident to improve our ability to assess and track spill in the dark;
- c. We are streamlining our access to aerial and on-water reconnaissance capabilities;
- d. Updating local knowledge specific Geographic Response Plans (GRPs);
- e. Making sure all private sector response resources can immediately be called upon to respond to an orphan spill;

- f. Growing from our lessons learned. We will continue to strengthen the critical functions provided by my program's Incident Management Action Team (IMAT.)

We will continue to evaluate and test our spill response capabilities to ensure that we have the most effective program possible.

Congress can help in this effort by providing funding, particularly for capital needs as well as cleanup response. The Oil Spill Liability Trust Fund is critical to this effort, and I want to thank Senator Cantwell for her leadership in securing continued funding for this account.

Increased Coast Guard Responsibilities

Since 2001, the Coast Guard has been faced with increased demand for and participation in Homeland Security activities. In our region, the Coast Guard has stepped up to these new challenges with exceptional professionalism. However, the agency is also facing budget constraints due to a declining federal budget and increasing need in the various aspects of our national War on Terrorism.

We are concerned that these new responsibilities and pressures on the Coast Guard will impact their activities in the area of oil spill prevention and response. Currently the regional MSO has done an outstanding job balancing these demands. However, we urge Congress to provide more resources to the Coast Guard commensurate with the increased demands that are placed on the agency.

We don't question the dedication and commitment to the women and men serving in the USCG, but we are concerned with these external pressures and demands. We must maintain our vigilance on spill prevention, preparedness and response. We should look to states as partners to help with these demands.

Again, we should remember that it was a talented Ecology Spills vessel inspector who first caught the problem leading to the penalty to Evergreen Shipping – this is a perfect example of how the state can assist our federal partners in oil spill prevention, preparedness and response.

Another example of state/Coast Guard cooperation occurred on October 14, 2004, when the ConocoPhillips' Polar Texas spilled black oil at Dalco Passage, near Tacoma. At the time the spill was report, the source of the spill was not known. This “orphan spill” required the close cooperation of our state inspectors and the U.S. Coast Guard. The response to this highly visible spill has triggered a new dimension in spill response in our state. Up to last year, our system for managing major oil spills relied too heavily on a Responsible Party being immediately identified, and participating in the spill response Unified Command. A lesson learned in the Dalco spill was that Ecology and the Coast Guard must be better prepared to immediately assess orphan spills at night and begin recovery operations during any weather conditions.

Congress should consider methods by which they can support state actions on oil spill prevention, preparedness and response. As I will discuss later, these actions don't necessary have to be funding. Improved regulatory authority and flexibility for states can also provide for some relief for the Coast Guard, as well as increased cooperation with states.

Increasing Risk from Oil Transfers

On December 30, 2003, a tank barge was taking on bunker fuel at a facility near Shoreline, Washington in the middle of the night. The tank was overfilled and 4,620 gallons of fuel was spilled into the waters of Puget Sound. In response to this incident, the Washington State Legislature directed the spills program to report on the scope of oil and fuel transfers in Puget Sound and to develop standards for these transfers.

Our report will be completed in the next few months, but our preliminary assessment is that information on cargo and fueling volume, frequency, location and practices is not consistently required and is often incompletely reported. We believe there are regulatory gaps that our standards can cover that will result in fewer spills to water. The next steps in this process will be to work with the Coast Guard and others on the specifics of the rule and the monitoring program that the state will develop.

***Intertanko* Limitations on State Activities**

In 2000, the U.S. Supreme Court issued their decision in *Intertanko v. Locke*, a seminal case in federal/state regulation of shipping. Prior to the decision, Washington had a very detailed and aggressive oil spill prevention program for oil tankers and tank barges. In brief, the court ruled that many aspects of the state program are preempted by federal law and historic congressional action in the area of shipping. As a result, much of our state oil spill prevention, preparedness and response program was struck down.

This has created a difficult situation where the people of Washington have very high expectations as to the degree of protection from the risk of oil spills that they would like to see for our state, but federal law limits the scope of an oil spill program.

Congress can assist in reducing this legal tension by supporting joint cooperative opportunities between states and the Coast Guard. Understanding the nature of shipping and the need for a certain degree of uniform standards, Congress should also consider allowing neighboring states to work together as a region to develop solutions and

standards in the area of oil spill prevention, preparedness and response. We already have some examples such as the Pacific States/BC Oil Spill Task Force, where states and the province of BC coordinate and share information on oil spill activities in the region.

Congress and the Administration should support a structure where the federal laws are a floor, and the states can implement a program to address the particular needs of the state or the region. The court in *Intertanko* allowed a degree of support for this approach when it acknowledged that there may be “peculiar circumstances” in a state that would allow for state specific regulation. Congress should codify this approach and expand it to regions.

Conclusion

In conclusion, we must remember the proud tradition in our state of protecting our precious natural resources from the risk of oil spills. Residents of Washington demand that we maintain a high degree of vigilance, and a rapid and aggressive response to all major spills.

We must also remember that companies, including shippers and oil facilities of types, consider themselves residents of our great state, and they too share in this desire to protect our resources.

We will continue to work collaboratively with the U.S. Coast Guard as we develop our oil spill prevention, preparedness and response program. And we stand ready to provide support for the Coast Guard as they operate in an increasingly demanding and challenging atmosphere.

