

HB 2131-5  
(LC 2255)  
5/18/17 (MAM/ps)

Requested by Representative SMITH WARNER

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2131**

1 On page 1 of the printed bill, line 2, delete “and”.

2 Delete line 3 and insert “453.392, 468B.300, 468B.340, 468B.355, 468B.360,  
3 468B.365, 468B.370, 468B.385, 468B.410 and 468B.495; and prescribing an ef-  
4 fective date.”.

5 Delete lines 5 through 24 and delete pages 2 through 12 and insert:

6

7 **“STATE FIRE MARSHAL PLAN FOR RAIL TRANSPORT**  
8 **HAZARDOUS MATERIAL EMERGENCY RESPONSE**

9

10 **“SECTION 1.** ORS 453.392 is amended to read:

11 “453.392. (1) As part of the plan for the effective implementation of a  
12 statewide hazardous material emergency response system established by rule  
13 under ORS 453.374, the State Fire Marshal shall adopt by rule a plan for the  
14 coordinated response to oil or hazardous material spills or releases that oc-  
15 cur during rail transport. The plan adopted under this subsection:

16 “(a) Shall address with a specific focus on oil or hazardous material spills  
17 or releases that occur during rail transport all required provisions under  
18 ORS 453.374;

19 “(b) May include requirements and incentives for local governments and  
20 other responders to participate in ongoing training programs;

21 “(c) Shall provide a system for identifying where **oil or** hazardous mate-

1 rial **spill or release** response [*materials*] **resources** owned by railroads are  
2 located throughout this state and how access to those [*materials*] **resources**  
3 is to be coordinated; [*and*]

4 **“(d) Shall be consistent with the provisions of the oil or hazardous**  
5 **material spill response plan required by ORS 468B.495 and 468B.500 that**  
6 **relate to listed sensitive areas along high hazard train routes;**

7 **“(e) Shall provide for the implementation of a full-scale, multia-**  
8 **gency, multijurisdictional and multidisciplinary oil or hazardous ma-**  
9 **terial spill or release training exercise that:**

10 **“(A) Examines or validates training for all manner of personnel**  
11 **necessary to a coordinated response to an oil or hazardous material**  
12 **spill or release;**

13 **“(B) Is intended to examine or validate the planning, coordination**  
14 **and command and control decisions made by the various agencies and**  
15 **to examine or validate the agencies’ response-specific capabilities or**  
16 **functions; and**

17 **“(C) May involve training that covers the entire sequence of events**  
18 **that take place during an oil or hazardous material spill or release**  
19 **incident that occurs during rail transport; and**

20 **“[(d)] (f) [May] Shall include any other information deemed necessary by**  
21 **[the office of] the State Fire Marshal to provide coordinated response to oil**  
22 **or hazardous material spills or releases that occur during rail transport.**

23 **“(2) A railroad operating in this state shall provide to the State Fire**  
24 **Marshal, upon request, information that the State Fire Marshal deems**  
25 **necessary to develop the plan required under subsection (1) of this**  
26 **section. Information requested by the State Fire Marshal under this**  
27 **subsection may include, but need not be limited to:**

28 **“(a) The names, addresses, phone numbers, facsimile numbers and**  
29 **electronic mail addresses for the primary owner of the railroad and for**  
30 **the local primary contacts for the railroad;**

1       **“(b) The contacts for the railroad that are available 24 hours each**  
2 **day to respond to threatened or actual oil or hazardous material spills**  
3 **or releases;**

4       **“(c) The area of transit of the railroad;**

5       **“(d) The spill mitigation measures that are used by the railroad;**

6       **“(e) The procedures that the railroad has in place for notification**  
7 **in the event of an oil or hazardous material spill or release;**

8       **“(f) The personnel that the railroad will have at its disposal, as ev-**  
9 **idenced by documentation that may include letters of intent with**  
10 **contractors, for spill response activities in the event of an oil or haz-**  
11 **ardous material spill or release;**

12       **“(g) The response resources available for oil or hazardous material**  
13 **spills or releases that are owned by the railroad and available for use**  
14 **in this state, including the location of the response resources; and**

15       **“(h) The types of responder training that are provided by the rail-**  
16 **road and the frequency at which the responder training activities oc-**  
17 **cur.**

18       **“[(2)] (3) The [office of the] State Fire Marshal shall annually coordinate**  
19 **with local governments, other state agencies involved in hazardous material**  
20 **emergency response, other responders and representatives of the railroad in-**  
21 **dustry to prepare a report on the coordinated response plan adopted under**  
22 **this section and shall:**

23       **“(a) Make the report available as an appendix to the Office of Emergency**  
24 **Management’s oil and hazardous material response emergency operations**  
25 **plan developed pursuant to ORS 401.092; and**

