

# Senate Bill 7

Sponsored by Senator COURTNEY (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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.

Adds railroad cars to definition of "facility" for purposes of liability for oil spillage under oil or hazardous material spillage statutes.

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

Establishes annual assessment proportioned among certain railroads. Transfers moneys to Oil Spill Prevention Fund for purposes of certain activities related to high hazard train routes. Requires certain railroads to submit annual financial responsibility statement.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to state transport of hazardous materials; creating new provisions; amending ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385 and 468B.412; and prescribing an effective date.

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

## AMENDMENTS TO OIL OR HAZARDOUS MATERIAL SPILLAGE STATUTES

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

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

(1) **"Applicable rail carrier" means a railroad operating in this state that is classified as a Class I or Class II carrier under 49 C.F.R. 1201 and that owns or operates high hazard train routes.**

[(1)] (2) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.

[(2)] (3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.

[(3)] (4) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

[(4)] (5) "Contingency plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

[(5)] (6) "Covered vessel" means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

[(6)] (7) "Damages" includes damages, costs, losses, penalties or attorney fees of any kind for

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 which liability may exist under the laws of this state resulting from, arising out of or related to the  
2 discharge or threatened discharge of oil.

3 [(7)] (8) “Discharge” means any emission other than natural seepage of oil, whether intentional  
4 or unintentional. “Discharge” includes but is not limited to spilling, leaking, pumping, pouring,  
5 emitting, emptying or dumping oil.

6 [(8)] (9) “Dredge vessel” means a self-propelled vessel of 300 or more gross tons that is equipped  
7 for regularly engaging in dredging of submerged and submersible lands.

8 [(9)] (10) “Exploration facility” means a platform, vessel or other offshore facility used to ex-  
9 plore for oil in the navigable waters of the state. “Exploration facility” does not include platforms  
10 or vessels used for stratigraphic drilling or other operations that are not authorized or intended to  
11 drill to a producing formation.

12 [(10)] (11) “Facility” means a pipeline, **a railroad car** or any structure, group of structures,  
13 equipment or device, other than a vessel that transfers oil over navigable waters of the state, that  
14 is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that  
15 is capable of storing or transporting 10,000 or more gallons of oil. “Facility” does not include:

16 (a) A [*railroad car,*] motor vehicle or [*other*] rolling stock **other than a railroad car** while  
17 transporting oil over the highways [*or rail lines*] of this state;

18 (b) An underground storage tank regulated by the Department of Environmental Quality or a  
19 local government under ORS 466.706 to 466.882 and 466.994; or

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

22 [(11)] (12) “Federal on-scene coordinator” means the federal official predesignated by the United  
23 States Environmental Protection Agency or the United States Coast Guard to coordinate and direct  
24 federal responses or the official designated by the lead agency to coordinate and direct removal  
25 under the National Contingency Plan.

26 [(12)] (13) “Hazardous material” has the meaning given that term in ORS 466.605.

27 (14) **“High hazard train route” means a section of rail lines in this state:**

28 (a) **That abuts or travels over navigable waters of the state, an inland watershed or a**  
29 **drinking water intake; and**

30 (b) **Over which trains operate that consist of multiple tanker railroad cars transporting**  
31 **oil or hazardous material as cargo.**

32 (15) **“Listed sensitive area” means an area or location listed as an area of special eco-**  
33 **nomical or environmental importance in an Area Contingency Plan or Sub-Area Contingency**  
34 **Plan prepared and published pursuant to section 311(j) of the Federal Water Pollution Control**  
35 **Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990, P.L. 101-380.**

36 [(13)] (16) “Maritime association” means an association or cooperative of marine terminals, fa-  
37 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-  
38 vides oil spill response planning and spill related communications services within the state.

39 [(14)] (17) “Maximum probable spill” means the maximum probable spill for a vessel operating  
40 in the navigable waters of the state considering the history of spills of vessels of the same class  
41 operating on the west coast of the United States.

42 [(15)] (18) “Navigable waters” means the Columbia River, the Willamette River up to Willamette  
43 Falls, the Pacific Ocean and estuaries to the head of tidewater.

44 [(16)] (19) “National Contingency Plan” means the plan prepared and published under section  
45 311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution

1 Act of 1990 (P.L. 101-380).

2 [(17)] (20) “Offshore facility” means any facility located in, on or under any of the navigable  
3 waters of the state.

