

D R A F T

SUMMARY

Directs Environmental Quality Commission to adopt rules applying certain oil spill prevention and emergency response planning requirements to high hazard train routes in this state.

Defines “high hazard train route” and “listed sensitive area” for purposes of contingency plans.

Requires railroads that own or operate high hazard train routes to annually submit financial responsibility statements to Department of Environmental Quality.

Requires department to levy and collect annual assessment equal to \$_____ per year. Requires railroads that own and operate high hazard train routes to pay share of annual assessment proportionate to high hazard train route track miles operated by railroads.

Establishes High Hazard Train Route Oil Spill Prevention Fund. Requires moneys collected to be deposited in High Hazard Train Route Oil Spill Prevention Fund. Prescribes uses of fund.

Requires facilities receiving crude oil from railroad cars to provide advance notice to department.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to safe transportation of oil; creating new provisions; amending
3 ORS 468B.300, 468B.305, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365,
4 468B.385, 468B.410, 468B.412 and 468B.495; and prescribing an effective
5 date.

6 **Be It Enacted by the People of the State of Oregon:**

CONTINGENCY PLANNING

1 **SECTION 1.** ORS 468B.300 is amended to read:

2 468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to
3 468B.500:

4 (1) “Bulk” means material stored or transported in loose, unpackaged
5 liquid, powder or granular form capable of being conveyed by a pipe, bucket,
6 chute or belt system.

7 (2) “Cargo vessel” means a self-propelled ship in commerce, other than a
8 tank vessel, of 300 gross tons or more. “Cargo vessel” does not include a
9 vessel used solely for commercial fish harvesting.

10 (3) “Commercial fish harvesting” means taking food fish with any gear
11 unlawful for angling under ORS 506.006, or taking food fish in excess of the
12 limits permitted for personal use, or taking food fish with the intent of dis-
13 posing of such food fish or parts thereof for profit, or by sale, barter or trade,
14 in commercial channels.

15 (4) “Contingency plan” means an oil spill prevention and emergency re-
16 sponse plan required under ORS 468B.345.

17 (5) “Covered vessel” means a tank vessel, cargo vessel, passenger vessel
18 or dredge vessel.

19 (6) “Damages” includes damages, costs, losses, penalties or attorney fees
20 of any kind for which liability may exist under the laws of this state re-
21 sulting from, arising out of or related to the discharge or threatened dis-
22 charge of oil.

23 (7) “Discharge” means any emission other than natural seepage of oil,
24 whether intentional or unintentional. “Discharge” includes but is not lim-
25 ited to spilling, leaking, pumping, pouring, emitting, emptying or dumping
26 oil.

27 (8) “Dredge vessel” means a self-propelled vessel of 300 or more gross tons
28 that is equipped for regularly engaging in dredging of submerged and
29 submersible lands.

30 (9) “Exploration facility” means a platform, vessel or other offshore fa-
31 cility used to explore for oil in the navigable waters of the state. “Explora-

1 tion facility” does not include platforms or vessels used for stratigraphic
2 drilling or other operations that are not authorized or intended to drill to
3 a producing formation.

4 (10) “Facility” means a pipeline or any structure, group of structures,
5 equipment or device, other than a vessel that transfers oil over navigable
6 waters of the state, that is used for producing, storing, handling, trans-
7 ferring, processing or transporting oil in bulk and that is capable of storing
8 or transporting 10,000 or more gallons of oil. “Facility” does not include:

9 (a) A railroad car, motor vehicle or other rolling stock while transporting
10 oil over the highways or rail lines of this state;

11 (b) An underground storage tank regulated by the Department of Envi-
12 ronmental Quality or a local government under ORS 466.706 to 466.882 and
13 466.994; or

14 (c) A marina, or a public fueling station, that is engaged exclusively in
15 the direct sale of fuel, or any other product used for propulsion, to a final
16 user of the fuel or other product.

17 (11) “Federal on-scene coordinator” means the federal official predesig-
18 nated by the United States Environmental Protection Agency or the United
19 States Coast Guard to coordinate and direct federal responses or the official
20 designated by the lead agency to coordinate and direct removal under the
21 National Contingency Plan.

22 (12) “Hazardous material” has the meaning given that term in ORS
23 466.605.

24 **(13) “High hazard train route” means a section of rail lines in this**
25 **state:**

26 **(a) That abuts or travels over navigable waters of the state, an in-**
27 **land watershed or a drinking water intake; and**

28 **(b) Over which trains operate that consist of multiple tanker rail-**
29 **road cars transporting oil or hazardous material as cargo.**

30 **(14) “Listed sensitive area” means an area or location listed as an**
31 **area of special economic or environmental importance in an Area**

1 **Contingency Plan or Sub-Area Contingency Plan prepared and pub-**
2 **lished pursuant to section 311(j) of the Federal Water Pollution Control**
3 **Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990 (P.L.**
4 **101-380).**

5 [(13)] (15) “Maritime association” means an association or cooperative of
6 marine terminals, facilities, vessel owners, vessel operators, vessel agents or
7 other maritime industry groups, that provides oil spill response planning and
8 spill related communications services within the state.

9 [(14)] (16) “Maximum probable spill” means the maximum probable spill
10 for a vessel operating in the navigable waters of the state considering the
11 history of spills of vessels of the same class operating on the west coast of
12 the United States.

13 (17) “National Contingency Plan” means the plan prepared and
14 published under section 311(d) of the Federal Water Pollution Control
15 Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L.
16 101-380).

17 [(15)] (18) “Navigable waters” means the Columbia River, the Willamette
18 River up to Willamette Falls, the Pacific Ocean and estuaries to the head
19 of tidewater.

20 [(16)] “National Contingency Plan” means the plan prepared and published
21 under section 311(d) of the Federal Water Pollution Control Act, 33 U.S.C.
22 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).]

23 [(17)] (19) “Offshore facility” means any facility located in, on or under
24 any of the navigable waters of the state.

