



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

May 20, 2021

Rulemaking, Agenda Item C High Hazard Railroad Contingency Planning 2021

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DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

Language of proposed EQC motion:

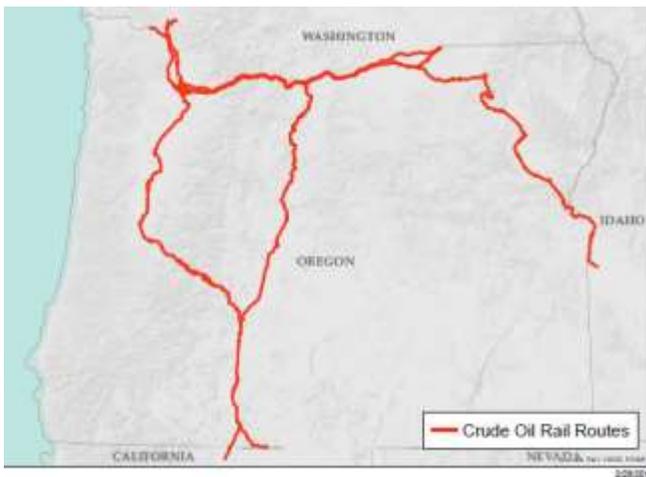
“I move that the commission adopt the proposed rule amendments as seen in Attachment A of this report as part of Chapter 340 of the Oregon Administrative Rules.”

Introduction

There has been a substantial increase in crude oil transported by rail through Oregon over the past five years. Transportation of crude oil by rail at these volumes was not contemplated when laws regarding hazardous rail transportation (ORS 468B.300 through 468B.500) were enacted in 2003 and updated in 2019. Due to this increase, additional regulations and contingency plans are essential in ensuring the continued protection of Oregon’s environment and public health.

Passage of House Bill 2209 during the 2019 legislative session specifically addressed contingency planning for high hazard train routes, those on which crude oil is transported by rail. These proposed new rules implement the statutory requirements of HB 2209 as they pertain to High Hazard Rail, including the new requirements in the legislation for contingency planning by the owners or operators of High Hazard Rail routes, new requirements for notice, and for financial assurance to pay response costs in the event of a spill. The rules also include limited updates to other Oil Spill Contingency Planning rules to align the general requirements and the new rail-specific requirements.

The scope of this program was established by the Oregon legislature in House Bill 2209 (2019). That legislation includes criteria that define which rail lines qualify as high hazard routes, such that the contingency planning, notice, and financial assurance requirements of the program apply. There are currently three sections of rail lines that qualify as high hazard rail routes in Oregon, owned by two entities (Burlington Northern Santa Fe Railroad Co. (BNSF), and Union Pacific (UP)).



The specific requirements for notice of a high hazard route are contained in HB 2209. The owner or operator of a route must notify DEQ when it commences operation of a train on a section of rail line that abuts or travels over navigable waters, a drinking water source or a location that is one quarter mile or less from waters of the state, and where the train has 20 or more tank cars loaded with oil in a continuous block, or the train has 35 or more tank cars loaded with oil not in a continuous block.

Similarly, for the most part the requirements for what must be included in contingency plans are contained in HB 2209 and are repeated with some additional detail and clarifications in the proposed rules. The major required elements are:

- To identify the high hazard train route that the contingency plan is for;
- To show that the railroad has the resources and capacity to respond to a spill;
- To describe in detail the primary contacts for the railroad responsible for a response, available resources, personnel available to be on scene within 12 hours of a spill, and other aspects of equipment and supplies for a response;
- A plan for drills and exercises for preparation and training;
- Early detection procedures; and
- Emergency response communications systems and notification lists.

Under the statute, DEQ must approve the plan if it contains these elements, and the railroad shows that the plan, if implemented, is capable of removing oil promptly and properly and will minimize any damage to the maximum extent practicable. The contingency plan also must provide for the use of the best available technology (as of the time of plan submittal). The statute also provides for review and comment on the proposed contingency plan by affected tribes and certain state agencies.

The final program element is the requirement for each railroad owning or operating a High Hazard Rail route to provide evidence of financial assurance (capacity) to pay for the costs of response to a worst case spill. HB 2209 is specific about how the cost of a worst case spill is to be determined for this purpose, with a formula based on the number of tank cars containing oil, and a cost of \$16,800 per barrel. The formula translates into a range, with the lower end being a spill of 300,000 gallons, for a minimum cost of just over \$5 billion for financial assurance purposes. Evidence of ability to pay can be provided by insurance, reserve accounts, letters of credit, or other financial instruments or resources.

To implement HB 2209 and clarify the requirements specific to High Hazard Rail transport, the proposed rules include a new dedicated section for contingency planning for rail, and add detail to statutory requirements to ensure consistency in contingency planning between vessels, facilities and now High Hazard Rail. The new rules ensure that adequate planning and response capabilities are met by companies transporting oil through the state via rail car. The rules also assure that rail companies incorporate environmental protection strategies specific to areas along the High Hazard Rail Route, known as Geographic Response Plans. The rules also include provision for health and safety of workers, and for air monitoring to protect both workers and the public.

In the original draft of the rules, DEQ had proposed establishing a loaded tank car fee to fund a Public Safety Training Specialist with Oregon State Fire Marshal to manage the drill and exercise requirements for High Hazard Rail, including the monitoring and coordination of the drills and exercises with all involved parties. In response to comments received during the public comment period, DEQ removed this proposed section from the rulemaking to allow for further interagency collaboration.

Statement of Need

What need would the proposed rule address?

This rulemaking implements the requirements established in HB 2209 (2019) for railroad companies that transport oil by rail along high hazard routes to submit contingency plans to Oregon DEQ and to maintain these plans over time. These plans outline procedures to follow in the event of a derailment and oil spill impacting the waters of the state. These new rules provide additional detail and clarification of the provisions included in the 2019 legislation, House Bill 2209, and provide for an ongoing system of drills, exercises and plan submittals to ensure compliance with current high hazard rail regulations.

House Bill 2209 is self-executing, which means the program has been operating (without rules) since the bill became effective. This is due to the specificity of the legislative requirements. These proposed rules provide somewhat more detail for the requirements for contingency plans, and align the proposed High Hazard Rail requirements with general oil spill rules already established in statute and by rule.

How would the proposed rule address the need?

Existing rules in OAR 340-141 focus on Oil Spill Contingency Planning and Fees for vessels and facilities (not including rail). However, the rules currently do not include state contingency planning requirements for high hazard rail routes in Oregon. This rulemaking adds some detail to existing statutory requirements to ensure that the contingency plans, if executed, are effective in minimizing environmental damage (including harm to public health) resulting from a spill along a high hazard train route..

Current Oil Spill Contingency Planning requirements are found in ORS 468B.350, 468B.427 and 468B.429. Language currently found within the rules in OAR 340-141-0140 were used as a basis for the proposed plan content requirements contained in the new High Hazard Rail Rules.

How will DEQ know the rule addressed the need?

DEQ will conduct annual reviews of the plans submitted from the railroads and provide feedback and approval and ensure continued compliance with the requirements of the plans. DEQ will coordinate exercises and drills with Oregon State Fire Marshal and the rail companies, as well as other entities that would be involved in a response.

Rules Affected, Authorities, Supporting Documents

Lead division

Land Quality

Program or activity

Emergency Response and Cleanup Program

Chapter 340 action

| Adopt | | | | |
|--------------|--------------|--------------|--------------|--------------|
| 340-141-0250 | 340-141-0260 | 340-141-0265 | 340-141-0270 | 340-141-0280 |
| 340-141-0282 | 340-141-0285 | | | |
| Amend | | | | |
| 340-141-0001 | 340-141-0005 | 340-141-0010 | 340-141-0130 | 340-141-0140 |
| 340-141-0150 | 340-141-0160 | 340-141-0170 | 340-141-0180 | 340-141-0190 |
| 340-141-0200 | 340-141-0210 | 340-141-0220 | 340-141-0230 | 340-141-0240 |

| Statutory Authority - ORS | | | | |
|---------------------------|---------|--|--|--|
| 468.020 | 468.065 | | | |

| Statutes Implemented - ORS | | | | |
|----------------------------|--|--|--|--|
| 468B.300 – 468B.500 | | | | |

Legislation

House Bill 2209 – 2019 Legislative Session

Documents relied on for rulemaking

| Document title | Document location |
|---|---|
| HB - 2209 | https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2209/Introduced |
| Rule Advisory Committee meeting materials | https://www.oregon.gov/deq/Regulations/rulemaking/RuleDocuments/hhrc2021m3materials.pdf |

Fee Analysis

DEQ does not propose to adopt or amend any fees at this time.

Statement of Fiscal and Economic Impact

Fiscal Impact

The state agencies overseeing this program will use existing personnel to carry out compliance with the statutory and rule requirements. Most of the requirements relating to work of the agencies stem from the enactment of HB 2209, and the fiscal impacts of those requirements were addressed in the legislative fiscal impact statement for that bill. The legislature authorized two new positions for the department for this program. No additional fiscal impact beyond that of the legislation is expected as a result of the adoption of these proposed rules.

Statement of Cost of Compliance

State agencies

The requirements of HB 2209 and the new rules proposed for adoption by the Environmental Quality Commission (EQC) will eventually necessitate the hiring and training of a Public Safety Training Specialist 2 with Oregon State Police/ Oregon State Fire Marshal.

Local governments

DEQ does not anticipate additional fiscal impacts to local governments as a result of the proposed rules. Local governments that elect to participate in training exercises or that comment on proposed contingency plans may experience some costs, but those costs are the result of the enactment of HB 2209 rather than the proposed rules because the rules do not add any substantial requirements beyond those in the legislation that is already in effect.

Public

Adoption of the proposed rules will not have a significant economic impact on the public because the rules do not add any substantial requirements beyond those already mandated by HB 2209. By minimizing the potential environmental harm of a spill on a high hazard rail route, the legislation is likely to provide long term benefits in terms of public health and reduced environmental damage.

Large businesses - businesses with more than 50 employees

The proposed rules would apply to two large business operating three high hazard rail routes in Oregon, at present (BNSF and Union Pacific). The costs associated with notice, contingency planning, and financial assurance may be substantial, but these costs are already required by HB 2209, and the proposed rules do not add substantial additional requirements for contingency planning (and none for notice and none for financial assurance). The proposed rules do not include adoption of a fee associated with the program at this time. As a result, DEQ has determined that there will not be any significant economic impact on large businesses resulting from the adoption of the proposed rules.

In addition, any costs incurred by the large companies (high hazard rail operators) will be in conjunction with existing costs of conducting drills and exercises with state and federal agencies that are already required by state statute and federal statutes and rules. Many of the costs incurred by the high hazard rail operators for the purposes of compiling a contingency plan specific to Oregon will be limited, as the new plans required by Oregon statute will include much of the same information found in existing plans required by neighboring states and for the companies' Comprehensive Oil Spill Response Plans required by 49 CFR 130.120.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 - Cost of Compliance for Small Businesses

a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

DEQ does not anticipate the proposed rules having significant cost impacts on small businesses. At present, no small businesses are subject to the notice, contingency planning, or financial assurance requirements of HB 2209 (or of the proposed rules) because no small businesses currently operate a high hazard rail route. If a small business were to begin operating a high hazard rail route, the requirements of HB 2209 would apply. The proposed rules do not add any substantial requirements to those contained in statute.

b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

At present, the proposed rules are not expected to apply to small businesses as no small business currently operates a high hazard rail route.

c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

At present, the proposed rules are not expected to apply to small businesses as no small business currently operates a high hazard rail route.

d. Describe how DEQ involved small businesses in developing this proposed rule.

At present, the proposed rules are not expected to apply to small businesses as no small business currently operates a high hazard rail route.

Documents relied on for fiscal and economic impact

| Document title | Document location |
|--|---|
| Fiscal Impact of Proposed Legislation | https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/51207 |
| Revenue Impact of Proposed Legislation | https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/47569 |

Advisory committee fiscal review

DEQ appointed an advisory committee for this rulemaking process.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved minutes dated Aug. 4, 2020. The committee determined the proposed rules would not have a significant adverse fiscal impact on small businesses in Oregon.

The original fiscal impact statement review was conducted during the Rules Advisory Committee meeting and the committee members agreed that there would be no significant adverse fiscal impact on small businesses in Oregon.

Federal Relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require that if DEQ proposes that the EQC adopt rules that are more restrictive than corresponding federal laws and rules it explain why doing so is necessary or desirable. In this case, the Oregon legislature has already determined that it is desirable to adopt additional requirements for contingency planning for high hazard rail routes in Oregon, and the proposed rules simply implement that legislative policy choice.

Land Use

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ bases its determination of whether:

- The statewide land use planning goals specifically refer to the rule or program; or
- The rule or program is reasonably expected to have significant effects on:
 - Resources, objects, or areas identified in the statewide planning goals, or
 - Present or future land uses identified in acknowledge comprehensive plans

In this case, some of the resources along high hazard rail routes are likely significant resources under Statewide Planning Goal 5 and comprehensive plans implementing that goal. By adding protecting for these resources, the proposed rules (and the underlying statute, HB 2209) comply with Goal 5 and are compatible with comprehensive plans.

The proposed rules and underlying statute also are designed to protect public drinking water systems that could be threatened by an oil spill along a high hazard rail route. As a result the rules comply with Statewide Planning Goal 11 (Public Facilities and Services) and are compatible with local comprehensive plans implementing that goal.

- Finally, HB 2209 and the proposed rules establish additional requirements to protect water quality in Oregon in specific areas of higher risk from oil spills. These requirements comply with Statewide Planning Goal 6 because they provide additional protection to assure that Oregon's water quality standards are met in these areas.

Determination

DEQ has determined that these proposed rules comply with Statewide Planning Goals 5, 6 and 11, and are compatible with comprehensive plans implementing those goals.

