

**A-Engrossed**  
**House Bill 2209**

Ordered by the House April 9  
Including House Amendments dated April 9

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Veterans and Emergency Preparedness)

**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.

Requires railroads that own or operate high hazard train routes to have oil spill contingency plans that have been approved by Department of Environmental Quality. Defines "high hazard train route." Sets forth requirements for submission and approval of contingency plans for high hazard train routes.

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

**Establishes fee on railroads required to submit contingency plans for high hazard train routes. Requires fees collected to be deposited in High Hazard Train Route Oil Spill Preparedness Fund. Establishes fee on tank railroad cars loaded with oil. Requires certain fees collected to be deposited in High Hazard Train Route Oil Spill Preparedness Fund and certain fees collected to be deposited in Oil and Hazardous Material Transportation by Rail Action Fund. Sunsets both fees on January 2, 2027.**

Establishes High Hazard Train Route Oil Spill Preparedness Fund. Continuously appropriates moneys in fund to Department of Environmental Quality for certain purposes related to high hazard train route contingency planning.

Sets forth additional requirements for plan adopted by State Fire Marshal for coordinated response to oil or hazardous material spills or releases that occur during rail transport.

**A BILL FOR AN ACT**

1  
2 Relating to safe transportation of oil; creating new provisions; and amending ORS 453.392, 468B.300,  
3 468B.305, 468B.340, 468B.365, 468B.385, 468B.410 and 468B.495.

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

5  
6 **CONTINGENCY PLANNING FOR HIGH HAZARD TRAIN ROUTES**  
7 **(Definitions)**

8  
9 **SECTION 1.** ORS 468B.300 is amended to read:

10 468B.300. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

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

13 (2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300  
14 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish har-  
15 vesting.

16 (3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling un-  
17 der ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food  
18 fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or  
19 trade, in commercial channels.

**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 (4) "Contingency plan" means an oil spill prevention and emergency response plan required un-  
2 der ORS 468B.345 or **section 5 of this 2019 Act.**

3 (5) "Covered vessel" means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

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

7 (7) "Discharge" means any emission other than natural seepage of oil, whether intentional or  
8 unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emit-  
9 ting, emptying or dumping oil.

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

12 (9) "Exploration facility" means a platform, vessel or other offshore facility used to explore for  
13 oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels  
14 used for stratigraphic drilling or other operations that are not authorized or intended to drill to a  
15 producing formation.

16 (10) "Facility" means a pipeline or any structure, group of structures, equipment or device, other  
17 than a vessel that transfers oil over navigable waters of the state, that is used for producing, stor-  
18 ing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or  
19 transporting 10,000 or more gallons of oil. "Facility" does not include:

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

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

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

26 (11) "Federal on-scene coordinator" means the federal official predesignated by the United  
27 States Environmental Protection Agency or the United States Coast Guard to coordinate and direct  
28 federal responses or the official designated by the lead agency to coordinate and direct removal  
29 under the National Contingency Plan.

30 (12) "Hazardous material" has the meaning given that term in ORS 466.605.

31 **(13) "High hazard train route" means a section of rail lines in this state:**

32 **(a) That abuts or travels over navigable waters, a drinking water source or an inland**  
33 **location that is one quarter mile or less from the waters of the state; and**

34 **(b) Over which trains operate that, in a single train, transport:**

35 **(A) 20 or more tank railroad cars in a continuous block that are loaded with oil; or**

36 **(B) 35 or more tank railroad cars loaded with oil that are spread throughout the entirety**  
37 **of the rolling stock, not including the locomotive, that make up the train.**

38 [(13)] (14) "Maritime association" means an association or cooperative of marine terminals, fa-  
39 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-  
40 vides oil spill response planning and spill related communications services within the state.

41 [(14)] (15) "Maximum probable spill" means the maximum probable spill for a vessel operating  
42 in the navigable waters of the state considering the history of spills of vessels of the same class  
43 operating on the west coast of the United States.

44 **(16) "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**

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

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

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

7 [(17)] (18) “Offshore facility” means any facility located in, on or under any of the navigable  
8 waters of the state.

9 [(18)] (19) “Oils” or “oil” means:

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

13 (b) Liquefied natural gas.

14 [(19)] (20) “Onshore facility” means any facility located in, on or under any land of the state,  
15 other than submerged land, that, because of its location, could reasonably be expected to cause  
16 substantial harm to the environment by discharging oil into or on the navigable waters of the state  
17 or adjoining shorelines.

