

# House Bill 2858

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT (at the request of Friends of the Columbia Gorge)

## 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 high hazard train routes in this state.

Defines "high hazard train route" and "listed sensitive area" for purposes of contingency plans.

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

Requires department to levy and collect annual assessment equal to \$\_\_\_\_\_ per year. Requires railroads that own and operate high hazard train routes to pay share of annual assessment proportionate to high hazard train route track miles operated by railroads.

Establishes High Hazard Train Route Oil Spill Prevention Fund. Requires moneys collected to be deposited in High Hazard Train Route Oil Spill Prevention Fund. Prescribes uses of fund.

Requires facilities receiving crude oil from railroad cars to provide advance notice to department.

Becomes operative January 1, 2020.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to safe transportation of oil; creating new provisions; amending ORS 468B.300, 468B.305, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385, 468B.410, 468B.412 and 468B.495; and prescribing an effective date.

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

## CONTINGENCY PLANNING

**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.

(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 dis-

**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 charge or threatened discharge of oil.

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

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

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

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

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

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

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

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

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

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

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

29 **(b) Over which trains operate that consist of multiple tanker railroad cars transporting**  
 30 **oil or hazardous material as cargo.**

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

35 [(13)] (15) "Maritime association" means an association or cooperative of marine terminals, fa-  
 36 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-  
 37 vides oil spill response planning and spill related communications services within the state.

38 [(14)] (16) "Maximum probable spill" means the maximum probable spill for a vessel operating  
 39 in the navigable waters of the state considering the history of spills of vessels of the same class  
 40 operating on the west coast of the United States.

41 **(17) "National Contingency Plan" means the plan prepared and published under section**  
 42 **311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil**  
 43 **Pollution Act of 1990 (P.L. 101-380).**

44 [(15)] (18) "Navigable waters" means the Columbia River, the Willamette River up to Willamette  
 45 Falls, the Pacific Ocean and estuaries to the head of tidewater.

1        [(16) “National Contingency Plan” means the plan prepared and published under section 311(d) of  
 2        the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of  
 3        1990 (P.L. 101-380).]

4        [(17)] (19) “Offshore facility” means any facility located in, on or under any of the navigable  
 5        waters of the state.

6        [(18)] (20) “Oils” or “oil” means:

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

10        (b) Liquefied natural gas.

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

15        [(20)] (22) “Passenger vessel” means a ship of 300 or more gross tons carrying passengers for  
 16        compensation.

17        [(21)] (23) “Person” has the meaning given the term in ORS 468.005.

18        [(22)] (24) “Person having control over oil” includes but is not limited to any person using,  
 19        storing or transporting oil immediately prior to entry of such oil into the navigable waters of the  
 20        state, and shall specifically include carriers and bailees of such oil.

21        [(23)] (25) “Pipeline” means a facility, including piping, compressors, pump stations and storage  
 22        tanks, used to transport oil between facilities or between facilities and tank vessels.

23        [(24)] (26) “Region of operation” with respect to the holder of a contingency plan means the area  
 24        where the operations of the holder that require a contingency plan are located.

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

28        [(26)] (28) “Responsible party” has the meaning given under section 1001 of the Oil Pollution  
 29        Act of 1990 (P.L. 101-380), **33 U.S.C. 2701**.

30        [(27)] (29) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

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

35        (b) For purposes of this subsection:

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

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

44        [(29)] (31) “Tank vessel” means a ship that is constructed or adapted to carry oil in bulk as  
 45        cargo or cargo residue. “Tank vessel” does not include:

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

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

3 (c) An oil spill response barge or vessel.

4 [(30)] (32) "Worst case spill" means:

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

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

9 **(c) In the case of a high hazard train route, a spill, complicated by adverse weather**  
10 **conditions, of the entire fuel capacity of the locomotive and the entire capacity of the total**  
11 **loading of oil transported within the largest single train operated on the high hazard train**  
12 **route, based on 714 barrels per tank car, unless the Department of Environmental Quality**  
13 **determines that a larger or smaller volume is more appropriate given the particular high**  
14 **hazard train route's site characteristics, unique operations, spill history and transfer ca-**  
15 **capacity.**

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

17 468B.340. (1) The Legislative Assembly finds that:

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

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

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

23 (A) Gaps in regulatory oversight;