EQC Prior Involvement

DEQ did not present additional information specific to this proposed rule revision.

Advisory Committee

DEQ convened the High Hazard Rail Contingency Plan Rulemaking Advisory Committee. The committee included representatives from industry, including railroads, Tribal government representatives, local communities and emergency response organizations. The committee met three times.

The committee members were:

| High Hazard Rail Contingency Plan Advisory Committee | |
|--|--|
| Name | Representing |
| Dominic Winslow | Burlington Northern Santa Fe Railroad |
| Cindy Robert | Union Pacific Railroad |
| Michael Lang | Friends of the Columbia Gorge |
| Audie Huber | Confederated Tribes of Umatilla Indian Reservation |
| Holly Robinson | Maritime Fire and Safety Administration |
| Jerry Henderson | Clean Rivers Cooperative |
| Julie Carter | Columbia River Inter-Tribal Fishing Commission |
| Michael Heffner | Oregon State Fire Marshal |
| Richard Franklin | US Environmental Protection Agency |
| Scott Winkels | League of Oregon Cities |

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Rulemaking
 - Environmental Cleanup Program
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee generally discussed the rulemaking elements.

Public Engagement

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Nov. 27, 2020, Filing notice with the Oregon Secretary of State for publication in the December 2020 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [High Hazard Rail Contingency Planning 2021](#);
- Emailing approximately 17,749 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Environmental Cleanup Program
 - DEQ Public Notices
- Emailing the following key legislators required under [ORS 183.335](#):
 - Representative Paul Evans, Chair, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Rick Lewis, Vice-Chair, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Marty Wilde, Vice-Chair, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Mark Meek, Member, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Courtney Neron, Member, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Bill Post, Member, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Kim Wallan, Member, House Interim Committee On Veterans and Emergency Preparedness
 - Representative Jack Zika, Member, House Interim Committee On Veterans and Emergency Preparedness
- Emailing advisory committee members
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearing

DEQ held one public hearing. DEQ received six comments at the hearing. Later sections of this document include a summary of the six comments received during the open public comment period, DEQ's responses and a list of the commenters. Original comments are on file with DEQ.

Presiding Officers' Record

| | |
|-------------------|-----------------------|
| Date | Dec. 16, 2020 |
| Place | Zoom meeting (online) |
| Start Time | 1 p.m. |
| End Time | 2:30 p.m. |
| Presiding Officer | Josh Emerson |

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice. Twenty-one people attended by teleconference or webinar. Six people commented orally at the hearing.

Summary of Public Comments and DEQ Responses

Public comment period

DEQ accepted public comment on the proposed rulemaking from Nov. 11, 2020, until 4 p.m. on Dec. 29, 2020.

For public comments received by the close of the public comment period, the following table organizes comments and DEQ’s response. Please note, DEQ does not edit comments for formatting or grammar, but may redact personally-identifying information when necessary to preserve a commenter’s right to privacy.

DEQ changed the proposed rules in response to some comments, as described in the response sections below. Original comments are on file with DEQ, and a list of people who submitted a form letter, noted in the table below, is included at the end of this document.

| Comments received during the Public Comment Period | DEQ response to comment |
|---|---|
| <p><u>Christopher Warrern</u> I live about a Mile from the Burlington Railroad tracks which block our only county road exit on our Wallace Creek Rd at Jasper Rd so We have some commitment to these rules by our exposure. We believe that any Petroleum shipments that run along our Rivers and Main Roads should be DOUBLE CONTAINED AND HARDENED to prevent spillage from a Collision or De-railment or track failure. Emergency Responders adjacent to Rivers, Streams or Creeks and Railroad Crossings should be trained in responding to Petroleum fires and containment of Spill or Methane Gas leakage in NEW TECHNOLOGIES that actually WORK FOR CONTAINMENT and not the current use of booms, straw and dispersants that are antique methods that have failed in every major spill last Century and NOW! Our Rivers are PRECIOUS PUBLIC ASSETS that have no determined value that can be established, except as IRRPLACEABLE ! So the protection of these assets have no rational limitation by projected costs except that whatever the sum it will be worth IT!</p> | <p>Thank you for your comment. Multiple response strategies are listed as available options and there is specific provisions requiring companies to incorporate the “best technology available” to respond to an incident. Most cars carrying oil are the updated DOT 117R cars which helps contain product and has multiple safety features to ensure effective containment and fire protection. The older car design DOT 111 are being phased out to ensure that rail transport of crude oil stays as safe as possible.</p> |
| <p><u>John</u> Do what you must but do it with care and thoughtfulness for the environment. do not try to aboriginals and make loopholes for people doing</p> | <p>Thank you for your comment. Oregon DEQ takes any and all concerns seriously and indeed</p> |

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| <p>bad things period We trust government agencies to work in the benefit of all Americans so please do your job with that in mind.</p> | <p>strives to follow our mission of protecting the environment and the people of our state. We have engaged with both industry as well as environmental protection groups to find a way forward that ensures protection measures are in place.</p> |
| <p><u>Sam Maynard</u> I am a highly educated marine who is dying from toxic water poisoning at camp lejeune. I am very honest and unfiltered cause the chems I was exposed to make thinking difficult. makes the head hurt. but if you want my honest opinion and can dell with the spelling, then i would like to give my two cents just dumb it down for me. i aint got a lot of time left and i do not want to spend it reading tons of booring ****. i have 2 degees in electronics, one in hydalrics, and damn near lone in auto cad. i have been an oregon state licensed electrician since the mid 90's and several other tech and non tech jobs. i have been in a wheelchair since 2004 and traped at home every since. give me a task and i will make you proud.</p> | <p>Thank you for your comment. We are working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon.</p> |
| <p><u>Chris Kuenzi</u></p> <p>340-141-005 (32)(a) Just a comment that this definition will capture substances that do not meet the definition of hazardous materials in the federal DOT hazardous materials regulations for transportation.</p> <p>340-141-0260 (2)(b) Will the similar notice to the SERC that is required by 49 CFR 312 fulfill this rule? Might be something to consider in order to prevent redundant notification requirements.</p> <p>340-141-0265 (21)(d) Most, if not all, of the “transfer” of oil from the tank car to storage takes place at the consignee, after the tank car has left possession of the railroad. I would recommend deleting these two paragraphs since the elements described are not under control of the railroad.</p> <p>Tank car designs, including loading/unloading connections vary and selection is under control of the shipper, not the railroad.</p> | <p>Thank you for your comment. The definition is already in place within Oregon Revised Statute. We are limited in what language within the statute we are allowed to change. <i>Reference 49 CFR 174.312 (a)-(c)</i> The notification requirements under 49 CFR 312 are similar, however, the intent of this section is the general notification that a railroad intends to operate High Hazard Rail, not specifically a weekly notification. The notification referenced in</p> |

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| | <p>49 CFR 312 will partially suffice, but additionally, the statement of availability of personnel who will physically respond on behalf of the railroad, instead of just the Qualified Individual is also required. As well as the specific route being used, not just response zones. We agree that the description of the tanks and piping does not need to be required. The type of cars used should be the standard that is in use.</p> |
| <p><u>Tracy Farwell</u> This comment is filed well in advance of the December 29, 2020 suspense date, and references an earlier comment already filed with Kyrion Gray’s Office, 30 September 2020, enclosed.</p> <p>The current comment consisting of this message DOES NOT concern tar sands transport by rail, since bitumen is called out both in the original rules language and the revised language now under DEQ consideration.</p> <p>The proposed rulemaking acknowledges two essential CFRs</p> <p>40 CFR 300 - National Oil and Hazardous Substances Pollution Contingency Plan Subparts A – J, Appendix E 49 CFR 130 – Oil Spill Prevention and Response Plans Subparts A, B, C</p> <p>Another CFR identifies the hazards of Hydrogen Sulfide (H2S) found in tar sands diluents: 43 CFR 3160 Rule No. 6. There is no justification for omitting this CFR from DEQ High Hazard Rail Rulemaking. Given the highly toxic properties of H2S cited in MSDS, anyone exposed at a rail spill site will suffer immediate and lasting injury. There is no reference in rules to the known bitumen/diluent constituent H2S, meaning this high hazard is not called out, acknowledged or mitigated by DEQ.</p> <p>Due diligence calls for acknowledgment and regulation of this hazard.</p> | <p>Thank you for your comment. We require notifications for the different types of oil as they are shipped.</p> <p>As H2S is a component to be found in the transport process. Section 340-141-0265 discusses procedures for response as well as acknowledges the dangers of a spill and ensures that responders are prepared for any associated risks for a spill. This should cover H2S as part of the oil and thus consideration for this chemical should be incorporated. DEQ does require notification of product being transported as part of a Contingency Plan as well as air monitoring for chemicals that would be expected to be present (which includes H2S)</p> |

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| <p>*MULTIPLE INDIVIDUALS* - See attachment #1 for list of all names. (form letter sender list)</p> <p>Dear Environmental Quality Commission and Staff:</p> <p>Thank you for the opportunity to comment on the draft rule for High Hazard Rail Contingency Planning. The draft rule is long overdue, but a step in the right direction to better protect Oregon’s rivers and communities from the threats of oil by rail.</p> <p>I strongly oppose the transport of crude oil by rail through Oregon. Every shipment of crude oil potentially endangers Oregon’s rivers, communities and the Columbia River Gorge National Scenic Area. The 2016 derailment of a Union Pacific oil train in the Columbia River Gorge town of Mosier, Oregon endangered the lives of local residents and has not been forgotten. The draft rule would go a long way toward better preparing Oregon for the next oil train derailment and spill.</p> <p>The draft rule appears to be consistent with the requirements of House Bill 2209, which passed into law in 2019. It requires railroads hauling crude oil through the state to develop contingency plans and submit them for approval to the Oregon Department of Environmental Quality. It requires sufficient planning and resources to respond to “worst case” spills, but, like HB 2209, it erroneously defines worst case spills as 300,000 gallons or 15% of the oil train’s cargo.</p> <p>I support requiring the oil industry to pay for the costs of development and implementation of oil spill response plans, and require railroads to prove they have the financial resources to pay for the cleanup of oil spills and the resulting damage to the environment.</p> <p>Since oil spills and resulting fires spew toxic fumes into the environment, I support the requirement for air monitoring to protect the health of responders and the surrounding community.</p> <p>I support the rule’s requirement for a full inventory of sensitive resources along rail routes, including water resources, fish, and wildlife habitat, drinking water withdrawals, and the protection of these resources.</p> <p>Thank you for considering these comments and including them in the official record.</p> | <p>Thank you for your comment. Your concern and attention to this important issue is appreciated. Worst Case Scenario oil spill is established in statute and we are unable to change the definition. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment.</p> <p>For the case of these rules, we are following existing statute and federal guidelines as they are listed in 49 CFR 130.5.</p> |
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| <p><u>Kevin Jeray</u></p> <p>I am opposed to any oil trains. Oil going thru our state is headed to a government funded bio diesel facility that was basically “given” to oil companies so they could export bakken oil.</p> <p>I lived in Linnton and watched a train derail about a decade ago. The response of our emergency crews was to watch and let it burn. They could do nothing.</p> <p>I also worked with the linnton neighborhood association regarding the danger of the passing trains as well as the oil yards on unstable soil along the willamette that endangered that community.</p> <p>Finally, I got to watch as the train burned in mosier, one of oregons jewels.</p> <p>It is apparent to me that the state lacks adequate preparedness to handle a oil train, not only that, but it is plainly obvious they cater to the railroad lobby and do t required them to proper document hazardous trains going through our state nor require them to have adequate safety measures in case of a derailment.</p> <p>This is oregon risking their population for big business that isnt even in our state.</p> <p>If these trains were carrying oil to cover our own needs, I may be more open to the oil trains. Since this is just oil just passing through oregon giving its people little to no benefit, I am adamantly opposed to oil trains,</p> <p>Oregonians before oil companies.</p> <p>Kind regards,</p> <p>Kevin</p> | <p>Thank you for your comment. DEQ has worked hard to tighten restrictions on oil trains as they traverse our state. These rules establish preparedness requirements for the rail companies and ensure there are response strategies and resources in place to respond appropriately. Further, they work to protect our sensitive areas and ensure that community and responder safety is a priority. The new rules allow Oregon to better prepare for a spill and ensure that we can minimize the chances of a spill. By establishing these rules, DEQ is better equipped to enforce these environmental laws that are in place. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans.</p> |
| <p><u>Bonnie New</u></p> <p>I am writing re the High Hazard Railroad Contingency Planning 2021, to urge the DEQ to adopt strong rules that require:</p> | <p>Thank you for your comment. These rules help to establish requirements for High Hazard Rail. The volume</p> |

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| <ul style="list-style-type: none"> • Oil spill contingency plans on <u>all</u> oil train routes; • Sufficient planning and resources to clean up <u>large spills of both light and heavy crude oil</u>; • <u>Railroads and oil companies to bear the costs</u> of oil spill response; • <u>Proof of financial capability</u> by the railroads; • <u>Air monitoring</u> to protect responders and the public; and • <u>Protection of fish and wildlife</u>. <p>We here in the Gorge experienced the horror of an oil train derailment in 2016, and were lucky that the weather and low speed of the train prevented a widespread disaster. We were not even aware at the time of how poorly prepared that state was to respond to such a problem, or how little in the way of liability and responsible planning the state had required of the railroads and oil companies. Now we know, and we are clear that all the above points need to be included in the new rules.</p> <p>Thank you,</p> <p><i>Bonnie New</i></p> | <p>of oil is consistent with current federal legislation and we are unable to change the statute definition of High Hazard Rail. Systems are in place and financial means are an essential part of these new rules. Oil and railroad companies are required to show financial means to handle a spill and take necessary measures to monitor air for responders as well as the community. Sensitive areas will be specifically addressed in the newly required plans.</p> |
| <p><u>Arlene Burns</u></p> <p>Dear State of Oregon Department of Environmental Quality,</p> <p>Thank you for the opportunity to comment on the draft rule for High Hazard Rail Contingency Planning. The draft rule is long overdue, but a step in the right direction to better protect Oregon’s rivers and communities from the threats of oil by rail. As mayor of MOSIER, we’ve dealt with firsthand the consequences of hazardous material, and we all know that we were very lucky in our case that our sewage treatment plant caught a majority of the benzene... Please help us protect all communities along the tracks from the dangers of hazardous material being shipped, and also please on a state level require that the foam used to put out oil fires is not toxic!</p> <p>Thank you For serving our community during the oil train crisis.</p> <p>Sincerely</p> <p>Arlene Burns</p> | <p>Thank you for your comment. We work with Oregon State Police and Oregon State Fire Marshal to ensure that response activities take into account the safety of not only the responders, but also, the community that may be affected. The section that lists “Best Technology Available” allows DEQ staff to ensure the safest and least toxic options can be used on a response.</p> |
| <p><u>GT</u></p> <p>Dear State of Oregon Department of Environmental Quality,</p> <p>DO YOU READ THESE COMMENTS?</p> | <p>Thank you for your comment. By establishing these rules, DEQ is better equipped to enforce these</p> |