25 [(18)] (20) “Oils” or “oil” means:

26 (a) Oil, including gasoline, crude oil, **bitumen, synthetic crude oil,**
27 **natural gas well condensate,** fuel oil, diesel oil, lubricating oil, sludge, oil
28 refuse and any other petroleum related product; and

29 (b) Liquefied natural gas.

30 [(19)] (21) “Onshore facility” means any facility located in, on or under
31 any land of the state, other than submerged land, that, because of its lo-

1 cation, could reasonably be expected to cause substantial harm to the envi-
2 ronment by discharging oil into or on the navigable waters of the state or
3 adjoining shorelines.

4 [(20)] **(22)** “Passenger vessel” means a ship of 300 or more gross tons
5 carrying passengers for compensation.

6 [(21)] **(23)** “Person” has the meaning given the term in ORS 468.005.

7 [(22)] **(24)** “Person having control over oil” includes but is not limited to
8 any person using, storing or transporting oil immediately prior to entry of
9 such oil into the navigable waters of the state, and shall specifically include
10 carriers and bailees of such oil.

11 [(23)] **(25)** “Pipeline” means a facility, including piping, compressors,
12 pump stations and storage tanks, used to transport oil between facilities or
13 between facilities and tank vessels.

14 [(24)] **(26)** “Region of operation” with respect to the holder of a contin-
15 gency plan means the area where the operations of the holder that require
16 a contingency plan are located.

17 [(25)] **(27)** “Removal costs” means the costs of removal that are incurred
18 after a discharge of oil has occurred or, in any case in which there is a
19 substantial threat of a discharge of oil, the costs to prevent, minimize or
20 mitigate oil pollution from the incident.

21 [(26)] **(28)** “Responsible party” has the meaning given under section 1001
22 of the Oil Pollution Act of 1990 (P.L. 101-380), **33 U.S.C. 2701**.

23 [(27)] **(29)** “Ship” means any boat, ship, vessel, barge or other floating
24 craft of any kind.

25 [(28)(a)] **(30)(a)** “State on-scene coordinator” means the state official ap-
26 pointed by the Department of Environmental Quality to represent the de-
27 partment and the State of Oregon in response to an oil or hazardous material
28 spill or release or threatened spill or release and to coordinate cleanup re-
29 sponse with state and local agencies.

30 (b) For purposes of this subsection:

31 (A) “Spill or release” means the discharge, deposit, injection, dumping,

1 spilling, emitting, releasing, leaking or placing of any oil or hazardous ma-
2 terial into the air or into or on any land or waters of this state except as
3 authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A,
4 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal
5 law, or except when being stored or used for its intended purpose.

6 (B) “Threatened spill or release” means oil or hazardous material is likely
7 to escape or be carried into the air or into or on any land or waters of the
8 state, including from a ship as defined in this section that is in imminent
9 danger of sinking.

10 [(29)] (31) “Tank vessel” means a ship that is constructed or adapted to
11 carry oil in bulk as cargo or cargo residue. “Tank vessel” does not include:

- 12 (a) A vessel carrying oil in drums, barrels or other packages;
13 (b) A vessel carrying oil as fuel or stores for that vessel; or
14 (c) An oil spill response barge or vessel.

15 [(30)] (32) “Worst case spill” means:

16 (a) In the case of a vessel, a spill of the entire cargo and fuel of the tank
17 vessel complicated by adverse weather conditions; [*and*]

18 (b) In the case of an onshore or offshore facility, the largest foreseeable
19 spill in adverse weather conditions[.]; **and**

20 (c) **In the case of a high hazard train route, a spill, complicated by**
21 **adverse weather conditions, of the entire fuel capacity of the locomo-**
22 **tive and the entire capacity of the total lading of oil transported**
23 **within the largest single train operated on the high hazard train route,**
24 **based on 714 barrels per tank car, unless the Department of Environ-**
25 **mental Quality determines that a larger or smaller volume is more**
26 **appropriate given the particular high hazard train route’s site char-**
27 **acteristics, unique operations, spill history and transfer capacity.**

28 **SECTION 2.** ORS 468B.340 is amended to read:

29 468B.340. (1) The Legislative Assembly finds that:

30 (a) Oil spills present a serious danger to the fragile natural environment
31 of the state.

1 (b) Commercial vessel activity on the navigable waters of the state is vi-
2 tal to the economic interests of the people of the state.

3 (c) Recent studies conducted in the wake of disastrous oil spills have
4 identified the following problems in the transport and storage of oil:

5 (A) Gaps in regulatory oversight;

6 (B) Incomplete cost recovery by states;

7 (C) Despite research in spill cleanup technology, it is unlikely that a
8 large percentage of oil can be recovered from a catastrophic spill;

9 (D) Because response efforts cannot effectively reduce the impact of oil
10 spills, prevention is the most effective approach to oil spill management; and

11 (E) Comprehensive oil spill prevention demands participation by industry,
12 citizens, environmental organizations and local, state, federal and interna-
13 tional governments.

14 (2) Therefore, the Legislative Assembly declares it is the intent of ORS
15 468B.345 to 468B.415 to establish a program to promote:

16 (a) The prevention of oil spills especially on the large, navigable waters
17 of the Columbia River, the Willamette River and the Oregon coast;

18 **(b) The prevention of oil spills to listed sensitive areas, such as in-**
19 **land rivers and streams that serve as essential habitats for salmon and**
20 **other wildlife or as sources of water for consumption, irrigation or**
21 **other public use;**

22 **(c) The prevention of oil spills along high hazard train routes;**

23 [(b)] **(d)** Oil spill response preparedness, including the identification of
24 actions and content required for an effective contingency plan;

25 [(c)] **(e)** A consistent west coast approach to oil spill prevention and re-
26 sponse;

27 [(d)] **(f)** The establishment, coordination and duties of safety committees
28 as provided in ORS 468B.415; and

29 [(e)] **(g)** To the maximum extent possible, coordination of state programs
30 with the programs and regulations of the United States Coast Guard and
31 adjacent states.

