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RE: Oil Spill Contingency Plan for Global Partners' Crude Oil Shipping Terminal

Dear Oregon Department of Environmental Quality:

Columbia Riverkeeper (Riverkeeper) respectfully submits these comments to the Oregon Department of Environmental Quality (DEQ) regarding the Oil Spill Contingency Plan (Plan)[1] submitted for Global Partners LP's (Global) crude oil terminal which operates at the site of the Columbia Pacific Bio-Refinery. Riverkeeper appreciates DEQ's willingness to extend the public comment period on this important Plan, and DEQ's efforts to increase public access to the Plan by posting it on DEQ's website.

Riverkeeper's mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper represents over 7,000 members

[1] For the purposes of these comments, Riverkeeper uses the term "Plan" to refer collectively to all of the documents submitted by Global to fulfill Oregon's oil spill contingency planning requirements. As appropriate, Riverkeeper will refer to individual elements of the Plan, such as the "Emergency Response Action Plan" document and the "Spill Prevention, Control and Countermeasures Plan" document.

and supporters in Oregon and Washington and regularly comments on decisions impacting water quality and salmon habitat in the Columbia River. Riverkeeper's members boat, fish, and swim in the Columbia River nearby and downstream of Global's crude oil terminal. Several Riverkeeper members and supporters, including James Hoffmann, owner of Hopville Farms LLC, and the proprietors of several other family farms, are located in the Port Westward region close to the crude oil shipping terminal and could be severely impacted by crude oil spills. As the Oregon Legislature stated, "[o]il spills present a serious danger to the fragile natural environment of the state." ORS § 468B.340(1)(a).

DEQ has the responsibility and authority to protect the Columbia River Estuary from a crude oil spill from Global's crude oil shipping terminal. Indeed, the Oregon Legislature explicitly prioritized "[t]he prevention of oil spills especially on the large, navigable waters of the Columbia River . . . ." ORS § 468B.340(2)(a). The Columbia is a national treasure. The Lower Columbia River is a federally-designated Estuary of National Significance under the Clean Water Act's National Estuary Program, and the Columbia River was designated in 2006 as one of EPA's seven Priority Large Aquatic Ecosystems. The Columbia River Estuary faces numerous threats, but none with the potential to quickly and comprehensively devastate this ecosystem like a crude oil spill.

Riverkeeper is deeply concerned by the Plan's lack of assurances that Cascade Kelly Holdings LLC would be able—or that Global Partners LP would be required—to pay the cost of cleaning up a moderate to large crude oil spill. By any measure, oil spill response is expensive. It is not clear that Cascade Kelly Holdings LLC is adequately capitalized or insured to pay for an expensive spill response. The Plan should include information about Cascade Kelly Holdings LLC's oil spill liability insurance, so that DEQ and the public may compare Cascade Kelly Holdings LLC's level of coverage to the average cost of responding to large crude oil spills.

Alternatively, Global Partners LP should agree to be liable for any spill response costs that Cascade Kelly Holdings LLC is unable to pay. Without such assurances, Oregonians could be left to shoulder the high costs of spill response. As a legal matter, because the Plan does not insure adequate funding for spill response, it is not "designed to . . . remove oil and minimize environmental damage to the maximum extent practicable" in the event of a spill. OAR 340-141-0100(4).

Finally, as explained below, many required elements of Global's spill plan appear to be missing entirely. To facilitate more meaningful public comment on the spill plan, Riverkeeper hereby requests that DEQ direct Global to address the deficiencies in its proposed Plan and then re-open the public comment period to allow Riverkeeper and the public to comment on the revised Plan.

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Specific Comments on Global's Oil Spill Contingency Plan

For the following reasons, Global's oil spill contingency plan does not adequately protect the Columbia River Estuary and the people living and working there, and does not satisfy Oregon's laws and rules for oil spill prevention and response planning.

a. The Plan does not identify or describe the people, ecosystems, and resources it supposedly protects.

Oregon's spill planning rules exist to protect our state's natural and public resources from potential oil spills, especially oil spills in the environmentally sensitive Columbia River Estuary. Global's Plan does not acknowledge or describe the important and sensitive ecosystem surrounding Global's crude oil shipping terminal. Identifying and describing the sites, species, and public and natural resources that would be impacted by a spill from Global's terminal is an essential part of preparing to protect those resources in the event of a spill. Accordingly, DEQ's rules require that "[a]ll plans must describe" the natural resources that could be impacted by a spill, including "coastal and aquatic habitat types and [their] sensitivity by season," the "breeding sites" of local wildlife, the "presence of state or federally listed endangered or threatened species," and the "presence of commercial and recreational species." OAR 340-141-0140(29)(a).