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| <p>Will you tighten the rules to protect our environment? Enforcing laws we already have would be a first step. BANNING oil cars in sensitive areas would be even better!. DO IT NOW!</p> <p>Regards, G T</p> | <p>environmental laws that are in place. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods.</p> |
| <p><u>Jean Culp</u> Dear State of Oregon Department of Environmental Quality,</p> <p>We must start doing things differently to protect the Earth and our children's and grandchildren's futures.</p> <p>We must put people and the Earth above profit.</p> <p>Please assure that:</p> <ul style="list-style-type: none"> -oil spill contingency plans are established on all oil train routes; -sufficient planning and resources are in place to clean up large spills of both light and heavy crude oil; -railroads and oil companies bear the costs of oil spill response; -proof of financial responsibility by the railroads is established; -air monitoring is required of railroad and oil company activities to protect responders and the public; and -protection of fish and wildlife is assured. <p>Regards, Jean Culp</p> | <p>Thank you for your comment. Under that statute, we have to follow the existing regulations that qualify High Hazard Rail as 20 continuous cars or 35 or more cars within the length of a train. Current provisions ensure that railroads have the financial means to bear the costs of a clean-up and ensure safety of the community and responders. Consideration and protection of sensitive areas is a specific item within the Contingency Plan requirements and is an essential part of the Geographic Response Plan development.</p> |
| <p><u>Lisa Kuntz</u> A personal comment in favor protecting air in our neighborhoods: These trains run on the tracks right below the Temple between Lombard St and Columbia Blvd. The air and particulate pollution of our neighborhood is extremely serious and particularly dangerous for the children playing outside at Woodlawn Elementary and in the neighborhood parks. (*Form letter text follows this statement*)</p> | <p>Thank you for your comment. These rules are specific to preparedness for oil spills and ensuring that proper procedures and resources are in place to ensure a safe and effective cleanup of any spill that may occur along</p> |

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| | a High Hazard Rail Route. |
| <p><u>Julian Wixson</u> (*Form letter text*) In addition I would also like to see a requirement to periodically notify members of the community in writing of the potential risks of toxic fumes and the explosive impact to those residing within 500 yard, 1/2 mile, 1 mile, and 5 mile radii of a derailment site that results in a spill and fire.</p> <p style="text-align: center;">Julian Wixson</p> | <p>Thank you for your comment. Community notifications are an essential provision that is included in the new rules. Worst Case Scenario oil spill is established in statute and we are unable to change the definition. Anyspill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment. For the case of these rules, we are following existing statute and federal guidelines as they are listed in 49 CFR 130.5.</p> |
| <p><u>Leslie Kochan</u> Dear Environmental Quality Commission and Staff:</p> <p>I appreciate the opportunity to comment on DEQ's draft rule for High Hazard Rail Contingency Planning and appreciate the efforts of DEQ staff to strengthen existing requirements.</p> <p>Before providing more specific comments, I would like to note my strong opposition to the transportation of crude oil by rail. The risks posed to communities and the environment, particularly our natural water resources, from potential spills and accidents is not an acceptable risk.</p> <p>New requirements must better protect residents in the region from the threats of railway and on-site accidents and must address the risks to workers who may be on-site or in the vicinity during accidents or may respond to spills and accidents. If any releases do occur, there should be air quality monitoring to address risks to workers, first responders and clean-up crews, as well as any potentially exposed residents in the affected areas.</p> | <p>Thank you for your comment. Provisions for the safety of responders and communities are currently in the new rules. Both in the form of air quality monitoring, as well as notification requirements. Oil companies not located within the state are unable to be taxed, but specific funding is established to allow DEQ to work towards environmental evaluation and development of response plans specifically tailored</p> |

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| <p>I support stronger fees and regulations that hold fossil fuel industries accountable for all stages of their activities from development of spill contingency plans and regulatory oversight to spill clean up/air quality monitoring and their on-going contribution to the climate crisis.</p> <p>I support additional requirements to evaluate critical natural resources along rail routes. Again, the fossil fuel industries should pay for such assessment.</p> <p>Thank you again for the chance to comment and for the work of DEQ staff and your efforts to address the risks of transporting fossil fuels by rail. (*Form letter text follows this statement*)</p> | <p>to the High Hazard Train Routes.</p> |
| <p><u>John W Lotzgesell</u> Kyrion- Apologies for my delay in getting some information to you.</p> <p>In the state of Washington, on April 22, 2019, they passed SB 5579, which addressed by volatility of CBR by stating: that any crude oil being transported in a railcar may not load or unload crude oil into or from a rail tank car unless the oil has a vapor pressure of less than nine pounds per square inch.</p> <p>At one time as much as 740,000 barrels of crude per day was shipped by rail out of the Bakken area. It is currently hovering around 63,000 bpd. As one might remember, there were grave safety concerns due to railcar derailment and subsequent explosions. The US department of transportation as well as the State of Dakota started contemplating a series of fixes to both rail tanker cars as well as modifying various operational recommendations. The PHMSA instituted new requirements on the tank cars. Shippers were required to transition from the DOT 111 to the CPC-1232 design, and also the 1232 cars needed to be retrofitted with 7/16 inch shells (all new cars now are built with 9/16 shell on the DOT117J models).</p> <p>Our firm developed an economical process to reduce the CBR (crude by rail) liquid to as low as less than 2 PSI. It was a closed loop system, using a low temperature/low pressure reactor that increased the flash point from an average of 24C to nearly 40C and the initial boiling point up to 92C. Our aim was to allow the treated crude to be a designated PG3 liquid and therefore the lesser expensive DOT-111 tankers could continue to be used. We projected the cost to process to be less than a \$1barrel - possibly .05 per gallon max. We were on line to set up two locations with a major east coast refinery group that was shipping crude from North Dakota. Unfortunately, the crude prices during 2015 started sliding severely lower and the project was suspended.</p> <p>Reducing the volatility of crude is a major safety step. It reduces the risk of injury in the case of derailments- reducing the changes of fire and explosion.</p> | <p>Thank you for your comment. The rules currently in place do not over-rule existing federal requirements, and are intended to parallel the existing federal guidelines. DEQ is unable to dictate to private industry any specific business practices, specifically, the endorsement of any product or business.</p> |

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| <p>It is also safer for the environment by reducing the fumes from the crude. While doing this, it doesn't reduce the value the crude .</p> <p>Hope this helps you as you consider your future options. If I can be of any services, please do not hesitate to email me or give me a call on the cell. Best. John</p> <p>John W. Lotzgesell Stakeholder</p> | |
| <p><u>Nic Winslow</u></p> <p>December 15, 2020 Oregon Department of Environmental Quality Attn: Kyrion Gray 700 NE Multnomah St., Room 600 Portland, OR 97232-4100 VIA EMAIL to: hhrp@deq.state.or.us</p> <p>RE: BNSF Comments – HHTR Oregon Oil Spill Contingency Plan Draft Rules</p> <p>BNSF Railway Company (BNSF) submits the following comments on the draft Oregon Department of Environmental Quality (DEQ) High Hazard Train Route (HHTR) Oil Spill Contingency Plan (C-Plan) rules contained in its Notice of Proposed Rulemaking (Notice) dated 30 November 2020 (i.e., the Draft Rules).</p> <p>As a HHTR Rail Advisory Committee (RAC) member, BNSF has consistently urged DEQ and RAC members to develop HHTR regulations that align with US DOT PHMSA (49 CFR 130 Subpart C) ‘Comprehensive Oil Spill Response Plan’ (COSRP) regulations for High Hazard Flammable Trains, following the policy statement of ORS 183.332 for conformity of state rules with equivalent federal laws and rules. As such, the governing statute, ORS 468B.427 through 431, is most efficiently and effectively implemented through adopting Draft Rules that are consistent with the federal COSRP regulations, with minimal additions.</p> <p>DEQ’s Draft Rules, as written, would require significant modifications to BNSF’s existing federally-approved railroad COSRP.</p> <p>This stems from:</p> <ul style="list-style-type: none"> • Unfulfilled obligations under ORS 183.332 and Oregon Administrative Rules (OAR) 340-011-0029 which require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws (“unless there are reasons not to do so”). • DEQ’s incorrect assertion in the Notice that the “requirements and contents of [Oregon’s proposed Railroad C-Plans] are equivalent to federal guidelines concerning oil spill contingency planning” under federal | <p>Thank you for your comments. In drafting the new rules as they pertain to High Hazard Rail, DEQ views sections 340-141-0250 – 340-141-0285 as a stand alone section of the OAR specifically for rail. These rules are implemented under 340-141 because they are related to Contingency plans and spill response. DEQ fully supports the use of NPREP and has included language which allows the railroads to use NPREP as a guideline which will satisfy DEQ requirements as the drills and exercises are evaluated. The use of the terms discussed would all be covered under GRPs that would be developed and therefore, under 340-141-0265 (23)(a), a reference to a specific GRP would be allowable for the purposes of a DEQ review. We have made edits to include only “owner” and not “owner or operator”, Oil Spill Removal Organization” and not “Oil Spill</p> |

requirements 40 CFR 300 Subparts A – J, Appendix E, or 49 CFR 130 Subparts A, B, and C.

As contemplated by ORS 468B.429(3)1 which provides that a plan satisfying the requirements of the statute prepared for a federal agency shall be accepted as an HHTR contingency plan by the Department, BNSF continues to advocate that DEQ adopt regulations which rely on federally-approved COSRPs as the primary compliance vehicle and simplify/clarify the conditions under which an existing and federally-approved COSRP would satisfy requirements of the Draft Rules.

BNSF has identified revisions to the 30 November 2020 Draft Rules which would both reduce confusing aspects of the rules, as well as streamline steps to finalize, enact, and implement the statutory directive.

The recommended modifications to the Draft Rules are described as follows:

1. Stand-alone OAR for Railroad HHTR C-Plans
2. Consistent use and express adoption of federally-approved and nationally-adopted oil spill plan procedures and programs
3. Consistent use of federally-approved and nationally-adopted oil spill plan terms and definitions
4. Draft Rule specific language clarifications.

Each category is further described in detail below:

1: Stand-alone OAR for Railroad HHTR C-Plans

As written, the Draft Rules are confusing and unnecessarily difficult to determine which sections are applicable to HHTRs versus facilities and vessels. The Draft Rules should be produced as a stand-alone section of the OAR and not mixed into requirements for facilities and vessels.

Development of stand-alone rules for HHTRs would provide an opportunity for the logical progression of the regulations, from development, applicability review, public comment, Environmental Quality Commission review and implementation.

If a stand-alone HHTR rule is not implemented, certain clarifications should be made. For example, the Draft Rules should:

- Specify whether individual sections of 340-141 are relevant to facilities and vessels, HHTRs, or both. Instances where the sections are individually applicable could be clearly identified by simply adding “Facilities and Vessels” and/or “HHTRs” to the section title.
- Use a Table of Contents (see the example provided below), clearly showing applicability of existing/Draft Rules to facilities and vessels and/or HHTRs.

2: Consistent Use and Express Adoption of Federally-Approved and Nationally-Adopted Oil Spill Plan Procedures and Programs

The current Draft Rules use or reference inconsistent oil spill plan procedures and processes that, if adopted, would complicate C-Plan preparation, use, and maintenance. DEQ should eliminate these references

Response Organization”. While an OSRO is allowable to use in response, DEQ does not want to create the requirement of an OSRO, and so the use of the term “primary response contractor” should stay. Other definitions in place are consistent with established definitions in statute. Artifacts and erroneous words brought to the attention of DEQ have been addressed and removed as appropriate. The specific type of oil shipped is important to provide to DEQ that is one of the ways that response capability will be measured.

The suggested wording has been added to the rules. While we agree that the use of GIS should be utilized, it should be done using GIS capabilities of the railroad.

Language revision is agreed upon and the rules have been updated to reflect that.

and alternatively integrate the federally-approved and nationally-adopted oil spill plan procedures and processes described below.

- Revise the Draft Rules to fully adopt the National Preparedness for Response Exercise Program (NPREP) Version 2016.1 for drills and exercises in lieu of the proposed requirements presented in the Draft Rules at 340-141-0265(20) and 340-141-0270(2).

NPREP requirements already address the vast majority of exercise types proposed in the Draft Rules at 340-141-0265(20) and 340-141-0270(2).

Note that the NPREP requirements are supported by clearly defined scopes, guidelines, objectives, documentation requirements, and other more detailed requirements. However, implementation of the current Draft Rules would require substantial delineation of DEQ's expectations with respect to the exercises outlined in 340-141-0270(2) if NPREP is not adopted. For comparison, the current NPREP guidelines provide 104 pages of exercise discussion and description, while the Draft Rules contain less than one page.