26       **“(b) No later than February 1 of each year, submit the report to the**  
27 **Legislative Assembly in the manner provided in ORS 192.245.**

28       **“[(3)] (4) The report required by subsection [(2)] (3) of this section shall**  
29 **include, but need not be limited to, the following in relation to oil and haz-**  
30 **ardous material emergency response for rail transport:**

1 “(a) An inventory of all emergency response resources available in this  
2 state, including information on:

3 “(A) The location of, and the means of access to, the resources;

4 “(B) Whether the resources are publicly or privately maintained; and

5 “(C) Additional resources that are needed to provide for adequate re-  
6 sponse;

7 “(b) Suggested changes to the structure for the continued coordination  
8 between state agencies and industry;

9 “(c) Possible revisions to the response roles or responsibilities of state  
10 agencies, local governments and railroads; and

11 “(d) Strategies for ensuring adequate funding at the state and local gov-  
12 ernment levels to cover the training, equipment and administrative costs  
13 associated with providing comprehensive response and equipment.

14 **“SECTION 2. Sections 3 and 4 of this 2017 Act are added to and  
15 made a part of ORS 453.307 to 453.414.**

16 **“SECTION 3. (1) As used in this section:**

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

20 **“(b) ‘Cost to clean up a worst case spill’ means a dollar amount  
21 equal to the worst case spill number calculated under paragraph (d)  
22 of this subsection multiplied by \$16,800.**

23 **“(c) ‘High hazard train route’ has the meaning given that term in  
24 ORS 468B.300.**

25 **“(d) ‘Worst case spill number’ means a risk assessment number  
26 related to a spill of oil, calculated as follows:**

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

1       “(B) The applicable rail carrier shall multiply the percentage cal-  
2       culated under subparagraph (A) of this paragraph by the number of  
3       barrels of oil moved on the largest trainload of oil that traveled on a  
4       high hazard train route operated by the applicable rail carrier in this  
5       state during the previous calendar year. The result of the calculation  
6       made under this subparagraph shall equal the worst case spill number.

7       “(2) An applicable rail carrier shall annually submit to the State  
8       Fire Marshal a statement that demonstrates proof of financial re-  
9       sponsibility by the applicable rail carrier to pay the cost to clean up  
10      a worst case spill.

11      “(3) The State Fire Marshal may not use the information submitted  
12      by an applicable rail carrier under this section:

13      “(a) As a basis for engaging in economic regulation of a railroad;  
14      or

15      “(b) As a basis for penalizing a railroad.

16      “(4) Nothing in this section may be construed as assigning liability  
17      to an applicable rail carrier or establishing liquidated damages for a  
18      spill, release or accident involving the transport of oil by an applicable  
19      rail carrier.

20      “SECTION 4. (1) The State Fire Marshal shall make the information  
21      received under ORS 453.392 (2) and section 3 of this 2017 Act from  
22      railroads operating in this state available to the Department of Envi-  
23      ronmental Quality for the purposes of the department’s administration  
24      of those provisions of ORS 468B.300 to 468B.500 that apply to high  
25      hazard train routes, as defined in ORS 468B.300.

26      “(2) Except as provided in subsection (1) of this section, the State  
27      Fire Marshal may make the information received from railroads under  
28      ORS 453.392 (2) and section 3 of this 2017 Act available only to the Of-  
29      fice of Emergency Management, state and local responders and feder-  
30      ally recognized Oregon Indian tribes.

1       **“(3) All information provided to the State Fire Marshal by a rail-**  
2 **road under ORS 453.392 (2) and section 3 of this 2017 Act, including any**  
3 **information constituting security sensitive information provided for**  
4 **under 49 U.S.C. 11904(b), 49 C.F.R. 15 and 49 C.F.R. 1520 or information**  
5 **otherwise protected under federal law, is confidential, exempt from**  
6 **disclosure under public records law, and may not be disclosed to any**  
7 **person or entity not specified in this section. No subpoena or judicial**  
8 **order may be issued compelling the disclosure of information provided**  
9 **under this section, except when relevant to a proceeding where com-**  
10 **pliance by a railroad’s compliance with this section is to be adjudi-**  
11 **cated.**

12

13               **“DEPARTMENT OF ENVIRONMENTAL QUALITY; OIL OR**  
14               **HAZARDOUS MATERIAL SPILLAGE STATUTES**

15

16       **“SECTION 5.** ORS 468B.300 is amended to read:

17       “468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to  
18 468B.500:

19       “(1) ‘Bulk’ means material stored or transported in loose, unpackaged  
20 liquid, powder or granular form capable of being conveyed by a pipe, bucket,  
21 chute or belt system.