1 **SECTION 3.** ORS 468B.305 is amended to read:

2 468B.305. (1) It shall be unlawful for oil to enter the waters of the state
3 from any ship **or high hazard train route** or **from** any fixed or mobile fa-
4 cility or installation located offshore or onshore, whether publicly or pri-
5 vately operated, regardless of the cause of the entry or the fault of the
6 person having control over the oil, or regardless of whether the entry **of oil**
7 is the result of intentional or negligent conduct, accident or other cause.
8 Such entry constitutes pollution of the waters of the state.

9 (2) Subsection (1) of this section shall not apply to the entry of oil into
10 the waters of the state under the following circumstances:

11 (a) The person discharging the oil was expressly authorized to do so by
12 the Department of Environmental Quality, having obtained a permit
13 [*therefor*] **to do so** required by ORS 468B.050;

14 (b) Notwithstanding any other provision of ORS 466.640, 468B.025 or
15 468B.050 or this section, the person discharging the oil was expressly au-
16 thorized to do so by a federal on-scene coordinator or the department in
17 connection with activities related to the removal of or response to oil that
18 entered the waters of the state; or

19 (c) The person having control over the oil can prove that the entry
20 [*thereof*] **of oil** into the waters of the state was caused by:

21 (A) An act of war or sabotage or an act of God.

22 (B) Negligence on the part of the United States Government, or the State
23 of Oregon.

24 (C) An act or omission of a third party without regard to whether any
25 such act or omission was or was not negligent.

26 **SECTION 4.** ORS 468B.345 is amended to read:

27 468B.345. (1)(a) Unless an oil spill prevention and emergency response
28 plan has been approved by the Department of Environmental Quality and has
29 been properly implemented, [*no*] **a person** [*shall*] **may not**:

30 [(a)] **(A)** Cause or permit the operation of an onshore facility in the state;

31 [(b)] **(B)** Cause or permit the operation of an offshore facility in the state;

1 or

2 [(c)] (C) Cause or permit the operation of a covered vessel within the
3 navigable waters of the state.

4 [(2)] (b) It is not a defense to an action brought for a violation of **this**
5 subsection [(1) of this section] that the person charged believed that a current
6 contingency plan had been approved by the department.

7 [(3)] (c) A contingency plan **required under this subsection** shall be
8 renewed at least once every five years.

9 [(4) *This section shall not apply to the operation of a cargo or passenger*
10 *vessel on Yaquina Bay or on the navigable waters of the state in the Pacific*
11 *Ocean used by cargo or passenger vessels entering or leaving Yaquina Bay*
12 *until January 1, 1998.*]

13 **(2)(a) A railroad that owns or operates a high hazard train route in**
14 **this state shall have an oil spill prevention and emergency response**
15 **plan that has been approved by the department.**

16 **(b) It is not a defense to an action brought for a violation of this**
17 **subsection that the person charged believed that a current contin-**
18 **gency plan had been approved by the department.**

19 **(c) A contingency plan required under this subsection for a high**
20 **hazard train route shall be renewed at least once every five years.**

21 **(d) Failure by a railroad that owns or operates a high hazard train**
22 **route to comply with this subsection or to be in compliance with a**
23 **contingency plan required under this subsection does not preclude the**
24 **railroad from operating the high hazard train route.**

25 **SECTION 5. Section 6 of this 2019 Act is added to and made a part**
26 **of ORS 468B.345 to 468B.415.**

27 **SECTION 6. (1) The Environmental Quality Commission shall, by**
28 **rule:**

29 **(a) Adopt standards for the preparation of contingency plans for**
30 **high hazard train routes that:**

31 **(A) Reflect the requirements of subsection (2) of this section; and**

1 (B) To the extent feasible and appropriate, are equivalent to stan-
2 dards for the preparation of contingency plans for facilities and cov-
3 ered vessels adopted under ORS 468B.350.

4 (b) Identify oil spill response zones along high hazard train routes
5 and the amount of equipment identified in a contingency plan that is
6 required to be regularly located in those zones.

7 (c) Identify all navigable waters and listed sensitive areas within
8 the region of operation of high hazard train routes. A listed sensitive
9 area may be considered within the region of operation of a high hazard
10 train route if the listed sensitive area is located anywhere within an
11 area:

12 (A) Beginning at the probable point of a spill of oil into waters of
13 the state from a high hazard train route; and

14 (B) Ending at the point that the oil could travel to, by water flowing
15 downstream, in a time period and at a speed, measured in knots, es-
16 tablished by the commission by rule.

17 (2) A contingency plan must include:

18 (a) The federal or state requirements intended to be met by the
19 plan.

20 (b) The size of the worst case spill volume for the high hazard train
21 route.

22 (c) A log sheet to record revisions and updates to the plan, which
23 must identify each section revised or updated, including the date and
24 page of the revision or update and the name of the authorized person
25 making the revision or update.

26 (d) A table of contents and a cross-reference table reflecting the
27 locations in the plan of each component of the plan required by this
28 subsection.

29 (e) A map of the high hazard train route and a description of the
30 operations covered by the plan, including locations where fueling oc-
31 curs and an inventory of above-ground storage tanks and the tank

1 **capacities, except that an inventory of above-ground storage tanks and**
2 **tank capacities is not required if the total above-ground storage ca-**
3 **capacity from containers with capacity of at least 55 gallons is less than**
4 **1,320 gallons.**

5 **(f) A list of all oil transported, including region of origin, oil types,**
6 **physical properties and health and safety hazards of the oil. If a rail-**
7 **road satisfies this requirement using a safety data sheet or equivalent**
8 **information, the plan must identify where the safety data sheet or**
9 **equivalent information is kept for emergency response use.**

10 **(g) The name, address, phone number or other means of contact**
11 **at any time of the day for the primary personnel available to respond**
12 **to a spill of oil and proof of arrangements by contract or other ap-**
13 **proved means for the primary personnel to be available.**

14 **(h) Information on the personnel who will be available to manage**
15 **an oil spill response, including:**

16 **(A) An organizational diagram depicting the chain of command for**
17 **the spill management team for a worst case spill;**