4 [(18)] (21) “Oils” or “oil” means oil, including gasoline, crude oil, **bitumen, synthetic crude**  
5 **oil, natural gas condensate**, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other  
6 petroleum related product and liquefied natural gas.

7 [(19)] (22) “Onshore facility” means any facility located in, on or under any land of the state,  
8 other than submerged land, that, because of its location, could reasonably be expected to cause  
9 substantial harm to the environment by discharging oil into or on the navigable waters of the state  
10 or adjoining shorelines.

11 [(20)] (23) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for  
12 compensation.

13 [(21)] (24) “Person” has the meaning given the term in ORS 468.005.

14 [(22)] (25) “Person having control over oil” includes but is not limited to any person using,  
15 storing or transporting oil immediately prior to entry of such oil into the [*navigable*] waters of the  
16 state, and shall specifically include carriers and bailees of such oil.

17 [(23)] (26) “Pipeline” means a facility, including piping, compressors, pump stations and storage  
18 tanks, used to transport oil between facilities or between facilities and tank vessels.

19 [(24)] (27) “Region of operation” with respect to the holder of a contingency plan means the area  
20 where the operations of the holder that require a contingency plan are located.

21 [(25)] (28) “Removal costs” means the costs of removal that are incurred after a discharge of  
22 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs  
23 to prevent, minimize or mitigate oil pollution from the incident.

24 [(26)] (29) “Responsible party” has the meaning given under section 1001 of the Oil Pollution  
25 Act of 1990 (P.L. 101-380).

26 [(27)] (30) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

27 [(28)(a)] (31)(a) “State on-scene coordinator” means the state official appointed by the Depart-  
28 ment of Environmental Quality to represent the department and the State of Oregon in response to  
29 an oil or hazardous material spill or release or threatened spill or release and to coordinate cleanup  
30 response with state and local agencies.

31 (b) For purposes of this subsection:

32 (A) “Spill or release” means the discharge, deposit, injection, dumping, spilling, emitting, re-  
33 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or  
34 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,  
35 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except  
36 when being stored or used for its intended purpose.

37 (B) “Threatened spill or release” means oil or hazardous material is likely to escape or be car-  
38 ried into the air or into or on any land or waters of the state, including from a ship as defined in  
39 this section that is in imminent danger of sinking.

40 [(29)] (32) “Tank vessel” means a ship that is constructed or adapted to carry oil in bulk as  
41 cargo or cargo residue. “Tank vessel” does not include:

42 (a) A vessel carrying oil in drums, barrels or other packages;

43 (b) A vessel carrying oil as fuel or stores for that vessel; or

44 (c) An oil spill response barge or vessel.

45 [(30)] (33) “Worst case spill” means:

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

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

5 **(c) In the case of an applicable rail carrier, a spill of a number of barrels of oil as cal-**  
 6 **culated by an applicable rail carrier under section 14 of this 2017 Act.**

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

8 468B.340. (1) The Legislative Assembly finds that:

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

10 (b) Commercial vessel activity on the navigable waters of the state is vital to the economic in-  
 11 terests of the people of the state.

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

14 (A) Gaps in regulatory oversight;

15 (B) Incomplete cost recovery by states;

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

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

20 (E) Comprehensive oil spill prevention demands participation by industry, citizens, environ-  
 21 mental organizations and local, state, federal and international governments.

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

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

26 **(b) The prevention of oil spills to inland rivers and streams serving as essential habitat**  
 27 **for salmon and other wildlife or as a source of water for consumption, irrigation or other**  
 28 **public use;**

29 **(c) The prevention of spills from railroad cars transporting oil as cargo;**

30 **(d) The prevention of spills along high hazard train routes;**

31 [(b)] (e) Oil spill response preparedness, including the identification of actions and content re-  
 32 quired for an effective contingency plan;

33 [(c)] (f) A consistent west coast approach to oil spill prevention and response;

34 [(d)] (g) The establishment, coordination and duties of safety committees as provided in ORS  
 35 468B.415; and

36 [(e)] (h) To the maximum extent possible, coordination of state programs with the programs and  
 37 regulations of the United States Coast Guard and adjacent states.