22       “(2) ‘Cargo vessel’ means a self-propelled ship in commerce, other than a  
23 tank vessel, of 300 gross tons or more. ‘Cargo vessel’ does not include a  
24 vessel used solely for commercial fish harvesting.

25       “(3) ‘Commercial fish harvesting’ means taking food fish with any gear  
26 unlawful for angling under ORS 506.006, or taking food fish in excess of the  
27 limits permitted for personal use, or taking food fish with the intent of dis-  
28 posing of such food fish or parts thereof for profit, or by sale, barter or trade,  
29 in commercial channels.

30       “(4) ‘Contingency plan’ means an oil spill prevention and emergency re-

1 sponse plan required under ORS 468B.345 **or section 9 of this 2017 Act.**

2 “(5) ‘Covered vessel’ means a tank vessel, cargo vessel, passenger vessel  
3 or dredge vessel.

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

8 “(7) ‘Discharge’ means any emission other than natural seepage of oil,  
9 whether intentional or unintentional. ‘Discharge’ includes but is not limited  
10 to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

11 “(8) ‘Dredge vessel’ means a self-propelled vessel of 300 or more gross tons  
12 that is equipped for regularly engaging in dredging of submerged and  
13 submersible lands.

14 “(9) ‘Exploration facility’ means a platform, vessel or other offshore fa-  
15 cility used to explore for oil in the navigable waters of the state. ‘Explora-  
16 tion facility’ does not include platforms or vessels used for stratigraphic  
17 drilling or other operations that are not authorized or intended to drill to  
18 a producing formation.

19 “(10) ‘Facility’ means a pipeline, **a railroad car** or any structure, group  
20 of structures, equipment or device, other than a vessel that transfers oil over  
21 navigable waters of the state, that is used for producing, storing, handling,  
22 transferring, processing or transporting oil in bulk and that is capable of  
23 storing or transporting 10,000 or more gallons of oil. ‘Facility’ does not in-  
24 clude:

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

28 “(b) An underground storage tank regulated by the Department of Envi-  
29 ronmental Quality or a local government under ORS 466.706 to 466.882 and  
30 466.994; or

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

4 “(11) ‘Federal on-scene coordinator’ means the federal official predesig-  
5 nated by the United States Environmental Protection Agency or the United  
6 States Coast Guard to coordinate and direct federal responses or the official  
7 designated by the lead agency to coordinate and direct removal under the  
8 National Contingency Plan.

9 “(12) ‘Hazardous material’ has the meaning given that term in ORS  
10 466.605.

11 “(13) **‘High hazard train route’ means a section of rail lines in this**  
12 **state:**

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

15 **“(b) Over which trains that consist of multiple tanker railroad cars**  
16 **that transport oil or hazardous material as cargo operate.**

17 **“(14) ‘Listed sensitive area’ means an area or location listed as an**  
18 **area of special economic or environmental importance in an Area**  
19 **Contingency Plan or Sub-Area Contingency Plan prepared and pub-**  
20 **lished pursuant to section 311(j) of the Federal Water Pollution Control**  
21 **Act, 33 U.S.C. 1321(j), as amended by the Oil Pollution Act of 1990 (P.L.**  
22 **101-380).**

23 “[13] (15) ‘Maritime association’ means an association or cooperative of  
24 marine terminals, facilities, vessel owners, vessel operators, vessel agents or  
25 other maritime industry groups, that provides oil spill response planning and  
26 spill related communications services within the state.

27 “[14] (16) ‘Maximum probable spill’ means the maximum probable spill  
28 for a vessel operating in the navigable waters of the state considering the  
29 history of spills of vessels of the same class operating on the west coast of  
30 the United States.



1 “[(15)] (17) ‘Navigable waters’ means the Columbia River, the Willamette  
2 River up to Willamette Falls, the Pacific Ocean and estuaries to the head  
3 of tidewater.

4 “[(16)] (18) ‘National Contingency Plan’ means the plan prepared and  
5 published under section 311(d) of the Federal Water Pollution Control Act,  
6 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

7 “[(17)] (19) ‘Offshore facility’ means any facility located in, on or under  
8 any of the navigable waters of the state.

9 “[(18)] (20) ‘Oils’ or ‘oil’ means:

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

13 “(b) **Ethanol, biodiesel** and liquefied natural gas.

14 “[(19)] (21) ‘Onshore facility’ means any facility located in, on or under  
15 any land of the state, other than submerged land, that, because of its lo-  
16 cation, could reasonably be expected to cause substantial harm to the envi-  
17 ronment by discharging oil into or on the navigable waters of the state or  
18 adjoining shorelines.

19 “[(20)] (22) ‘Passenger vessel’ means a ship of 300 or more gross tons  
20 carrying passengers for compensation.

21 “[(21)] (23) ‘Person’ has the meaning given the term in ORS 468.005.