Additionally, "[a]ll plans must describe" the *public* resources that could be impacted by a spill, including "public beaches, water intakes, drinking water supplies and marinas." OAR 340-141-0140(29)(b). Despite the wealth of information available about the Columbia River Estuary's natural and public resources, the Global's Plan does not appear to contain any of this information,[2] and is therefore legally insufficient.

In addition to describing the resources of the Columbia River Estuary broadly, the Plan must identify and describe the natural and public resources of Port Westward, the area closest to the facility. The Columbia River and its shorelines around Port Westward, and the agricultural lands and waterways inside the dike, contain many natural and public resources that would be severely impacted by a spill. For instance, the area inside the dike contains wetlands,[3] prime farm lands where local farmers grow berries, mint, and other crops, and several irrigation "water intakes" within the meaning of OAR 340-141-0140(29)(b).[4] A spill to the interconnected waterways inside the dike, or spills to ground that reach the relatively shallow water table at Port Westward, could contaminate irrigation water and severely damage local farming operations. A spill from Global's facility could devastate these local resources, but the spill plan does not even

[2] One part of the Plan that might contain this information is Section 2.4 (page 33) of the Emergency Response Action Plan. This section is listed in the table of contents of the Emergency Response Action Plan, but the version of the Emergency Response Action Plan posted on-line for public review ends at Section 2.3.2 (page 30). Regardless, it seems highly unlikely that Global could have adequately described all the environmental and public resources that could be impacted by a spill on the single page that appears to be allocated to this topic.

[3] *See* U.S. Fish and Wildlife Service's National Wetlands Inventory Wetland Mapping Tool (online at http://www.fws.gov/wetlands/Data/Mapper.html).

[4] *See* Comments of James Hoffmann, Hopville Farms, LLC.

acknowledge the existence of these sensitive areas and uses. Instead, Global's Emergency Response Action Plan repeatedly states that Global will wait until a spill occurs before "obtaining local knowledge about the impacts of the release." *See* Emergency Response Action Plan at 10, 26, 28.

Waiting for a spill to occur before finding out what resources should be protected is a wholly inadequate way to plan for an emergency, and does not satisfy the requirements of OAR 340-141-0140(29)(a) and (b). Global should—as soon as possible—obtain local knowledge about resources that would be effected by as spill and put that information in its spill plan, so that it will be prepared to protect those resources when a spill occurs. *See* OAR 340-141-0100(1) (Spill plans exist to ensure the "protection of fisheries and wildlife, other natural resources *and public or private property* . . . .") (emphasis added).

The Plan's lack of information about the very resources it supposedly protects greatly decreases its practical value, and also hinders DEQ from fulfilling its responsibilities in reviewing the Plan. DEQ, when reviewing spill plans, "shall" consider the "sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan." ORS § 468B.360(6); *see also* OAR 340-141-0190(4)(d) ("When reviewing plans, [DEQ] will . . . consider the . . . sensitivity and value of natural resources within the . . . geographic area covered by the plan."). Because Global's Plan does not contain the required assessment of the natural and public resources that would be impacted by a spill, DEQ has little or no information to consider when conducting its mandatory assessment of the sensitivity and value of the resources that would be impacted by a spill from Global's facility. Requiring Global to comply with OAR 340-141-0140(29)(a) and (b) would strengthen the Plan and help DEQ fulfill its review obligations under ORS § 468B.360(6) and OAR 340-141-0190(4)(d).

b. The Plan describes the facility as an ethanol refinery; Global's facility is a crude oil shipping terminal.

The Plan does not accurately describe what occurs at Global's crude oil shipping terminal. People reading the Plan without background knowledge of Global's facility or operation would assume (and have assumed) that this is an ethanol refining and shipping facility that someday might handle crude oil. Of course, the opposite is true: this is a crude oil shipping terminal that someday might refine or ship ethanol. For example, on the first page of "Appendix A – Facility-Specific Information," Global claims that:

> Columbia Pacific Bio-Refinery (CPBR or the facility) is a producer of fuel-grade denatured ethanol. * * * CPBR ships denatured ethanol and undenatured ethanol offsite via railroad, truck, and through a pipeline to a barge load-out facility. CPBR also has the capacity to receive light sweet crude oil (crude oil) or other ethanol products via railcar and transload the material to barges on the Columbia River.

