

House Bill 4004

Sponsored by Representative SMITH WARNER (Presession filed.)

SUMMARY

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

Directs Environmental Quality Commission to adopt rules applying certain oil spill prevention and emergency response planning requirements to railroads that own or operate high hazard train routes in this state. Modifies certain requirements under oil or hazardous material spillage statutes.

Requires railroads that own or operate high hazard train routes to submit annually certain proof of financial responsibility for high hazard train routes.

Establishes High Hazard Train Route Oil Spill Prevention Fund. Continuously appropriates moneys in fund to Department of Environmental Quality to be used for costs related to contingency planning and preparedness for high hazard train routes.

Becomes operative January 1, 2019.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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

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

AMENDMENTS TO OIL OR HAZARDOUS MATERIAL SPILLAGE STATUTES

6
7
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.

20 (4) "Contingency plan" means an oil spill prevention and emergency response plan required un-
21 der ORS 468B.345.

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

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

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

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 ting, emptying or dumping oil.

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

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

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

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

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

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

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

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

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

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

26 (b) **Over which trains that consist of 25 or more tanker railroad cars transporting oil as**
27 **cargo operate.**

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

32 [(13)] (15) "Maritime association" means an association or cooperative of marine terminals, fa-
33 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-
34 vides oil spill response planning and spill related communications services within the state.

35 [(14)] (16) "Maximum probable spill" means the maximum probable spill for a vessel operating
36 in the navigable waters of the state considering the history of spills of vessels of the same class
37 operating on the west coast of the United States.

38 (17) **"National Contingency Plan" means the plan prepared and published under section**
39 **311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil**
40 **Pollution Act of 1990 (P.L. 101-380).**

41 [(15)] (18) "Navigable waters" means the Columbia River, the Willamette River up to Willamette
42 Falls, the Pacific Ocean and estuaries to the head of tidewater.

43 [(16)] *"National Contingency Plan" means the plan prepared and published under section 311(d) of*
44 *the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of*
45 *1990 (P.L. 101-380).]*

1 [(17)] (19) “Offshore facility” means any facility located in, on or under any of the navigable
 2 waters of the state.

3 [(18)] (20) “Oils” or “oil” means:

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

7 (b) Liquefied natural gas.

8 [(19)] (21) “Onshore facility” means any facility located in, on or under any land of the state,
 9 other than submerged land, that, because of its location, could reasonably be expected to cause
 10 substantial harm to the environment by discharging oil into or on the navigable waters of the state
 11 or adjoining shorelines.

12 [(20)] (22) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for
 13 compensation.

14 [(21)] (23) “Person” has the meaning given the term in ORS 468.005.

15 [(22)] (24) “Person having control over oil” includes but is not limited to any person using,
 16 storing or transporting oil immediately prior to entry of such oil into the navigable waters of the
 17 state, and shall specifically include carriers and bailees of such oil.

18 [(23)] (25) “Pipeline” means a facility, including piping, compressors, pump stations and storage
 19 tanks, used to transport oil between facilities or between facilities and tank vessels.

20 [(24)] (26) “Region of operation” with respect to the holder of a contingency plan means the area
 21 where the operations of the holder that require a contingency plan are located.

22 [(25)] (27) “Removal costs” means the costs of removal that are incurred after a discharge of
 23 oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs
 24 to prevent, minimize or mitigate oil pollution from the incident.

25 [(26)] (28) “Responsible party” has the meaning given under section 1001 of the Oil Pollution
 26 Act of 1990 (P.L. 101-380).