22 “[(22)] (24) ‘Person having control over oil’ includes but is not limited to  
23 any person using, storing or transporting oil immediately prior to entry of  
24 such oil into the [*navigable*] waters of the state, and shall specifically in-  
25 clude carriers and bailees of such oil.

26 “[(23)] (25) ‘Pipeline’ means a facility, including piping, compressors,  
27 pump stations and storage tanks, used to transport oil between facilities or  
28 between facilities and tank vessels.

29 “[(24)] (26) ‘Region of operation’ with respect to the holder of a contin-  
30 gency plan means the area where the operations of the holder that require

1 a contingency plan are located.

2 “[25] (27) ‘Removal costs’ means the costs of removal that are incurred  
3 after a discharge of oil has occurred or, in any case in which there is a  
4 substantial threat of a discharge of oil, the costs to prevent, minimize or  
5 mitigate oil pollution from the incident.

6 “[26] (28) ‘Responsible party’ has the meaning given under section 1001  
7 of the Oil Pollution Act of 1990 (P.L. 101-380).

8 “[27] (29) ‘Ship’ means any boat, ship, vessel, barge or other floating  
9 craft of any kind.

10 “[28)(a)] (30)(a) ‘State on-scene coordinator’ means the state official ap-  
11 pointed by the Department of Environmental Quality to represent the de-  
12 partment and the State of Oregon in response to an oil or hazardous material  
13 spill or release or threatened spill or release and to coordinate cleanup re-  
14 sponse with state and local agencies.

15 “(b) For purposes of this subsection:

16 “(A) ‘Spill or release’ means the discharge, deposit, injection, dumping,  
17 spilling, emitting, releasing, leaking or placing of any oil or hazardous ma-  
18 terial into the air or into or on any land or waters of this state except as  
19 authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A,  
20 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal  
21 law, or except when being stored or used for its intended purpose.

22 “(B) ‘Threatened spill or release’ means oil or hazardous material is likely  
23 to escape or be carried into the air or into or on any land or waters of the  
24 state, including from a ship as defined in this section that is in imminent  
25 danger of sinking.

26 “[29] (31) ‘Tank vessel’ means a ship that is constructed or adapted to  
27 carry oil in bulk as cargo or cargo residue. ‘Tank vessel’ does not include:

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

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

30 “(c) An oil spill response barge or vessel.

1        “[30] (32) ‘Worst case spill’ means:

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

4        “(b) In the case of an onshore or offshore facility, the largest foreseeable  
5 spill in adverse weather conditions.

6        **“SECTION 6.** ORS 468B.340 is amended to read:

7        “468B.340. (1) The Legislative Assembly finds that:

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

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

12       “(c) Recent studies conducted in the wake of disastrous oil spills have  
13 identified the following 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  
17 large percentage of oil can be recovered from a catastrophic spill;

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

20       “(E) Comprehensive oil spill prevention demands participation by indus-  
21 try, citizens, environmental organizations and local, state, federal and inter-  
22 national governments.

23       “(2) Therefore, the Legislative Assembly declares it is the intent of ORS  
24 468B.345 to 468B.415 to establish a program to promote:

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

27       **“(b) The prevention of oil spills in or near inland rivers and streams**  
28 **servng as essential habitat for salmon and other wildlife or as a**  
29 **source of water for consumption, irrigation or other public uses of**  
30 **local concern;**

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

3       **“(d) The prevention of oil spills along high hazard train routes;**

4       **“[(b)] (e) Oil spill response preparedness, including the identification of**  
5 **actions and content required for an effective contingency plan;**

6       **“[(c)] (f) A consistent west coast approach to oil spill prevention and re-**  
7 **sponse;**

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

10       **“[(e)] (h) To the maximum extent possible, coordination of state programs**  
11 **with the programs and regulations of the United States Coast Guard and**  
12 **adjacent states.**

13       **“SECTION 7. Sections 8 and 9 of this 2017 Act are added to and**  
14 **made a part of ORS 468B.345 to 468B.415.**

15       **“SECTION 8. Notwithstanding ORS 468B.300, as used in ORS**  
16 **468B.345 to 468B.415, ‘facility’ has the meaning given that term in ORS**  
17 **468B.300, except that ‘facility’ does not include railroad cars.**

18       **“SECTION 9. (1)(a) An owner or operator of a high hazard train**  
19 **route shall have an oil spill prevention and emergency response plan**  
20 **that has been submitted to the Department of Environmental Quality**  
21 **pursuant to ORS 468B.355.**

22       **“(b) A contingency plan for a high hazard train route shall be re-**  
23 **newed at least once every five years.**

24       **“(c) Failure by an owner or operator of a high hazard train route**  
25 **to submit a contingency plan to the department does not preclude the**  
26 **owner or operator from operating the high hazard train route.**

