November 14th, 2024

Multnomah County Commissioners and Commissioners-Elect

Re: *Comments on proposed CEI hub financial responsibility ordinance*

Dear Multnomah County Commissioners and Commissioners Elect:

Thank you for service to Multnomah County and, Commissioner Dr. Sharon Meieran, for your leadership on responsible regulation of fossil fuel facilities in the CEI Hub. Center for Sustainable Economy (CSE) and This Land are pleased to provide these comments on the draft ordinance requiring owners of certain facilities in Multnomah County to provide financial assurance mechanisms for costs and damages caused by the spill or release of oil, liquid fuel products and hazardous material.

While we are excited to see this advance, we hope you recognize that this is a just a first step in the process to ensure that Multnomah County taxpayers are not forced to bear the costs of accidents, decommissioning, or climate change associated with use of these facilities. As you may know, in 2016, CSE introduced the idea of Fossil Fuel Risk Bond (FFRB) programs to shift these costs away from taxpayers and onto the ledgers of fossil fuel corporations in line with the international 'polluter pays' principle. While the proposed ordinance deals with a subset of these costs, we hope Multnomah County will continue to forge ahead with a process to strengthen the ordinance to include two major components of FFRB programs now missing from this draft:

(1) financial assurance for decommissioning and removal of fossil fuel infrastructure and restoration of affected sites once the renewable energy transition obviates the need for most liquid fuels at the CEI Hub;
(2) and a surcharge placed on wholesale transactions of fossil fuels to help defray Multnomah County's anticipated costs associated with climate disaster response, climate change mitigation, and climate change adaptation.

With respect to decommissioning, we believe the draft ordinance can be strengthened to include this in a relatively straightforward fashion, as noted below. With respect to the surcharge, we believe this could be a valuable complement to ongoing litigation attempting to recoup climate change costs from fossil fuel corporations through the courts.

The outcome of legal actions is highly uncertain, but a surcharge put in place now will ensure that when the time comes for Multnomah County to consider major capital expenses related to climate change – such as establishing levees and dikes to prevent inundation of areas near the Columbia and Willamette River or installing a 1000-year floodproof stormwater system – those funds will be

on hand. Regardless, the surcharge approach is an entirely different policy mechanism and so we have left it out of our recommendations below. Instead, we hope you will carefully consider this option as the subject of a future, complementary ordinance.

Specific recommendations for strengthening the draft are as follows:

[1] Raise the cost per gallon to $478/gallon (or $20,076/barrel) in line with the only analog we know of, the BP Horizon spill, which has cost at least $64 billion and spilled 134 million gallons.

The 2022 EcoNorthwest report on the CEI Hub found that the CEI Hub could cause the largest oil spill in U.S. history. That report states that "the *minimum* (emphasis added) costs to society of potential fuel releases at the CEI Hub range from $359 million to $2.6 billion (Table ES-2). Because not all costs were monetized, this range of costs represents only a portion of the total costs likely to be imposed on society from fuel releases from the CEI Hub."

Because these are the *minimum* costs, and because bonding requirements should ensure that the *maximum* costs are covered by the polluters, thereby incentivizing the safest possible practices, we strongly encourage you to raise the cost estimate from damages per gallon to $478/gallon in line with the BP Deepwater Horizon spill, which spilled 134 million gallons at a cost of at least $64 billion. The EcoNorthwest report assumed the maximum amount spilled from the CSZ quake would be *larger* than the BP Deepwater spill at194 million gallons. Thus, at $478/gallon, the worst-case scenario—the largest oil spill in U.S. history—would come to at least $93 billion should the CEI Hub collapse, less the amounts covered under the Oil Pollution Act or other federal requirements. It should be noted that, while large, this estimate is does not include other costs which will invariably be incurred when the CSZ quake occurs, including loss of life, income, livelihoods, fisheries, tourism and other currently incalculable costs.