18 [(20)] (21) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for  
19 compensation.

20 [(21)] (22) “Person” has the meaning given the term in ORS 468.005.

21 [(22)] (23) “Person having control over oil” includes but is not limited to any person using,  
22 storing or transporting oil immediately prior to entry of such oil into the navigable waters of the  
23 state, and shall specifically include carriers and bailees of such oil.

24 [(23)] (24) “Pipeline” means a facility, including piping, compressors, pump stations and storage  
25 tanks, used to transport oil between facilities or between facilities and tank vessels.

26 [(24)] (25) “Region of operation” with respect to the holder of a contingency plan means the area  
27 where the operations of the holder that require a contingency plan are located.

28 [(25)] (26) “Removal costs” means the costs of removal that are incurred after a discharge of  
29 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs  
30 to prevent, minimize or mitigate oil pollution from the incident.

31 [(26)] (27) “Responsible party” has the meaning given under section 1001 of the Oil Pollution  
32 Act of 1990 (P.L. 101-380).

33 [(27)] (28) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

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

38 (b) For purposes of this subsection:

39 (A) “Spill or release” means the discharge, deposit, injection, dumping, spilling, emitting, re-  
40 leasing, leaking or placing of any oil or hazardous material into the air or into or on any land or  
41 waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468,  
42 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except  
43 when being stored or used for its intended purpose.

44 (B) “Threatened spill or release” means oil or hazardous material is likely to escape or be car-  
45 ried into the air or into or on any land or waters of the state, including from a ship as defined in

1 this section that is in imminent danger of sinking.

2 [(29)] (30) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as  
3 cargo or cargo residue. "Tank vessel" does not include:

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

7 [(30)] (31) "Worst case spill" means:

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

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

12 (c) **In the case of a high hazard train route, the greater of:**

13 **(A) 300,000 gallons of oil from a single train; or**

14 **(B) 15 percent of the total lading of oil transported within the largest single train rea-**  
15 **sonably expected to transport oil over the high hazard train route.**

16  
17 **(Entry of Oil Into Waters of The State Prohibited)**

18  
19 **SECTION 2.** ORS 468B.305 is amended to read:

20 468B.305. (1) It shall be unlawful for oil to enter the waters of the state from any ship **or high**  
21 **hazard train route** or **from** any fixed or mobile facility or installation located offshore or onshore,  
22 whether publicly or privately operated, regardless of the cause of the entry or the fault of the per-  
23 son having control over the oil, or regardless of whether the entry is the result of intentional or  
24 negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the  
25 state.

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

28 (a) The person discharging the oil was expressly authorized to do so by the Department of En-  
29 vironmental Quality, having obtained a permit therefor required by ORS 468B.050;

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

34 (c) The person having control over the oil can prove that the entry thereof into the waters of  
35 the state was caused by:

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

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

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

40  
41 **(Contingency Planning Requirements)**

42  
43 **SECTION 3.** ORS 468B.340 is amended to read:

44 468B.340. (1) The Legislative Assembly finds that:

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

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

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

5 (A) Gaps in regulatory oversight;

6 (B) Incomplete cost recovery by states;

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

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

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

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

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

17 **(b) The prevention of oil spills along high hazard train routes;**

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

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

21 [(d)] (e) The establishment, coordination and duties of safety committees as provided in ORS  
22 468B.415; and

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

25 **SECTION 4. Sections 5, 8, 9, 10, 13 and 14 of this 2019 Act are added to and made a part**  
26 **of ORS 468B.300 to 468B.500.**

27 **SECTION 5. (1) A railroad that owns or operates a high hazard train route in this state**  
28 **shall have an oil spill prevention and emergency response plan that has been approved by the**  
29 **Department of Environmental Quality.**

30 (2)(a) **A railroad must submit a contingency plan for a high hazard train route to the**  
31 **department within 90 days after the date that operation of trains that cause a section of rail**  
32 **lines to meet the definition of a high hazard train route commences on that section of rail**  
33 **lines, or within a longer time period that is mutually agreed upon by the department and the**  
34 **railroad if the department and railroad agree that the longer time period is necessary.**