24 (B) Incomplete cost recovery by states;

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

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

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

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

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

35 **(b) The prevention of oil spills to listed sensitive areas, such as inland rivers and streams**  
36 **that serve as essential habitats for salmon and other wildlife or as sources of water for**  
37 **consumption, irrigation or other public use;**

38 **(c) The prevention of oil spills along high hazard train routes;**

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

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

42 [(d)] (f) The establishment, coordination and duties of safety committees as provided in ORS  
43 468B.415; and

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

1        **SECTION 3.** ORS 468B.305 is amended to read:

2        468B.305. (1) It shall be unlawful for oil to enter the waters of the state from any ship **or high**  
 3 **hazard train route** or **from** any fixed or mobile facility or installation located offshore or onshore,  
 4 whether publicly or privately operated, regardless of the cause of the entry or the fault of the per-  
 5 son having control over the oil, or regardless of whether the entry **of oil** is the result of intentional  
 6 or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the  
 7 state.

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

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

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

16        (c) The person having control over the oil can prove that the entry [*thereof*] **of oil** into the wa-  
 17 ters of the state was caused by:

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

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

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

22        **SECTION 4.** ORS 468B.345 is amended to read:

23        468B.345. (1)(a) Unless an oil spill prevention and emergency response plan has been approved  
 24 by the Department of Environmental Quality and has been properly implemented, [*no*] **a** person  
 25 [*shall*] **may not**:

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

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

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

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

33        [(3)] **(c)** A contingency plan **required under this subsection** shall be renewed at least once  
 34 every five years.

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

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

41        **(b) It is not a defense to an action brought for a violation of this subsection that the**  
 42 **person charged believed that a current contingency plan had been approved by the depart-**  
 43 **ment.**

44        **(c) A contingency plan required under this subsection for a high hazard train route shall**  
 45 **be renewed at least once every five years.**

1 (d) Failure by a railroad that owns or operates a high hazard train route to comply with  
 2 this subsection or to be in compliance with a contingency plan required under this subsection  
 3 does not preclude the railroad from operating the high hazard train route.

4 **SECTION 5.** Section 6 of this 2019 Act is added to and made a part of ORS 468B.345 to  
 5 468B.415.

6 **SECTION 6.** (1) The Environmental Quality Commission shall, by rule:

7 (a) Adopt standards for the preparation of contingency plans for high hazard train routes  
 8 that:

9 (A) Reflect the requirements of subsection (2) of this section; and

10 (B) To the extent feasible and appropriate, are equivalent to standards for the prepara-  
 11 tion of contingency plans for facilities and covered vessels adopted under ORS 468B.350.

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

15 (c) Identify all navigable waters and listed sensitive areas within the region of operation  
 16 of high hazard train routes. A listed sensitive area may be considered within the region of  
 17 operation of a high hazard train route if the listed sensitive area is located anywhere within  
 18 an area:

19 (A) Beginning at the probable point of a spill of oil into waters of the state from a high  
 20 hazard train route; and

21 (B) Ending at the point that the oil could travel to, by water flowing downstream, in a  
 22 time period and at a speed, measured in knots, established by the commission by rule.

23 (2) A contingency plan must include:

24 (a) The federal or state requirements intended to be met by the plan.

25 (b) The size of the worst case spill volume for the high hazard train route.

26 (c) A log sheet to record revisions and updates to the plan, which must identify each  
 27 section revised or updated, including the date and page of the revision or update and the  
 28 name of the authorized person making the revision or update.

29 (d) A table of contents and a cross-reference table reflecting the locations in the plan of  
 30 each component of the plan required by this subsection.

31 (e) A map of the high hazard train route and a description of the operations covered by  
 32 the plan, including locations where fueling occurs and an inventory of above-ground storage  
 33 tanks and the tank capacities, except that an inventory of above-ground storage tanks and  
 34 tank capacities is not required if the total above-ground storage capacity from containers  
 35 with capacity of at least 55 gallons is less than 1,320 gallons.

36 (f) A list of all oil transported, including region of origin, oil types, physical properties  
 37 and health and safety hazards of the oil. If a railroad satisfies this requirement using a  
 38 safety data sheet or equivalent information, the plan must identify where the safety data  
 39 sheet or equivalent information is kept for emergency response use.