27       **“(2) The Environmental Quality Commission, after consultation and**  
28 **in coordination with the State Fire Marshal, shall by rule adopt stan-**  
29 **dards for the preparation of contingency plans for high hazard train**  
30 **routes.**

1       **“(3) Rules adopted by the commission under subsection (2) of this**  
2 **section shall, to the extent feasible and appropriate:**

3       **“(a) Define standards for the preparation of contingency plans for**  
4 **high hazard train routes that are consistent with the standards for the**  
5 **preparation of contingency plans for facilities adopted under ORS**  
6 **468B.350; and**

7       **“(b) Be consistent with requirements placed on railroads by ORS**  
8 **453.392 and section 3 of this 2017 Act and by rules adopted by the State**  
9 **Fire Marshal under ORS 453.392.**

10       **“(4) A contingency plan for a high hazard train route is not subject**  
11 **to approval by the department, but shall be subject to review by the**  
12 **department under ORS 468B.360. If the department determines upon**  
13 **review that a submitted contingency plan for a high hazard train route**  
14 **does not meet the standards adopted by rule under subsection (2) of**  
15 **this section, the department shall by conference, conciliation and**  
16 **persuasion endeavor to receive from the owner or operator of the high**  
17 **hazard train route an updated or modified contingency plan that ad-**  
18 **dresses concerns of the department.**

19       **“(5) An owner or operator of a high hazard train route shall im-**  
20 **mediately notify the department, in writing, of any significant change**  
21 **affecting the contingency plan for the high hazard train route, in-**  
22 **cluding changes in any applicable factor set forth in ORS 468B.345 to**  
23 **468B.360 or rules adopted by the commission.**

24       **“(6) An owner or operator does not act out of conformity with the**  
25 **terms of a submitted contingency plan for a high hazard train route**  
26 **by furnishing to another contingency plan holder, after notifying the**  
27 **department, equipment, materials or personnel to assist the other plan**  
28 **holder in a response to an oil discharge. The plan holder shall replace**  
29 **or return the transferred equipment, materials and personnel as soon**  
30 **as feasible.**

1       **“(7) The department may require the holder of a contingency plan**  
2 **for a high hazard train route to take steps necessary to demonstrate**  
3 **the holder’s ability to carry out the contingency plan, including:**

4       **“(a) Periodic training;**

5       **“(b) Spill response team exercises; and**

6       **“(c) Verification of access to inventories of equipment, supplies and**  
7 **personnel identified as available in the approved contingency plan.**

8       **“(8) Upon receipt of a contingency plan for a high hazard train**  
9 **route, the department shall provide a copy of the contingency plan for**  
10 **review to the State Department of Fish and Wildlife, the State Fire**  
11 **Marshal and the Department of Land Conservation and Development**  
12 **and to any federally recognized Oregon Indian tribes owning property**  
13 **that abuts or is travelled over by the high hazard train route for which**  
14 **the contingency plan is prepared. Agencies and tribes that receive**  
15 **copies of a contingency plan under this subsection shall review the**  
16 **plan according to procedures and time limits established by rule by the**  
17 **commission.**

18       **“(9) The receipt and review by the Department of Environmental**  
19 **Quality of a contingency plan for a high hazard train route does not**  
20 **constitute an express assurance regarding the adequacy of the plan**  
21 **or constitute a defense to liability imposed under ORS chapter 468,**  
22 **468A or 468B or any other state law.**

23       **“SECTION 10. 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 within the 12-month period. The schedule for the Columbia**  
29 **River shall be coordinated with the State of Washington. The department**  
30 **may adopt an alternative schedule for the Oregon coast and the Willamette**

1 River.

2 **“(2) A contingency plan for a high hazard train route shall be sub-**  
3 **mitted to the department within 12 months after the commission**  
4 **adopts rules under section 9 of this 2017 Act. The department may**  
5 **adopt a schedule for submission of a contingency plan within the**  
6 **12-month period.**

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

10 “[3] (4) The contingency plan for a tank vessel shall be submitted by:

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

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

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

16 “[4] (5) Subject to conditions imposed by the department, the contin-  
17 gency plan for a tank vessel, if submitted by the owner or operator of a fa-  
18 cility, may be submitted as a single plan for all tank vessels of a particular  
19 class that will be loading or unloading cargo at the facility.

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

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

29 “[6] (8) A person that has contracted with a facility, [or] covered vessel  
30 **or owner or operator of a high hazard train route** to provide containment

1 and cleanup services and that meets the standards established by the com-  
2 mission under ORS 468B.350 **or section 9 of this 2017 Act** may submit the  
3 contingency plan for any facility, [*or*] covered vessel **or high hazard train**  
4 **route** for which the person is contractually obligated to provide services.  
5 Subject to conditions imposed by the department, the person may submit a  
6 single plan for more than one covered vessel.