38 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 468B.345 to**  
 39 **468B.415.**

40 **SECTION 4. Notwithstanding ORS 468B.300, as used in ORS 468B.345 to 468B.415,**  
 41 **“facility” has the meaning given that term in ORS 468B.300, except that “facility” does not**  
 42 **include railroad cars.**

43 **SECTION 5.** ORS 468B.345 is amended to read:

44 468B.345. (1)(a) Unless an oil spill prevention and emergency response plan has been approved  
 45 by the Department of Environmental Quality and has been properly implemented, no person shall:

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

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

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

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

8 [(3)] (c) A contingency plan shall be renewed at least once every five years.

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

12 (2)(a) **An oil spill prevention and emergency response plan that has been approved by the  
13 department is required for the operation of a high hazard train route in this state.**

14 (b) **It is not a defense to an action brought for a violation of this subsection that the  
15 person charged believed that a current contingency plan had been approved by the depart-  
16 ment.**

17 (c) **A contingency plan for a high hazard train route shall be renewed at least once every  
18 three years.**

19 **SECTION 6.** Section 7 of this 2017 Act is added to and made a part of ORS 468B.345 to  
20 468B.415.

21 **SECTION 7.** (1) **The Environmental Quality Commission shall adopt rules defining:**

22 (a) **Standards for the preparation of contingency plans for high hazard train routes; and**

23 (b) **Oil spill response zones along high hazard train routes and the amount of equipment  
24 identified in a contingency plan that is required to be regularly located in the zones.**

25 (2) **The rules adopted under subsection (1) of this section shall:**

26 (a) **To the extent feasible and appropriate, define standards for the preparation of con-  
27 tingency plans for high hazard train routes that are equivalent to standards for the prepa-  
28 ration of contingency plans for facilities adopted under ORS 468B.350; and**

29 (b) **Require the owners and operators of high hazard train routes to demonstrate an  
30 ability to meet the requirements of subsection (3) of this section.**

31 (3) **A railroad that owns or operates a high hazard train route in this state shall:**

32 (a) **Offer training at least once every three years to each fire department having juris-  
33 diction along the high hazard train routes owned or operated by the railroad. Training pro-  
34 vided under this paragraph must address:**

35 (A) **General hazards of oil and hazardous materials;**

36 (B) **Techniques to assess hazards to the environment and to the safety of emergency  
37 responders and the public;**

38 (C) **Factors that an incident commander must consider in determining whether to at-  
39 tempt to suppress a fire or to evacuate emergency responders and the public from an area;**

40 (D) **Other strategies for initial response by local emergency responders; and**

41 (E) **Suggested protocols or practices by which local emergency responders can safely ac-  
42 complish activities associated with items listed in subparagraphs (A) to (D) of this paragraph.**

43 (b) **Communicate at least annually with the State Fire Marshal and with each regional  
44 hazardous material response team having jurisdiction along high hazard train routes owned  
45 or operated by the railroad, to ensure coordination of emergency response activities between**

1 the railroad and the regional hazardous material response teams.

2 (c) Following confirmation of a discharge from a train along a high hazard train route,  
3 deliver and deploy sufficient equipment and trained personnel to contain and recover dis-  
4 charged oil or hazardous materials and to protect the environment and public safety. The  
5 railroad must:

6 (A) Provide, within one hour of confirmation of the discharge, a qualified company em-  
7 ployee to advise the state on-scene coordinator. The employee may be made available by  
8 telephone and must be authorized to deploy all necessary response resources of the railroad.

9 (B) Be capable of providing, within three hours of confirmation of the discharge:

10 (i) Monitoring equipment and a trained equipment operator to assist in protecting the  
11 safety of emergency responders and the public; and

12 (ii) Qualified personnel at the discharge site to assess the discharge and advise the state  
13 on-scene coordinator.

14 (C) Be capable of delivering and deploying, within eight hours of confirmation of the dis-  
15 charge, containment booms, boats, oil recovery equipment, trained staff and all other mate-  
16 rials needed to provide:

17 (i) On-site containment and recovery of a volume of oil equal to 10 percent of the calcu-  
18 lated worst case spill at any location along the route; and

19 (ii) Protection of the listed sensitive areas and potable water intakes that are within one  
20 mile of a discharge site and within eight hours of water travel time downstream in any river  
21 or stream that the high hazard train route abuts.

22 (D) Be capable of delivering and deploying, within eight hours of confirmation of the  
23 discharge, additional containment booms, boats, oil recovery equipment, trained staff and all  
24 other materials needed to provide containment and recovery of a worst case spill and to  
25 protect the listed sensitive areas and potable water intakes that are at any location along  
26 the route.