The first two sentences are false, at least to the extent that Global is asserting that it routinely refines and ships commercial quantities of ethanol form the facility, which is clearly implied. The final sentence is quite true, but written to suggest that crude oil shipping is not yet

happening. Global makes a similarly disingenuous assertion at page 19 of the Emergency Response Action Plan:

> The normal daily throughput of denatured ethanol at CPBR averages 2,400,000 gallons per week or 343,000 gallons per day. * * * When transloading crude oil the normal throughput is expected to be 13,850,000 gallons per week.

Again, the first sentence is blatantly wrong, and the second sentence strongly suggests only that oil shipping might occur in the future. The Global's attempt to greenwash its crude oil terminal insults anyone who knows anything about Global's operation, and misleads anyone who does not.

In addition to impeding public review of the Plan, information about a phantom ethanol refinery and shipping operation could impede effective response to a real crude oil spill. The Plan—and specifically the Emergency Response Action Plan—is intended to be a resource in the event of a spill, an efficient roadmap for spill response. Including information about ethanol shipping and the appropriate response to an ethanol spill distracts people who might actually need to use the Plan to respond to a real emergency; one that would almost certainly involve crude oil, not ethanol. If CPBR ever begins refining and shipping ethanol, Global should amend its Plan to account for ethanol spills, as Global would be required to do if it began shipping other products like Tar Sands heavy crude. Until then, it is counter-productive to fill the Plan, and especially the Emergency Response Action Plan, with information about a substance that could not actually be spilled at the facility.

c. The Plan does not explain how much oil Global currently ships or plans to ship in the future.

Global's Plan omits two very important pieces of information: the volume of crude oil that Global currently ships, and the volume of crude oil that Global intends to ship in the near future. When planning to prevent and respond to an oil spill at a facility, what could be more important than knowing the volume of oil that the facility handles? When assessing the risk of spills, as required by OAR 340-141-0160(3)(i), isn't it imperative to know how much oil passes through the facility? Indeed, when evaluating a spill plan, DEQ must consider the volume of oil being shipped. *See* ORS 468B.360(3); OAR 340-141-0190(4)(a). Global's Plan is legally incomplete because Global never actually discloses how much crude oil it is shipping right now. Instead, the Plan describes the average and maximum crude oil *storage* available at the facility, and an "expected" throughput volume of 13,850,000 gallons per week. *See* Emergency Response Action Plan at 3, 19. It is not clear when Global 'expects' to hit this 13,850,000 gallons per week mark (figures from DEQ indicate that Global shipped roughly 9,000,000 gallons per week during November 2013[5]), but Global clearly 'expects' to exceed it. Global is currently applying to DEQ for a Clean Air Act permit that would allow it to transload 35,376,923

[5] *See* DEQ's Notice of Civil Penalty Assessment and Order No. AQ/AC-NWR-14-014 at 3 (March, 2014).

gallons of crude oil every week;[6] almost three times the volume stated in the Plan. The Plan is legally and functionally inadequate because it does not explain how much oil Global is, or will be, shipping.

d. Global should notify nearby land owners and farmers about spills.

In addition to seeking information about local resources that need protection, the Plan should require Global to notify nearby land owners and farmers in the Port Westward area if a spill occurs on land or water. As discussed above, and in other comments,[7] a spill to the lands or waters inside the Port Westward dike could severely damage wetlands, crops, and agricultural water supplies. DEQ requires that spill plans "[p]rovide for immediate notification and mobilization of resources upon discovery of a spill." OAR 340-141-0190(3)(c). In the event of a spill, local land owners and farmers should be notified so that they may take necessary actions to protect their land, property, and crops. The number of landowners and farmers in the local area is not so large as to make notification prohibitively complicated or expensive; Global could easily create a list of people who desire notification, and notify those people with a single automated voice or text message in the event of a spill.

e. Oil spill *prevention* should be the Plan's primary focus.