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

13 “[~~(8)~~] **(10)** A contingency plan prepared for an agency of the federal gov-  
14 ernment or an adjacent state that satisfies the requirements of ORS 468B.345  
15 to 468B.360 and the rules adopted by the [*Environmental Quality*] commission  
16 may be accepted as a plan under ORS 468B.345 **or section 9 of this 2017**  
17 **Act**. The commission shall assure that to the greatest extent possible, re-  
18 quirements for a contingency plan under ORS 468B.345 to 468B.360 are con-  
19 sistent with requirements for a plan under federal law.

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

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

29 “[~~(11)~~] **(13)** A maritime association shall have a lien on the responsible  
30 vessel if the vessel owner or operator fails to remit any regular operating



1 assessments and shall further have a lien for the recovery for any direct  
2 costs provided to or for the vessel by the maritime association for oil spill  
3 response or spill related communications services. The lien shall be enforced  
4 in accordance with applicable law.

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

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

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

23 “[~~(15)~~] (17) A person providing a contingency plan for a cargo or passen-  
24 ger vessel under this section shall be exempt from liability as provided under  
25 ORS 468B.425 for any action taken or omitted in the course of providing  
26 contingency planning service.

27 **“SECTION 11.** ORS 468B.360 is amended to read:

28 “468B.360. In reviewing [*the*] **a** contingency plan required by ORS 468B.345  
29 **or section 9 of this 2017 Act**, the Department of Environmental Quality  
30 shall consider at least the following factors, **as applicable**:

1 “(1) The adequacy of containment and cleanup equipment, personnel,  
2 communications equipment, notification procedures and call-down lists, re-  
3 sponse time and logistical arrangements for coordination and implementation  
4 of response efforts to remove oil spills promptly and properly and to protect  
5 the environment;

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

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

10 “(4) The existence of navigational hazards within the area covered by the  
11 plan;

12 “(5) The history and circumstances surrounding prior spills of oil within  
13 the area covered by the plan;

14 “(6) The sensitivity of fisheries and wildlife and other natural resources  
15 within the area covered by the plan;

16 “(7) Relevant information on previous spills contained in on-scene coor-  
17 dinator reports covered by the plan;

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

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

25 “(10) The spill response equipment and resources available to a person  
26 providing a contingency plan for cargo and passenger vessels under contin-  
27 gency plans filed by the person under state or federal law for other covered  
28 vessels or facilities owned or operated by that person[.]; **and**

29 “(11) **For a high hazard train route, the extent to which the plan**  
30 **reduces or eliminates local hazards such as contamination of drinking**

1 **water supplies and irrigation sources.**

2 **“SECTION 12.** ORS 468B.365 is amended to read:

3 “468B.365. (1) The Department of Environmental Quality shall approve a  
4 contingency plan **required under ORS 468B.345** only if *[it]* **the department**  
5 determines that:

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

8 *“[(a)]* **(b)** The covered vessel or facility demonstrates evidence of compli-  
9 ance with ORS 468B.390; and

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

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

19 **“(3)** A holder of an approved contingency plan **required under ORS**  
20 **468B.345** does not violate the terms of the contingency plan by furnishing  
21 to another plan holder, after notifying the department, equipment, materials  
22 or personnel to assist the other plan holder in a response to an oil discharge.  
23 The plan holder shall replace or return the transferred equipment, materials  
24 and personnel as soon as feasible.

25 **“(4)** The department may attach any reasonable term or condition to its  
26 approval or modification of a contingency plan **required under ORS**  
27 **468B.345** that the department determines is necessary to *[insure]* **ensure** that  
28 the applicant:

29 **“(a)** Has access to sufficient resources to protect environmentally sensi-  
30 tive areas and to prevent, contain, clean up and mitigate potential oil dis-

1 charges from the facility or tank vessel;

2 “(b) Maintains personnel levels sufficient to carry out emergency oper-  
3 ations; and

4 “(c) Complies with the contingency plan.

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

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

11 “(a) Periodic training;

12 “(b) Response team exercises; and

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

15 “(7) The department may consider evidence that oil discharge prevention  
16 measures such as double hulls or double bottoms on vessels or barges, sec-  
17 ondary containment systems, hydrostatic testing, enhanced vessel traffic  
18 systems or enhanced crew or staffing levels have been implemented and, in  
19 its discretion, may make exceptions to the requirements of this section to  
20 reflect the reduced risk of oil discharges from the facility or tank vessel for  
21 which the plan is submitted or being modified.