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

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

32 (b) For purposes of this subsection:

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

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

41 [(29)] (31) “Tank vessel” means a ship that is constructed or adapted to carry oil in bulk as
 42 cargo or cargo residue. “Tank vessel” does not include:

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

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

45 (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 vessel complicated
3 by adverse weather conditions; [and]

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

6 **(c) In the case of a high hazard train route, a spill of the entire capacity, measured in**
7 **barrels of oil, of a train that consists of the largest number of tanker railroad cars trans-**
8 **porting oil as cargo that may be operated on the high hazard train route in a given period,**
9 **in adverse weather conditions.**

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

11 468B.340. (1) The Legislative Assembly finds that:

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

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

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

17 (A) Gaps in regulatory oversight;

18 (B) Incomplete cost recovery by states;

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

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

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

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

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

29 **(b) The prevention of oil spills into inland rivers and streams serving as essential habitat**
30 **for salmon and other wildlife or as a source of water for consumption, irrigation or other**
31 **public uses of local concern;**

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

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

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

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

37 [(d)] (g) The establishment, coordination and duties of safety committees as provided in ORS
38 468B.415; and

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

41 **SECTION 3.** Section 4 of this 2018 Act is added to and made a part of ORS 468B.345 to
42 **468B.415.**

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

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

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

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

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

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

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

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

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

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

(b) It is not a defense to an action brought for a violation of this subsection that the person charged believed that a current contingency plan had been approved by the department.

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

(d) Failure by an owner or operator of a high hazard train route to comply with this subsection or to be in compliance with a contingency plan submitted under this subsection does not preclude the owner or operator from operating the high hazard train route.

SECTION 6. Section 7 of this 2018 Act is added to and made a part of ORS 468B.345 to 468B.415.

SECTION 7. (1) The Environmental Quality Commission, after consultation and in coordination with the State Fire Marshal, shall adopt rules defining:

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

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

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

(a) To the extent feasible and appropriate, define standards for the preparation of contingency plans for high hazard train routes that are equivalent to standards for the preparation of contingency plans for facilities adopted under ORS 468B.350; and

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

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

(a) Offer training at least once every three years to each fire department, including each tribal fire department, having jurisdiction along the high hazard train routes owned or operated by the railroad. Training provided under this paragraph must be coordinated by the State Fire Marshal and meet any requirements for ongoing training adopted by the State Fire Marshal by rule under ORS 453.392.

(b) Following confirmation of a discharge from a train along a high hazard train route,

1 **deliver and deploy sufficient equipment and trained personnel to contain and recover dis-**
 2 **charged oil or hazardous materials and to protect life, safety, property and the environment.**

3 **(c) Within a certain time period after confirmation of a discharge as set forth in rule by**
 4 **the commission, be capable of delivering and deploying containment booms, boats, oil recov-**
 5 **ery equipment, trained staff and all other materials needed to provide:**

6 **(A) On-site containment and recovery of a volume of oil equal to a percentage of the**
 7 **calculated worst case spill as required by the commission by rule at any location along the**
 8 **route; and**

9 **(B) Protection of the listed sensitive areas and potable water intakes that are within a**
 10 **distance as specified by the commission by rule from a discharge site and within eight hours**
 11 **of water travel time downstream in any river or stream that the high hazard train route**
 12 **abuts.**

13 **(d) Conduct at least one oil containment, recovery and listed sensitive area protection**
 14 **drill every three years, at a location and time chosen by the Department of Environmental**
 15 **Quality.**

16 **(4) A railroad may arrange with a contractor or other qualified public or private entity**
 17 **to supply containment booms under subsection (3) of this section. Any arrangement entered**
 18 **into under this subsection must be tested by drill at least once every five years.**

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

20 468B.355. (1) A contingency plan for a facility or covered vessel shall be submitted to the De-
 21 partment of Environmental Quality within 12 months after the Environmental Quality Commission
 22 adopts rules under ORS 468B.350. The department may adopt a schedule for submission of an oil
 23 contingency plan within the 12-month period. The schedule for the Columbia River shall be coordi-
 24 nated with the State of Washington. The department may adopt an alternative schedule for the
 25 Oregon coast and the Willamette River.