18 **(B) An organization list of one primary and one alternate person**
19 **to fill each incident command system spill management position, down**
20 **to the section chief and command staff level;**

21 **(C) A detailed description of the planning process and job de-**
22 **scription for each spill management position, or a reference to where**
23 **that information is available in a plan prepared for the federal gov-**
24 **ernment in the same area of the state covered by the contingency**
25 **plan;**

26 **(D) A description of the type and frequency of training that the spill**
27 **management team receives; and**

28 **(E) A primary and alternate incident commander's representative**
29 **that can form unified command at the initial command post, and, if**
30 **the representative is located out of state, a primary and alternate in-**
31 **cident commander who could arrive at the initial command post**

1 **within six hours.**

2 (i) **Procedures for immediately notifying appropriate parties that a**
3 **spill or a substantial threat of a spill has occurred. The procedures**
4 **required by this paragraph must establish a clear order of priority for**
5 **immediate notification and must:**

6 (A) **Include a list of the names and phone numbers for required**
7 **notifications to government agencies, response contractors and spill**
8 **management team members;**

9 (B) **Identify the central reporting office or individuals responsible**
10 **for implementing the notification process; and**

11 (C) **Include a form to document those notifications.**

12 (j) **The procedures to track and account for the entire volume of**
13 **oil recovered and oily wastes generated and disposed of during spills.**
14 **The responsible party shall provide waste disposal records to the De-**
15 **partment of Environmental Quality upon request.**

16 (k) **A statement of how an oil spill will be assessed for determining**
17 **product type, potential spill volume and environmental conditions in-**
18 **cluding tides, currents, weather, river speed and initial trajectory.**

19 (L) **A safety assessment including air monitoring.**

20 (m) **A list of the procedures that will be used to confirm the oc-**
21 **currence and estimate the quantity and nature of the spill.**

22 (n) **A checklist that identifies significant steps used to respond to**
23 **a spill, listed in a logical progression of response activities.**

24 (o) **A description of the methods to be used to promptly assess spills**
25 **with the potential to impact groundwater, including contact informa-**
26 **tion in the plan for resources typically used to investigate, contain and**
27 **remediate or recover spills to groundwater.**

28 (p) **Concise procedures to manage oil spill liability claims of dam-**
29 **ages to persons or property, public or private, for which a responsible**
30 **party may be liable.**

31 (q) **A description of the listed sensitive areas along the high hazard**

1 **train route and a description of how protection of listed sensitive areas**
2 **will be achieved, including containment, enhanced collection and di-**
3 **version tactics, or a reference to where that information is available**
4 **in a plan prepared for the federal government for the same listed**
5 **sensitive areas.**

6 **(r) Identification of potential initial command post locations.**

7 **(s) A description of how the railroad that owns or operates the high**
8 **hazard train routes meets the requirements of subsection (3) of this**
9 **section.**

10 **(3)(a) A railroad that owns or operates a high hazard train route**
11 **shall have a letter of intent with a primary response contractor that**
12 **maintains the resources and capabilities necessary to respond to a spill**
13 **of oil that may weather and sink or submerge. Such resources and**
14 **capabilities must include, but need not be limited to:**

15 **(A) Sonar, sampling equipment or other methods to locate the oil**
16 **on the bottom or suspended in the water column;**

17 **(B) A containment boom, a sorbent boom, silt curtains or other**
18 **methods for containing the oil that may remain floating on the sur-**
19 **face or to reduce spreading on the bottom;**

20 **(C) Dredges, pumps or other equipment necessary to recover oil**
21 **from the bottom and shoreline;**

22 **(D) Equipment necessary to assess the impact of oil spills; and**

23 **(E) Other appropriate equipment necessary to respond to a spill**
24 **involving the type of oil handled, stored or transported.**

25 **(b) The equipment described in paragraph (a) of this subsection**
26 **must be capable of being on scene within 12 hours of spill notification.**

27 **(4) A railroad that owns or operates a high hazard train route shall**
28 **develop schedules, methods and procedures for response equipment**
29 **maintenance. The railroad shall keep the maintenance records re-**
30 **quired by this subsection for at least five years and make the records**
31 **available to the department upon request.**

1 **(5) A railroad that owns or operates a high hazard train route shall**
2 **develop and conduct an oil spill exercise program that includes con-**
3 **ducting an annual notification drill and annually conducting one of**
4 **the following three types of exercises, on a three-year rotating basis:**

5 **(a) A spill management team tabletop drill;**

6 **(b) An oil spill containment and recovery equipment deployment**
7 **drill; and**

8 **(c) A listed sensitive area protection exercise.**

9 **(6) The commission and the department may not require the rail-**
10 **road that owns or operates a high hazard train route to submit, as**
11 **part of a contingency plan, information constituting sensitive security**
12 **information provided for under 49 C.F.R. 1520.5(b)(12), (14) or (16).**

13 **SECTION 7.** **Notwithstanding ORS 468B.355 (2), if operations of**
14 **trains that cause a section of rail lines to meet the definition of a high**
15 **hazard train route commence on or before the date that the Environ-**
16 **mental Quality Commission adopts rules under section 6 of this 2019**
17 **Act, a contingency plan for the high hazard train route shall be sub-**
18 **mitted to the Department of Environmental Quality no later than 12**
19 **months after the date that the commission adopts rules under section**
20 **6 of this 2019 Act. The department may adopt a schedule for sub-**
21 **mission of a contingency plan within the 12-month period.**

22 **SECTION 8.** **Section 7 of this 2019 Act is repealed on January 2, 2022.**

23 **SECTION 9.** **ORS 468B.355 is amended to read:**

24 **468B.355. (1) A contingency plan for a facility or covered vessel shall be**
25 **submitted to the Department of Environmental Quality within 12 months**
26 **after the Environmental Quality Commission adopts rules under ORS**
27 **468B.350. The department may adopt a schedule for submission of [an oil] a**
28 **contingency plan for a facility or covered vessel within the 12-month pe-**
29 **riod. The schedule for the Columbia River shall be coordinated with the**
30 **State of Washington. The department may adopt an alternative schedule for**
31 **the Oregon coast and the Willamette River.**

1 **(2) A contingency plan for a high hazard train route shall be sub-**
2 **mitted to the department no later than 90 days before operations of**
3 **trains that cause a section of rail lines to meet the definition of a high**
4 **hazard train route commence.**

5 [(2)] **(3)** The contingency plan for a facility shall be submitted by the
6 owner or operator of the facility or by a qualified oil spill response cooper-
7 ative in which the facility owner or operator is a participating member.