22 “(8) Before the department approves or modifies a contingency plan re-  
23 quired under ORS 468B.345, the department shall provide a copy of the con-  
24 tingency plan to the State Department of Fish and Wildlife, the office of the  
25 State Fire Marshal and the Department of Land Conservation and Develop-  
26 ment for review. The agencies shall review the plan according to procedures  
27 and time limits established by rule of the Environmental Quality Commis-  
28 sion.

29 “(9) Upon approval of a contingency plan **required under ORS**  
30 **468B.345**, the department shall issue to the plan holder a certificate stating

1 that the plan has been approved. The certificate shall include the name of  
2 the facility or tank vessel for which the certificate is issued, the effective  
3 date of the plan and the date by which the plan must be submitted for re-  
4 newal.

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

9 **“SECTION 13.** ORS 468B.370 is amended to read:

10 “468B.370. (1)(a) The Environmental Quality Commission by rule shall  
11 adopt procedures to determine the adequacy of [*a contingency plan*] **contingency plans:**  
12

13 **“(A)** Approved or filed for approval under ORS 468B.365[.]; **and**

14 **“(B) Required for a high hazard train route under section 9 of this**  
15 **2017 Act.**

16 “(b) The rules shall require random practice drills without prior notice  
17 to test the adequacy of the responding entities. The rules may provide for  
18 unannounced practice drills of an individual contingency plan.

19 “(c) The rules may require the contingency plan holder to publish a report  
20 on the drills. This report shall include an assessment of response time and  
21 available equipment and personnel compared to those listed in the contin-  
22 gency plan relying on the responding entities and requirements, if any, for  
23 changes in the plans or their implementation. The Department of Environ-  
24 mental Quality shall review the report and assess the adequacy of the drill.

25 “(d) The department may require additional drills and changes in ar-  
26 rangements for implementing the approved plan that are necessary to insure  
27 the effective implementation of the plan.

28 “(2) The [*Environmental Quality*] commission by rule may require any  
29 tank vessel carrying oil as cargo in the navigable waters of the state to:

30 “(a) Place booms, in-water sensors or other detection equipment around

1 tank vessels during transfers of oil; and

2 “(b) Submit to the department evidence of a structural and mechanical  
3 integrity inspection of the tank vessel equipment and hull structures.

4 “(3) A tank vessel that is conducting, or is available only for conducting,  
5 oil discharge response operations is exempt from the requirements of sub-  
6 section (1) of this section if the tank vessel has received prior approval of  
7 the department. The department may approve exemptions under this sub-  
8 section upon application and presentation of information required by the  
9 department.

10 **“SECTION 14.** ORS 468B.385 is amended to read:

11 “468B.385. (1) Upon request of a plan holder or on the initiative of the  
12 Department of Environmental Quality, the department, after notice and op-  
13 portunity for hearing, may modify its approval of a contingency plan **re-**  
14 **quired under ORS 468B.345** if the department determines that a change has  
15 occurred in the operation of the facility or tank vessel necessitating an  
16 amended or supplemental plan, or that the operator’s discharge experience  
17 demonstrates a necessity for modification.

18 “(2) The department, after notice and opportunity for hearing, may revoke  
19 its approval of a contingency plan **required under ORS 468B.345** if the de-  
20 partment determines that:

21 “(a) Approval was obtained by fraud or misrepresentation;

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

24 “(c) A term or condition of approval or modification has been violated;  
25 or

26 “(d) The plan holder is not in compliance with the plan and the deficiency  
27 materially affects the plan holder’s response capability.

28 “(3) Failure of a holder of an approved or modified contingency plan **or**  
29 **a submitted contingency plan for a high hazard train route** to comply  
30 with the plan or to have access to the quality or quantity of resources

1 identified in the plan or to respond with those resources within the shortest  
2 possible time in the event of a spill is a violation of ORS 468B.345 to  
3 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other appli-  
4 cable law.

5 “(4) If the holder of an approved or modified contingency plan, **or of a**  
6 **submitted contingency plan for a high hazard train route**, fails to re-  
7 spond to and conduct cleanup operations of an unpermitted discharge of oil  
8 with the quality and quantity of resources identified in the plan and in a  
9 manner required under the plan, the holder is strictly liable, jointly and se-  
10 verally, for the civil penalty assessed under ORS 466.992 and 468.140.

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

13 “(a) Establish and carry out procedures identified in the plan as being the  
14 responsibility of the holder of the plan;

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

18 “(c) Fulfill the assurances espoused in the plan in the manner described  
19 in the plan;

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

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

24 “**SECTION 15.** ORS 468B.410 is amended to read:

25 “468B.410. (1) The Oil Spill Prevention Fund is established separate and  
26 distinct from the General Fund in the State Treasury. Interest earned on  
27 the fund shall be credited to the fund. Moneys received by the Department  
28 of Environmental Quality for the purpose of oil and hazardous material spill  
29 prevention and the fees collected under ORS 468B.405 shall be paid into the  
30 State Treasury and credited to the fund.