26 **(2) A contingency plan for a high hazard train route shall be submitted to the department**
 27 **within 12 months after the commission adopts rules under section 7 of this 2018 Act. The**
 28 **department may adopt a schedule for submission of a contingency plan within the 12-month**
 29 **period.**

30 [(2)] **(3) The contingency plan for a facility shall be submitted by the owner or operator of the**
 31 **facility or by a qualified oil spill response cooperative in which the facility owner or operator is a**
 32 **participating member.**

33 [(3)] **(4) The contingency plan for a tank vessel shall be submitted by:**

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

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

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

39 [(4)] **(5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,**
 40 **if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank**
 41 **vessels of a particular class that will be loading or unloading cargo at the facility.**

42 [(5)] **(6) The contingency plan for a cargo vessel or passenger vessel may be submitted by the**
 43 **owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to con-**
 44 **ditions imposed by the department, the owner, operator, agent or a maritime association may submit**
 45 **a single contingency plan for cargo vessels or passenger vessels of a particular class.**

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

3 [(6)] **(8)** A person that has contracted with a facility, [or] covered vessel **or railroad that op-**
4 **erates a high hazard train route** to provide containment and cleanup services and that meets the
5 standards established by the commission under ORS 468B.350 **or section 7 of this 2018 Act** may
6 submit the contingency plan for any facility, [or] covered vessel **or high hazard train route** for
7 which the person is contractually obligated to provide services. Subject to conditions imposed by the
8 department, the person may submit a single plan for more than one covered vessel.

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

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

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

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

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

31 [(12)] **(14)** Obligations incurred by a maritime association and any other liabilities or claims
32 against the association shall be enforced only against the assets of the association, and no liability
33 for the debts or action of the association exists against either the State of Oregon or any other
34 subdivision or instrumentality thereof, or against any member, officer, employee or agent of the as-
35 sociation in an individual or representative capacity.

36 [(13)] **(15)** Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the mem-
37 bers of the association, its officers, agents or employees, nor the business entities by whom the
38 members are regularly employed, may be held individually responsible for errors in judgment, mis-
39 takes or other acts, either of commission or omission, as principal, agent, person or employee, save
40 for their own individual acts of dishonesty or crime.

41 [(14)] **(16)** Assessment participation in a maritime association does not constitute a defense to
42 liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment
43 participation shall not relieve a covered vessel from complying with those portions of the approved
44 maritime association contingency plan that may require vessel specific oil spill response equipment,
45 training or capabilities for that vessel.

1 [(15)] (17) A person providing a contingency plan for a cargo or passenger vessel under this
 2 section shall be exempt from liability as provided under ORS 468B.425 for any action taken or
 3 omitted in the course of providing contingency planning service.

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

5 468B.360. In reviewing the contingency plan required by ORS 468B.345, the Department of En-
 6 vironmental Quality shall consider at least the following factors:

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

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

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

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

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

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

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

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

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

27 (10) The spill response equipment and resources available to a person providing a contingency
 28 plan for cargo and passenger vessels under contingency plans filed by the person under state or
 29 federal law for other covered vessels or facilities owned or operated by that person.

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

31 468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only
 32 if it determines that:

33 (a)(A) The plan **for a covered vessel or facility** meets the requirements of ORS 468B.345 to
 34 468B.360 and[:]

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

37 **(B) The plan for a high hazard train route meets the requirements of ORS 468B.345 to**
 38 **468B.360; and**

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

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

1 plan as a result of these changes.

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

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

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

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

13 (c) Complies with the contingency plan.

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

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

18 (a) Periodic training;

19 (b) Response team exercises; and

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

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

28 (8)(a) Before the department approves or modifies a contingency plan required under ORS
29 468B.345, the department shall provide a copy of the contingency plan to the State Department of
30 Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation
31 and Development for review.

32 **(b) In addition to providing copies to the agencies listed in paragraph (a) of this sub-**
33 **section, before approving or modifying a contingency plan for a high hazard train route, the**
34 **Department of Environmental Quality shall provide a copy of the contingency plan to feder-**
35 **ally recognized Indian tribes.**

36 **(c) [The] Agencies and tribes that receive copies of a contingency plan under this sub-**
37 **section** shall review the plan according to procedures and time limits established by rule of the
38 Environmental Quality Commission.

