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Vice President – Pacific Region

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Ms. Diana Davis
Spill Prevention, Preparedness, and Response Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: Chapter 173-187
WAC Financial
Responsibility
Preliminary Rule
Language

Dear Ms. Davis:

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

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

AWO has a track record of working with government and private sector stakeholders to ensure safe, sustainable, and environmentally sound navigation and our members implement effective and appropriate risk mitigation measures while operating in Washington state waters. In that spirit, we provide the following recommendations.

173-187-010: Purpose

Under 173-187-010 (2), the proposed rule states that “Financial responsibility is conclusive evidence that the person or entity holding the certificate of financial responsibility (COFR), is the party responsible.” Holding a COFR is not evidence of responsibility, rather it is a guarantee that a responsible party can pay its legal liability up to the prescribed limits. We recommend amending the language to read:

“A COFR is a vessel Certificate of Financial Responsibility and is evidence in the form of a guarantee. It assures potential claimants, including the state of Washington, that a responsible party can pay its legal liability up to prescribed limits, as determined under chapter 90.48 RCW.”

This language reflects that of the U.S. Coast Guard Vessel Certification Division of the National Pollution Funds Center¹. It also highlights the fact that holding a COFR is not conclusive evidence, nor does it demonstrate responsibility. Rather, it shows financial ability to pay if determined responsible.

173-187-040: Definitions

The preliminary rule, as written, restricts the verification process to vessels that have Protection and Indemnity (P&I) Club membership. While AWO recognizes that the statute authorizing these amendments states that vessels that have P&I coverage do not need to prove financial responsibility, hence the “verification” process, we do not agree that this is the only coverage that should be given this right.

The benefit of P&I Clubs is that they cover oil pollution risk up to the maximum amount the state requires and that their certificate of entry includes all the information necessary to quickly verify if a vessel is covered. However, P&I Club membership is not the only insurance option available to vessel owners, and they should not be excluded from the verification for financial responsibility process if they are able to demonstrate that they have a COFR issued by another state or federal agency in the amount that meets Washington state’s financial responsibility requirements. AWO recommends amending the definition of “Verification of Financial Responsibility” to mean:

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

¹ <https://npfc.uscg.mil/cofr/default.aspx>

173-187-220: Procedures for applying for a certificate of financial responsibility.

To streamline the renewal process, AWO recommends ECY use the same system and requirements for both certifications and verifications.² This would mean that COFRs would be renewed following the expiration of coverage rather than on a calendar year basis.

173-187-250: Issuance of Certificates and Approval of Verifications.

For barges that engage in consistent trips on regular routes, the proposed 10-day notice is an adequate amount of time for vessel operators to apply for a COFR and submit a completed and signed application. However, this is not the only operating model; vessels are mobile assets that go where the work is, and 10-days' advance notice of a vessel's operating location is not always possible. AWO appreciates ECY's effort to provide flexibility in the regulation by expediting COFR applications and verifications if they are received within 24 hours before entering Washington waters. However, we disagree with the proposal to allow only vessels with P&I Club membership to enter Washington waters without waiting for ECY to formally respond to their application. AWO recommends that ECY amend this section to allow any vessel with an approved COFR from another federal or state agency where financial responsibility is equal to or greater than the amounts required under this regulation to enter Washington waters without receiving a formal response.

ECY's justification for allowing vessels with P&I Club membership special treatment is that P&I certificates are easily accessed and have all the same information that ECY's COFR applications do. This is meant to avoid administrative delays from "contribut[ing] to or caus[ing] delays in commerce for vessels subject to financial responsibility requirements."³ However, preventing any vessel from reaching its destination will cause interruptions in commerce. COFRs are a matter of public record. If ECY knows which states have the same or higher financial responsibility requirements, it should be as easy to verify information from COFRs issued by those states as it would P&I certificates.

173-187-300: Significant changes to approve certificates or verifications require notification.

AWO recognizes that ECY needs to be aware of any event that could cause a vessel to become out of compliance with its COFR. However, reporting should only be required if the vessel could reasonably be liable. As written, Section 2 implies that entities required to demonstrate financial responsibility must notify ECY about *any* spill in another jurisdiction's waters. AWO recommends amending the section to read as follows:

Entities required to demonstrate financial responsibility must notify Ecology of an oil spill in another jurisdiction's waters if the *certificant may be liable for damages* that exceed 15 percent of the required financial responsibility amount.

² 173-187-220 (3)(f)(viii)

³ 173-187-250(2)(a)

AWO also recommends that ECY provide guidelines outlining when the notification for a spill must be submitted and what information is required.⁴

Conclusion

Thank you for the opportunity to comment on this issue. AWO would be pleased to answer any questions or provide further information as the Department of Ecology sees fit.

Sincerely,

A handwritten signature in black ink that reads "Peter Schrappen". The signature is written in a cursive style with a large initial "P".

Peter Schrappen, CAE
Vice President – Pacific Region

⁴ California requires written notification be submitted with 10 calendar days of knowledge of the incident or knowledge of sufficient facts which would lead a reasonably prudent person to investigate the situation.