40 (g) The name, address, phone number or other means of contact at any time of the day  
 41 for the primary personnel available to respond to a spill of oil and proof of arrangements by  
 42 contract or other approved means for the primary personnel to be available.

43 (h) Information on the personnel who will be available to manage an oil spill response,  
 44 including:

45 (A) An organizational diagram depicting the chain of command for the spill management

1 team for a worst case spill;

2 (B) An organization list of one primary and one alternate person to fill each incident  
3 command system spill management position, down to the section chief and command staff  
4 level;

5 (C) A detailed description of the planning process and job description for each spill man-  
6 agement position, or a reference to where that information is available in a plan prepared  
7 for the federal government in the same area of the state covered by the contingency plan;

8 (D) A description of the type and frequency of training that the spill management team  
9 receives; and

10 (E) A primary and alternate incident commander's representative that can form unified  
11 command at the initial command post, and, if the representative is located out of state, a  
12 primary and alternate incident commander who could arrive at the initial command post  
13 within six hours.

14 (i) Procedures for immediately notifying appropriate parties that a spill or a substantial  
15 threat of a spill has occurred. The procedures required by this paragraph must establish a  
16 clear order of priority for immediate notification and must:

17 (A) Include a list of the names and phone numbers for required notifications to govern-  
18 ment agencies, response contractors and spill management team members;

19 (B) Identify the central reporting office or individuals responsible for implementing the  
20 notification process; and

21 (C) Include a form to document those notifications.

22 (j) The procedures to track and account for the entire volume of oil recovered and oily  
23 wastes generated and disposed of during spills. The responsible party shall provide waste  
24 disposal records to the Department of Environmental Quality upon request.

25 (k) A statement of how an oil spill will be assessed for determining product type, poten-  
26 tial spill volume and environmental conditions including tides, currents, weather, river speed  
27 and initial trajectory.

28 (L) A safety assessment including air monitoring.

29 (m) A list of the procedures that will be used to confirm the occurrence and estimate the  
30 quantity and nature of the spill.

31 (n) A checklist that identifies significant steps used to respond to a spill, listed in a log-  
32 ical progression of response activities.

33 (o) A description of the methods to be used to promptly assess spills with the potential  
34 to impact groundwater, including contact information in the plan for resources typically used  
35 to investigate, contain and remediate or recover spills to groundwater.

36 (p) Concise procedures to manage oil spill liability claims of damages to persons or  
37 property, public or private, for which a responsible party may be liable.

38 (q) A description of the listed sensitive areas along the high hazard train route and a  
39 description of how protection of listed sensitive areas will be achieved, including contain-  
40 ment, enhanced collection and diversion tactics, or a reference to where that information is  
41 available in a plan prepared for the federal government for the same listed sensitive areas.

42 (r) Identification of potential initial command post locations.

43 (s) A description of how the railroad that owns or operates the high hazard train routes  
44 meets the requirements of subsection (3) of this section.

45 (3)(a) A railroad that owns or operates a high hazard train route shall have a letter of

1 intent with a primary response contractor that maintains the resources and capabilities  
 2 necessary to respond to a spill of oil that may weather and sink or submerge. Such resources  
 3 and capabilities must include, but need not be limited to:

4 (A) Sonar, sampling equipment or other methods to locate the oil on the bottom or sus-  
 5 pended in the water column;

6 (B) A containment boom, a sorbent boom, silt curtains or other methods for containing  
 7 the oil that may remain floating on the surface or to reduce spreading on the bottom;

8 (C) Dredges, pumps or other equipment necessary to recover oil from the bottom and  
 9 shoreline;

10 (D) Equipment necessary to assess the impact of oil spills; and

11 (E) Other appropriate equipment necessary to respond to a spill involving the type of oil  
 12 handled, stored or transported.

13 (b) The equipment described in paragraph (a) of this subsection must be capable of being  
 14 on scene within 12 hours of spill notification.

15 (4) A railroad that owns or operates a high hazard train route shall develop schedules,  
 16 methods and procedures for response equipment maintenance. The railroad shall keep the  
 17 maintenance records required by this subsection for at least five years and make the records  
 18 available to the department upon request.