And finally, Congress can help by continuing to provide funding for oil spill prevention, preparedness and response activities by both the Coast Guard and the states. Congress should also explore how to provide states and regions with more authority and flexibility to address risks in their areas.

Again, thank you for this opportunity to testify today.

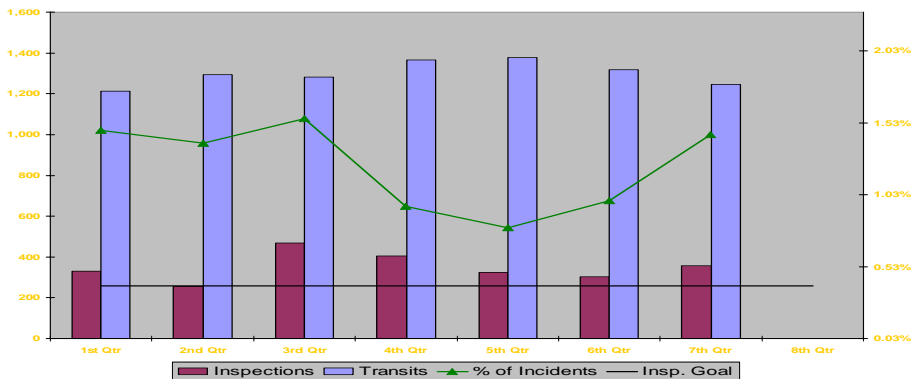
Indicator Data from the Washington Department of Ecology

All figures are for Washington State, fiscal years 04 and 05.

Target: Reduce The Number Of Commercial Vessel Incidents, Such As Loss Of Propulsion Or Steering, Which Can Lead To Spills.

Output: Increase The Number Of Commercial Vessel Inspections To 1,000 In FY-04 And FY-05.
Outcome: Reduce The Percentage Of Large Commercial Vessels Experiencing "Incidents" While Transiting Washington Waters To 2.1% In FY-04 And FY-05.

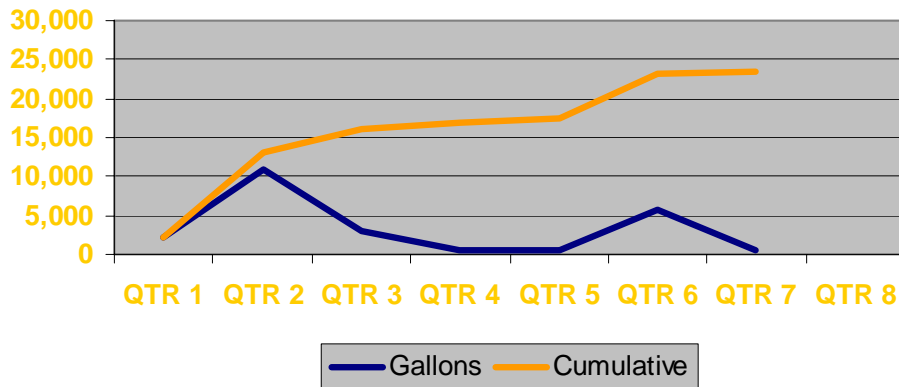
| | QTR 1 | QTR 2 | QTR 3 | QTR 4 | QTR 5 | QTR 6 | QTR 7 | QTR 8 | Total |
|------------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Transits | 1,212 | 1,294 | 1,281 | 1,365 | 1,378 | 1,318 | 1,245 | | 9,095 |
| Inspection Goal | 259 | 259 | 259 | 259 | 259 | 259 | 259 | 259 | |
| Inspections | 329 | 255 | 467 | 405 | 325 | 303 | 358 | | 2,442 |
| Transit Incidents in WA Waters | 18 | 18 | 20 | 13 | 11 | 13 | 18 | | 104 |
| % of Incidents from Total Transits | 1.48 | 1.39 | 1.56 | .95 | .80 | .99 | 1.45 | | |



Target: Reduce The Total Volume Of Oil That Enters The State's Surface Waters From Spills In The Range Of 25 To 10,000 Gallons.

Outcome: Reduce The Volume Of Oil Spilled To 30,000 Gallons By FY-05.

| | QTR 1 | QTR 2 | QTR 3 | QTR 4 | QTR 5 | QTR 6 | QTR 7 | QTR 8 |
|------------|-------|--------|--------|--------|--------|--------|--------|-------|
| Gallons | 2,229 | 10,885 | 3,068 | 607 | 554 | 5,740 | 435 | |
| Cumulative | 2,229 | 13,114 | 16,182 | 16,789 | 17,343 | 23,083 | 23,518 | |



Objective: Respond To And Clean-Up Oil And Hazardous Material Spills

*Target: Assure all Spill events are responded to in a timely manner.
Output: Increase The Percentage Of Oil Spill And Hazardous Material Complaints Which Ecology Has Responded To Within 48-Hours To 95%.*

| | QTR 1 | QTR 2 | QTR 3 | QTR 4 | QTR 5 | QTR 6 | QTR 7 | QTR 8 |
|---------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Response Rate | 90.7% | 94.0% | 96.0% | 97.0% | 97.0% | 99.0% | 99.0% | |
| Goal | 95% | 95% | 95% | 95% | 95% | 95% | 95% | 95% |

