April 7th, 2025

RE: *Comments on HB 2949-5*

Dear Representative Tran and members of the House Committee on Emergency Management, General Government, and Veterans:

Thank you for your leadership on this critical issue to all Oregonians, and for the opportunity to comment on HB 2949-5. Center for Sustainable Economy (CSE), a nonprofit organization, first proposed the concept of fossil fuel risk bonds in 2016 as a way to shield taxpayers from the externalized costs of fossil fuel infrastructure, which includes costs associated with catastrophic and routine accidents and spills as well as the increasing risks associated with infrastructure abandonment. The primary mechanism for this is financial assurance.

Fossil fuel risk bond programs also provide the opportunity for states, counties, and cities to shift the financial burden of climate adaptation on polluters rather than taxpayers with a surcharge on fossil fuel transactions. You can read more about fossil fuel risk bonds at Brookings.edu, in a report we prepared last year, and learn more about how such programs can help finance climate adaptation in Oregon here, in a new report we co-published with the Forum on Oregon Climate Change Economics last month.

We are pleased by your interest in moving the financial assurance component along in Oregon but have some serious concerns about how this legislation is currently written. These concerns are set forth below along with specific suggestions for revisions that will make this legislation far more aligned with the fossil fuel risk bond concept as originally conceived.

1) **This is not a regulatory bill but a rule making bill with no set deadlines for implementation.**

We appreciate your responsiveness to earlier recommendations of our organizations to bypass a study bill and enact a regulatory bill to impose financial assurance requirements on major fossil fuel infrastructure owners upon enactment. However, this bill does not accomplish that. Instead, the bill punts enforceable financial assurance requirements far down the road at the end of a rule making process that will most certainly be dominated by the fossil fuel industry since they alone have the time, money, and staffing to regularly engage with the process as it unfolds over many years and then to challenge the final rules in court.

As a result, none of these facility owners will be financially responsible before 2030, at the earliest, which is not commensurate with the taxpayer risks at stake here. There is no reason for

this length of delay given that we are overdue for a Cascadia Subduction Zone (CSZ) quake. We recommend three ways to fix this length of delay.

- **Option 1**: The first option is adding language stating that the financial responsibility exists upon enactment of the legislation but that the financial assurance certificates are not due until the conclusion of the rule making process. In other words, establishing strict legal liability for all the costs and damages enumerated in the statute 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, and that such language can build upon and strengthen strict liability laws for fossil fuels already on the books in Oregon and Washington (based on OPA 1990).[1]

- **Option 2**: The second option is to amend the legislation to establish an interim financial assurance requirement based on the most current per barrel damage estimates from the scientific literature multiplied by the storage capacity of individual regulated entities. For example, Melstrom et al. (2019) estimated $1.3 billion from a worst-case spill in the Straits of Mackinac, which translates into per-barrel damages of $27,973 in 2025 dollars.[2] A study commissioned by California's Office of Spill Response and Prevention found that a spill of heavy persistent oil – a type of crude stored at the CEI Hub – could cost up to $70,386 per barrel for spills between 100 and 10,000 barrels.[3] Using the latter figure, a facility that stores 2,000,000 gallons would be required to demonstrate financial assurance of $3.35 billion until the final rules are enacted.

- **Option 3**: The third way this bill could be amended is to give the EQC a set time frame for finalizing their rules and for DEQ to implement the program based on those rules. For example, SB 91 A addresses another hazard, PFAS or "forever" chemicals, in firefighting foam and directs EQC to promulgate rules and then for DEQ to implement a program based on those rules no later than July 1st, 2026.[4] There is no reason why this legislation could not adopt a similar deadline.

[1] 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 Oregon facilities, but with no act of God exemptions.
[2] Richard T. Melstrom, Carson Reeling, Latika Gupta, Steven R. Miller, Yongli Zhang, Frank Lupi, 2019. Economic damages from a worst-case oil spill in the Straits of Mackinac, Journal of Great Lakes Research, Volume 45, Issue 6, 2019, Pages 1130-1141, ISSN 0380-1330, https://doi.org/10.1016/j.jglr.2019.09.003.
[3] As reported by Sightline Institute at: https://www.sightline.org/2020/01/22/the-cost-of-a-salish-sea-oil-spill-we-still-dont-know/.
[4] Specific language in SB 91 A is as follows: "The Environmental Quality Commission shall adopt rules to establish, and the Department of Environmental Quality shall implement, the program described in section 3 of this 2025 Act no later than July 1, 2026."