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

3 “(3) The moneys in the Oil Spill Prevention Fund are appropriated con-  
4 tinuously to the Department of Environmental Quality to be used in the  
5 manner described in subsection (4) of this section.

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

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

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

10 “(B) Conduct training, response exercises, inspection and tests in order  
11 to verify equipment inventories and ability to prevent and respond to oil  
12 release emergencies and to undertake other activities intended to verify or  
13 establish the preparedness of the state, a municipality or a party required  
14 by ORS 468B.345 to 468B.415 to have an approved contingency plan to act in  
15 accordance with that plan; and

16 “(C) Verify or establish proof of financial responsibility required by ORS  
17 468B.390.

18 “(b) Review and revise the oil spill response plan required by ORS  
19 468B.495 and 468B.500.

20 “(5) **Notwithstanding any contrary provision of subsection (4) of this**  
21 **section, moneys in the Oil Spill Prevention Fund may not be used to**  
22 **pay the costs of the department that may be paid with moneys depos-**  
23 **ited in the High Hazard Train Route Oil Spill Prevention Fund estab-**  
24 **lished under section 17 of this 2017 Act.**

25 “**SECTION 16. Section 17 of this 2017 Act is added to and made a**  
26 **part of ORS 468B.345 to 468B.415.**

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



1       “(2) The fund shall consist of:

2       “(a) All moneys placed in the fund as provided by law; and

3       “(b) Any gifts, grants, donations, endowments or bequests from any  
4 public or private source.

5       “(3) Moneys in the fund are continuously appropriated to the De-  
6 partment of Environmental Quality to be used only to pay the costs  
7 of the department incurred to:

8       “(a) Review, under ORS 468B.360, contingency plans for high hazard  
9 train routes required by section 9 of this 2017 Act;

10       “(b) Conduct training, response exercises, inspection and tests in  
11 order to verify equipment inventories and ability to prevent and re-  
12 spond to oil release emergencies related to high hazard train routes  
13 and to undertake other activities intended to verify or establish the  
14 preparedness of the state, a municipality or an owner or operator of  
15 a high hazard train route required by section 9 of this 2017 Act to have  
16 submitted a contingency plan to the department; and

17       “(c) Develop, review and revise the portions of the oil spill response  
18 plan required by ORS 468B.495 and 468B.500 that relate to listed sensi-  
19 tive areas along high hazard train routes.

20       “SECTION 18. ORS 468B.495 is amended to read:

21       “468B.495. (1) The Department of Environmental Quality shall develop an  
22 integrated, interagency response plan for oil or hazardous material spills in  
23 the Columbia River, the Willamette River up to Willamette Falls [*and*], the  
24 coastal waters and estuaries of the state **and listed sensitive areas along**  
25 **high hazard train routes**. In developing the response plan, the department  
26 shall work with all affected local, state and federal agencies and with any  
27 volunteer group interested in participating in oil or hazardous material spill  
28 response.

29       “(2) The plan developed under subsection (1) of this section shall be con-  
30 sistent to the extent practicable with the plan for a statewide hazardous

1 material emergency response system established by the State Fire Marshal  
2 under ORS 453.374.

3

4

**“MISCELLANEOUS**

5

6 **“SECTION 19. (1) Sections 2 to 4, 7 to 9, 16 and 17 of this 2017 Act**  
7 **and the amendments to statutes by sections 1, 5, 6, 10 to 15 and 18 of**  
8 **this 2017 Act become operative on January 1, 2018.**

9 **“(2) The State Fire Marshal, the Environmental Quality Commis-**  
10 **sion and the Department of Environmental Quality may take any**  
11 **action before the operative date specified in subsection (1) of this sec-**  
12 **tion that is necessary for the State Fire Marshal, the commission or**  
13 **the department to exercise, on and after the operative date specified**  
14 **in subsection (1) of this section, any of the duties, functions and**  
15 **powers conferred on the State Fire Marshal, the commission and the**  
16 **department by sections 2 to 4, 7 to 9, 16 and 17 of this 2017 Act and the**  
17 **amendments to statutes by sections 1, 5, 6, 10 to 15 and 18 of this 2017**  
18 **Act.**

19 **“SECTION 20. The unit captions used in this 2017 Act are provided**  
20 **only for the convenience of the reader and do not become part of the**  
21 **statutory law of this state or express any legislative intent in the**  
22 **enactment of this 2017 Act.**

23 **“SECTION 21. This 2017 Act takes effect on the 91st day after the**  
24 **date on which the 2017 regular session of the Seventy-ninth Legislative**  
25 **Assembly adjourns sine die.”.**

26

\_\_\_\_\_