35 (b) **In addition to meeting the requirement of paragraph (a) of this subsection and im-**  
36 **mediately after the date that operation of trains that cause a section of rail lines to meet**  
37 **the definition of a high hazard train route commences on that section of rail lines, a railroad**  
38 **shall provide notice to the department that the railroad has commenced operation of a high**  
39 **hazard train route. Notice provided pursuant to this paragraph shall include:**

40 (A) **Identification of the high hazard train route for which the notice is provided;**

41 (B) **The names, addresses, phone numbers and electronic mail addresses for the primary**  
42 **contact for the railroad that owns or operates the high hazard train route and for the local**  
43 **primary contacts for the railroad that owns or operates the high hazard train route; and**

44 (C) **A statement of whether personnel are available to arrive on behalf of the railroad**  
45 **that owns or operates the high hazard train route to respond to an oil spill or release or**

1 threatened oil spill or release and if personnel are available, the contact information for the  
2 personnel.

3 (3) A contingency plan for a high hazard train route shall be submitted by the railroad  
4 that owns or operates the high hazard train route.

5 (4) A contingency plan for a high hazard train route must be renewed at least once every  
6 five years. An expiring approved contingency plan shall remain in effect until the department  
7 approves the renewed contingency plan.

8 (5) The department shall respond to the submission of a contingency plan or a contin-  
9 gency plan renewal for a high hazard train route within 90 days of the date that the contin-  
10 gency plan or the contingency plan renewal is submitted, or within a longer time period that  
11 is mutually agreed upon by the department and the railroad submitting the contingency plan  
12 if the department and railroad agree that the longer time period is necessary for the de-  
13 partment to provide a response. Failure by the department to respond to a contingency plan  
14 or a contingency plan renewal within the requisite time period constitutes approval of the  
15 contingency plan or the contingency plan renewal.

16 (6) Failure by a railroad that owns or operates a high hazard train route to comply with  
17 this section or to be in compliance with a contingency plan submitted under this section does  
18 not preclude the railroad from operating the high hazard train route.

19 **SECTION 6.** Notwithstanding section 5 (2) of this 2019 Act, if operations of trains that  
20 cause a section of rail lines to meet the definition of a high hazard train route commence  
21 on or before the effective date of this 2019 Act, a contingency plan for the high hazard train  
22 route must be submitted to the Department of Environmental Quality no later than 12  
23 months after the effective date of this 2019 Act. The department may adopt a schedule for  
24 submission of a contingency plan within the 12-month period.

25 **SECTION 7.** Section 6 of this 2019 Act is repealed on January 2, 2022.

26 **SECTION 8.** (1) A contingency plan for a high hazard train route required under section  
27 5 of this 2019 Act must:

28 (a) Identify the high hazard train route for which the contingency plan is prepared.

29 (b) Demonstrate the capacity of the railroad that owns or operates the high hazard train  
30 route, both in material resources and finances, for the cleanup of an oil spill or release.

31 (c) Include the following information related to specified personnel and equipment that  
32 are available to respond to an oil spill or release:

33 (A) The names, addresses, phone numbers and electronic mail addresses for the primary  
34 contact for the railroad that owns or operates the high hazard train route and for the local  
35 primary contacts for the railroad that owns or operates the high hazard train route;

36 (B) A list that identifies all personnel, equipment and services available to respond to an  
37 oil spill or release pursuant to a written contract between the railroad that owns or operates  
38 the high hazard train route and other entities;

39 (C) The contact information for personnel available to arrive on behalf of the railroad  
40 that owns or operates the high hazard train route within 12 hours to respond to an oil spill  
41 or release or threatened oil spill or release;

42 (D) A description of the responsibilities of the personnel specified in the contingency plan  
43 for responding to an oil spill or release;

44 (E) The number, training preparedness and fitness of all dedicated, pre-positioned per-  
45 sonnel assigned to direct and implement the contingency plan; and

1 (F) The amount and type of equipment and supplies available or other approved means  
2 to respond to an oil spill or release and a description of where the equipment and supplies  
3 are located.

4 (d) Describe how the contingency plan relates to and is coordinated with the response  
5 plan developed by the Department of Environmental Quality under ORS 468B.495 and  
6 468B.500 and any relevant contingency plan prepared by a cooperative, a port, a regional en-  
7 tity, the state or the federal government in the same area of the state covered by the plan.