Counterintuitively, the range of costs for cleanup is variable and can be significantly higher for smaller quantities of oil spilled. Consider the following examples of actual cleanup costs incurred for spills in the Barataria-Terrebonne, Louisiana estuary area:

- A spill of two barrels (84 gallons of oil) cost the company $6,094 for labor and equipment, or $72.55 per gallon.
- A spill of 8 gallons cost $41,717, or more than $5,000 per gallon.
- A spill of only 6/10 gallon (less than 5 pints) of oil cost the company $8,672.

Given these wide variations in cost, we believe the closest analog to a CSZ quake is the Deepwater Horizon spill and Section M should be amended to read, "The monetized costs from CSZ earthquake-induced spills, estimated to be the largest in U.S. history, were calculated to be comparable to the cost of the BP Horizon deepwater oil spill with the upper-cost estimate for a worst-case spill being $93,000,000,000. Based on the total storage capacity of the CEI Hub of 350,600,000 gallons, this translates to an upper per-barrel cost estimate of $20,076."

[2] Lower the threshold of compliance to facilities with 10,000 gallons of combined storage.

We understand that the 2-million-gallon facility threshold was your starting point because that is the threshold for compliance with the seismic vulnerability legislation. However, we think this may

leave far too many gallons off the table. According to the PSU honors study of CEI Hub infrastructure, about 98% of the CEI Hub Capacity would be covered if ordinance applied to all tanks 100,000 gallons or more (Bal 2021) and probably 99% or more if it is set at 10,000 gallons. As noted above, smaller spills can be more expensive to clean up than larger ones and can also lead to cascading accidents and explosions when infrastructure is tightly packed together, so we encourage you to cover 99% of the CEI Hub's capacity.

If the threshold is set at 10,000 gallons, it would be consistent with the recommendations from the Oregon Seismic Safety Policy Advisory Commission (OSSPAC 2019), which recommend "...focusing first on regulatory authority of above-ground liquid fuel tanks of more than 10,000 gallons, which are of primary concern in terms of limiting threats to safety, environment, and recovery. Tanks of this size constitute the bulk of liquid fuel stored in the state, and this size exempts smaller tanks located at farms, schools or fire stations." Small tanks can pose just as many threats as large ones if they are located in the wrong place, such as across from schools or if they are mobile.

To make a lower threshold (<2 million gallons) work with the two-tiered financial responsibility rate structure you propose in Section MCC 25.270, we suggest adding language[1] that would grant the lower rate to any facility that voluntarily complies with the risk mitigation implementation plan requirements, in addition to those facilities for which the requirements are mandatory. Of course, this raises the issue of whether DEQ is set up to approve voluntary risk mitigation plans, but at this point we don't see any real difficulty in doing this.

[3] Add language to specify that the costs of decommissioning and removal of fossil fuel infrastructure and remediation of affected sites is included.

To do this, there first needs to be a section establishing a duty to decommission, which we believe is entirely absent right now from federal, state, or local requirements. The rusty relics of fossil fuel and other industrial infrastructure are a major issue for jurisdictions across the US, and the CEI Hub is no exception. It already houses storage tanks that are dilapidated and obsolete. We recommend adding the following language to establish this, based on Alaska's decommissioning requirements:

MCC 25.255 DUTY TO DECOMMISSION ABANDONED INFRASTRUCTURE
(A) The owner or operator of a facility must decommission facilities or components of facilities that have been abandoned or which have been out of service for at least one year and remediate affected land to marketable condition before expiration of the owner's rights in that property.
(B) The owner or operator of a facility for which decommissioning and remediation work has been initiated shall notify the Director that such work has been initiated and obtain a certificate from the Director that the work has been completed in a satisfactory manner.
(C) Unless the owner or operator demonstrates to the Director that a different disposition to facilitate a genuine beneficial, marketable use of the land is feasible, the owner or operator shall:

[1] Change MCC 25.270 B(2) to read: "(2) For facilities that have implemented a DEQ-approved Risk Mitigation Implementation Plan, either voluntary or mandated, that has been approved as complete by DEQ, multiply the total storage capacity by $46 per barrel."

i. remove all materials, supplies, structures, and installations from the location;
ii. remove all loose debris from the location;
iii. fill and grade all pits or close them in another manner approved by the commission as adequate to protect public health and safety; and
iv. leave the location in a clean and graded condition.