19 (5) A railroad that owns or operates a high hazard train route shall develop and conduct  
 20 an oil spill exercise program that includes conducting an annual notification drill and annu-  
 21 ally conducting one of the following three types of exercises, on a three-year rotating basis:

22 (a) A spill management team tabletop drill;

23 (b) An oil spill containment and recovery equipment deployment drill; and

24 (c) A listed sensitive area protection exercise.

25 (6) The commission and the department may not require the railroad that owns or op-  
 26 erates a high hazard train route to submit, as part of a contingency plan, information con-  
 27 stituting sensitive security information provided for under 49 C.F.R. 1520.5(b)(12), (14) or (16).

28 **SECTION 7.** Notwithstanding ORS 468B.355 (2), if operations of trains that cause a sec-  
 29 tion of rail lines to meet the definition of a high hazard train route commence on or before  
 30 the date that the Environmental Quality Commission adopts rules under section 6 of this  
 31 2019 Act, a contingency plan for the high hazard train route shall be submitted to the De-  
 32 partment of Environmental Quality no later than 12 months after the date that the com-  
 33 mission adopts rules under section 6 of this 2019 Act. The department may adopt a schedule  
 34 for submission of a contingency plan within the 12-month period.

35 **SECTION 8.** Section 7 of this 2019 Act is repealed on January 2, 2022.

36 **SECTION 9.** ORS 468B.355 is amended to read:

37 468B.355. (1) A contingency plan for a facility or covered vessel shall be submitted to the De-  
 38 partment of Environmental Quality within 12 months after the Environmental Quality Commission  
 39 adopts rules under ORS 468B.350. The department may adopt a schedule for submission of [*an oil*]  
 40 a contingency plan for a facility or covered vessel within the 12-month period. The schedule for  
 41 the Columbia River shall be coordinated with the State of Washington. The department may adopt  
 42 an alternative schedule for the Oregon coast and the Willamette River.

43 (2) A contingency plan for a high hazard train route shall be submitted to the department  
 44 no later than 90 days before operations of trains that cause a section of rail lines to meet  
 45 the definition of a high hazard train route commence.

1        [(2)] (3) The contingency plan for a facility shall be submitted by the owner or operator of the  
2 facility or by a qualified oil spill response cooperative in which the facility owner or operator is a  
3 participating member.

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

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

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

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

10       [(4)] (5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,  
11 if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank  
12 vessels of a particular class that will be loading or unloading cargo at the facility.

13       [(5)] (6) The contingency plan for a cargo vessel or passenger vessel may be submitted by the  
14 owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to con-  
15 ditions imposed by the department, the owner, operator, agent or a maritime association may submit  
16 a single contingency plan for cargo vessels or passenger vessels of a particular class.

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

19       [(6)] (8) A person that has contracted with a facility, [or] covered vessel **or railroad that owns**  
20 **or operates a high hazard train route** to provide containment and cleanup services and that meets  
21 the standards established by the commission under ORS 468B.350 **or section 6 of this 2019 Act** may  
22 submit the contingency plan for any facility, [or] covered vessel **or high hazard train route** for  
23 which the person is contractually obligated to provide services. Subject to conditions imposed by the  
24 department, the person may submit a single plan for more than one covered vessel.

25       [(7)] (9) The requirements of submitting a contingency plan under this section may be satisfied  
26 by a covered vessel by submission of proof of assessment participation by the vessel in a maritime  
27 association. Subject to conditions imposed by the department, the association may submit a single  
28 plan for more than one facility or covered vessel or may submit a single plan providing contingen-  
29 cies to respond for different classes of covered vessels.

30       [(8)] (10) A contingency plan prepared for an agency of the federal government or an adjacent  
31 state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the  
32 [*Environmental Quality*] commission may be accepted as a plan under ORS 468B.345. The commission  
33 shall [*assure*] **ensure** that to the greatest extent possible, requirements for a contingency plan under  
34 ORS 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

35       [(9)] (11) Covered vessels may satisfy the requirements of submitting a contingency plan under  
36 this section through proof of current assessment participation in an approved plan maintained with  
37 the department by a maritime association.

38       [(10)] (12) A maritime association may submit a contingency plan for a cooperative group of  
39 covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the  
40 navigable waters of the state if, upon entering such waters, the vessel pays the established assess-  
41 ment for participation in the approved plan maintained by the association.