8 (e) Describe a plan, which may be based in whole or in part on participation in the ex-  
9 ercises required by the plan adopted by the State Fire Marshal under ORS 453.392, for par-  
10 ticipating in or conducting each of the following:

11 (A) An annual oil spill or release notification exercise;

12 (B) A triennial oil spill or release response tabletop exercise;

13 (C) A triennial oil spill or release response functional exercise; and

14 (D) A triennial oil spill containment and recovery equipment deployment exercise.

15 (f) Include procedures and information related to supporting the early detection of an oil  
16 spill or release and timely notification of appropriate federal, state, local, tribal and other  
17 authorities about an oil spill or release in accordance with applicable state and federal law,  
18 including but not limited to:

19 (A) Procedures for the initial detection of an oil spill or release;

20 (B) Procedures to be used for immediate notification of qualified individuals at the rail-  
21 road that owns or operates the high hazard train route;

22 (C) Call-down lists for notification of appropriate federal, state, local, tribal and other  
23 authorities;

24 (D) Information demonstrating that the railroad that owns or operates the high hazard  
25 train route has ownership of or access to an emergency response communications network  
26 covering the entire high hazard train route and that the emergency response communi-  
27 cations network also provides for immediate notification and continual emergency commu-  
28 nications during cleanup response;

29 (E) Procedures specifying the circumstances under which notifications will be made and  
30 the time frames for making notifications; and

31 (F) Follow-up requirements for notifications, provided for on a 24-hour basis.

32 (2) The Environmental Quality Commission and the department may not require a rail-  
33 road that owns or operates a high hazard train route to submit, as part of a contingency  
34 plan, information constituting sensitive security information provided for under 49 C.F.R.  
35 1520.5(b)(12), (14) or (16).

36 (3) A contingency plan for a high hazard train route prepared for an agency of the federal  
37 government or an adjacent state that satisfies the requirements of this section shall be ac-  
38 cepted by the department as a contingency plan required under section 5 of this 2019 Act.

39 **SECTION 9.** (1) The Department of Environmental Quality shall review a contingency  
40 plan for a high hazard train route submitted under section 5 of this 2019 Act and shall ap-  
41 prove the contingency plan if the plan:

42 (a) Meets the requirements of section 8 of this 2019 Act; and

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

1       (2) A railroad that owns or operates a high hazard train route shall notify the depart-  
2 ment in writing promptly of any significant change affecting the contingency plan, including  
3 changes in any factor set forth in this section. The department may require the railroad to  
4 update a contingency plan as a result of these changes.

5       (3) The contingency plan must provide for the use by the applicant of the best technology  
6 available at the time the contingency plan was submitted or renewed. For purposes of this  
7 subsection, the technology that provides the greatest degree of protection, taking into con-  
8 sideration processes that are currently in use anywhere in the world, shall be considered the  
9 best technology available. In determining what is the best technology available, the depart-  
10 ment shall consider the effectiveness, engineering feasibility, technological achievability and  
11 cost of the technology.

12       (4)(a) Before the department approves a contingency plan required under section 5 of this  
13 2019 Act, the department shall provide a copy of the contingency plan to the State Depart-  
14 ment of Fish and Wildlife, the office of the State Fire Marshal and the Department of Land  
15 Conservation and Development for review.

16       (b) In addition to providing copies to the agencies listed in paragraph (a) of this sub-  
17 section, before approving or modifying a contingency plan for a high hazard train route, the  
18 Department of Environmental Quality shall provide a copy of the contingency plan to each  
19 federally recognized Indian tribe that owns land or enjoys treaty-reserved hunting, fishing  
20 or gathering rights that could be impacted by an oil discharge along any portion of the high  
21 hazard train route.

22       (c) The agencies and tribes that receive copies of a contingency plan under this sub-  
23 section shall review the contingency plan according to procedures and time limits established  
24 by rule of the Environmental Quality Commission.

25       (5) Upon approval of a contingency plan, the department shall issue to the plan holder a  
26 certificate stating that the contingency plan has been approved. The certificate shall include  
27 the name of the high hazard train route for which the certificate is issued, the effective date  
28 of the contingency plan and the date by which the contingency plan must be submitted for  
29 renewal.

30       (6) The approval of a contingency plan by the department does not constitute an express  
31 assurance regarding the adequacy of the contingency plan or constitute a defense to liability  
32 imposed under ORS chapters 468, 468A and 468B or any other state law.

33       **SECTION 10.** The Environmental Quality Commission may adopt rules as necessary for  
34 the implementation of sections 5, 8, 9, 13 and 14 of this 2019 Act.