- o HHTR Planholders are already required to establish NPREP program areas as part of COSRP requirements in 49 CFR 130 Subpart C and are continuing to undertake exercises in Oregon as part of these efforts. For example, BNSF's 2020 NPREP program in COSRP 'Response Zone 3' (which includes Oregon) undertook a 'worst-case spill scenario' table-top and equipment deployment exercise on the Columbia River attended by over 150 participants, including representation by OR DEQ, USACE, USDOT, US Coast Guard, USFWS, Washington State Department of Ecology, Columbia River Inter-Tribal Fish Commission, and Tribes.

- o NPREP adoption in the Draft Rules would clarify exercise expectations between the Oregon State Fire Marshall and Planholders.

- The Draft Rules' use of terminology for Planholder responsibilities (and expectations of compliance) with respect to natural resources are inconsistent. Multiple undefined terms are presented in various sections of the Draft Rules, including:

- o 0265(15): 'Sensitive aquatic species', 'sensitive and aquatic species', and

- o 'sensitive areas'

- o 0265(19)(b): 'Environmentally sensitive locations'

- o 0265(23)(a): 'Sensitive shoreline', 'island habitat', 'birds', 'marine mammals' and 'other wildlife'.

DEQ should clearly define and standardize the natural resource terms used throughout the Draft Rules to provide regulatory certainty and avoid ambiguities.

Further, definitions for standardized terms should reflect federally-recognized designations for natural resource types such as 'Environmentally Sensitive Areas' under 49 CFR 130 Subpart C, or adopt existing federal natural resources guidance such as those available from the Department of Commerce/National Oceanic and Atmospheric Administration "Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments".

- Planning distance requirements in OAR 340-141-0265(22) should be modified to eliminate inconsistency. The Draft Rules require that the plan identify environmental variables from the probable point of release to the point the oil could travel in 24-hours. ORS468B.429(1)(c)(C) requires the number of response personnel arriving onsite within 12-hours. The adoption of a 12-hour planning distance requirement in OAR 340-141-0265(22) would eliminate this inconsistency and provide alignment with the 12-hour standards required federally under 49 CFR 130 Subpart C.

3: Consistent use of Federally-Approved and Nationally-Adopted Oil Spill Plan Terms and Definitions

Draft Rule terms and definitions should be standardized with those found in the US EPA Region 10 Northwest Area Plan (NWACP), Oil Pollution Act of 1990, National Contingency Plan, and/or 49 CFR 130 Subpart C.

- Revise 340-141-0260 to acknowledge that the owner of a HHTR has responsibility for plan preparation, drills and exercises, etc., not the ‘owner or operator’. The term “owns or operates” is used repeatedly throughout this section of the Draft Rules and should be revised to reference only the owner.
 - o This distinction is necessary for alignment with the NWACP which indicates ‘the track owner is responsible for the emergency response phase of the incident, regardless of whose trains are operating on the line.’ Since the emergency response phase of an incident is the responsibility of the track owner (and not operator), it is unnecessary, according to the NWACP, for a HHTR operator (who doesn’t own the HHTR) to prepare plans that will not be implemented during a response, or to exercise spill scenarios its personnel will not respond to. Both BNSF’s Pipeline and Hazardous Materials Safety Administration-approved COSRP and Washington State Department of Ecology-approved C-plan already reflect this track ownership-driven construct.
 - o In the case of determining responsibility for assessing the ‘up to \$20-tank car fee’, a different term needs to be used to define ‘oil owner’ to distinguish this definition from those elsewhere in the Draft Rules associated with track ownership. The ‘person who has ultimate control over, and the right to use or sell, oil being shipped’ should be defined separately as the “offerer” in this section of the Draft Rules.
- Use the US Coast Guard (USCG) term “Oil Spill Removal Organization” (OSRO) instead of “Oil Spill Response Organization” currently used in the Draft Rules.
- Instead of the term “primary response contractor,” use the term “OSRO” which is nationally recognized and used elsewhere successfully in the Draft Rules.
- “Tank railroad car” as defined in 340-141-0250 should be “railroad tank car” throughout the rules.

- The Draft Rules’ “Definitions” as applied to HHTRs are both inconsistent and confusing because they are referenced in both 340-141-0005 and 340-141-0250. Listing all definitions applicable to HHTRs in single section of the Draft Rules would provide much needed clarity to the regulated community.

4: Draft Rule Specific Language Clarifications

Minor language clarifications are necessary to streamline the Draft Rules, including:

- Remove artifact references to ‘facilities and vessels’ in HHTR portions of the Draft Rules. Currently, each section of the existing and Draft Rules must be read carefully to determine its potential applicability to HHTRs. Most of these artifacts have been addressed by DEQ; however, a few remain. For example:
 - o 340-141-0210(3): Remove the words “or high hazard rail”. This section of the Draft Rules does not apply to HHTRs. HHTRs have a separate section for Plan Maintenance and Use (340-141-0282).
 - o 340-141-0265(11)(e): Remove the words “OAR 340-141-0190”. This section of the Draft Rules does not apply to HHTRs. Replace with the HHTR-applicable reference “340-141-0280”.
- Clarifications to OAR 340-141-0265:
 - o (1)(c): This section requires the railroad to identify the type of oil shipped. This needs to be reworded as “typical types of oil shipped”. As a common carrier railroads ship all types of oil that are properly offered for transport.
List(s) of oils being transported will change over time. Lists of typical oils can be used without adding additional plan maintenance burdens while maintaining protectiveness of the plan.
 - o (11)(a) currently states: “If the plan relies on federally approved OSROs or response contractors who list their equipment in a shared and publicly available database, this information may be included by reference in lieu of a full list in the Plan.”
Remove the words “federally approved OSROs or response contractors”. The federal government does not approve OSROs or response contractors. OSROs are classified by the USCG based on their capabilities within different geographies and operating environments. Replace with “USCG-classified OSROs.”
Remove the words “who list their equipment in a shared and publicly available database”. Classified OSRO equipment lists are maintained in the USCG Response Resource Inventory (RRI). The RRI is used by the USCG to maintain a comprehensive list of spill removal equipment. Use of classified OSROs should allow the Planholder to list the classified OSROs by their name and need not include extensive detailed lists of response equipment within the C-Plan.

The revised section should, therefore, be modified to read: “If the plan relies on USCG-classified OSROs, equipment information may be included by reference in lieu of a full list in the Plan.”

- o (11)(c): Should be modified as only applicable to Planholder owned and/or non USCG-classified OSRO-owned emergency response equipment cited in the plan. As discussed above, this section should not be applicable to equipment owned by USCG-classified OSROs
- o (16)(b): Section should be removed. OSROs maintain equipment and contracts for interim or portable oil storage. Adding these lists of contacts and procedural descriptions to plans is unnecessary, cumbersome, not required by statute, and will increase DEQ’s plan review/approval burden.
- o (21)(a): Revise to list “general types oils transported” as types and quantities vary over time. As a common carrier railroads ship all types of oil that are properly offered for transport. See comment above under (1)(c).
- o 21(d): The Draft Rules state “A written description and diagram showing the tank cars, piping and intakes”. This requires clarification to address(i) if this is requiring a description and an illustration of a typical tank car used in HHTRs; (ii) if the piping on the tank car is to be described and illustrated; and (iii) what “intake” refers to as it is not a typical component of a tank car.
- o (22)(d): Should be modified to remove the reference to Geographic Response Plans (GRPs), and a new item (e) should be added so that it is clearly permissible to reference GRPs for all items included in (22)(a) through (d), not just item

(22)(d). Specifically, the new item (e) should state:

“In lieu of (a) through (d) above, plans may reference numbered GRP strategies in the NWACP and publicly available geographical information system-based (GIS) databases managed by state and federal agencies and tribes when identifying individual environmental variables and cultural resource features.”

- (21), (22), and (23): Many of the requirements are better depicted on GIS-based maps rather than listed or described, and DEQ should confirm state-wide GIS data is consistently available to Planholders for all environmental variable types listed in the Draft Rules. Planholders should be allowed to reference environmentally sensitive data available in the NWACP and publicly available databases as well as to reference available GRPs.

Clarifications to 340-141-0270 - Drill and Exercise Requirements for HHTRs:

- o (4): This section should be revised to indicate that the drill and exercise records must be available, and the storage location be indicated in the plan. Maintenance of the records “in the plan” is burdensome, inefficient, and makes maintenance and sharing of the plan unwieldy.
- o (5): Recommend DEQ add language specifying that railroads must submit drill documentation for department review and whether DEQ ‘drill credit’ must be received vs. whether self-certification under NPREP is also allowed. If drill credit must be approved, DEQ should adopt the NPREP

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| <p>drill/exercise program and confirm components with which Planholders must comply.</p> <ul style="list-style-type: none"> o (7): The word “participates” should be removed from this section. Although in theory DEQ should participate in a HHTR spill response exercise, credit should be extended to the railroads even if DEQ does not participate so long as DEQ finds that the exercised spill event adequately tested the plan. <p>BNSF appreciates the opportunity as an HHTR RAC member to support DEQ’s development of the Draft Rules and believes that consideration of the federal regime and input from the regulated community is critical to the success of Oregon’s response program. BNSF has submitted these recommendations to the Draft Rules in advance of the public comment deadline to facilitate discussion during the upcoming public meeting. Following the public meeting, BNSF may provide additional comments. Please forward any questions or comments to me at the address above or via email.</p> <p>Sincerely, Nic Winslow Dominic.Winslow@BNSF.com Manager Hazmat Planning</p> | |
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| <p><u>Renita Gerard</u> It is important that both the Railroads and the Oil Companies put money aside for clean ups. It should be held for our State only and be used only for cleanup. If need be they should bonded for this.</p> | <p>Thank you for your comment. Financial means to clean the spill is a provision within the new rules. Within these rules are specific items that allow for additional money to fund State of Oregon training and spill response activities.</p> |
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| <p><u>M.E. Andre</u> This comment is being submitted as a part of the DEQ Public Hearing on <u>Oil Train Emergency Rulemaking</u>, December 16, 2020. Attention: Kyrion Gray</p> <p>Thank you for the opportunity to contribute to the Rulemaking process for Oil Train Emergencies. To better prepare for the next oil train derailment and spill, I bring you the concerns I carry as one who is frequently in the vicinity of the rails in the Columbia Gorge.</p> <p>However, my comments do not relate only to me personally. Each time I enter the Gorge, I am uniquely attuned to all forms of life along the</p> | <p>Thank you for your comment. The protection of our environment is an absolute priority. Most railroads currently operating have some form of an emergency response program in place. These rules further spell out minimum requirements for High Hazard Rail, as well as establish</p> |

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| <p>rails.....others who may be recreating or conducting studies or engaging in cultural practices such as harvesting First Foods, communities who have long stewarded the area, creatures of the land, air, and water, and all those traveling through this sole sea-level passage through the Cascade Mountains, whether they come to connect with family and friends, to conduct the needs of their business, to bring supplies needed to sustain life along the river, or to enjoy renewing their spirit in one of the most iconic scenic and environmentally significant places on Earth.</p> <p>With all these constituencies in mind, I urge you to include oil spill contingency plans on <u>all</u> oil train routes and to include protection of fish and wildlife. The planning needs to include sufficient planning and resources to clean up large spills of both light and heavy crude oil. During any response to oil spills, air monitoring protections for the responders and the public need to be happening. After a spill, railroads and oil companies need to bear the costs of the spill response. Therefore, the plan needs to include proof of financial responsibility by the railroads.</p> <p>I think of the protection of the Columbia River Gorge as the rent paid for the privilege of being part of it. I urge the Rulemaking for Oil Train Emergencies to hold this value high throughout the process, culminating in a Plan that provides the highest protection for all contingent life forms possible, and the clearest path for the railroads to implement and take responsibility for clean up.</p> <p>Thank you for your consideration. I look forward to learning of the final results of this critical work.</p> <p>M. E. Andre Portland, OR</p> | <p>guidelines for protection of the environment, responders as well as the impacted community. Specific provisions mentioning air monitoring for responders and the local community, as well as sensitive area protections are specifically outlined within the plan requirements.</p> |
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| <p><u>Basey Klopp</u> To whom it may concern:</p> <p>I do not want toxic trains traveling through my community, much less my state.</p> <p>Oregon needs to protect its residents from potential oil train derailments, spills, fires, and explosions. Additionally, Liquefied Natural Gas (LNG) is now allowed for transport by rail, without any additional safety rules or regulations that would make it more safe.</p> <p>Any corporation transporting oil or LNG by rail through Oregon communities must:</p> <p>Carry insurance equal to the cost of a worst-case spill or fire.</p> <p>Carry a surety bond obligating them to pay the cost of response and cleanup.</p> | <p>Thank you for your comment. The safety of Oregon’s people and environment is a top priority for us. The established statute currently limits our ability to regulate trains carrying oil. Specific release of information such as route, time of transport and product can be considered a security concern, and put communities even more at risk. DEQ takes</p> |