8 [(3)] **(4)** The contingency plan for a tank vessel shall be submitted by:

9 (a) The owner or operator of the tank vessel;

10 (b) The owner or operator of the facility at which the vessel will be
11 loading or unloading its cargo; or

12 (c) A qualified oil spill response cooperative in which the tank vessel
13 owner or operator is a participating member.

14 [(4)] **(5)** Subject to conditions imposed by the department, the contingency
15 plan for a tank vessel, if submitted by the owner or operator of a facility,
16 may be submitted as a single plan for all tank vessels of a particular class
17 that will be loading or unloading cargo at the facility.

18 [(5)] **(6)** The contingency plan for a cargo vessel or passenger vessel may
19 be submitted by the owner or operator of the vessel, or the agent for the
20 vessel resident in this state. Subject to conditions imposed by the depart-
21 ment, the owner, operator, agent or a maritime association may submit a
22 single contingency plan for cargo vessels or passenger vessels of a particular
23 class.

24 **(7) The contingency plan for a high hazard train route shall be**
25 **submitted by the railroad that owns or operates the high hazard train**
26 **route.**

27 [(6)] **(8)** A person that has contracted with a facility, [or] covered vessel
28 **or railroad that owns or operates a high hazard train route** to provide
29 containment and cleanup services and that meets the standards established
30 by the commission under ORS 468B.350 **or section 6 of this 2019 Act** may
31 submit the contingency plan for any facility, [or] covered vessel **or high**

1 **hazard train route** for which the person is contractually obligated to pro-
2 vide services. Subject to conditions imposed by the department, the person
3 may submit a single plan for more than one covered vessel.

4 [(7)] **(9)** The requirements of submitting a contingency plan under this
5 section may be satisfied by a covered vessel by submission of proof of as-
6 sessment participation by the vessel in a maritime association. Subject to
7 conditions imposed by the department, the association may submit a single
8 plan for more than one facility or covered vessel or may submit a single plan
9 providing contingencies to respond for different classes of covered vessels.

10 [(8)] **(10)** A contingency plan prepared for an agency of the federal gov-
11 ernment or an adjacent state that satisfies the requirements of ORS 468B.345
12 to 468B.360 and the rules adopted by the [*Environmental Quality*] commission
13 may be accepted as a plan under ORS 468B.345. The commission shall
14 [*assure*] **ensure** that to the greatest extent possible, requirements for a con-
15 tingency plan under ORS 468B.345 to 468B.360 are consistent with require-
16 ments for a plan under federal law.

17 [(9)] **(11)** Covered vessels may satisfy the requirements of submitting a
18 contingency plan under this section through proof of current assessment
19 participation in an approved plan maintained with the department by a
20 maritime association.

21 [(10)] **(12)** A maritime association may submit a contingency plan for a
22 cooperative group of covered vessels. Covered vessels that have not previ-
23 ously obtained approval of a plan may enter the navigable waters of the state
24 if, upon entering such waters, the vessel pays the established assessment for
25 participation in the approved plan maintained by the association.

26 [(11)] **(13)** A maritime association shall have a lien on the responsible
27 vessel if the vessel owner or operator fails to remit any regular operating
28 assessments and shall further have a lien for the recovery for any direct
29 costs provided to or for the vessel by the maritime association for oil spill
30 response or spill related communications services. The lien shall be enforced
31 in accordance with applicable law.

1 [(12)] (14) Obligations incurred by a maritime association and any other
2 liabilities or claims against the association shall be enforced only against
3 the assets of the association, and no liability for the debts or action of the
4 association exists against either the State of Oregon or any other subdivision
5 or instrumentality thereof, or against any member, officer, employee or agent
6 of the association in an individual or representative capacity.

7 [(13)] (15) Except as otherwise provided in ORS chapters 468, 468A and
8 468B, neither the members of the association, its officers, agents or employ-
9 ees, nor the business entities by whom the members are regularly employed,
10 may be held individually responsible for errors in judgment, mistakes or
11 other acts, either of commission or omission, as principal, agent, person or
12 employee, save for their own individual acts of dishonesty or crime.

13 [(14)] (16) Assessment participation in a maritime association does not
14 constitute a defense to liability imposed under ORS 468B.345 to 468B.415 or
15 other state or federal law. Such assessment participation shall not relieve a
16 covered vessel from complying with those portions of the approved maritime
17 association contingency plan that may require vessel specific oil spill re-
18 sponse equipment, training or capabilities for that vessel.

19 [(15)] (17) A person providing a contingency plan for a cargo or passenger
20 vessel under this section shall be exempt from liability as provided under
21 ORS 468B.425 for any action taken or omitted in the course of providing
22 contingency planning service.