35  
36                   **(Applicability of Existing Contingency Planning Provisions to High**  
37                   **Hazard Train Route Contingency Planning Requirements)**

38  
39       **SECTION 11.** ORS 468B.365 is amended to read:

40       468B.365. (1) The Department of Environmental Quality shall approve a contingency plan re-  
41 quired under ORS 468B.345 only if it determines that the plan meets the requirements of ORS  
42 468B.345 to 468B.360 and:

43       (a) The covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; and

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



1 environment.

2 (2) An owner or operator of a covered vessel or facility shall notify the department in writing  
3 immediately of any significant change affecting the contingency plan, including changes in any fac-  
4 tor set forth in this section or in rules adopted by the Environmental Quality Commission. The de-  
5 partment may require the owner or operator to update a contingency plan as a result of these  
6 changes.

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

11 (4) The department may attach any reasonable term or condition to its approval or modification  
12 of a contingency plan that the department determines is necessary to insure that the applicant:

13 (a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent,  
14 contain, clean up and mitigate potential oil discharges from the facility or tank vessel;

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

16 (c) Complies with the contingency plan.

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

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

21 (a) Periodic training;

22 (b) Response team exercises; and

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

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

30 (8) Before the department approves or modifies a contingency plan required under ORS 468B.345,  
31 the department shall provide a copy of the contingency plan to the State Department of Fish and  
32 Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Devel-  
33 opment for review. The agencies shall review the plan according to procedures and time limits es-  
34 tablished by rule of the Environmental Quality Commission.

35 (9) Upon approval of a contingency plan, the department shall issue to the plan holder a certif-  
36 icate stating that the plan has been approved. The certificate shall include the name of the facility  
37 or tank vessel for which the certificate is issued, the effective date of the plan and the date by  
38 which the plan must be submitted for renewal.

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

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

43 468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environ-  
44 mental Quality, the department, after notice and opportunity for hearing, may modify its approval  
45 of a contingency plan **required under ORS 468B.345** if the department determines that a change

1 has occurred in the operation of the facility or tank vessel necessitating an amended or supple-  
2 mental plan, or that the operator's discharge experience demonstrates a necessity for modification.

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

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

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

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

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

11 (3) Failure of a holder of an approved or modified contingency plan to comply with the plan or  
12 to have access to the quality or quantity of resources identified in the plan or to respond with those  
13 resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to  
14 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other applicable law.

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

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

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

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

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

25 (d) Comply with terms and conditions attached to the plan by the department under ORS  
26 468B.345 to 468B.380; and

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

29  
30 **FINANCIAL RESPONSIBILITY**

31  
32 **SECTION 13. (1) A railroad that owns or operates a high hazard train route shall submit**  
33 **to the Department of Environmental Quality, together with a contingency plan required un-**  
34 **der section 5 of this 2019 Act, a financial responsibility statement described in subsection (2)**  
35 **of this section. The railroad shall submit an updated statement at least once every five years,**  
36 **together with submission of a renewed contingency plan under section 5 (4) of this 2019 Act.**

37 **(2) A financial responsibility statement required by this section must:**

38 **(a) Demonstrate the railroad's ability, in the form of insurance, reserve accounts, letters**  
39 **of credit or other financial instruments or resources on which the railroad can rely, to pay**  
40 **the costs to clean up a worst case spill as calculated under subsection (3) of this section; and**

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

44 **(3) For the purposes of this section, a railroad that owns or operates a high hazard train**  
45 **route shall calculate the total costs to clean up a worst case spill based on a minimum cost**

1 of \$16,800 per barrel of oil multiplied by the number of barrels of oil that would constitute a  
2 worst case spill on the high hazard train route.

3 (4) A statement prepared for an agency of the federal government or an adjacent state  
4 that satisfies the requirements of this section may be accepted as a financial responsibility  
5 statement under this section.

6  
7 FEES  
8

9 **SECTION 13a.** (1) Subject to subsections (2) and (3) of this section, each railroad that is  
10 required to submit a contingency plan for a high hazard train route under section 5 of this  
11 2019 Act shall pay to the Department of Transportation in each year a fee equal to the  
12 amount that the Department of Environmental Quality finds and determines to be necessary  
13 to defray the costs of only those duties imposed on the Department of Environmental Quality  
14 by law for which costs may be paid from the High Hazard Train Route Oil Spill Preparedness  
15 Fund established under section 14 of this 2019 Act.