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| <p>Disclose the dangerous cargo and the time it will be transported through an area, to first responders with at least 24 hours notice.</p> <p>History shows that this volatile cargo has dangerous, life threatening explosions that can cause extreme damages, up to 3 billion in the case of the event in Lac Megantic.</p> <p>The costs of rebuilding, repairing and cleaning up after a derailment, crash, spill or fire should not fall back on taxpayers, but should be born by those responsible.</p> <p>Oil transporters, rail companies and their associated partners should be required to make rail cars safe for transport, and make safety repairs to tracks throughout the system.</p> <p>This is a public health and safety issue that affects all Oregonians who live, work or play near the tracks.</p> <p>All homes, businesses, schools, parks, places of worship, and natural areas within 0.5 miles of the train tracks are at risk of direct damage from an oil train derailment, spill, fire or explosion.</p> <p>All homes, businesses, schools, parks, places of worship, and natural areas within 1 mile of the train tracks would need to be evacuated in the case of an oil or train derailment, spill, fire or explosion.</p> <p>If LNG is being transported, the direct risk and evacuation zones are even larger.</p> <p>22 cars of LNG, if exploded would be the equivalent of the Hiroshima bomb.</p> <p>This is an unacceptable risk to life and property.</p> <p>This is an environmental justice issue that violates Title VI of the Civil Rights Act.</p> <p>Low-Income and POC communities are disproportionately housed near train tracks, which puts them at a greater safety and health risk than their wealthier and whiter counterparts.</p> <p>Our waterways and wildlife are put at risk by oil trains.</p> <p>Derailments can cause toxic oil to spill into waterways and groundwater, resulting in contamination of ground and surface water.</p> <p>Please ensure the safety of all Oregonians by ceasing hazardous rail transport.</p> <p>Basey Klopp</p> | <p>environmental justice very seriously. Every person deserves to be protected from the hazards of a spill. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment and our communities throughout the state.</p> |
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Matt Orr

Dear Oregon Department of Environmental Quality:

I am writing with regard to HB 2209, "Contingency Planning For High Hazard Train Routes." I live within the 1600 meter evacuation perimeter for derailment of trains carrying liquified natural gas (LNG), and my son attends Bend Senior High School, which falls within the 800 meters perimeter for trains carrying crude oil.¹ While it is encouraging to know that Oregon state government is willing to consider issues of rail safety, for the following reasons HB 2209 does not go far enough to protect the public or my family:

1. Strangely, Section 1, Paragraph (19)(b) includes liquified natural gas (LNG) under the definition of "oil." Both Oregon U.S. senators have criticized proposals to transport LNG by rail.²
2. Section 1 Paragraph (13) defines a high hazard train route as one that abuts navigable waters, a drinking water source, or an inland location within ¼ mile of state waters. (I assume the latter would apply to the Deschutes River, which flows within 3 blocks of my home.) A quarter mile is an insufficient distance, since it is half the distance recommended for evacuation from crude oil accidents (800 m)¹ and one quarter the distance recommended for LNG (1600 m).¹ Moreover, given the threat to human life, not merely water quality, imposed by derailment and explosion of train cars carrying crude oil³ and LNG, the bill's myopic focus on waterway pollution seems perilously limited. In addition, my son attends school within ¼ mile of the train tracks in Bend, but at that location the tracks are almost two miles from the river. Is no response plan needed to protect Bend Senior High School or any of the dozens of schools, child care centers, churches, emergency services, restaurants, parks, and trails in Bend located within 800 m of the train tracks⁴ but not within a hazardous route, as defined by the bill?
3. Section 5, Paragraph 6 reads: "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." A bill written with specific attention to unenforceability indicates that the rail interests who have influenced its language understand that there is a risk to what they are doing but do not want to be accountable to the Oregon public or to state government. Passage of this bill as written would be an abdication of the state government's responsibility to protect Oregon's citizens.

Sincerely,

Thank you for your comment. These rules address existing risks to oil by rail, but leave space for further clarification in the future as deemed necessary. The definition of High Hazard Rail is used to qualify specific routes. Once the route is identified, Contingency Plans are to be developed throughout the entire length of the route, which will incorporate Geographic Response Plans (GRPs) as they become available. The protection of Oregon's people and environment is always the priority of DEQ.

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| <p>Matthew Orr</p> <p>¹ As described in the US DOT Pipeline and Hazardous Materials Safety Administration’s 2020 Emergency Response Guidebook (https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/ERG2016.pdf). Crude oil is covered under category #128, p. 192. Liquefied natural gas is category #115, p. 166.</p> <p>² https://www.opb.org/news/article/oregon-senators-reject-liquefied-national-gas-transport-rail-lng/</p> <p>³ Austen, I. 2019. A runaway train explosion killed 47, but deadly cargo still rides the rails. New York Times 16 July 2019. https://www.nytimes.com/2019/07/16/world/canada/lac-megantic-quebec-train-explosion.html</p> <p>⁴ https://350deschutes.org/oiltrains/ Click to view the map legend to see list of sites in evacuation zones for crude oil and LNG.</p> | |
| <p><u>Jim Neu</u> To Whom it May Concern,</p> <p>I am a resident of Eugene and live within a quarter mile of the high hazard Union Pacific train route that runs north and south through our town. Until March when the Covid-19 pandemic reduced travel, we were seeing up to five unit trains (100 cars same product) of crude oil per week moving through town. These highly hazardous trains were carrying over 3 million gallons of explosive Bakken and tar sands crude oil adjacent to the Willamette River, through downtown past the University and many schools, shops, and residential areas all within the half mile evacuation zone.</p> <p>HB 2209, although well intentioned, falls short of protecting the health and safety of the public in the state of Oregon when it comes to high hazard rail traffic. Crude oil and the proposed movement of liquefied natural gas are highly explosive products that would inflict extensive infrastructure destruction and public safety risks should there be an event through Eugene. Two train derailment events in the last two years in central Oregon, Madras and Mosier, were examples of the volatility associated with high hazard train routes.</p> <p>* This bill should require stoppage of oil and gas movement until the area and process can be deemed safe after a derailment, fire or explosion occurs.</p> | <p>Thank you for your comment. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities. The current regulations and statute as well as the limits of the House Bill limits what DEQ can change and require of the Railroad companies. Worst Case Scenario oil spill is established in statute and we are unable to change the definition. Any spill is a serious issue and these plans will better allow state, local, tribal and federal</p> |

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| <p>* Insurance requirements should be increased to cover costs associated with derailment event damage and risk bond requirements should be secured and held in trust to insure coverage in case of carrier bankruptcy.</p> <p>* The worst case spill amount of 15% of load or 300,000 gallons is much too low. This amount should be at a minimum 20% of load and preferably 25%.</p> <p>*Positive Train Control (PTC) should be required to be installed completely on all high hazard train routes before any hazardous or volatile products can be shipped on high hazard train routes.</p> <p>* Electronic Pneumatic Braking (ECP) systems should be required on all rail tank cars that transport hazardous or volatile products on high hazard train routes.</p> <p>* An essential inventory of wetlands and wildlife habitats within a mile along all HHTR in Oregon should be compiled and documented to act as a control benchmark in case of a polluting spill.</p> <p>* Regulations should extend to 2 miles and associated downstream and groundwater contamination within HHTR.</p> <p>* Regulations should apply to explosion or a risk event from a rail tank car on the tracks that is transporting oil or gas regardless of the number of rail tank cars within the train.</p> <p>* Community first responders and Fire chiefs should be given 24 hr. notice of high hazard volatile or hazardous materials before they come into their jurisdictions.</p> <p>Thank you for the opportunity to provide comment on the high hazard rulemaking.</p> <p>Jim Neu</p> | <p>resources to respond in an effective manner and protect our environment. For the case of these rules, we are following existing statute and federal guidelines as they are listed in 49 CFR 130.5. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities.</p> |
| <p><u>Kevin Jeray</u> Please read the news of what is happening outside Custer wa in whatcom county today.</p> <p>You are risking our lives so we can ship oil out of state.</p> <p>How does any of this help oregon and the people you serve?</p> <p>Regards, Kevin</p> <p>></p> <p>> I am opposed to any oil trains. Oil going thru our state is headed to a government funded bio diesel facility that was basically “given” to oil companies so they could export bakken oil.</p> <p>></p> | <p>Thank you for your comment. The passage of House Bill 2209 works to ensure that agencies within the State or Oregon are better prepared to respond to a train derailment and spill. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response</p> |

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| <p>> I lived in Linnton and watched a train derail about a decade ago. The response of our emergency crews was to watch and let it burn. They could do nothing.</p> <p>></p> <p>> I also worked with the linnton neighborhood association regarding the danger of the passing trains as well as the oil yards on unstable soil along the willamette that endangered that community.</p> <p>></p> <p>> Finally, I got to watch as the the train burned in mosier, one of oregons jewels.</p> <p>></p> <p>> It is apparent to me that the state lacks adequate preparedness to handle a oil train, not only that, but it is plainly obvious they cater to the railroad lobby and do t required them to proper document hazardous trains going through our state nor require them to have adequate safety measures in case of a derailment.</p> <p>></p> <p>> This is oregon risking their population for big business that isnt even in our state.</p> <p>></p> <p>> If these trains were carrying oil to cover our own needs, I may be more open to the oil trains. Since this is just oil just passing through oregon giving its people little to no benefit, I am adamantly opposed to oil trains,</p> <p>></p> <p>> Oregonians before oil companies.</p> <p>></p> <p>> Kind regards,</p> <p>></p> <p>> Kevin</p> <p>></p> | <p>entities. This further prepares our communities and state agencies to ensure that they are ready to respond.</p> |
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| <p><u>Audie Huber</u> Dear Mr. Gray: The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) offers the following comments on the proposed Oregon Department of Environmental Quality rulemaking regarding High Hazard Railroad Contingency Planning. Due to the timing of the issuance of these rules over the holidays and during the COVID 19 pandemic, we were unable to devote sufficient staffing resources to fully engage in reviewing these proposed rules. However from our staff review, we believe that the proposed rules largely</p> | <p>Thank you for your comment. DEQ worked hard to ensure tribal interests were included in the development of these rules. We are temporarily reserving the section of the rules concerning the fee for further analysis and interagency coordination. We will move forward with it separately at a later date.</p> |

carry out the authorized purposes of HB 2209 from the 2019 legislative session. The CTUIR DNR anticipates working with the State of Oregon, the counties, other interested parties and the railroads implementing these rules including developing and implementing the response plans in our continuing effort to protect the resources the CTUIR protected under our Treaty of 1855.

The CTUIR is a federally-recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. In 1855, predecessors to the CTUIR—ancestors with the Cayuse, Umatilla, and Walla Walla Tribes—negotiated and signed the Treaty of 1855 with the United States. The Treaty is a contract between sovereigns and is “the supreme Law of the Land” under the United States Constitution. In the Treaty the CTUIR ceded millions of acres of land to the federal government, and in exchange received assurances that pre-existing tribal rights would be protected, and our interests would be respected, in perpetuity. A paramount objective in the Treaty was protecting and maintaining our tribal culture, traditions, and way of life, a duty the United States undertook in the form of the Trust Responsibility to honor the obligations of the Treaty. Fulfilling this role requires protection and maintenance of our essential cultural resources—which include not merely specific sites and locations, and any artifacts found there, but also the First Foods (water, fish, big game, roots, berries, and other plants) that have been and continue to be woven into the fabric of CTUIR members’ lives. This objective—protecting, maintaining, and perpetuating our culture—remains paramount for the CTUIR.

Since the 1880’s, Union Pacific Railroad and its predecessors have continuously operated a railroad line across the Umatilla Indian Reservation (UIR). Over the last century, the CTUIR has built a relationship with UPRR that started with a written agreement on June 1, 1881 and continued with a comprehensive Memorandum of Understanding with UPRR on August 28,

2013 and additional agreements since. The CTUIR has developed experience in addressing and planning for the impacts of railroad operations and continues to this day dealing with spills and incidents.

Incidents involving railroads are unavoidable. Below is a partial list of derailments we have monitored, participated in or are aware of on or near our reservation or within our traditional lands:

- Last week, on December 14, a covered hopper car was damaged one mile off the Umatilla Indian Reservation near the headwaters of Meacham Creek at UPRR Mile Post 272. In this incident, the hopper car's side was torn open by unknown means resulting in a spill of soda ash.¹
- On January 9, 2017, six cars derailed on the Umatilla Indian Reservation at MP 236, at least two of which contained hazardous materials.²
- On March 2, 2015, at MP 262, two miles off reservation, a derailment occurred of ten train cars, including an empty tank car for transporting propane derailed and came to rest next to Meacham Creek, headwaters to the Umatilla River.³
- On September 19, 2014, a BNSF train struck a rock south of Pasco along the Columbia River and leaked over 1000 gallons of diesel fuel.⁴
- On August 1, 2014, a UP train derailed and resulted in five rail cars sliding into the Columbia River near Wallula, Washington.⁵

The increase in crude-by-rail shipments is unprecedented. We've watched as shipments of crude oil have increased dramatically along the Columbia River and through the territory of the CTUIR. Below are a number of incidents that are related to shipments of crude-by-rail or other incidents along the Columbia River and tributaries:

- Yesterday, December 22, a BNSF crude oil train derailed and caught fire in Washington State near the U.S.-Canadian border. The derailed train was carrying Bakken crude oil, crude oil that would have travelled along the Columbia River through the Columbia River Gorge on its way to Washington.⁶

- August 12, 2019, a BNSF train hit rocks on the way to Pasco, Washington causing the spill of roughly 4000 gallons of diesel fuel near Madras, Oregon.⁷
 - On December 27, 2016, a BNSF train struck a rock along the Deschutes River and caused a diesel spill from the engine.⁸
 - On June 3, 2016, 16 cars of a UPRR train derailed in Mosier carrying Bakken crude resulting in a fire and extensive natural resource damage.⁹
- 1 Notification, Oregon Emergency Response System, OERS 2020-3087 Umatilla County, December 14, 2020.
- 2 East Oregonian, January 13, 2017, page 3A.
- 3 Confederated Umatilla Journal, March, 2015, pages 1,4.
- 4 <https://www.spokesman.com/stories/2014/sep/19/bnsf-contains-diesel-spill-near-columbia-river/>
- 5 Notification, OERS 2014-1682, Umatilla County, August 1, 2014.
- 6 <https://www.seattletimes.com/seattle-news/train-carrying-crude-oil-derails-near-custer-whatcom-county/>
- 7 <https://www.thenewtribune.com/news/state/article233799927.html>
- 8 Notification, OERS 2016-3253, Wasco County, December 27, 2016.
- 9 https://response.epa.gov/site/site_profile.aspx?site_id=11637