23 **SECTION 10.** ORS 468B.360 is amended to read:

24 468B.360. In reviewing the contingency plan required by ORS 468B.345,
25 the Department of Environmental Quality shall consider at least the follow-
26 ing factors:

27 (1) The adequacy of containment and cleanup equipment, personnel, com-
28 munications equipment, notification procedures and call-down lists, response
29 time and logistical arrangements for coordination and implementation of re-
30 sponse efforts to remove oil spills promptly and properly and to protect the
31 environment;

1 (2) The nature and amount of vessel **or high hazard train route** traffic
2 within the area covered by the plan;

3 (3) The volume and type of oil being transported within the area covered
4 by the plan;

5 (4) The existence of navigational hazards within the area covered by the
6 plan;

7 (5) The history and circumstances surrounding prior spills of oil within
8 the area covered by the plan;

9 (6) The sensitivity of fisheries and wildlife and other natural resources
10 within the area covered by the plan;

11 (7) Relevant information on previous spills contained in on-scene coordi-
12 nator reports covered by the plan;

13 (8) The extent to which reasonable, cost-effective measures to reduce the
14 likelihood that a spill will occur have been incorporated into the plan;

15 (9) The number of covered vessels calling in, **and high hazard train**
16 **routes** and [*the*] facilities located in, the geographic area and the resulting
17 ability of local agencies and industry groups to develop, finance and main-
18 tain a contingency plan and spill response system for those vessels, **high**
19 **hazard train routes** and facilities; and

20 (10) The spill response equipment and resources available to a person
21 providing a contingency plan for cargo and passenger vessels under contin-
22 gency plans filed by the person under state or federal law for other covered
23 vessels or facilities owned or operated by that person.

24 **SECTION 11.** ORS 468B.365 is amended to read:

25 468B.365. (1) The Department of Environmental Quality shall approve a
26 contingency plan only if [*it*] **the department** determines that:

27 (a)(A) The plan **for a covered vessel or facility** meets the requirements
28 of ORS 468B.345 to 468B.360 and[:]

29 [*(a)*] the covered vessel or facility demonstrates evidence of compliance
30 with ORS 468B.390; [*and*] **or**

31 (B) **The plan for a high hazard train route meets the requirements**

1 **of ORS 468B.345 to 486B.360; and**

2 (b) If implemented, the plan is capable, to the maximum extent practicable
3 in terms of personnel, materials and equipment, of removing oil promptly and
4 properly and minimizing any damage to the environment.

5 (2) An owner or operator of a covered vessel, **high hazard train route**
6 or facility shall notify the department in writing immediately of any signif-
7 icant change affecting the contingency plan, including changes in any factor
8 set forth in this section or in rules adopted by the Environmental Quality
9 Commission. The department may require the owner or operator to update
10 a contingency plan as a result of these changes.

11 (3) A holder of an approved contingency plan does not violate the terms
12 of the contingency plan by furnishing to another plan holder, after notifying
13 the department, equipment, materials or personnel to assist the other plan
14 holder in a response to an oil discharge. The plan holder shall replace or
15 return the transferred equipment, materials and personnel as soon as feasi-
16 ble.

17 (4) The department may attach any reasonable term or condition to its
18 approval or modification of a contingency plan that the department deter-
19 mines is necessary to [*insure*] **ensure** that the applicant:

20 (a) Has access to sufficient resources to protect environmentally sensitive
21 areas and to prevent, contain, clean up and mitigate potential oil discharges
22 from the facility or tank vessel **or along the high hazard train route;**

23 (b) Maintains personnel levels sufficient to carry out emergency oper-
24 ations; and

25 (c) Complies with the contingency plan.

26 (5) The contingency plan must provide for the use by the applicant of the
27 best technology available at the time the contingency plan was submitted
28 or renewed.

29 (6) The department may require an applicant or a holder of an approved
30 contingency plan to take steps necessary to demonstrate its ability to carry
31 out the contingency plan, including:

1 (a) Periodic training;

2 (b) Response team exercises; and

3 (c) Verification of access to inventories of equipment, supplies and per-
4 sonnel identified as available in the approved contingency plan.

5 (7) The department may consider evidence that oil discharge prevention
6 measures such as double hulls or double bottoms on vessels or barges, sec-
7 ondary containment systems, hydrostatic testing, enhanced vessel traffic
8 systems or enhanced crew or staffing levels have been implemented and, in
9 its discretion, may make exceptions to the requirements of this section to
10 reflect the reduced risk of oil discharges from the facility or tank vessel,
11 **or along the high hazard train route**, for which the plan is submitted or
12 being modified.

13 (8)(a) Before the department approves or modifies a contingency plan re-
14 quired under ORS 468B.345, the department shall provide a copy of the con-
15 tingency plan to the State Department of Fish and Wildlife, the office of the
16 State Fire Marshal and the Department of Land Conservation and Develop-
17 ment for review.

18 **(b) In addition to providing copies to the agencies listed in para-**
19 **graph (a) of this subsection, before approving or modifying a contin-**
20 **gency plan for a high hazard train route, the Department of**
21 **Environmental Quality shall provide a copy of the contingency plan**
22 **to each federally recognized Indian tribe that owns land or enjoys**
23 **treaty-reserved hunting, fishing or gathering rights that could be im-**
24 **acted by an oil discharge along any portion of the high hazard train**
25 **route.**

26 (c) *[The]* **Agencies and tribes that receive copies of a contingency**
27 **plan under this subsection** shall review the plan according to procedures
28 and time limits established by rule of the *[Environmental Quality]* commis-
29 sion.

30 (9) Upon approval of a contingency plan, the department shall issue to the
31 plan holder a certificate stating that the plan has been approved. The cer-

1 tificate shall include the name of the facility, **high hazard train route** or
2 tank vessel for which the certificate is issued, the effective date of the plan
3 and the date by which the plan must be submitted for renewal.

4 (10) The approval of a contingency plan by the department does not con-
5 stitute an express assurance regarding the adequacy of the plan or constitute
6 a defense to liability imposed under ORS chapters 468, 468A and 468B or any
7 other state law.

8 **SECTION 12.** ORS 468B.385 is amended to read:

9 468B.385. (1) Upon request of a plan holder or on the initiative of the
10 Department of Environmental Quality, the department, after notice and op-
11 portunity for hearing, may modify its approval of a contingency plan if the
12 department determines that a change has occurred in the operation of the
13 facility, **high hazard train route** or tank vessel necessitating an amended
14 or supplemental plan, or that the operator's discharge experience demon-
15 strates a necessity for modification.

16 (2) The department, after notice and opportunity for hearing, may revoke
17 its approval of a contingency plan if the department determines that:

18 (a) Approval was obtained by fraud or misrepresentation;

19 (b) The operator does not have access to the quality or quantity of re-
20 sources identified in the plan;

21 (c) A term or condition of approval or modification has been violated; or

22 (d) The plan holder is not in compliance with the plan and the deficiency
23 materially affects the plan holder's response capability.