The Plan must focus primarily on preventing oil spills, because oil spill clean-up is difficult, expensive, and largely ineffective. Despite much research on oil spill response, the Oregon Legislature concluded that "response efforts cannot effectively reduce the impact of oil spills," ORS § 468B.340(1)(c)(D), and that "it is unlikely that a large percentage of oil can be recovered from a catastrophic spill." ORS § 468B.340(1)(c)(C). Accordingly, the Oregon Legislature recognized that "prevention is the most effective approach to oil spill management," ORS § 468B.340(1)(c)(D), and designed Oregon's oil spill laws and regulations to establish a program for "[t]he *prevention* of oil spills especially on the large, navigable waters of the Columbia River." ORS § 468B.340(2)(a) (emphasis added).

Global's Plan fails to describe appropriate spill prevention measures based on an honest assessment of spill risks at Global's crude oil shipping facility. Global attempts satisfy its spill prevention obligations under Oregon law by relying on its Spill Prevention, Control and Countermeasures Plan (SPCC)—a document that was that was prepared to satisfy the EPA's guidelines, not Oregon's. While it is acceptable to address Oregon and federal requirements for spill prevention planning in one combined document, that document must satisfy all of Oregon's requirements for spill prevention. *See* OAR 340-141-0160(2).

Specifically, Oregon rules require that Global's spill prevention strategies must include a "detailed and comprehensive *site risk analysis*" that, among other things, evaluates the

[6] *See* Global's Application for Standard Air Contaminant Discharge Permit at 1 (Aug. 2013) (Stating that Global is seeking permission from DEQ to move 1.84 billion gallons of crude oil per year—or 35,376,923 gallons of crude oil every week).
[7] *E.g.* Comments of James Hoffmann, Hopville Farms, LLC.

"construction, age, corrosion, inspection and maintenance, operation and oil spill risk of the transfer, production and storage system including piping, tanks, pumps, valves and associated equipment" and is prepared under the supervision of a licensed professional engineer. OAR 340-141-0160(3)(i) (emphasis added).

Moreover, Global must describe what measures it will use to address to the spill risks identified in the spill risk analysis to provide the "best achievable protection" against spills. OAR 340-141-0160(3)(j). Global's SPCC—or any other part of the Oil Spill Contingency Plan—does not appear contain a spill risk analysis, let alone describe how Global would address the spill risks identified in such an analysis. Unless the requirements of OAR 340-141-0160(3)(i) and (j) are met, Global's plan is fundamentally and legally insufficient.

f. Global does not explain why the Plan provides the "best achievable protection" against potential oil spills, or why the Plan would minimize the environmental damage from a spill to the "maximum extent practicable."

Global's Plan does not explain whether, or why, it satisfies Oregon's basic standards for spill prevention and response. First, the rules governing spill prevention require Global to "develop spill prevention strategies that will, when implemented, provide the *best achievable protection*" from oil spills. OAR 340-141-0160(1) (emphasis added). The "best achievable protection" standard means "the highest level of protection that can be achieved through the use of the best achievable technology" while accounting for a wide range of factors. OAR 340-141-0005(2). Second, Global's Plan "must be designed to . . . remove oil and minimize environmental damage to the *maximum extent practicable*" in the event of a spill. OAR 340-141-0100(4) (emphasis added). The "maximum extent practicable" standard "means the highest level of effectiveness that can be achieved" through various reasonable means. OAR 340-141-0005(23). Global's Plan must not only meet these two standards, it must explain *why* it meets them. DEQ's rules regarding plan preparation require that plans must "contain enough information, analyses, supporting data and documentation to demonstrate the plan holder's ability to meet the requirements of this Division." OAR 340-141-0100(3); *see also* OAR 340-141-0160(3)(j) (Plan must include a "description of how the facility will incorporate those measures that will provide best achievable protection to address . . . spill risks . . . ."). Among the "requirements" referenced in OAR 340-141-0100(3) are the requirements to provide the 'best achievable protection' from oil spills and to limit spill damages to the 'maximum extent practicable.' Global's Plan contains many pages describing Global's facility and operational planning, but no "information, analyses, supporting data and documentation to demonstrate" that the Plan meets these two underlying standards. These standards are necessarily broad, because they are intended to apply to many different operations at many different facilities. However, DEQ should be familiar with implementing such standards because similar standards appear in many environmental laws. Global's Plan is insufficient because it does not explain whether or why the plan meets these two standards.

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g. Global's Plan does not adequately address a worst case spill from the facility.