There are tens of millions of gallons of Bakken Crude and Alberta tar sands crude traveling along the Columbia through the Gorge and up the Deschutes River on a weekly basis. Only timely, competent oversight will allow Oregon and its agencies to both plan for and respond to such events. The current DEQ spill response budget is cobbled together from a number of sources and receives no general fund dollars. The proposal to assess the statutory maximum of \$20 per car is likely the minimum necessary to meet the needs of the state agencies to respond to this planning effort. A sufficient, stable and consistent source of revenue is essential to address hazardous material spills that have the potential for catastrophic impacts. Notably, the proposed rules implementing HB 2209 provides the opportunity for the CTUIR to review and comment on contingency plans. During earlier legislative sessions the CTUIR noted that we have unique and extensive experience in the management of natural resources, specifically water-ways, in their territory and can provide invaluable information to resource

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| <p>agencies in planning for spill response. In areas of eastern Oregon, remoteness of railroad lines and limited access oftentimes means response equipment is hours away. Because these tracks often run along rivers due to predictable grades, planning is particularly important to address potential spills. The CTUIR DNR appreciates this inclusion in the rules and looks forward to participating in the planning process. If you have any questions, please feel free to contact Audie Huber, CTUIR DNR Intergovernmental Affairs Manager, at 541-429-7228 if you have any questions regarding these comments.</p> | |
| <p><u>Michael Newsom</u> Dear Environmental Quality Commission and Staff:</p> <p>Thank you for the opportunity to comment on the draft rule for High Hazard Rail Contingency Planning. I oppose the transport of crude oil by rail through Oregon. It is my wish that the Oregon legislature will go beyond the requirements of House Bill 2209, which passed into law in 2019 and place stricter limitations on crude oil transport. Meanwhile I support requiring the oil industry to pay for the costs of development and implementation of oil spill cleanup plans.</p> <p>I also support the rule’s requirement for a full inventory of sensitive resources along rail routes, including water resources, fish, and wildlife habitat, drinking water withdrawals, and the protection of these resources.</p> <p>Thank you for considering these comments and including them in the official record.</p> <p>Regards, Michael Newsom</p> | <p>Thank you for your comment. These rules are a crucial step in regulating High Hazard Rail, as well as accounting for sensitive habitat and the necessary protection strategies that should be put in place in the event of a spill. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities.</p> |
| <p><u>Linda Gertz</u> Dear Environmental Quality Commission and Staff:</p> <p>Thank you for the opportunity to comment on the draft rule for High Hazard Rail Contingency Planning. The draft rule is long overdue, but a step in the right direction to better protect Oregon’s rivers and communities from the threats of oil by rail.</p> <p>The oil spill up in the state of Washington shows that oil spills happen. We</p> | <p>Thank you for your comment. These rules are a crucial step in regulating High Hazard Rail, as well as accounting for sensitive habitat and the necessary protection strategies that should be put in place in</p> |

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| <p>need to make sure the oil companies are prepared to: Respond quickly by having plans in place Be held responsible for the clean up &/or damage done Doing the most they can in making sure if the cars derail that the type of car the oil is in will help prevent damage.</p> <p>The Columbia River Gorge is so important & one big oil spill could cause an immense amount of damage.</p> <p>Thank you for considering these comments and including them in the official record.</p> <p>Regards, Linda Gertz</p> | <p>the event of a spill. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities.</p> |
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| <p><u>John Hickey</u> Asphalt binder and aggregates are the primary ingredients in asphalt pavement, which is what is used to make the surface of most roads and highways. Asphalt binder, along with almost countless other products, is technically a “petroleum-related product,” but is not hazardous when transported by rail.</p> <p>There are numerous industries in Oregon with individuals who have expertise in the chemistry and hazardousness of petroleum-related products, including the asphalt pavement industry. However, it appears that none of the industries were asked to participate in the process to draft the proposed rule. Because there are many industries operating in Oregon with products that would not be considered hazardous when transported by rail and because there are many individuals with knowledge about hazardous and non-hazardous petroleum-related products, we suggest that DEQ include those industries and individuals in a process to revise the currently proposed rule. Such individuals should also be included in the further development of DEQ’s regulatory system.</p> <p>Knowledge drives good decision-making in business and in regulation, and DEQ should regulate the transport of hazardous petroleum-related products by rail with as much knowledge as possible.</p> <p>Although we understand that regulatory agencies cannot defer to affected industries, the proposed rule applies to materials that are not hazardous and that should not be included under a regulation for hazardous substances. We suggest that DEQ structure a process under which it involves academics and industry experts to create a regulatory system that will protect Oregonians</p> | <p>Thank you for your comment. Contingency plan requirements span any rail that qualifies as High Hazard Rail. This is not just limited to crude oil, but other substances listed within the existing rules that can pose a risk to the environment in the event of a spill.</p> |

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| <p>and not tax industries that should not in all fairness be subject to the regulatory system.</p> <p>The Asphalt Institute has information on the environmental concerns relating to asphalt binder: http://www.asphaltinstitute.org/hse/.</p> <p>We also request all documents on which DEQ relied to conclude that all petroleum-related products, including asphalt binder, should be considered hazardous for purposes of the rule.</p> <p>JOHN HICKEY Executive Director Asphalt Pavement Association of Oregon</p> | |
| <p><u>Jenny Holmes</u> Dear Environmental Quality Commission and Staff:</p> <p>I am pleased to comment on the draft rule for High Hazard Rail Contingency Planning. I saw the June 2016 Moiser derailment a few days after it happened and spoke with people who were affected by it. The fact that winds were unusually light, prevented death and destruction. We must not let this happen again. Next time we may not be so lucky. I strongly oppose the transport of crude oil by train, but the draft rules are a step forward.</p> <p>The rules must address the following:</p> <ul style="list-style-type: none"> - Oil spill contingency plans must apply to all oil train routes -There must be sufficient planning and resources to clean up large spills of both light and heavy crude oil; -Railroads and oil companies should bear the costs of oil spill response; -The proof of financial responsibility by the railroads must be documented. -Air monitoring should be required to protect responders and the public; and -There must be strong provisions to protect fish and wildlife. <p>The draft rule appears to be consistent with the requirements of House Bill 2209, which passed into law in 2019.</p> <p>Thank you for considering these comments and including them in the official record.</p> <p>Regards, Jenny Holmes</p> | <p>Thank you for your comment. Due to limits within the existing statute, we are so far only able to require plans for routes that qualify as High Hazard Rail. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities.</p> |

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| <p><u>Emily Herbert</u> Dear Rule Makers, Please do pass the implementation of rules to better prepare Oregon for inevitable oil spills from trains. It is beyond time to do so! Mosier and now Custer WA remind us that the costs of these spills typically fall to the locals who must endure the poisoning of their soils, water and air as well as try to move on. The people who live closest to the tracks are not the wealthy. We must stop this injustice and make the polluters pay, with assurance they have the financial resources to do so. Thank you for your work to keep our blessed Earth and all beings safer. Sincerely, Emily Herbert</p> | <p>Thank you for your comment. DEQ is working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon.</p> |
| <p><u>Theodora Tsongas</u> December 28, 2020 To: Oregon DEQ Comments re: High Hazard Railroad Contingency Planning 2021 Via email: hhrp@deq.state.or.us On December 22, 2020, we have all been made aware, again, of the high risks associated with transporting oil by rail, with the derailment and fire of an oil train in Washington state. This is another reminder that we cannot afford further contamination of our environment and supporting ecosystems on this planet by the extraction, transportation, refining, or use of fossil fuels. Since 2013, oil train derailments, spills, explosions and fires across North America have claimed hundreds of lives, required the evacuation of thousands, spilled millions of gallons of oil into waterways, and cost billions of dollars in clean up attempts. We are losing our air, water, and lives while oil companies and the railroads transporting the oil make a profit without responsibility for the damage they cause. With this travesty in mind, I want to encourage Oregon DEQ to take every step to develop the most stringent regulations, AND ENFORCE them, in order to prevent further damage. In this sense, the word PREVENTION is primary!! Oil spills may be partially ‘cleaned up’, but the damage they do in the time between release and remediation is irreversible. <u>Prevention</u> of releases is the most effective and economical way to manage these incidents.</p> | <p>Thank you for your comment. DEQ is limited in the authority it has to change wording for existing rules. The definition of High Hazard Rail is already established in statute and so for the purposes of this rulemaking, DEQ is unable to change the applicability of these proposed rules. Prevention is absolutely the goal of these new rules, and with the requirements of contingency plans and drills and exercises, it will allow DEQ to regulate and ensure that steps are taken to ensure spill prevention through the state. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment.</p> |

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| <p>I would like to request that Oregon DEQ strengthen the proposed regulations in the following ways:</p> <ul style="list-style-type: none"> • Oil spill contingency plans must be required on ALL oil train routes, not just major routes, including spurs and railyards; • Sufficient planning and resources must be available to clean up spills of both light and heavy crude oil; • Railroads and oil companies must bear ALL the costs of oil spill response, including preparation, training and equipment; • The railroads and oil companies (large and small) must be required to demonstrate proof of financial responsibility; • Air monitoring must be conducted immediately and continuously to protect responders <u>and</u> the public; portable air monitoring equipment must be available to and carried by all potential responders; • Protection of fish and wildlife and ecosystem supporting systems must also be required; • At least annual table top exercises of response plans instead of triennial exercises should be used as train derailments can occur at any time, and learning from incidents and changes in response plans must be incorporated into exercises. • Build continuing education requirements into training and certification of all responders. <p>Thank you for this opportunity to comment.</p> <p>Theodora Tsongas, PhD, MS</p> <p>Environmental Health Scientist/Epidemiologist</p> <p>https://www.usatoday.com/story/news/nation/2020/12/22/washington-state-train-derailment-spills-crude-oil-custer/4016493001/</p> | <p>Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans. Specific provisions mentioning air monitoring for responders and the local community, as well as sensitive area protections are outlined within the plan requirements. The drill and exercise requirements are consistent with federal guidelines and the new requirements will ensure that “best available technology” is always incorporated into response actions and strategies.</p> |
| <p><u>Kevin Jones</u> Dear Dept. of Environmental Quality,</p> <p>Asphalt binder and aggregates are the primary ingredients in asphalt pavement, which is what is used to make the surface of most roads and highways. The State of Oregon through ODOT is a major consumer of asphalt binder annually.</p> | <p>Thank you for your comment. Contingency plan requirements span any rail that qualifies as high hazard rail. This is not just limited to crude oil, but other substances listed within the existing</p> |

A slightly modified asphalt binder is the primary ingredient used to make various forms of roofing components. The roofing industry is a large and thriving business in Oregon that produces millions of “squares” annually and supplies the entire West Coast. Asphalt binder, along with almost countless other products, is technically a “petroleum-related product,” but is not hazardous when transported by rail.

There are numerous industries in Oregon with individuals who have expertise in the chemistry and hazardousness of petroleum-related products, including the asphalt pavement industry. However, it appears that none of the industries were asked to participate in the process to draft the proposed rule. Because there are many industries operating in Oregon with products that would not be considered hazardous when transported by rail and because there are many individuals with knowledge about hazardous and non-hazardous petroleum-related products, we suggest that DEQ include those industries and individuals in a process to revise the currently proposed rule. Such individuals should also be included in the further development of DEQ’s regulatory system.

Knowledge drives good decision-making in business and in regulation, and DEQ should regulate the transport of hazardous petroleum-related products by rail with as much knowledge as possible.

Although we understand that regulatory agencies cannot defer to affected industries, the proposed rule applies to materials that are not hazardous and that should not be included under a regulation for hazardous substances. We suggest that DEQ structure a process under which it involves academics and industry experts to create a regulatory system that will protect Oregonians and not tax industries that should not in all fairness be subject to the regulatory system.

The Asphalt Institute has information on the environmental concerns relating to asphalt binder: <http://www.asphaltinstitute.org/hse/>.

We also request all documents on which DEQ relied to conclude that all petroleum-related products, including asphalt binder, should be considered hazardous for purposes of the rule.

Sincerely,

Kevin T. Jones
CEO
McCall Companies

rules that can pose a risk to the environment in the event of a spill. DEQ is limited in the authority it has to change wording for existing rules. The definition of High Hazard Rail, as well as oil and petroleum related products is already established in statute and so for the purposes of this rulemaking, DEQ is unable to change the applicability of these proposed rules.