27 (d) Be capable of deploying containment booms from land across sewer outfalls, creeks,  
28 ditches and other places where oil or hazardous substances may drain, in order to prevent  
29 access by discharged material. A railroad may arrange with a contractor or other qualified  
30 public or private entity to supply containment booms under this paragraph. Any arrange-  
31 ment entered into under this paragraph must be tested by drill at least once every five years.

32 (e) Conduct at least one oil containment, recovery and listed sensitive area protection  
33 drill every three years, at a location and time chosen by the Department of Environmental  
34 Quality. The drill must be attended by safety representatives of railroad employees governed  
35 by the Railway Labor Act, as amended (45 U.S.C. 153 et seq.).

36 **SECTION 8.** ORS 468B.355 is amended to read:

37 468B.355. (1) A contingency plan for a facility or covered vessel shall be submitted to the De-  
38 partment of Environmental Quality within 12 months after the Environmental Quality Commission  
39 adopts rules under ORS 468B.350. The department may adopt a schedule for submission of [*an oil*]  
40 a contingency plan within the 12-month period. The schedule for the Columbia River shall be coor-  
41 dinated with the State of Washington. The department may adopt an alternative schedule for the  
42 Oregon coast and the Willamette River.

43 (2) A contingency plan for a high hazard train route shall be submitted to the department  
44 within 12 months after the commission adopts rules under section 7 of this 2017 Act. The  
45 department may adopt a schedule for submission of a contingency plan within the 12-month

1 **period.**

2 [(2)] (3) The contingency plan for a facility shall be submitted by the owner or operator of the  
3 facility or by a qualified oil spill response cooperative in which the facility owner or operator is a  
4 participating member.

5 [(3)] (4) The contingency plan for a tank vessel shall be submitted by:

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

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

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

11 [(4)] (5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,  
12 if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank  
13 vessels of a particular class that will be loading or unloading cargo at the facility.

14 [(5)] (6) The contingency plan for a cargo vessel or passenger vessel may be submitted by the  
15 owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to con-  
16 ditions imposed by the department, the owner, operator, agent or a maritime association may submit  
17 a single contingency plan for cargo vessels or passenger vessels of a particular class.

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

20 [(6)] (8) A person that has contracted with a facility, [or] covered vessel **or railroad that op-**  
21 **erates a high hazard train route** to provide containment and cleanup services and that meets the  
22 standards established by the commission under ORS 468B.350 **or section 7 of this 2017 Act** may  
23 submit the contingency plan for any facility, [or] covered vessel **or high hazard train route** for  
24 which the person is contractually obligated to provide services. Subject to conditions imposed by the  
25 department, the person may submit a single plan for more than one covered vessel.

26 [(7)] (9) The requirements of submitting a contingency plan under this section may be satisfied  
27 by a covered vessel by submission of proof of assessment participation by the vessel in a maritime  
28 association. Subject to conditions imposed by the department, the association may submit a single  
29 plan for more than one facility or covered vessel or may submit a single plan providing contingen-  
30 cies to respond for different classes of covered vessels.

31 [(8)] (10) A contingency plan prepared for an agency of the federal government or an adjacent  
32 state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the  
33 [*Environmental Quality*] commission may be accepted as a plan under ORS 468B.345. The commission  
34 shall assure that to the greatest extent possible, requirements for a contingency plan under ORS  
35 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

36 [(9)] (11) Covered vessels may satisfy the requirements of submitting a contingency plan under  
37 this section through proof of current assessment participation in an approved plan maintained with  
38 the department by a maritime association.

39 [(10)] (12) A maritime association may submit a contingency plan for a cooperative group of  
40 covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the  
41 navigable waters of the state if, upon entering such waters, the vessel pays the established assess-  
42 ment for participation in the approved plan maintained by the association.

43 [(11)] (13) A maritime association shall have a lien on the responsible vessel if the vessel owner  
44 or operator fails to remit any regular operating assessments and shall further have a lien for the  
45 recovery for any direct costs provided to or for the vessel by the maritime association for oil spill

1 response or spill related communications services. The lien shall be enforced in accordance with  
2 applicable law.

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

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

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

18 [(15)] (17) A person providing a contingency plan for a cargo or passenger vessel under this  
19 section shall be exempt from liability as provided under ORS 468B.425 for any action taken or  
20 omitted in the course of providing contingency planning service.