2) **Define "financial assurance mechanism" to exclude evidence of insurance and explicitly bar self-insurance, self-bonding, or corporate guarantees.**

The language now reads: "(3) 'Financial assurance mechanism' means an instrument or other evidence that establishes financial assurance for spill-related liabilities, including but not limited to:

"(a) Evidence of insurance;
"(b) Surety bonds;
"(c) A letter of credit;
"(d) A trust; or
"(e) Other evidence of financial responsibility deemed acceptable by the Environmental Quality Commission."

Existing insurance is insufficient to protect the taxpayer from a worst-case disaster scenario, which is likely to occur in the next 30-50 years at the CEI Hub. This is the primary reason why this policy needs to be implemented: If existing insurance were adequate, no additional legislation would be required. Furthermore, self-insurance, self-bonding, or corporate guarantee 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. This legislation should be modified to *explicitly exclude* these forms of financial assurance. As now written, this legislation gives EQC discretion to allow them.

3) **Restore the "worst-case" standard as a basis for financial assurance.**

This version of the legislation directs EQC to establish "*reasonable minimum amounts*" of financial assurance based on historical spill data where in the context of the proposed Multnomah County ordinance and all other fossil fuel risk bond policies we have worked on the standard is a *worst-case scenario*. A worst-case baseline is also the standard for financial assurance programs by other federal, state, and local agencies. For example, section MC 25.270 of Multnomah County's proposed ordinance would determine the financial assurance required by "calculating the costs and damages that could result from, arise out of, or relate to a worst-case spill or release." King County, WA has enacted a risk bond ordinance that requires:

> (1) As part of permit application submittal, the applicant shall demonstrate financial responsibility in an amount necessary to compensate for the cost of decommissioning, and for the maximum damages that might occur from an explosion resulting from a ***worst-case release***, as defined in the 40 C.F.R. Sec. 68.3, of flammable gases and flammable liquids (emphasis added).[5]

One of the most important motivations of risk bond legislation is shielding taxpayers from costs and damages associated with catastrophic events and so lowering the standard to "reasonable minimum" undermines the entire rationale for this legislation.

[5] A copy of the ordinance can be accessed here: https://irp.cdn-website.com/0358d1eb/files/uploaded/FFRB%20King%20County%202023.pdf.

4) **Raise the financial assurance cap to be commensurate with the latest scientific information.**

The current legislation states: "(3)(a) Rules adopted under this section may not require a covered entity to obtain an amount of financial assurance that is greater than $300 million." This is problematic for two reasons: 1) a $300 million cap on insurance works out to $6,300 a barrel for an entity with 2 million gallons of storage, which is far below most damage estimates from the scientific literature (i.e. $27,393 and $70,239 per barrel, respectively, for the studies we cite above) and; 2) a cap of $300 million is what industry can now buy on the open market and such a cap is one of the reasons why we believe this legislation is needed: in order to incentivize the highest possible safety standards, not the lowest, for Oregon. Again, Oregon's infrastructure is uniquely vulnerable to a 9.0 quake. There is no other region in the country this vulnerable to such a catastrophic incident. Therefore, caps of $300 million are inappropriate, given *the risk of the largest spill in U.S. history.*

5) **Comply with OSSPAC recommendations and lower threshold for compliance from 2,000,000 to 10,000 gallons.**

We are further concerned that the current language in this bill is restricted to facilities with combined storage capacity of 2 million gallons or more. According to a PSU honors study of CEI Hub infrastructure, about 98% of the CEI Hub Capacity would be covered if risk bonding applied to all tanks 100,000 gallons or more (Bal 2021) and probably 99% or more if it is set at 10,000 gallons. In many cases, 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.

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 recommends "…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.