24 (3) Failure of a holder of an approved or modified contingency plan to
25 comply with the plan or to have access to the quality or quantity of re-
26 sources identified in the plan or to respond with those resources within the
27 shortest possible time in the event of a spill is a violation of ORS 468B.345
28 to 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other ap-
29 plicable law.

30 (4) If the holder of an approved or modified contingency plan fails to re-
31 spond to and conduct cleanup operations of an unpermitted discharge of oil

1 with the quality and quantity of resources identified in the plan and in a
2 manner required under the plan, the holder is strictly liable, jointly and se-
3 verally, for the civil penalty assessed under ORS 466.992 and 468.140.

4 (5) In order to be considered in compliance with a contingency plan, the
5 plan holder must:

6 (a) Establish and carry out procedures identified in the plan as being the
7 responsibility of the holder of the plan;

8 (b) Have access to and have on hand the quantity and quality of equip-
9 ment, personnel and other resources identified as being accessible or on hand
10 in the plan;

11 (c) Fulfill the assurances espoused in the plan in the manner described
12 in the plan;

13 (d) Comply with terms and conditions attached to the plan by the de-
14 partment under ORS 468B.345 to 468B.380; and

15 (e) Successfully demonstrate the ability to carry out the plan when re-
16 quired by the department under ORS 468B.370.

17 **SECTION 13.** ORS 468B.495 is amended to read:

18 468B.495. (1) The Department of Environmental Quality shall develop an
19 integrated, interagency response plan for oil or hazardous material spills:

20 (a) In the Columbia River, the Willamette River up to Willamette Falls
21 and the coastal waters and estuaries of the state[.]; **and**

22 (b) **In listed sensitive areas within the region of operation of high**
23 **hazard train routes.**

24 (2) In developing the response plan **under subsection (1) of this**
25 **section**, the department shall work with all affected local, state and federal
26 agencies and with any volunteer group interested in participating in oil or
27 hazardous material spill response.

28 [(2)] (3) The **response** plan developed under subsection (1) of this section
29 shall be consistent to the extent practicable with the plan for a statewide
30 hazardous material emergency response system established by the State Fire
31 Marshal under ORS 453.374.

FINANCIAL RESPONSIBILITY

SECTION 14. Section 15 of this 2019 Act is added to and made a part of ORS 468B.300 to 468B.500.

SECTION 15. (1) A railroad that owns or operates a high hazard train route in this state shall annually submit to the Department of Environmental Quality a statement that:

(a) Describes all insurance carried by the railroad that covers any losses resulting from a worst case spill, as well as the coverage amounts, limitations and other conditions of the insurance; and

(b) Identifies the capacity, measured in barrels, of the total lading of oil transported within the average-sized train and the largest single train that was operated on each high hazard train route owned or operated by the railroad during the previous calendar year.

(2)(a) A statement required under subsection (1) of this section must also contain additional information sufficient to demonstrate the railroad's ability to pay the cost to clean up a worst case spill on each high hazard train route owned or operated by the railroad during the previous calendar year. Additional information may include, but need not be limited to, proof of reserve accounts, letters of credit or other financial instruments or resources that the railroad can rely on to pay the cost to clean up a worst case spill.

(b) For purposes of this subsection, "cost to clean up a worst case spill" means a dollar amount equal to the number of barrels of oil that would constitute a worst case spill on the high hazard train route multiplied by \$16,800.

(3) A railroad shall submit a statement required by this section to the department upon payment to the department of the annual assessment payable under section 17 of this 2019 Act.

RAILROAD SAFETY ASSESSMENTS AND USE

1 **SECTION 16.** Section 17 of this 2019 Act is added to and made a part
2 of ORS 468B.300 to 468B.500.

3 **SECTION 17.** (1) The Department of Environmental Quality shall
4 levy and collect an annual assessment from railroads that own or op-
5 erate high hazard train routes. The total assessment under this section
6 shall equal \$_____ per year, with each applicable railroad assessed a
7 proportional share of the total assessment that is based on the total
8 track miles within this state that are part of high hazard train routes
9 owned or operated by the railroad.

10 (2) Moneys collected by the department under this section shall be
11 deposited in the State Treasury to the credit of the High Hazard Train
12 Route Oil Spill Prevention Fund established under section 20 of this
13 2019 Act.

14 **SECTION 18.** ORS 468B.410 is amended to read:

15 468B.410. (1) The Oil Spill Prevention Fund is established separate and
16 distinct from the General Fund in the State Treasury. Interest earned on
17 the fund shall be credited to the fund. Moneys received by the Department
18 of Environmental Quality for the purpose of oil and hazardous material spill
19 prevention and the fees collected under ORS 468B.405 shall be paid into the
20 State Treasury and credited to the fund.

21 (2) The State Treasurer shall invest and reinvest moneys in the Oil Spill
22 Prevention Fund in the manner prescribed by law.

23 (3) The moneys in the Oil Spill Prevention Fund are appropriated con-
24 tinuously to the department [*of Environmental Quality*] to be used in the
25 manner described in subsection (4) of this section.

26 (4) The Oil Spill Prevention Fund may be used by the department [*of*
27 *Environmental Quality*] to:

28 (a) Pay all costs of the department incurred to:

29 (A) Review the contingency plans submitted under ORS 468B.360;

30 (B) Conduct training, response exercises, inspection and tests in order to
31 verify equipment inventories and ability to prevent and respond to oil release

1 emergencies and to undertake other activities intended to verify or establish
2 the preparedness of the state, a municipality or a party required by ORS
3 468B.345 to 468B.415 to have an approved contingency plan to act in ac-
4 cordance with that plan; and

5 (C) Verify or establish proof of financial responsibility required by ORS
6 468B.390.

7 (b) Review and revise the oil spill response plan required by ORS 468B.495
8 and 468B.500.