21 **SECTION 9.** ORS 468B.360 is amended to read:

22 468B.360. In reviewing the contingency plan required by ORS 468B.345, the Department of En-  
23 vironmental Quality shall consider at least the following factors:

24 (1) The adequacy of containment and cleanup equipment, personnel, communications equipment,  
25 notification procedures and call-down lists, response time and logistical arrangements for coordi-  
26 nation and implementation of response efforts to remove oil spills promptly and properly and to  
27 protect the environment;

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

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

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

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

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

36 (7) Relevant information on previous spills contained in on-scene coordinator reports covered  
37 by the plan;

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

40 (9) The number of covered vessels calling in, **and high hazard train routes** and *[the]* facilities  
41 located in, the geographic area and the resulting ability of local agencies and industry groups to  
42 develop, finance and maintain a contingency plan and spill response system for those vessels, **high**  
43 **hazard train routes** and facilities; and

44 (10) The spill response equipment and resources available to a person providing a contingency  
45 plan for cargo and passenger vessels under contingency plans filed by the person under state or



1 federal law for other covered vessels or facilities owned or operated by that person.

2 **SECTION 10.** ORS 468B.365 is amended to read:

3 468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only  
4 if it determines that:

5 (a)(A) The plan **for a covered vessel or facility** meets the requirements of ORS 468B.345 to  
6 468B.360 and[:]

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

9 **(B) The plan for a high hazard train route meets the requirements of ORS 468B.345 to**  
10 **486B.360; and**

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

14 (2) An owner or operator of a covered vessel, **high hazard train route** or facility shall notify  
15 the department in writing immediately of any significant change affecting the contingency plan, in-  
16 cluding changes in any factor set forth in this section or in rules adopted by the Environmental  
17 Quality Commission. The department may require the owner or operator to update a contingency  
18 plan as a result of these changes.

19 (3) A holder of an approved contingency plan does not violate the terms of the contingency plan  
20 by furnishing to another plan holder, after notifying the department, equipment, materials or per-  
21 sonnel to assist the other plan holder in a response to an oil discharge. The plan holder shall re-  
22 place or return the transferred equipment, materials and personnel as soon as feasible.

23 (4) The department may attach any reasonable term or condition to its approval or modification  
24 of a contingency plan that the department determines is necessary to [*insure*] **ensure** that the ap-  
25 plicant:

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

29 (b) Maintains personnel levels sufficient to carry out emergency operations; and

30 (c) Complies with the contingency plan.

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

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

35 (a) Periodic training;

36 (b) Response team exercises; and

37 (c) Verification of access to inventories of equipment, supplies and personnel identified as  
38 available in the approved contingency plan.

39 (7) The department may consider evidence that oil discharge prevention measures such as dou-  
40 ble hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic test-  
41 ing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented  
42 and, in its discretion, may make exceptions to the requirements of this section to reflect the reduced  
43 risk of oil discharges from the facility or tank vessel, **or along the high hazard train route**, for  
44 which the plan is submitted or being modified.

45 (8) Before the department approves or modifies a contingency plan required under ORS 468B.345,

1 the department shall provide a copy of the contingency plan to the State Department of Fish and  
2 Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Devel-  
3 opment for review. The agencies shall review the plan according to procedures and time limits es-  
4 tablished by rule of the Environmental Quality Commission.

5 (9) Upon approval of a contingency plan, the department shall issue to the plan holder a certif-  
6 icate stating that the plan has been approved. The certificate shall include the name of the  
7 facility, **high hazard train route** or tank vessel for which the certificate is issued, the effective  
8 date of the plan and the date by which the plan must be submitted for renewal.

9 (10) The approval of a contingency plan by the department does not constitute an express as-  
10 surance regarding the adequacy of the plan or constitute a defense to liability imposed under ORS  
11 chapters 468, 468A and 468B or any other state law.

12 **SECTION 11.** ORS 468B.385 is amended to read:

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

18 (2) The department, after notice and opportunity for hearing, may revoke its approval of a con-  
19 tingency plan if the department determines that:

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

21 (b) The operator does not have access to the quality or quantity of resources identified in the  
22 plan;

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

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

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

30 (4) If the holder of an approved or modified contingency plan fails to respond to and conduct  
31 cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources  
32 identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly  
33 and severally, for the civil penalty assessed under ORS 466.992 and 468.140.