Several language changes will then be needed throughout to ensure that financial assurances cover the costs of implementing these activities. For example, MC 25.250 (A) would need to be modified to add the following language at the end of the paragraph, "and to ensure that such facilities are fully decommissioned, and the land remediated to marketable condition once operations cease." MC 25.250 (B) would need to be modified to include "and for the costs of decommissioning and remediating the land to marketable condition" after "worst-case spill or release." MC 25.270 (A) would need to be modified to include "and projected costs to decommission the facility and remediate the site on which the facility is located" before the phrase "using the applicable formula." These are just examples of where the language would need to be modified.

[4] Explicitly bar self-insurance, self-bonding, or corporate guarantees

These forms of financial assurance have been discredited and often leave taxpayers liable for costs and damages in the event the corporation declares bankruptcy, dissolves, or is acquired by another company. MC 25.260 should be modified to explicitly exclude these forms of financial assurance. MC 25.260(B)5, as now written, gives the director discretion to allow them.

[5] Raise fee for civil penalties to make them comparable to federal agencies.

Together with other advocates, we strongly urge you to revise the daily fee for penalties in line with comparable fees imposed by the state and federal government. For example, the Bureau of Land Management's fines for the oil and gas industry are as follows: "...Civil penalties pursuant to 43 CFR 3163.2 range from $1,000+ a day to $52,000+ per day, depending on the violation. The monetary amount adjusts annually based on the inflation rate." We urge you to replace the language under MC 25.2990 that states: "The director may issue civil penalties of up to $1,000 per violation," with "The director may issue civil penalties from $1,000+ a day to $52,000+ per day, depending on the violation. The monetary amount adjusts annually based on the inflation rate."

[6] Move up implementation date or establish an interim policy

The proposed draft pushes the implementation date out to July 1, 2026, which is not commensurate with the taxpayer risks at stake here. There is no reason for this length of delay. Submitting financial assurances based on the simple, capacity-based rates established by MC 25.270 should be a routine administrative task for regulated facilities, although we realize Multnomah County's side of the equation is a bit more complex (i.e. rulemaking and getting appropriate staffing in place).

We recommend one of two approaches for hastening the pace of implementation: (1) moving up the implementation date to April 1st, 2025 – giving regulated entities three full months to comply instead of a year and a half, or (2) adding language stating that the financial responsibility exists

upon enactment of the ordinance but that the financial assurance certificates are not due until July 1st, 2026.

In other words, establishing strict legal liability for all the costs and damages enumerated in the ordinance can be an interim step that helps shield taxpayers from costs and damages that may occur prior to finalization of the rules and presentation of financial assurance certificates. We believe a short section establishing that liability can be inserted after MC 25.250, and that such language can build upon and strengthen strict liability laws for oil already on the books in Oregon and Washington (based on OPA 1990).[2]

[7] Expedite a study that would explore moving the entire CEI Hub to a safer site.

We are deeply concerned that, even should our recommendations be accepted in full, they may not be sufficient to protect the people, the fish and wildlife, and the county from a catastrophe that would jeopardize the entire state. We urge you to work with industry and federal officials to explore a just transition for the industries in the CEI Hub to a safer site far from population centers and vital waterways.

Sincerely,

John Talberth
President, Center for Sustainable Economy

Daphne Wysham
This Land

[2] Washington State has established strict liability for owners or controllers of oil at RCW 90.56.370. Oregon at ORS 466.640. Language from these statutes can serve as a good template to apply to a broader range of costs and damages from CEI Hub facilities, but with no act of God exemptions.