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

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

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

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

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

(a) Approval was obtained by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. ORS 468B.410 is amended to read:

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

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

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

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

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

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

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

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

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

8 **(5) Notwithstanding any contrary provision of subsection (4) of this section, moneys in**
9 **the Oil Spill Prevention Fund may not be used to pay the costs of the department that may**
10 **be paid with moneys deposited in the High Hazard Train Route Oil Spill Prevention Fund**
11 **established under section 14 of this 2018 Act.**

12 **SECTION 13. Section 14 of this 2018 Act is added to and made a part of ORS 468B.345 to**
13 **468B.415.**

14 **SECTION 14. (1) The High Hazard Train Route Oil Spill Prevention 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 Prevention 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 ORS 468B.360, contingency plans for high hazard train routes;**

24 **(b) Conduct training, response exercises, inspection and tests in order to verify equip-**
25 **ment inventories and ability to prevent and respond to oil release emergencies related to**
26 **high hazard train routes and to undertake other activities intended to verify or establish the**
27 **preparedness of the state, a municipality or an owner or operator of a high hazard train**
28 **route required by ORS 468B.345 to 468B.415 to have an approved contingency plan to act in**
29 **accordance with that plan; and**

30 **(c) Develop, review and revise the portions of the oil spill response plan required by ORS**
31 **468B.495 and 468B.500 that relate to listed sensitive areas along high hazard train routes.**

32 **SECTION 15. ORS 468B.495 is amended to read:**

33 468B.495. (1) The Department of Environmental Quality shall develop an integrated, interagency
34 response plan for oil or hazardous material spills in the Columbia River, the Willamette River up
35 to Willamette Falls and the coastal waters and estuaries of the state **and listed sensitive areas**
36 **along high hazard train routes.** In developing the response plan, the department shall work with
37 all affected local, state and federal agencies and with any volunteer group interested in participating
38 in oil or hazardous material spill response.

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

42
43 **RAILROAD FINANCIAL RESPONSIBILITY STATEMENTS**

44
45 **SECTION 16. Section 17 of this 2018 Act is added to and made a part of ORS 468B.300 to**

1 468B.500.

2 **SECTION 17.** (1) As used in this section:

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

5 (b) “Worst case spill” means a spill of an amount of barrels of oil calculated as required
6 by rule by the Environmental Quality Commission.

7 (2) A railroad that owns or operates a high hazard train route shall annually submit to
8 the Department of Environmental Quality a statement that:

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

12 (b) Identifies the capacity, measured in barrels of oil, of trains consisting of the average
13 and the largest number of tanker railroad cars transporting oil as cargo that were operated
14 on high hazard train routes by the railroad in the previous calendar year; and

15 (c) Includes additional information sufficient to demonstrate the railroad’s ability to pay
16 the cost to clean up a worst case spill.

17
18 **MISCELLANEOUS**
19

20 **SECTION 18.** (1) Sections 3, 4, 6, 7, 13, 14, 16 and 17 of this 2018 Act and the amendments
21 to statutes by sections 1, 2, 5, 8 to 12 and 15 of this 2018 Act become operative on January
22 1, 2019.

23 (2) The Environmental Quality Commission, the Department of Environmental Quality,
24 the Department of Transportation and the State Fire Marshal may take any action before
25 the operative date specified in subsection (1) of this section that is necessary for the com-
26 mission, the departments or the State Fire Marshal to exercise, on and after the operative
27 date specified in subsection (1) of this section, any of the duties, functions and powers con-
28 ferred on the commission, the departments and the State Fire Marshal by sections 3, 4, 6,
29 7, 13, 14, 16 and 17 of this 2018 Act and the amendments to statutes by sections 1, 2, 5, 8 to
30 12 and 15 of this 2018 Act.

31 **SECTION 19.** The unit captions used in this 2018 Act are provided only for the conven-
32 ience of the reader and do not become part of the statutory law of this state or express any
33 legislative intent in the enactment of this 2018 Act.

34 **SECTION 20.** This 2018 Act takes effect on the 91st day after the date on which the 2018
35 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.
36