9 **(5) Notwithstanding any contrary provision of subsection (4) of this**
10 **section, moneys in the Oil Spill Prevention Fund may not be used to**
11 **pay the costs of the department that may be paid with moneys depos-**
12 **ited in the High Hazard Train Route Oil Spill Prevention Fund estab-**
13 **lished under section 20 of this 2019 Act.**

14 **SECTION 19. Section 20 of this 2019 Act is added to and made a part**
15 **of ORS 468B.345 to 468B.415.**

16 **SECTION 20. (1) The High Hazard Train Route Oil Spill Prevention**
17 **Fund is established in the State Treasury, separate and distinct from**
18 **the General Fund. Interest earned by the High Hazard Train Route**
19 **Oil Spill Prevention Fund shall be credited to the fund.**

20 **(2) The fund shall consist of:**

21 **(a) Moneys deposited in the fund under section 17 of this 2019 Act;**

22 **(b) All other moneys placed in the fund as provided by law; and**

23 **(c) Any gifts, grants, donations, endowments or bequests from any**
24 **public or private source.**

25 **(3) Moneys in the fund are continuously appropriated to the De-**
26 **partment of Environmental Quality to be used only to pay the costs**
27 **of the department incurred to:**

28 **(a) Review, under ORS 468B.360, contingency plans for high hazard**
29 **train routes;**

30 **(b) Conduct training, response exercises, inspection and tests in**
31 **order to verify equipment inventories and ability to prevent and re-**

1 **spond to oil release emergencies related to high hazard train routes**
2 **and to undertake other activities intended to maintain the capabilities**
3 **for emergency response related to high hazard train routes of the**
4 **state, a municipality or an owner or operator of a high hazard train**
5 **route required by ORS 468B.345 to 468B.415 to have an approved con-**
6 **tingency plan;**

7 **(c) Verify proof of financial responsibility required by section 15 of**
8 **this 2019 Act; and**

9 **(d) Develop, review and revise the portions of the oil spill response**
10 **plan required by ORS 468B.495 and 468B.500 that relate to high hazard**
11 **train routes.**

12 **SECTION 21.** ORS 468B.412 is amended to read:

13 468B.412. (1) By September 30 of each year, the Department of Environ-
14 mental Quality shall publish a report for the previous fiscal year, commenc-
15 ing on July 1 and ending on June 30, that addresses:

16 (a) The fees assessed under ORS 468B.405 on covered vessels and offshore
17 and onshore facilities;

18 **(b) The amount collected by the department out of the assessment**
19 **under section 17 of this 2019 Act;**

20 [(b)] (c) The activities of the department under ORS 468B.410 (4);

21 [(c)] (d) The penalties recovered by the department under ORS 468B.450
22 (1); and

23 [(d)] (e) The activities of the department under ORS 468B.455 (2).

24 (2)(a) The report published by the department under this section must be
25 in a format that allows for the monitoring of [fee] collection **of fees or as-**
26 **essments** and related activities by the department and for ensuring that
27 adequate but not excessive fees **or assessments** are collected to meet the
28 department's budgetary needs.

29 (b) The department shall make the report available to those who paid fees
30 under ORS 468B.405, **those who paid the assessment under section 17**
31 **of this 2019 Act** and [to] the general public.

ADVANCE REPORTING

SECTION 22. Section 23 of this 2019 Act is added to and made a part of ORS 468B.345 to 468B.415.

SECTION 23. (1) A facility that receives crude oil from a railroad car shall provide advance notice to the Department of Environmental Quality that the facility will receive crude oil from a railroad car. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, region per bill of lading and gravity, as measured by standards developed by the American Petroleum Institute, of crude oil received. Each week, a facility that provides advance notice under this section shall provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(2) The department may, upon request, share information provided by a facility through the advance notice required by this section with the agencies and tribes described in ORS 468B.365 (8).

(3) The department shall publish information collected under this section on a quarterly basis on the department's website. With respect to the information reported under subsection (1) of this section, the information published by the department must be aggregated on a statewide basis by route through the state, by week and by type of crude oil. The report may also include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil and number and volume of spills during transport and delivery.

(4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under

1 subsection (1) of this section in the event that the schedule of arrivals
2 of railroad cars carrying crude oil changes during a seven-day period.

3 (5) The department or any agency or tribe receiving information
4 under subsection (2) of this section may not disclose information pro-
5 vided by a facility under this section that contains proprietary, com-
6 mercial or financial information, to the public or to nongovernmental
7 entities, unless the information is aggregated. This requirement does
8 not apply to information received by the department under this section
9 and shared with entities described in subsection (2) of this section.

10 (6) The Environmental Quality Commission shall adopt rules to
11 implement the provisions of this section.

12
13 **CAPTIONS**

14
15 **SECTION 24.** The unit captions used in this 2019 Act are provided
16 only for the convenience of the reader and do not become part of the
17 statutory law of this state or express any legislative intent in the
18 enactment of this 2019 Act.

19
20 **OPERATIVE DATE**

21
22 **SECTION 25.** (1) Sections 5 to 8, 14 to 17, 19, 20, 22 and 23 of this 2019
23 Act and the amendments to statutes by sections 1 to 4, 9 to 13, 18 and
24 21 of this 2019 Act become operative on January 1, 2020.

25 (2) The Environmental Quality Commission and the Department of
26 Environmental Quality may take any action before the operative date
27 specified in subsection (1) of this section that is necessary for the
28 commission or the department to exercise, on and after the operative
29 date specified in subsection (1) of this section, any of the duties,
30 functions and powers conferred on the commission and the department
31 by sections 5 to 8, 14 to 17, 19, 20, 22 and 23 of this 2019 Act and the

1 amendments to statutes by sections 1 to 4, 9 to 13, 18 and 21 of this
2 2019 Act.

3

4

EFFECTIVE DATE

5

6 SECTION 26. This 2019 Act takes effect on the 91st day after the
7 date on which the 2019 regular session of the Eightieth Legislative
8 Assembly adjourns sine die.

9