16 (2) In each calendar year, the percentage rate of the fee required to be paid shall be de-  
17 termined by orders entered by the Department of Transportation on or after March 1 of each  
18 year. The department shall provide notice of the order to each railroad. Each railroad shall  
19 pay to the Department of Transportation the fee or portion of the fee as computed pursuant  
20 to this subsection on a date, as specified in the notice, that is at least 15 days after the date  
21 of mailing the notice.

22 (3) The total of the fees payable by railroads described in subsection (1) of this section  
23 may not exceed five hundredths of one percent of the combined gross operating revenues  
24 derived within this state of all railroads described in subsection (1) of this section.

25 (4) Payment of each fee or portion of the fee, verification of gross operating revenues  
26 by the railroad and any refunds of overpayment of the fee shall be made in the manner  
27 provided for and at the same time as payment of the fee required under ORS 824.010 and  
28 subject to ORS 824.012. Notwithstanding ORS 824.010 (1) and (4), the fee provided for in this  
29 section shall be in addition to all other fees paid or payable by railroads to the Department  
30 of Transportation.

31 (5) Fees collected under this section shall be paid into the State Treasury and deposited  
32 in the High Hazard Train Route Oil Spill Preparedness Fund established under section 14 of  
33 this 2019 Act.

34 **SECTION 13b.** As used in this section and section 13c of this 2019 Act:

35 (1) "Oil" has the meaning given that term in ORS 468B.300 except that "oil" does not  
36 mean gasoline or any other petroleum related product that has been processed such that it  
37 is capable of being used as a fuel for the propulsion of a motor vehicle.

38 (2) "Owner" means the person who has the ultimate control over, and the right to use  
39 or sell, oil being shipped.

40 (3) "Person" means an individual, trust, firm, joint stock company, corporation, part-  
41 nership, joint venture, consortium, association, state, municipality, commission, political  
42 subdivision of a state or any interstate body, any commercial entity and the federal govern-  
43 ment or any agency of the federal government.

44 (4) "Tank railroad car" means a loaded or unloaded railroad car or rolling stock desig-  
45 nated to transport oil as part of a single train that transports:

1 (a) 20 or more tank railroad cars in a continuous block that are loaded with oil; or

2 (b) 35 or more tank railroad cars loaded with oil that are spread throughout the entirety  
3 of the rolling stock, not including the locomotive, that make up the train.

4 **SECTION 13c.** (1)(a) The owner of oil at the time the oil is transported by loaded tank  
5 railroad car in this state shall pay to the Department of Revenue a fee not to exceed \$20 for  
6 each tank railroad car loaded with oil.

7 (b) If the loaded tank railroad car enters this state from outside of this state, the fee  
8 shall be imposed on the owner of the oil at the time the loaded tank railroad car enters this  
9 state.

10 (c) If the tank railroad car is loaded with oil in this state, the fee shall be imposed upon  
11 the loading of the oil into or onto the tank railroad car for transport in or through this state.

12 (2) The Department of Environmental Quality and the office of the State Fire Marshal  
13 shall establish by rule the amount of the fee required under this section as necessary to  
14 provide funding for programs authorized to be funded by moneys in the High Hazard Train  
15 Route Oil Spill Preparedness Fund established under section 14 of this 2019 Act and the Oil  
16 and Hazardous Material Transportation by Rail Action Fund established under ORS 453.394.

17 (3) Any oil that the Constitution or laws of the United States prohibit the state from  
18 taxing is exempt from the fee imposed under this section.

19 (4)(a) Each owner of oil transported by loaded tank railroad car shall remit payment of  
20 the fee established under this section on a quarterly basis.

21 (b) Each owner of oil transported by loaded tank railroad car shall register with the De-  
22 partment of Revenue at least 30 days prior to the date that the owner's oil is transported  
23 by loaded tank railroad car in this state.

24 (c) Each owner of oil transported by loaded tank railroad car shall keep at the person's  
25 registered place of business complete and accurate records of any petroleum products sold,  
26 purchased by, or brought in or caused to be brought in to the place of business.

27 (d) The Department of Revenue, upon oral or written reasonable notice, may make such  
28 examinations of the books, papers, records and equipment required to be kept under this  
29 subsection as it may deem necessary in carrying out this section.