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

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

37 (b) Have access to and have on hand the quantity and quality of equipment, personnel and other  
38 resources identified as being accessible or on hand in the plan;

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

40 (d) Comply with terms and conditions attached to the plan by the department under ORS  
41 468B.345 to 468B.380; and

42 (e) Successfully demonstrate the ability to carry out the plan when required by the department  
43 under ORS 468B.370.

44

45

**RAILROAD SAFETY ASSESSMENTS AND**

## FINANCIAL RESPONSIBILITY STATEMENTS

**SECTION 12.** Sections 13 and 14 of this 2017 Act are added to and made a part of ORS 468B.300 to 468B.500.

**SECTION 13.** (1) The Department of Environmental Quality shall levy and collect an annual assessment from applicable rail carriers. The total assessment under this section shall equal \_\_\_\_\_ per year, with each applicable rail carrier assessed a proportional share of the total assessment that is based on the total high hazard train route track miles operated by the applicable rail carrier within this state.

(2) Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund to be used in the manner described in ORS 468B.410 (4) for activities related to high hazard train routes.

**SECTION 14.** (1) For purposes of this section:

(a) “Worst case spill” means a spill of an amount of barrels of oil calculated as follows:

(A) An applicable rail carrier shall calculate a percentage equal to (maximum operating speed/65)<sup>2</sup>, where the maximum operating speed is the top speed that any train carrying oil travels on a high hazard train route operated by the applicable rail carrier in this state.

(B) The applicable rail carrier shall multiply the percentage calculated under subparagraph (A) of this paragraph by the number of barrels of oil moved on the largest train load of oil that traveled on a high hazard train route operated by the applicable rail carrier in this state during the previous calendar year. The result of the calculation under this subparagraph shall equal the worst case spill.

(b) “Cost to clean up a worst case spill” means a dollar amount equal to the worst case spill calculated under paragraph (a) of this subsection multiplied by \$16,800.

(2) An applicable rail carrier shall annually submit to the Department of Environmental Quality a statement that:

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

(b) Identifies the capacity, measured in barrels, of the average and of the largest trains consisting of multiple tanker cars transporting oil or hazardous materials as cargo that were operated on high hazard train routes by the applicable rail carrier in the previous calendar year; and

(c) Includes additional information sufficient to demonstrate the applicable rail carrier’s ability to pay the cost to clean up a worst case spill including, but not limited to, insurance, reserve accounts, letters of credit or other financial instruments or resources that the applicable rail carrier can rely on to pay the cost to clean up a worst case spill.

(3) An applicable rail carrier shall submit the statement required by this section upon payment of the annual assessment required under section 13 of this 2017 Act.

**SECTION 15.** ORS 468B.412 is amended to read:

468B.412. (1) By September 30 of each year, the Department of Environmental Quality shall publish a report for the previous fiscal year, commencing on July 1 and ending on June 30, that addresses:

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

(b) The assessment on applicable rail carriers under section 13 of this 2017 Act;

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

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

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

4 (2)(a) The report published by the department under this section must be in a format that allows  
5 for the monitoring of fee **and assessment** collection and related activities by the department and  
6 for ensuring that adequate but not excessive fees **and assessments** are collected to meet the  
7 department's budgetary needs.

8 (b) The department shall make the report available to those who paid fees under ORS  
9 468B.405, **those who paid the assessment under section 13 of this 2017 Act** and [to] the general  
10 public.

11  
12 **MISCELLANEOUS**

13  
14 **SECTION 16.** (1) Sections 3, 4, 6, 7 and 12 to 14 and the amendments to ORS 468B.300,  
15 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385 and ORS 468B.412 by sections 1, 2,  
16 5, 8, 9, 10, 11 and 15 of this 2017 Act become operative January 1, 2018.

17 (2) **The Environmental Quality Commission and the Department of Environmental Qual-**  
18 **ity may take any action before the operative date specified in subsection (1) of this section**  
19 **that is necessary for the commission or the department to exercise, on and after the oper-**  
20 **ative date specified in subsection (1) of this section any of the duties, functions and powers**  
21 **conferred on the commission or the department by sections 3, 4, 6, 7 and 12 to 14 and the**  
22 **amendments to ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385 and**  
23 **ORS 468B.412 by sections 1, 2, 5, 8, 9, 10, 11 and 15 of this 2017 Act.**

24 **SECTION 17.** The unit captions used in this 2017 Act are provided only for the conven-  
25 **ience of the reader and do not become part of the statutory law of this state or express any**  
26 **legislative intent in the enactment of this 2017 Act.**

27 **SECTION 18.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
28 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**