

Enrolled
House Bill 2209

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

CHAPTER

AN ACT

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

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

CONTINGENCY PLANNING FOR HIGH HAZARD TRAIN ROUTES
(Definitions)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(18)] (19) “Oils” or “oil” means:

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

(b) Liquefied natural gas.

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

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

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

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

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

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

(c) An oil spill response barge or vessel.

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

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

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

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

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

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

(Entry of Oil Into Waters of The State Prohibited)

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

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

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

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

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

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

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

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

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

(Contingency Planning Requirements)

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

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

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

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

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

(A) Gaps in regulatory oversight;

(B) Incomplete cost recovery by states;

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

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

(E) Comprehensive oil spill prevention demands participation by industry, citizens, environmental organizations and local, state, federal and international governments.

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

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

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

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

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

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

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

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

SECTION 5. (1) 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 of Environmental Quality.

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

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

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

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

(C) A statement of whether personnel are available to arrive on behalf of the railroad that owns or operates the high hazard train route to respond to an oil spill or release or threatened oil spill or release and if personnel are available, the contact information for the personnel.

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

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

(5) The department shall respond to the submission of a contingency plan or a contingency plan renewal for a high hazard train route within 90 days of the date that the contingency plan or the contingency plan renewal is submitted, or within a longer time period that is mutually agreed upon by the department and the railroad submitting the contingency plan if the department and railroad agree that the longer time period is necessary for the department to provide a response. Failure by the department to respond to a contingency plan or a contingency plan renewal within the requisite time period constitutes approval of the contingency plan or the contingency plan renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Describe a plan, which may be based in whole or in part on participation in the exercises required by the plan adopted by the State Fire Marshal under ORS 453.392, for participating in or conducting each of the following:

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

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

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

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

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

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

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

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

(D) Information demonstrating that the railroad that owns or operates the high hazard train route has ownership of or access to an emergency response communications network covering the entire high hazard train route and that the emergency response communications network also provides for immediate notification and continual emergency communications during cleanup response;

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

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

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

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

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

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

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

(2) A railroad that owns or operates a high hazard train route shall notify the department in writing promptly of any significant change affecting the contingency plan, including

changes in any factor set forth in this section. The department may require the railroad to update a contingency plan as a result of these changes.

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

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

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

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

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

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

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

(Applicability of Existing Contingency Planning Provisions to High Hazard Train Route Contingency Planning Requirements)

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

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

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

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

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

(3) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, after notifying the department, equipment, materials or per-

sonnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials and personnel as soon as feasible.

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

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

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

(c) Complies with the contingency plan.

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

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

(a) Periodic training;

(b) Response team exercises; and

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

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

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

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

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

SECTION 12. 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 **required under ORS 468B.345** if the department determines that a change has occurred in the operation of the facility 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.

FINANCIAL RESPONSIBILITY

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

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

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

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

(3) For the purposes of this section, a railroad that owns or operates a high hazard train route shall calculate the total costs to clean up a worst case spill based on a minimum cost of \$16,800 per barrel of oil multiplied by the number of barrels of oil that would constitute a worst case spill on the high hazard train route.

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

FEEES

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

(2) In each calendar year, the percentage rate of the fee required to be paid shall be determined by orders entered by the Department of Transportation on or after March 1 of each year. The department shall provide notice of the order to each railroad. Each railroad shall pay to the Department of Transportation the fee or portion of the fee as computed pursuant

to this subsection on a date, as specified in the notice, that is at least 15 days after the date of mailing the notice.

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

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

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

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

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

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

(3) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the federal government or any agency of the federal government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) All moneys received by the Department of Revenue under this section shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of this section and of refunds or credits arising from erroneous overpayments, the balance of the money shall be transferred to the High Hazard Train Route Oil Spill Preparedness Fund established under section 14 of this 2019 Act and to the Oil and Hazardous Material Transportation by Rail Action Fund established under ORS 453.394, in the proportionate amounts that each agency found and determined to be necessary under subsection (2) of this section.

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

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

HIGH HAZARD TRAIN ROUTE OIL SPILL PREPAREDNESS FUND

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

(2) The fund shall consist of:

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

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

(3) Moneys in the fund are continuously appropriated to the Department of Environmental Quality to be used only to pay the costs of the department incurred to:

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

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

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

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

(A) Equipment inventories; and

(B) The abilities of the following to prevent and respond to oil spill or release emergencies related to high hazard train routes and to undertake other activities intended to maintain the capabilities for emergency response related to high hazard train routes:

(i) The state;

(ii) **Municipalities; or**

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

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

SECTION 15. 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;

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

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

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

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

INTERAGENCY RESPONSE PLAN

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

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

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

STATE FIRE MARSHAL PROVISIONS

SECTION 17. ORS 453.392 is amended to read:

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

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

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

(c) Shall provide a system for identifying where hazardous material response [*materials*] resources owned by railroads are located throughout this state and how access to those [*materials*] resources is to be coordinated; [*and*]

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

(A) Commences with a triennial tabletop exercise that includes the Department of Environmental Quality, the Department of Transportation, the Office of Emergency Management, state and local responders, federally recognized Indian tribes in this state and railroads that operate in this state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Strategies for ensuring adequate funding at the state and local government levels to cover the training, equipment and administrative costs associated with providing comprehensive response and equipment.

UNIT CAPTIONS

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

Passed by House June 17, 2019

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 29, 2019

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

.....
Bev Clarno, Secretary of State