42       [(11)] (13) A maritime association shall have a lien on the responsible vessel if the vessel owner  
43 or operator fails to remit any regular operating assessments and shall further have a lien for the  
44 recovery for any direct costs provided to or for the vessel by the maritime association for oil spill  
45 response or spill related communications services. The lien shall be enforced in accordance with

1 applicable law.

2 [(12)] (14) Obligations incurred by a maritime association and any other liabilities or claims  
 3 against the association shall be enforced only against the assets of the association, and no liability  
 4 for the debts or action of the association exists against either the State of Oregon or any other  
 5 subdivision or instrumentality thereof, or against any member, officer, employee or agent of the as-  
 6 sociation in an individual or representative capacity.

7 [(13)] (15) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the mem-  
 8 bers of the association, its officers, agents or employees, nor the business entities by whom the  
 9 members are regularly employed, may be held individually responsible for errors in judgment, mis-  
 10 takes or other acts, either of commission or omission, as principal, agent, person or employee, save  
 11 for their own individual acts of dishonesty or crime.

12 [(14)] (16) Assessment participation in a maritime association does not constitute a defense to  
 13 liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment  
 14 participation shall not relieve a covered vessel from complying with those portions of the approved  
 15 maritime association contingency plan that may require vessel specific oil spill response equipment,  
 16 training or capabilities for that vessel.

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

20 **SECTION 10.** ORS 468B.360 is amended to read:

21 468B.360. In reviewing the contingency plan required by ORS 468B.345, the Department of En-  
 22 vironmental Quality shall consider at least the following factors:

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

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

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

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

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

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

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

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

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

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

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

468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only if *[it]* **the department** determines that:

(a)(A) The plan **for a covered vessel or facility** 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]* **or**

**(B) The plan for a high hazard train route meets the requirements of ORS 468B.345 to 486B.360; 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, **high hazard train route** 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 personnel 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]* **ensure** 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 **or along the high hazard train route;**

(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, **or along the high hazard train route**, for which the plan is submitted or being modified.

(8)(a) 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

1 Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation  
 2 and Development for review.

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

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

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

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

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

20 468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environ-  
 21 mental Quality, the department, after notice and opportunity for hearing, may modify its approval  
 22 of a contingency plan if the department determines that a change has occurred in the operation of  
 23 the facility, **high hazard train route** or tank vessel necessitating an amended or supplemental plan,  
 24 or that the operator's discharge experience demonstrates a necessity for modification.

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

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

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

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

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

33 (3) Failure of a holder of an approved or modified contingency plan to comply with the plan or  
 34 to have access to the quality or quantity of resources identified in the plan or to respond with those  
 35 resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to  
 36 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other applicable law.

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

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

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

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

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

2 (d) Comply with terms and conditions attached to the plan by the department under ORS  
3 468B.345 to 468B.380; and

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

6 **SECTION 13.** ORS 468B.495 is amended to read:

7 468B.495. (1) The Department of Environmental Quality shall develop an integrated, interagency  
8 response plan for oil or hazardous material spills:

9 (a) In the Columbia River, the Willamette River up to Willamette Falls and the coastal waters  
10 and estuaries of the state[.]; **and**

11 **(b) In listed sensitive areas within the region of operation of high hazard train routes.**

12 (2) In developing the response plan **under subsection (1) of this section**, the department shall  
13 work with all affected local, state and federal agencies and with any volunteer group interested in  
14 participating in oil or hazardous material spill response.

15 [(2)] **(3)** The **response** plan developed under subsection (1) of this section shall be consistent to  
16 the extent practicable with the plan for a statewide hazardous material emergency response system  
17 established by the State Fire Marshal under ORS 453.374.

18  
19 **FINANCIAL RESPONSIBILITY**

20  
21 **SECTION 14.** Section 15 of this 2019 Act is added to and made a part of ORS 468B.300 to  
22 **468B.500.**

23 **SECTION 15.** (1) A railroad that owns or operates a high hazard train route in this state  
24 shall annually submit to the Department of Environmental Quality a statement that:

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

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

31 (2)(a) A statement required under subsection (1) of this section must also contain addi-  
32 tional information sufficient to demonstrate the railroad's ability to pay the cost to clean  
33 up a worst case spill on each high hazard train route owned or operated by the railroad  
34 during the previous calendar year. Additional information may include, but need not be lim-  
35 ited to, proof of reserve accounts, letters of credit or other financial instruments or re-  
36 sources that the railroad can rely on to pay the cost to clean up a worst case spill.