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| <p>Dear Environmental Quality Commission and Staff:</p> <p>THESE DAYS HEARING TRAIN WHISTLES MAKES ME SAD NOT NOSTALGIC AS I KNOW THE TRAIN MAY BE CARRYING FOSSIL FUELS IN ONE FORM OR ANOTHER</p> <p>Regards, Sarah McKenzie</p> | <p>Thank you for your comment. We are working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon.</p> |
| <p><u>Ryan Whitchurch</u></p> <p>Suggestions regarding the proposed rules (November 30, 2020 version):</p> <p>340-141-0005 (32) [definition of "Oil" or "Oils"]</p> <ul style="list-style-type: none"> • Recommend addressing mixtures of oil, particularly at the federal 10% threshold [49 CFR 130.2(c)(1)] where contingency planning requirements cease to apply. This is particularly important when alcohols denatured with gasoline may be transported. • Consider addressing non-petroleum oils - e.g. biodiesel, animal fats, vegetable oils, wholly synthetic oils. <p>340-141-0140 (21)(a) [Chemical response agents toxicity]</p> <ul style="list-style-type: none"> • Consider updating the term "material safety data sheet (MSDS)" to "safety data sheet (SDS)" <p>340-141-0250 [Definitions]</p> <ul style="list-style-type: none"> • "Owner" and "person" are defined in the rule, but the term "railroad" is not explicitly defined. However, "railroad" is used throughout the rule in context that appears to apply to the "owner" and/or "person" definitions. Recommend that "railroad" be explicitly defined. <p>340-141-0250(1) ["Average Most Probable" definition]</p> <ul style="list-style-type: none"> • Consider eliminating or revising the 50 barrel option as a definition for "average most probable" planning volume - because 50 barrels (2,100 gallons) will always be less than 1% of the minimum 300,000 gallon "worst case spill" planning volume [340-141-0250(3)]. <p>340-141-0265(2) [Contingency Plan Contents - amendments]</p> <ul style="list-style-type: none"> • Recommend that each amended page of a plan be marked with either the plan version number, the amendment date, or similar scheme that will allow reviewers and plan users to quickly verify they have the most current plan. | <p>Thank you for our comment. DEQ is limited in the authority it has to change wording for existing rules. The definitions as they are presented, have already been established in statute and DEQ is only allowed to make specific changes to existing rules. Amendments will be logged in the log sheet as well as replace the old sections of the plans, and so there should be minimal confusion as to which version is the most current. The Contingency plans relying on federal guidelines require the same speed calculation and use the same speed over ground, and so this section is consistent with the existing rules pertaining to vessels and facilities. Since the transfer will occur on the facility side, we are not going to require a description of the tanks and piping.</p> |

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| <p>340-141-0265(11)(g) [Response resource delivery to spill staging area]</p> <ul style="list-style-type: none"> • The DOT federal equipment response time predictions/assumptions in 49 CFR 130 Subpart C apply to railroad oil spill response plans and assumes 35 mph over land. • The EPA federal equipment response time predictions/assumptions in 40 CFR 112 Appendix E apply to fixed facilities and also assume 35 mph over land. However, there are more requirements placed on the owner/operator to properly analyze and evaluate response resource response times and ensure their adequacy. • Recommend the Oregon rules consider explicitly stating which "federal speed predictions" for equipment mobilization is being adopted. <p>340-141-0265(21,22) [Spill risk variables]</p> <ul style="list-style-type: none"> • [(21)(b)] Recommend explicitly including both artificial and natural drainage conveyances in the route topography description. • [(21)(d)] Recommend using industry-accepted terminology for rail tank car components such as those defined in DOT tank car specifications at 49 CFR 178.10-24. • [(22)(b)] Recommend including water treatment systems (e.g. sewer treatment, stormwater treatment, constructed wetlands) <p>340-141-0270 [Drills and exercises]</p> <ul style="list-style-type: none"> • The railroad and/or response contractors will most likely choose convenient and less-costly places to conduct equipment deployment drills, not necessarily locations that present real-world logistics challenges. Recommend that the proposed rule explicitly state that DEQ, other agencies, and Tribal governments will approve (as part of the plan approval process) drill/exercise venues that are representative of existing and planned GRPs. <p>340-141-0280 [ODEQ review and approval of contingency plans]</p> <ul style="list-style-type: none"> • Recommend that (2)(a) explicitly include new/revised GRPs as a trigger for plan amendment | <p>During the development of the GRP, DEQ will involve community interests and Emergency Response entities, which would encompass these other areas. Drills and exercises will involve local communities as well as emergency response professionals who when designing the drills will ensure that all NPREP requirements are met and that the drill/exercise is not just an easy spot for the railroad, but do indeed include GRPs in their development. 340-141-0280 (2)(c) is meant to cover the implementation of a GRP as a trigger point for an amendment.</p> |
| <p>Bob Poole The Western States Petroleum Association (WSPA), the American Chemistry Council (ACC), American Fuel & Petroleum Manufacturers, the Asphalt Roofing Manufacturers Association (ARMA) and Oregon Business & Industry appreciate the opportunity to submit the following comments regarding the Department of Environmental Quality (DEQ) High Hazard Railroad Contingency Planning 2021 draft rules. Our industries are committed to the safe transportation of chemicals, fuels, gases and other potentially hazardous or flammable materials and have collectively devoted significant resources toward emergency response</p> | <p>Thank you for your comment. While products that are transported change, DEQ does not want to preempt or exempt any future products by listing a table. DEQ looks at the intent of the bill and works to operate within</p> |

training, technology and tank car safety. Safety is our top priority and we look forward to the continued efforts on this important issue. The Department of Transportation's hazardous materials incident statistics show that these efforts have paid off.

DEQ should provide a list of products subject to the High Hazard Railroad Contingency Planning Fees

The draft rules would impose a fee on oil shipments by high hazard rail routes. This aspect of the rule is legally deficient for two primary reasons: First, the rule is vague and without a specific list of products triggering its applicability, interested parties are unable to provide informed comment. Second, as discussed below, the rule is preempted under federal transportation law. The definition of "oil" in Section 340-141-0005 (High Hazard Railroad Contingency Planning Fees) presents significant compliance challenges. Without further specificity from DEQ, the broad language addressing "any other petroleum-related product" provides no rational way for a rail shipper to know whether its products fall inside or outside of the regulation. Countless products are made from, or related in some other way to, petroleum. Many (from aspirin and medical devices to golf balls and computers) are far removed from any common-sense definition of "oil." It is critical that DEQ provide further specificity and clarity to the regulated community.

To support workable implementation, DEQ should develop a list of covered products, using specific UN identification numbers and proper shipping names (e.g., UN 1267, PETROLEUM CRUDE OIL) or STCC codes. The list should be developed through a rulemaking process, with a proposed product list issued for public review and comment.

DEQ must provide a workable process to identify rail shipments subject to the fee

The Contingency Planning Fee applies to each loaded car that is transported in a single train that includes a block of 20 or more loaded tank railroad cars, or a total of 35 or more loaded tank railroad cars. However, the product owner (typically the shipper) may have no way to control the placement of railroad cars in a train or even know that it is subject to the fee. While some products such as crude oil are typically shipped in unit trains or large blocks of cars, many potentially covered products are shipped

in a single car or in small blocks. Shippers have no visibility into railroad operations after cars leave their facilities, and therefore have no way to know if the train carrying its cars meets the regulatory threshold when it enters the state of Oregon. Therefore, DEQ must establish a process to inform regulated entities when fees are due to the Department of Revenue.

Advisory Committee should have had industry members

Oregon law plainly states that the membership of rule advisory committees should reflect the interests of the entities to be affected by the proposed rule.

the confines of what is allowable to change from the statute. The definition of oil as it pertains to the "Contingency Planning fee" addressed in your letter, is already in place within Oregon Revised Statute and the wording was pulled directly from what is already in place. DEQ does not interpret the definition to mean products such as aspirin, medical devices, golf balls, and computers to be applicable under these rules. DEQ worked hard to include a varied background in developing our Rule Advisory Committee and indeed included a member of industry who was employed by Chevron as well as representatives of both Railroads. Unfortunately, we were unable to include all interested parties, as this would have made the group too large to maintain effective discussion over the subject matter. At one point, DEQ had reached out to additional agencies, but was only able to include members who responded to inquiry and communicated a willingness to be included in the rulemaking process. We are temporarily reserving the section of the rules

ORS 183.333 states that agencies should "seek public input to the maximum extent possible" and create "an advisory committee that will represent the interests of persons likely to be affected by the rule[.]" Likewise, OAR 137-001-0007(2)¹ states that when appointing an advisory committee, "the agency shall make a good faith effort to ensure that the committee's members represent the interests of persons likely to be affected by the rule." DEQ has patently violated this state policy in its membership for the "High Hazard Railroad Contingency Planning 2021 Rulemaking Advisory Committee" (the "Committee"). The Committee was appointed to assist in drafting DEQ's proposed rules regarding contingency planning for railroad transportation of oil, including updating the rules to show "[a]pproval of a tank car fee up to \$20."² These rules will directly and disproportionately impact petroleum suppliers operating through the state through the imposition of a fee on tank cars transporting petroleum suppliers' product. Yet not a single Committee member represents the petroleum suppliers affected by the proposed rules.³ Even worse, not a single fee-payer is on the Committee. The Committee should have included members who represent the interests of petroleum suppliers and fee payers. Had the Committee included such members, the Committee would not have missed the problematic and unlawful aspects of the proposed rules discussed in these comments.

DEQ's failure to include any member in the Committee to represent petroleum suppliers or fee payers violates state and agency policy. In addition, our coalition has legal concerns with the imposition of this rule.

The proposed fee is impermissible under federal and state law

Fees imposed on rail operations are generally preempted under the ICCTA, unless they qualify under the savings clause of the Hazardous Materials Transportation Act (the "HMTA"), which allows for the imposition of fees related to hazardous materials, but only if the fees are "fair." 49 USC § 5125(f)(1). The Ninth Circuit held in 2018 that California Senate Bill 84 ("SB 84"), which imposed hazardous-waste spill fees on trains without a corresponding charge to truck operators was "unfair" and preempted. *BNSF Ry. Co. v. California Dep't of Tax & Fee Admin.*, 904 F3d 755, 767–68 (9th Cir 2018). California's attempted imposition of hazardous-waste spill fees on trains is strikingly similar to the fees that Oregon attempts to impose here—both are fees imposed on trains but not on truck operators. Therefore, under the ICCTA and binding Ninth Circuit case law, federal law preempts the fees at issue here because there is not a similar charge on the truck transport of oil, thus rendering the fee unfair for purposes of the HMTA.

Second, the fee imposition violates the Dormant Commerce Clause of the United States Constitution because of the flat-fee nature of the spill-preparedness charge. The United States Supreme Court and other federal courts have found similar flat fees to be unconstitutional because they place a higher pro-rata burden on interstate carriers who on average use state facilities less than their intrastate counterparts. See *Am. Trucking Ass'ns*,

concerning the fee for further analysis and interagency coordination. We will move forward with it separately at a later date.

Inc. v. Scheiner, 483 US 266, 280–81, 107 S Ct 2829, 97 L Ed 2d 226 (1987). The Northern District of California also held in BNSF Ry. Co. that SB 84 likely violated the Dormant Commerce Clause because it placed a spill-preparedness fee of \$45 per railway car without consideration of the extent of use of the railroads within the state. BNSF Ry. Co. v. California State Bd. of Equalization, No. 16-CV-04311-RS, 2016 WL 6393507, at *4–5 (ND Cal Oct. 28, 2016); see also Trailer Marine Transp. Corp. v. Rivera Vazquez, 977 F2d 1 (1st Cir 1992) (per-trailer flat fee held unconstitutional because it charged a two-tier flat fee without regard to how long the trailer was on the island). Here, the spill-preparedness charge is a flat fee that places a higher burden on interstate railways and therefore violates the Dormant Commerce Clause.

Third, the contingency planning violates Article VIII, Section 2(g), of the Oregon Constitution, which requires that taxes and excises levied on oil distribution or the ownership of oil to be exclusively paid into the state's Common School Fund. Under Oregon case law, the proposed spill-preparedness fee would qualify as a tax or excise. See Northwest Natural Gas Co. v. Frank, 293 Or 374, 648 P2d 1284

(1982); Pollock v. Farmers' Loan & Tr. Co., 158 US 601, 656, 15 S Ct 912, 39 L Ed 1108 (1895) ("Exactions for the support of the government may assume the form of duties, imposts, or excises, or they may also assume the form of license fees for permission to carry on particular occupations or to enjoy special franchises, or they may be specific in form, as when levied upon corporations in reference to the amount of capital stock, or to the business done or profits earned by the individual or corporation."). Because the spill-preparedness fee is a tax or excise levied on oil distribution, and the regulations do not provide that the fee proceeds are to be paid into the state's Common School Fund, the fee violates the Oregon Constitution.

Finally, the fees are an unlawful tax under the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"). The 4-R Act prohibits states from imposing tax that "discriminates against" a rail carrier. Under 49 USC § 11501(b),

"The following acts unreasonably burden and discriminate against interstate commerce, and a State * * * may not do any of them:

"(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part."

The U.S. Supreme Court has interpreted the 4-R Act to "forbid[] States to impose (1) higher property tax rates and assessment ratios upon 'rail transportation property' than upon 'other commercial and industrial property,' and (2) 'another tax that discriminates against a rail carrier providing transportation'." Dep't of Revenue of Oregon v. ACF Indus., Inc., 510 US 332, 114 S Ct 843, 127 L Ed 2d 165 (1994) (citations omitted). Prohibited discrimination includes a tax that is imposed on an activity in which only a railroad engages. ACF Indus., Inc., 510 US at 346-47 (if only

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| <p>railroads were subject to a tax, "one could say that the State had singled out railroad[s] * * * for discriminatory treatment"); BNSF Ry. Co. v. California State Bd. of Equalization, 2016 WL 6393507, at *5, aff'd sub nom. BNSF Ry. Co. v. California Dep't of Tax & Fee Admin., 904 F3d 755 (9th Cir 2018). The spill-preparedness fee constitutes a tax imposed solely on the transportation of oil by rail, which violates the 4-R Act.</p> <p>We thank you in advance for your consideration of these comments. Please do not hesitate to contact us should you have any questions.</p> <p>Sincerely, Bob Poole Director, Northwest Technical & Regulatory Affairs Western States Petroleum Association</p> | |
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| <p><u>Steve McCoy</u></p> <p>December 29, 2020</p> <p>Oregon DEQ Attn: Kyrion Gray 700 NE Multnomah St., Suite 600 Portland, OR 97232-4100 Via email to HHRP@deq.state.or.us RE: High Hazard Railroad Contingency Planning 2021 Proposed Rulemaking</p> <p>Dear Mr. Gray,</p> <p>Friends of the Columbia Gorge ("Friends") has reviewed and submits these comments on the above-referenced proposed rulemaking. Friends is a non-profit organization with approximately 6,000 members dedicated to protecting and enhancing the resources of the Columbia River Gorge. Our membership includes hundreds of citizens who reside within the Columbia River Gorge National Scenic Area.</p> <p>Since 2014, oil train derailments, spills, explosions and fires across North America have cost hundreds of lives, required the evacuation of thousands, spilled millions of gallons of oil into waterways and cost billions of dollars in clean up. The dangers of oil-by-rail were brought home to Oregon on June 3, 2016 when a Union Pacific train loaded with 3 million gallons of oil derailed, spilled and caught fire in Mosier, in the heart of the Columbia River Gorge National Scenic Area. Mosier was saved only because it was a rare windless day in the Gorge. The next time we may not be able to avert catastrophe. The proposed rule is a step in the right direction.</p> <p>In fact, as I write these comments, there are reports that a BNSF Railway train has derailed in Washington and is currently on fire near the town of Custer. These rules are timely and important.</p> | <p>Thank you for our comment. Currently, there are requirements for companies operating High Hazard Rail to maintain insurance and financial coverage so that any costs associated with spill cleanup will be covered. DEQ is working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities. The inclusion of Non-Floating Oil definition while not specific to High Hazard Rail, was a necessary</p> |

