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## LEGISLATIVE CONCEPT

### **Risk Bonding to Limit Public Liability for Costs of Catastrophic Event and Removal of Abandoned Infrastructure**

**Problem:** Above-ground storage tanks present safety risks due to fire, flood, and collapse that can result in toxic spills, lead to fire and explosions, and precipitate or increase cascading effects of disaster.

The [2022 Portland-Multnomah County report](#) projected billions of dollars of costs due to a major seismic event impacting the CEI Hub—a disaster which could also result from triggers such as lightning strikes, floods, human error, equipment malfunction, and more. Some environmental damage from a CEI Hub disaster will be permanent; some will take decades to recover from. There is currently no provision to ensure that fuel facilities will or can be held financially accountable. Currently, these risks are externalized and costs of a catastrophic event will fall to the public, government, and taxpayers. Marginalized communities typically sustain disproportionate costs. Based on past experiences at other fuel spill and fire locations, the amount of post-disaster operator money available is insufficient. Companies often claim bankruptcy or avoid responsibility by selling their property. Limited federal emergency funding is available but will not pay the entire cost of the predicted CEI Hub disaster. The State Seismic Mitigation Fund currently has no money. Without assigned financial responsibility combined with surety guarantees that cover the full costs of predictable damages caused by CEI Hub operations and infrastructure, any such disaster costs (emergency response, removal, recovery, reparations) will surely fall to taxpayers.

Abandoned fuel infrastructure contributes to these dangers without providing any benefits in the form of fuel storage. There are more than 600 above-ground storage tanks at the CEI Hub--139 are out-of-service (OOS) liquid fuel tanks\*; most/all:

- were built before seismic standards were required
- are permanently abandoned
- are unable to pass the state required seismic stability assessments or be candidates for mitigation, rendering them unusable
- are not required to be removed

It's well known that old, unsafe, and/or abandoned fossil fuel infrastructure will increase as the liquid fuel industry transitions to climate-friendly alternatives because there are no incentives to remove them.

A 2024 report by economic researchers with the Center for Sustainable Economy, published by the Brookings Institute, "Fossil fuel risk bond programs: A policy innovation makes headway in the Pacific Northwest" is cited below. It addresses "categories of market failure associated with fossil fuel infrastructure", one being "the uncompensated physical and economic damages to air, land, and water that communities routinely experience associated with leaks, spills, accidents and

abandonment...” Fossil fuel risk-bonding can unfold in phases. Financial assurance mechanisms are explained in that report, as well as in the [EPAs Risk Bonding Reference Manual](#).

Assigning fiscal responsibility now for catastrophic damages is the best way to preclude costly and time-consuming litigation later. It can also incentivize operators to adopt risk prevention and mitigation measures in order to reduce the cost of risk bonding.

**Considerations:** Bad model: Consider the Portland Harbor Superfund situation where “responsible parties” are identified, but arguing about fiscal issues persists decades later.

Better models: Oregon currently requires insurance or other form of surety for all underground storage tanks for permits to operate. The EPAs Underground Storage Tank [UST] bonding program is managed by DEQ. Like underground tanks, above-ground tanks present environmental hazards because they contain millions of gallons of liquid fuels and oils, as well as residue and sludge that can enter the air, water, and soil, contributing to costly cleanup costs and prolonging recovery.

Millersburg, OR passed an ordinance in 2022 \*\*\* stating that any liquid fuel storage tank unused for 12 months must be removed. Kinder Morgan removed 15 tanks there. According to their city manager, this was based on existing Portland Fire and Rescue Department Code. However, fire codes (federal, state, and city) carve out an exception for abandoned/out-of-service tanks in facilities currently in operation.

Multnomah County and Eugene are currently considering “polluter pays” risk bonding actions.

The [EPA currently requires](#) financial assurances (e.g., risk bonding) for underground storage tanks, but not for above-ground storage tanks [ASTs]. A handful of states do have AST risk bonding programs, including Colorado, Delaware, Florida, New Mexico, and West Virginia. This demonstrates that states can and do enact and enforce this kind of operator responsibility legislation. However, none of those specific programs would be adequate for Oregon (in that they allow self-insurance, exceptions for “acts of God,” and set risk bonding levels very far below expected cost of disaster clean-up and recovery). Kings County, WA passed a risk bonding ordinance in 2023.

Although a liquid fuel trust fund would offer the strongest protections for taxpayers and the public because it would require operators to deposit funds in a publicly held trust in advance. A trust fund would eliminate the risk of litigation following a disaster. However, this is likely to generate stronger industry pushback than risk bonding. Risk bonding is a widely used form of assigning financial responsibility, including for the fossil fuel industry (but not yet for above-ground tanks).

**Solutions:** Enact risk bonding requirements tied to operating licensure/certification sufficiently robust to ensure that taxpayers will not be financially liable for the costs of clean-up, recovery, and restoration following a seismic or any other disaster, and for the costs of removing abandoned/out-of-service infrastructure and any required remediation following removal.

**Request:** Legislation that assigns financial responsibility to liquid fuel and oil facilities, and that requires annual certification of surety/risk bonds sufficient to cover the costs of catastrophic accidents and removal of abandoned and out-of-service infrastructure.

- Require operators to carry surety/risk bonding commensurate with predicted damages, inclusive of clean-up, recovery, and restoration.

- Require annual certification of active 3rd party risk bonding that would be fully cover damages in the event of a failure of AST facilities regardless of the cause. (DEQ’s requirement for certification of bonding by USTs can serve as a starting model.)
- Define legally what “abandoned infrastructure” is and assign fiscal responsibility for its removal to the corporate owners. This would include out-of-service tanks not eligible for reuse.
- Require any toxic residue that persists following structural removal to be the responsibility of the owners/operators to remove, pre-empting later cost and litigation.
- Ensure that risk-bonding legislation is difficult to circumnavigate or to avoid (most importantly, disallow self-insurance and act-of-god exemptions). Do not adopt the “act of God” terminology from existing OPA (Oil Pollution Act of 1990) liability regulations. Since the eventuality and risks of an earthquake, flood, fire, or lightning are well documented, the oil industry should not be permitted to claim this defense.

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\*Salus Resilience, 4/23; <https://www.multco.us/em/oregon-resilience-plan>

\*\*CSE Report: <https://www.brookings.edu/articles/fossil-fuel-risk-bond-programs-a-policy-innovation-makes-headway-in-the-pacific-northwest/>

\*\*\* *Millersburg ordinance:*

[https://library.municode.com/or/millersburg/codes/municipal\\_code?nodeId=TIT17FIPR\\_CH17.40ABGR\\_STTA\\_17.40.010AB](https://library.municode.com/or/millersburg/codes/municipal_code?nodeId=TIT17FIPR_CH17.40ABGR_STTA_17.40.010AB)

*Personal email from Kevin Kreitman to Nancy Hiser 8.1.23: “We actually used a Portland code to model our ordinance <https://www.portland.gov/policies/portland-fire-and-rescue/flammable-combustible-liquids/fir-701-abandoned-flammable-liquid>. The 2022 Oregon Fire Code also addresses removal of out of service above ground tanks in section 5704.2.13.2*

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