30 (5) The Department of Revenue is authorized to establish those rules and procedures for  
31 the implementation and enforcement of this section that are consistent with this section's  
32 provisions and are considered necessary and appropriate.

33 (6) The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for re-  
34 fund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection  
35 pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest,  
36 subpoenaing and examining witnesses and books and papers, and the issuance of warrants  
37 and the procedures relating thereto, shall apply to the collection of fees, penalties and in-  
38 terest by the Department of Revenue under this section, except where the context requires  
39 otherwise.

40 (7) All moneys received by the Department of Revenue under this section shall be de-  
41 posited in the State Treasury and credited to a suspense account established under ORS  
42 293.445. After payment of administration expenses incurred by the department in the ad-  
43 ministration of this section and of refunds or credits arising from erroneous overpayments,  
44 the balance of the money shall be transferred to the High Hazard Train Route Oil Spill  
45 Preparedness Fund established under section 14 of this 2019 Act and to the Oil and Hazardous

1 **Material Transportation by Rail Action Fund established under ORS 453.394, in the propor-**  
2 **tionate amounts that each agency found and determined to be necessary under subsection**  
3 **(2) of this section.**

4 **SECTION 13d. (1) Sections 13a to 13c of this 2019 Act are repealed on January 2, 2027.**

5 **(2) Any moneys remaining in the High Hazard Train Route Oil Spill Preparedness Fund**  
6 **established under section 14 of this 2019 Act and the Oil and Hazardous Material Transpor-**  
7 **tation by Rail Action Fund established under ORS 453.394 on the date of the repeal specified**  
8 **in subsection (1) of this section that were collected pursuant to sections 13a to 13c of this**  
9 **2019 Act that are unexpended, unobligated and not subject to any conditions shall be re-**  
10 **funded to the payors without interest.**

11  
12 **HIGH HAZARD TRAIN ROUTE OIL SPILL PREPAREDNESS FUND**

13  
14 **SECTION 14. (1) The High Hazard Train Route Oil Spill Preparedness Fund is established**  
15 **in the State Treasury, separate and distinct from the General Fund. Interest earned by the**  
16 **High Hazard Train Route Oil Spill Preparedness Fund shall be credited to the fund.**

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

18 **(a) All moneys placed in the fund as provided by law; and**

19 **(b) Any gifts, grants, donations, endowments or bequests from any public or private**  
20 **source.**

21 **(3) Moneys in the fund are continuously appropriated to the Department of Environ-**  
22 **mental Quality to be used only to pay the costs of the department incurred to:**

23 **(a) Review, under section 9 of this 2019 Act, contingency plans for high hazard train**  
24 **routes required under section 5 of this 2019 Act;**

25 **(b) Verify proof of financial responsibility required by section 13 of this 2019 Act;**

26 **(c) Develop, review and revise the portions of the oil spill response plan required by ORS**  
27 **468B.495 and 468B.500 that relate to high hazard train routes; and**

28 **(d) Participate in training, response exercises, inspections and tests in order to verify:**

29 **(A) Equipment inventories; and**

30 **(B) The abilities of the following to prevent and respond to oil spill or release emergen-**  
31 **cies related to high hazard train routes and to undertake other activities intended to main-**  
32 **tain the capabilities for emergency response related to high hazard train routes:**

33 **(i) The state;**

34 **(ii) Municipalities; or**

35 **(iii) Railroads that own or operate high hazard train routes.**

36 **(4) Notwithstanding any contrary provision of subsection (3) of this section, moneys in**  
37 **the High Hazard Train Route Oil Spill Preparedness Fund may not be used to pay the costs**  
38 **of the department that may be paid with moneys deposited in the Oil Spill Prevention Fund**  
39 **established under ORS 468B.410.**

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

41 **468B.410. (1) The Oil Spill Prevention Fund is established separate and distinct from the General**  
42 **Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys re-**  
43 **ceived by the Department of Environmental Quality for the purpose of oil and hazardous material**  
44 **spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and**  
45 **credited to the fund.**

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

3 (3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the Depart-  
4 ment of Environmental Quality to be used in the manner described in subsection (4) of this section.