37 (b) For purposes of this subsection, "cost to clean up a worst case spill" means a dollar  
38 amount equal to the number of barrels of oil that would constitute a worst case spill on the  
39 high hazard train route multiplied by \$16,800.

40 (3) A railroad shall submit a statement required by this section to the department upon  
41 payment to the department of the annual assessment payable under section 17 of this 2019  
42 Act.

43  
44 **RAILROAD SAFETY ASSESSMENTS AND USE**

1       **SECTION 16.** Section 17 of this 2019 Act is added to and made a part of ORS 468B.300 to  
2       **468B.500.**

3       **SECTION 17.** (1) The Department of Environmental Quality shall levy and collect an an-  
4       **annual assessment from railroads that own or operate high hazard train routes. The total as-**  
5       **assessment under this section shall equal \$\_\_\_\_\_ per year, with each applicable railroad**  
6       **assessed a proportional share of the total assessment that is based on the total track miles**  
7       **within this state that are part of high hazard train routes owned or operated by the railroad.**

8       (2) Moneys collected by the department under this section shall be deposited in the State  
9       **Treasury to the credit of the High Hazard Train Route Oil Spill Prevention Fund established**  
10       **under section 20 of this 2019 Act.**

11       **SECTION 18.** ORS 468B.410 is amended to read:

12       468B.410. (1) The Oil Spill Prevention Fund is established separate and distinct from the General  
13       Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys re-  
14       ceived by the Department of Environmental Quality for the purpose of oil and hazardous material  
15       spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and  
16       credited to the fund.

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

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

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

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

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

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

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

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

31       **(5) Notwithstanding any contrary provision of subsection (4) of this section, moneys in**  
32       **the Oil Spill Prevention Fund may not be used to pay the costs of the department that may**  
33       **be paid with moneys deposited in the High Hazard Train Route Oil Spill Prevention Fund**  
34       **established under section 20 of this 2019 Act.**

35       **SECTION 19.** Section 20 of this 2019 Act is added to and made a part of ORS 468B.345 to  
36       **468B.415.**

37       **SECTION 20.** (1) The High Hazard Train Route Oil Spill Prevention Fund is established  
38       **in the State Treasury, separate and distinct from the General Fund. Interest earned by the**  
39       **High Hazard Train Route Oil Spill Prevention Fund shall be credited to the fund.**

40       (2) The fund shall consist of:

41       (a) Moneys deposited in the fund under section 17 of this 2019 Act;

42       (b) All other moneys placed in the fund as provided by law; and

43       (c) Any gifts, grants, donations, endowments or bequests from any public or private  
44       **source.**

45       (3) Moneys in the fund are continuously appropriated to the Department of Environ-

1 **mental Quality to be used only to pay the costs of the department incurred to:**

2 (a) **Review, under ORS 468B.360, contingency plans for high hazard train routes;**

3 (b) **Conduct training, response exercises, inspection and tests in order to verify equip-**  
 4 **ment inventories and ability to prevent and respond to oil release emergencies related to**  
 5 **high hazard train routes and to undertake other activities intended to maintain the capabil-**  
 6 **ities for emergency response related to high hazard train routes of the state, a municipality**  
 7 **or an owner or operator of a high hazard train route required by ORS 468B.345 to 468B.415**  
 8 **to have an approved contingency plan;**

9 (c) **Verify proof of financial responsibility required by section 15 of this 2019 Act; and**

10 (d) **Develop, review and revise the portions of the oil spill response plan required by ORS**  
 11 **468B.495 and 468B.500 that relate to high hazard train routes.**

12 **SECTION 21.** ORS 468B.412 is amended to read:

13 468B.412. (1) By September 30 of each year, the Department of Environmental Quality shall  
 14 publish a report for the previous fiscal year, commencing on July 1 and ending on June 30, that  
 15 addresses:

16 (a) The fees assessed under ORS 468B.405 on covered vessels and offshore and onshore facilities;

17 (b) **The amount collected by the department out of the assessment under section 17 of**  
 18 **this 2019 Act;**

19 [(b)] (c) The activities of the department under ORS 468B.410 (4);

20 [(c)] (d) The penalties recovered by the department under ORS 468B.450 (1); and

21 [(d)] (e) The activities of the department under ORS 468B.455 (2).