Global has prevented public comment on its analysis of, and preparations for, a worst case spill from the facility. Planning for a 'worst case spill' is an integral part of Oregon's oil spill contingency planning requirements. Spill plans must, to the maximum extent practicable, be designed to "[r]emove oil and minimize any damage to the environment resulting from a *worst case spill* . . . ." ORS § 468B.350(2)(b)(B) (emphasis added); *see also* OAR 340-141-0100(4) ("Plans must be designed to promptly and properly remove oil and minimize environmental damage to the maximum extent practicable. They must cover a variety of spill sizes, including . . . worst case spills."). Global's Plan describes two different 'worst case spills'—the worst case spill from the pipeline leading to the dock, and the worst case spill from the storage tanks. *See* Emergency Response Action Plan at 20, 21. There appears to be no basis in Oregon law or regulations for dividing up the worst case spill analysis in this manner and, practically, the "worst" case spill from the facility would clearly be a 3.8 million gallon spill from a tank. *Id*. at 20.

Global's plan for responding to a worst case spill from the pipeline leading to the dock is unspecific and inadequate. Global's Plan asserts that the "[r]esponse actions and resources used to respond to such a discharge are included in section 2.1.3" of the Emergency Response Action Plan. *Id*. But Section 2.1.3 of the Emergency Response Action Plan contains no information focused on responding to a worst case spill; in fact, that section also provides Global's plan for responding to the Average Most Probable Spill, ten times smaller than the worst case spill. Global's one-size-fits-all approach is not designed to reduce the damage from a worst case spill "to the maximum extent practicable." ORS § 468B.350(2)(b)(B).

Global's plan for responding to a worst case spill from the tank farm—the real worst case spill at the facility—is not available for public review. Global's Emergency Response Action Plan states that "[r]esponse to this worst-case discharge is addressed under separate cover in the CPBR FRP prepared for the EPA." *See* Emergency Response Action Plan at 21. Incorporating an EPA document by reference to satisfy a requirement of Oregon law is unacceptable unless the Plan contains "a detailed analysis that fully supports" that EPA's standards are consistent with Oregon's standards. OAR 340-141-0150(2)(a). It is Global's duty to provide such a "detailed analysis" explaining why EPA's standards satisfy Oregon's rules, *id.*, and Global's failure to do so invalidates the worst case spill analysis, a central feature of Oregon's oil spill contingency planning requirements. Though it is not the public's duty to compare EPA's and Oregon's requirements, Global's failure to include the EPA-required FRP as an appendix to its Plan prevented the public from reviewing Global's proposed response to the worst case spill from a tank failure.

h. The Plan does not contain sufficient information about Global's fire-fighting capabilities.

The Plan does not explain whether Global has enough fire-retardant foam on-site to effectively contain or extinguish a major crude oil fire at the facility or at a rail car or ship

servicing the facility. As stated elsewhere in this comment, the Emergency Response Action Plan posted online for public review cuts off at page 30, right in the middle of Section 2.3.2 dealing with fire and explosion response.

The portions of the Plan available for public review, including the appendices, do not appear to contain information about the amount of foam on hand at the facility or any discussion about why that is an appropriate or protective amount. "Figure 4 – Safety Equipment at the Transfer Facility" purports to give the location of the foam storage, but the location denoted in Figure 4 is actually a tree in the middle of an undeveloped lot. Unless Global stores its fire-fighting foam under that tree, anyone attempting to use Global's spill Plan to locate fire-fighting foam in the event of a crude oil fire or explosion will be unable to do so. Additionally, fire-fighting foam breaks down and expires over time, and the Plan appears to contain no protocols for periodically testing or replacing however much foam Global actually has.

Without more information about the amount and location of fire-fighting foam, DEQ cannot determine whether the Plan provides reasonable protection in the event of a crude oil fire.

Conclusion

Crude oil shipping, however accomplished, is fundamentally incompatible with a safe and healthy Columbia River Estuary. A single crude oil spill could devastate the natural and economic productivity of this region, as has tragically occurred in Prince William Sound and the Gulf of Mexico. The best and only sure way to prevent a crude oil spill is to prevent Global from shipping crude oil altogether, which is emphatically within DEQ's authority.

Until DEQ acts decisively to eliminate this grave new threat to the Columbia River and the Oregonians living and working nearby, Riverkeeper will continue to participate in public comment opportunities focused on spill prevention and response. Thanks you in advance for considering Riverkeeper's input on Global's Plan.

Sincerely,

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