5 (4) The Oil Spill Prevention Fund may be used by the Department of Environmental Quality to:

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

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

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

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

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

15 **(5) Notwithstanding any contrary provision of subsection (4) of this section, moneys in**  
16 **the Oil Spill Prevention Fund may not be used to pay the costs of the department that may**  
17 **be paid with moneys deposited in the High Hazard Train Route Oil Spill Preparedness Fund**  
18 **established under section 14 of this 2019 Act.**

19  
20 **INTERAGENCY RESPONSE PLAN**

21  
22 **SECTION 16.** ORS 468B.495 is amended to read:

23 468B.495. (1) The Department of Environmental Quality shall develop an integrated, interagency  
24 response plan for oil or hazardous material spills in the Columbia River, the Willamette River up  
25 to Willamette Falls and the coastal waters and estuaries of the state, **and along high hazard train**  
26 **routes**. In developing the response plan, the department shall work with all affected local, state and  
27 federal agencies, **with railroads required to have approved contingency plans under section 5**  
28 **of this 2019 Act** and with any volunteer group interested in participating in oil or hazardous ma-  
29 terial spill response.

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

33  
34 **STATE FIRE MARSHAL PROVISIONS**

35  
36 **SECTION 17.** ORS 453.392 is amended to read:

37 453.392. (1) As part of the plan for the effective implementation of a statewide hazardous mate-  
38 rial emergency response system established by rule under ORS 453.374, the State Fire Marshal shall  
39 adopt by rule a plan for the coordinated response to oil or hazardous material spills or releases that  
40 occur during rail transport. The plan adopted under this subsection:

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

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

45 (c) Shall provide a system for identifying where hazardous material response [materials] re-

1 **sources** owned by railroads are located throughout this state and how access to those [*materials*]  
2 **resources** is to be coordinated; [*and*]

3 **(d) Shall include a recurring, three-year training cycle of statewide training exercises**  
4 **that:**

5 **(A) Commences with a triennial tabletop exercise that includes the Department of Envi-**  
6 **ronmental Quality, the Department of Transportation, the Office of Emergency Management,**  
7 **state and local responders, federally recognized Indian tribes in this state and railroads that**  
8 **operate in this state;**

9 **(B) Includes, in the second year of the training cycle, a triennial statewide functional**  
10 **exercise to test and evaluate response capabilities, functional groups, plans, incident com-**  
11 **mand staff and emergency operations centers in their abilities to respond to an oil or a**  
12 **hazardous material spill or release that occurs during rail transport; and**

13 **(C) Includes provisions for the planning, preparation and implementation, in the third**  
14 **year of the training cycle, of a triennial full-scale, multiagency, multijurisdictional and**  
15 **multidisciplinary oil or hazardous material spill or release training exercise that:**

16 **(i) Involves training for all manner of personnel necessary for a coordinated response to**  
17 **an oil or a hazardous material spill or release;**

18 **(ii) Is intended to examine or validate the planning, coordination and command and con-**  
19 **trol decisions that may be made in the event of an oil or hazardous material spill or release**  
20 **and to also examine or validate response-specific capabilities or functions; and**

21 **(iii) Involves training that covers the entire sequence of events that take place during**  
22 **an oil or hazardous material spill or release incident that occurs during rail transport; and**

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

26 (2) The office of the State Fire Marshal shall annually coordinate with local governments, other  
27 state agencies involved in hazardous material emergency response, other responders and represen-  
28 tatives of the railroad industry to prepare a report on the coordinated response plan adopted under  
29 this section and shall:

30 (a) Make the report available as an appendix to the Office of Emergency Management's oil and  
31 hazardous material response emergency operations plan developed pursuant to ORS 401.092; and

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

34 (3) The report required by subsection (2) of this section shall include, but need not be limited  
35 to, the following in relation to oil and hazardous material emergency response for rail transport:

36 (a) An inventory of all emergency response resources available in this state, including informa-  
37 tion on:

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

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

40 (C) Additional resources that are needed to provide for adequate response;

41 (b) Suggested changes to the structure for the continued coordination between state agencies  
42 and industry;

43 (c) Possible revisions to the response roles or responsibilities of state agencies, local govern-  
44 ments and railroads; and

45 (d) Strategies for ensuring adequate funding at the state and local government levels to cover

1 the training, equipment and administrative costs associated with providing comprehensive response  
2 and equipment.

3

4

**UNIT CAPTIONS**

5

6 **SECTION 18. The unit captions used in this 2019 Act are provided only for the conven-**  
7 **ience of the reader and do not become part of the statutory law of this state or express any**  
8 **legislative intent in the enactment of this 2019 Act.**

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