22 (2)(a) The report published by the department under this section must be in a format that allows  
 23 for the monitoring of [fee] collection **of fees or assessments** and related activities by the depart-  
 24 ment and for ensuring that adequate but not excessive fees **or assessments** are collected to meet  
 25 the department's budgetary needs.

26 (b) The department shall make the report available to those who paid fees under ORS  
 27 468B.405, **those who paid the assessment under section 17 of this 2019 Act** and [to] the general  
 28 public.

29  
 30 **ADVANCE REPORTING**

31  
 32 **SECTION 22.** Section 23 of this 2019 Act is added to and made a part of ORS 468B.345 to  
 33 **468B.415.**

34 **SECTION 23.** (1) **A facility that receives crude oil from a railroad car shall provide ad-**  
 35 **van**ce notice to the Department of Environmental Quality that the facility will receive crude  
 36 **oil from a railroad car. The advance notice must include the route taken to the facility**  
 37 **within the state, if known, and the scheduled time, location, volume, region per bill of lading**  
 38 **and gravity, as measured by standards developed by the American Petroleum Institute, of**  
 39 **crude oil received. Each week, a facility that provides advance notice under this section shall**  
 40 **provide the required information regarding the scheduled arrival of railroad cars carrying**  
 41 **crude oil to be received by the facility in the succeeding seven-day period. A facility is not**  
 42 **required to provide advance notice when there is no receipt of crude oil from a railroad car**  
 43 **scheduled for a seven-day period.**

44 (2) The department may, upon request, share information provided by a facility through  
 45 the advance notice required by this section with the agencies and tribes described in ORS

1 **468B.365 (8).**

2 (3) The department shall publish information collected under this section on a quarterly  
 3 basis on the department’s website. With respect to the information reported under sub-  
 4 section (1) of this section, the information published by the department must be aggregated  
 5 on a statewide basis by route through the state, by week and by type of crude oil. The report  
 6 may also include other information available to the department including, but not limited to,  
 7 place of origin, modes of transport, number of railroad cars delivering crude oil and number  
 8 and volume of spills during transport and delivery.

9 (4) A facility providing advance notice under this section is not responsible for meeting  
 10 advance notice time frame requirements under subsection (1) of this section in the event  
 11 that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day  
 12 period.

13 (5) The department or any agency or tribe receiving information under subsection (2) of  
 14 this section may not disclose information provided by a facility under this section that con-  
 15 tains proprietary, commercial or financial information, to the public or to nongovernmental  
 16 entities, unless the information is aggregated. This requirement does not apply to informa-  
 17 tion received by the department under this section and shared with entities described in  
 18 subsection (2) of this section.

19 (6) The Environmental Quality Commission shall adopt rules to implement the provisions  
 20 of this section.

21  
 22 **CAPTIONS**  
 23

24 **SECTION 24.** The unit captions used in this 2019 Act are provided only for the conven-  
 25 ience of the reader and do not become part of the statutory law of this state or express any  
 26 legislative intent in the enactment of this 2019 Act.  
 27

28 **OPERATIVE DATE**  
 29

30 **SECTION 25.** (1) Sections 5 to 8, 14 to 17, 19, 20, 22 and 23 of this 2019 Act and the  
 31 amendments to statutes by sections 1 to 4, 9 to 13, 18 and 21 of this 2019 Act become oper-  
 32 ative on January 1, 2020.

33 (2) The Environmental Quality Commission and the Department of Environmental Qual-  
 34 ity may take any action before the operative date specified in subsection (1) of this section  
 35 that is necessary for the commission or the department to exercise, on and after the oper-  
 36 ative date specified in subsection (1) of this section, any of the duties, functions and powers  
 37 conferred on the commission and the department by sections 5 to 8, 14 to 17, 19, 20, 22 and  
 38 23 of this 2019 Act and the amendments to statutes by sections 1 to 4, 9 to 13, 18 and 21 of  
 39 this 2019 Act.  
 40

41 **EFFECTIVE DATE**  
 42

43 **SECTION 26.** This 2019 Act takes effect on the 91st day after the date on which the 2019  
 44 regular session of the Eightieth Legislative Assembly adjourns sine die.  
 45