6) **Expand language to cover all counties in Oregon, not just 3.**

The definition of "covered entity" established under ORS 468.B.510 only applies to *three counties* – Multnomah, Columbia, and Lane. There is no reason for this legislation to be restricted to these three counties. Bulk terminals exist in other places, and many more may be constructed in the future given the Trump Administration's abandonment of the federal climate action agenda and push for more oil and gas drilling and domestic consumption.

7) **Uphold constitutionally protected state and local authority; don't cede power to federal authority.**

We are alarmed to see language in this bill that strips local jurisdictions of their constitutionally protected authority to enact stronger language even if local public health and safety concerns warrant that. In addition, while the legislation puts financial assurance requirements in effect (eventually) for *just three counties*, it effectively restricts all other counties and cities in the state from enacting anything at all, at least until the rule-making is complete.[6] This is illogical, unnecessary and unfair. If a county or city is not receiving the benefits of financial assurance under this bill, then it should be free to enact whatever requirements it deems necessary. This is important even for jurisdictions that currently do not have any bulk storage facilities because it helps disincentivize the construction of new facilities in their jurisdictions. A simple fix is below:

Current language:

"(6) A local government, as defined in ORS 174.116, may not adopt or enforce any ordinance, rule or regulation requiring the owner or operator of covered entity to obtain a financial assurance mechanism that exceeds or is in addition to the requirements of this section or rules adopted by the commission pursuant to this section.

This should read:

"(6) A local government, as defined in ORS 174.116, may ~~not~~ adopt and ~~or~~ enforce any ordinance, rule or regulation requiring the owner or operator of covered entity to obtain a financial assurance mechanism that exceeds or is in addition to the requirements of this section or rules adopted by the commission pursuant to this section if that government makes a finding that the requirements of this section or rules adopted by the commission are insufficient for covering all spill-related liabilities, including spill or release response, remediation and damages.

The health and safety of local community members is of primary concern to local elected officials, where their authority to implement strong requirements for protection must not be usurped.

Furthermore, because state and local jurisdictions have supremacy on public health and safety issues under the U.S. Constitution, there is no need to pledge subservience to federal laws, as written in Section 2(4): "Rules adopted by the commission under section 4 of this 2025 Act *should align with federal standards*, where appropriate, while addressing state-specific risks and needs" and in Section 4(e), which requires that the rules "be *consistent with the requirements of federal law,* including the federal Oil Pollution Act of 1990 (P.L. 101-380), while accounting for state-specific needs."

[6] While, technically, the language could be interpreted to allow all non-regulated counties and cities to move forward with their own financial assurance requirement programs, in reality, a court would not permit this until the rule-making is complete since the pre-emption language bars enactment of any measure that "exceeds or is in addition" to the rules, which will not be in effect for many years.

8) **Decommissioning costs should be included in this bill.**

As the transition to renewable energy accelerates, taxpayers will increasingly be on the hook for paying the costs of dismantling and removing abandoned fossil fuel infrastructure and cleaning up toxic sites like the CEI Hub. As such, the legislation should require financial assurances that not only cover potential taxpayer costs in the event of a catastrophic accident at fossil fuel infrastructure sites but also require financial assurance for *decommissioning* of fossil fuel infrastructure once it's no longer needed. The bill as written does not make such requirements and therefore exposes Oregon taxpayers to picking up the tab for cleanup when the infrastructure in abandoned. Oregon taxpayers cannot afford this additional burden.

9) **DEQ should have authority to adjust financial assurance amounts based on changing conditions and new information.**

The bill as written states: "(b) No *more* than once every three years, the department may evaluate and adjust the maximum amount of financial assurance listed in paragraph (a) of this subsection." This is unnecessarily restrictive. DEQ should have the authority to evaluate and adjust the maximum amount of financial assurance required based on changing conditions and new information. As such, this section should be rewritten to state "(b) The department may evaluate and adjust the maximum amount of financial assurance listed in paragraph (a) of this subsection as needed to respond to changing conditions and new information."

Thank you for your time and consideration of the issues we have raised. We look forward to reviewing a subsequent draft that incorporates these concerns.

Sincerely,

H. John Talberth

Daphne Wysham

John Talberth, Ph.D.
President, Center for Sustainable Economy
1322 Washington Street Box 705
Port Townsend, WA 98368

Daphne Wysham
This Land
6134 NE Alameda
Portland, OR 97213