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| <p>Friends appreciates the hard work that DEQ and the members of the rulemaking advisory committee have put in developing these draft rules. Friends believes that the proposed rules comport with the letter and the spirit of HB 2209 (2019).</p> <p>It is important that oil spill contingency plans are required for all high hazard rail routes (Proposed OAR 340-141-0260), that they have adequate information to ensure that they can be implemented when necessary, that they be specific and realistic, and that the owner of the high hazard train route must commit to implement each oil spill contingency plan and to prove beforehand that it can foot the cost (Proposed OAR 340-141-0265). In addition, the requirements for drills and exercises are critical to ensure that everyone is on the same page when a spill occurs.</p> <p>The provisions regarding air monitoring and communications about air quality are very important. Responders and local communities need to have accurate information about dangerous air contaminants and there must be measures in place to protect or evacuate local communities.</p> <p>Finally, while the proposed rules implicitly require sufficient planning and resources to clean up worst case spills of both light and heavy crude oil, Friends asks DEQ to make this more explicit in the final rules. For example, while “Non-floating Oil” is a defined term in the proposed rules, it is never actually used anywhere in the proposed rules. Friends asks that DEQ rectify this in the final rule.</p> <p>Thank you for this opportunity to comment. Sincerely, Steven D. McCoy Staff Attorney</p> | <p>addition to an already existing section of the rules to bring the rules compatible and update definitions in Oregon Revised Statute section 468.B.</p> |
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| <p><u>Joana Kirchhoff</u></p> <p>Hello, This is testimony from several of the Portland Raging Grannies. We support the creation of a fund or bond that will allow the state to hold money from oil companies and railroads in an account that can ONLY be used for cleanup and remediation after the next oil spill, fire, or explosion. Remember, it's not if, it's when.</p> <p>PDX Raging Grannies</p> | <p>Thank you for our comment. Currently there are requirements for companies operating High Hazard Rail to maintain insurance and financial coverage so that any costs associated with spill cleanup will be covered. DEQ is working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon.</p> |

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| <p><u>Barbara Robinson</u></p> <p>Dear Environmental Quality Commission and Staff:</p> <p>I would like to comment on the draft rule for High Hazard Rail Contingency Planning. My daughter went to Mosier School. The oil train fire in Mosier occurred on a rare windless day and before fire season. If it had occurred the day before with 30 mph winds the fire could have been carried from car to car and if fire hadn't consumed the town, smoke inhalation alone might have killed the town and all the school children. The town water system didn't have enough water to put on the burning cars to cool them enough to use the chemicals, so water had to be trucked in from two miles away. It took 11 hours to cool the cars with water. On a windy day with more cars on fire and more smoke, no emergency vehicles could have gotten to the scene. If this had happened in August at the peak of fire season, a fire might have been started that would burn all the way to The Dalles. I live in Lyle now, and see the BNSF oil trains every day. I often think about whether I could get to my car and drive up the back road out of town fast enough before the smoke destroyed visibility. Probably not, if it happened at night I wouldn't have a chance.</p> <p>The best solution would be to stop these unit oil trains. It would also help greatly to remove flammable gas from the oil before it is shipped. But I appreciate that you are trying to do something. The draft rule is long overdue, but a step in the right direction to better protect Oregon's rivers and communities from the threats of oil by rail.</p> <p>I strongly oppose the transport of crude oil by rail through Oregon. Every shipment of crude oil potentially endangers Oregon's rivers, communities and the Columbia River Gorge National Scenic Area. The 2016 derailment of a Union Pacific oil train in the Columbia River Gorge town of Mosier, Oregon endangered the lives of local residents and has not been forgotten. The draft rule would go a long way toward better preparing Oregon for the next oil train derailment and spill.</p> <p>The draft rule appears to be consistent with the requirements of House Bill 2209, which passed into law in 2019. It requires railroads hauling crude oil through the state to develop contingency plans and submit them for approval to the Oregon Department of Environmental Quality. It requires sufficient planning and resources to respond to "worst case" spills, but, like HB 2209, it erroneously defines worst case spills as 300,000 gallons or 15% of the oil train's cargo.</p> <p>I support requiring the oil industry to pay for the costs of development and implementation of oil spill response plans, and require railroads to prove they have the financial resources to pay for the cleanup of oil spills and the</p> | <p>Thank you for your comment. Your concern and attention to this important issue is appreciated. Worst Case Scenario oil spill is established in statute and we are unable to change the definition. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment. Specific provisions mentioning air monitoring for responders and the local community, as well as sensitive area protections are outlined within the plan requirements. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans.</p> |
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| <p>resulting damage to the environment.</p> <p>Since oil spills and resulting fires spew toxic fumes into the environment, I support the requirement for air monitoring to protect the health of responders and the surrounding community.</p> <p>I support the rule’s requirement for a full inventory of sensitive resources along rail routes, including water resources, fish, and wildlife habitat, drinking water withdrawals, and the protection of these resources.</p> <p>Thank you for considering these comments and including them in the official record.</p> <p>Regards, Barbara Robinson</p> | |
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| <p><u>Arlene Burns</u></p> <p>To whom it may concern,</p> <p>I very much appreciate DEQ taking on the matter of train safety on behalf of all the communities along the tracks as well as vulnerable wildlife in the surrounding areas.</p> <p>As mayor of Mosier, I have first hand experience Not only with the disruption of a derailment, but also the importance of DEQ, who has been a steadfast partner throughout the process in our MOSIER experience.</p> <p>I came to understand many things after the train derailment, for one, the railroad does not have the right to refuse cargo, even if it is tremendously hazardous. It really is up to the state agencies to regulate and require safety measures that protect our people and our environment from the results of derailments.</p> <p>We realize that we were very lucky that the consequences were not much worse in MOSIER, and hope that we can learn from this, in a way that protects our future.</p> <p>On the preventative side, one of the easiest measures is to require the trains to reduce their speed on curves and within city limits, as slower trains are much less likely to derail, period! We all adjusted to slowing interstate freeway speeds, which not only reduced the amount and severity of accidents, but also proved kinder with regard to fuel consumption/pollution.</p> <p>This seems to be the low hanging fruit that is completely achievable.</p> | <p>Thank you for your comment. These rules have been developed specifically around regulating High Hazard Rail and Contingency Plan requirements. The development of Geographic Response Plans, as well as the review and approval process for Contingency Plans involves community interests and Emergency Response entities. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated</p> |

The other very important factor is to make sure that the foam used to put out an oil train fire is not more toxic than the oil itself, as we have learned much about the problems with PFOS in parts per trillion! I hope that the state can require all foam that is provided and available is an environmentally friendly product. These do exist, it's a matter of regulation and requirement, so that the foam doesn't cause greater problem to groundwater contamination.

In MOSIER, since the derailment, we have achieved a good working relationship with Union Pacific Railroad, and appreciate the inevitable fact that they are our neighbors and partners, as the railroad tracks and the freeway span the entire length of our city limits. As we are a town in such circumstance, we serve a much greater region than is our capacity, as our volunteer fire department response to crashes on the freeway, that have nothing to do with our town or population.

In the same sense, all communities along the railroad tracks are vulnerable when hazardous materials escape from their containment in route.

The land all across America that was given to the railroad by eminent domain, was based on the concept of public trust, way before such hazardous products were shipped.

Now we put our trust in DEQ, to help navigate solutions to protect us from hazardous materials, And we rely on this regulation to protect the public trust.

We can also look to our neighbors in Washington and California, and at the very least achieve the same standard that is in place in our neighboring states.

Thank you for your dedication to Environmental Quality!

Sincerely,

Arlene Burns
Mayor of Mosier

technology and most effective methods, including the drafting of Geographic Response Plans. Specific provisions mentioning air monitoring for responders and the local community, as well as notification requirements and sensitive area protections are outlined within the required plan contents.

| Comments received during the Public Hearing | DEQ response to comment |
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| <p>Peter Cornelison with Columbia Gorge climate action network: Q: I live in Hood River and I am former Hood River city council member who toured the Mosier oil spill and derailment emergency, in terms of this regulation- I don't agree with the definition that a worse case oil spill would be 300k thousand gallon or 15% of the oil trains cargo – California for example defines a reasonable worse case spill as a loss of 20% of the oil train cargo</p> | <p>Thank you for your comment. The definition of a Worst Case Scenario oil spill is established in statute and we are unable to change the definition.</p> |

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| <p>that a railroad can transport on a single train. I strongly support the industry to pay for the cost of development and implementation of the oil spill response plans. Rail roads must prove they have the financial resources to pay for the cleanup of oil spills and the resulting damage oil spills and the resulting and fires that spew toxics fumes into the environment, I saw this when we started to see clouds of toxic black smoke coming over the ridge that separates Mosier from Hood River and a few days later when I went to Mosier as a council member and toured the oil train disaster site. I think it's critical that air monitoring be done to protect the health of first responders and the surrounding community. I support rules requirement for a full inventory of sensitive resources along rail routes including water resources, fish, wildlife habitat, drinking water with draws and the protection of these resources. Thank you for your work for on helping make dangerous oil train transport through Oregon safer and I just hope LPG transports trains don't start operating . Thank you for the opportunity to comment.</p> | <p>Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans. High Hazard Rail operators are required to maintain insurance and financial coverage so that any costs associated with spill cleanup will be covered. Specific provisions mentioning air monitoring for responders and the local community, as well as notification requirements and sensitive area protections are outlined within the required plan contents.</p> |
| <p>Michael Lang- Friends of the Columbia Gorge: Thank you this is Michael Lang the conservation direction with Friends of the Columbia Gorge – I want to thank you and the rest of the DEQ staff for pulling this draft rule together also for the legislature passing house bill 2209, friends and others can see that it is not perfect but it is a step in the right direction and will go a long way. I think those are DEQs words to making oil by rail less hazardous. I am not going to spend time talking about what is right or wrong with the bill I am going to focus on the draft rules. The draft rules are generally consistent with house bill 2209 and it does require the development of contingency plans and the approval of those plans by the DEQ and it also requires sufficient planning and resources for what is defined in the bill as a worse case spill again we contested what is worse case but that is what the bill says. So it appears to be consistent with that. Also the rules contain the requirement that the owners of the oil pay for the cost of the development and implementation of the oil spill response plans and also a proof of financial resources by the rail roads to be able to pay for the cleanup of any spills. Friends also supports that there is a requirement for air monitoring to protect responders and nearby communities also the requirement for an inventory of all sensitive resources along these rail lines, of course the</p> | <p>Thank you for your comment. The definition of a Worst Case Scenario oil spill is established in statute and we are unable to change the definition. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans. High Hazard Rail operators are required to</p> |

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| <p>Columbia river Gorge and other water ways through the state are threatened by oil by rail and having an inventory of the wetlands and aquatic resources and sensitive species and the communities along those rail lines is critically important. We will providing more detailed comments by the comment deadline. Again thank you for your work in this.</p> | <p>maintain insurance and financial coverage so that any costs associated with spill cleanup will be covered. Specific provisions mentioning air monitoring for responders and the local community, as well as notification requirements and sensitive area protections are outlined within the required plan contents.</p> |
| <p>Nick Winslow – BNSF Railway – Thank you for that opportunity Josh and the rest of the team, Mike and Kyrion. BNSF was invited to be an RAC member and so we participated as a rail advisory member with the other committee members many of whom are on this call, I appreciate that opportunity. BNSF is also a active participant in doing drill and exercises, in October we did a large worse case spill drill with Washington Ecology and invited Oregon DEQ many of partners and tribal partners, Coast Guard, Corps of Engineers. My point is we have active programs we do our active programs under both existing California, Washington rules, we also have a comprehensive oil spill plan approved by USDOT PHMSA and so consistently what BNSF has asked Oregon DEQ to allow submittal of a contingency plan that’s prepared for an agency of the federal government that satisfies the requirement of the ORS to be allowed to be submitted as a HHR plan – so that is our goal , we have an existing plan and were using and exercising our plan and our goal is to work with OREGON DEQ to focus the energies of the rule writing committee to stream line the process, not reinvent the wheel and basically try to have a standalone OAR for HHR oil spill contingency plans and I think should be the focus and I know we are a little bit behind in our planning and review process the ORS requires rail plan holders to submit a plan by the first of January of 2021 so BNSF is submitting our PHMSA comprehensive oil spill plan that’s allowed by the statute and we look forward to working with Oregon DEQ and the Environmental Quality Commission to see the plans adopted or the final rule is adopted . Thank you</p> | <p>Thank you for your comment. Based on language within the statute, DEQ has allowed the submittal of a neighboring states plan, as long as the main PHMSA requirements are met and the plan is modified to reflect Oregon specifics. The new rules establish a High Hazard Rail specific section of 340-141-0250 through 340-141-0285.</p> |
| <p>Norm Cimon: Oregon Rural Action – Thank you for the opportunity and thank you very much for putting together the draft plan. I would like to put</p> | <p>Thank you for your comment. The definition</p> |

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| <p>in my concern in agreement with Peter Cornelison, its absolutely essential that inventories be done , I have some concerns about some concerns of some of the definitions... West Coast is one – we are definitely not on the West Coast, we are in probably the most difficult part of the route and that’s out in the Blue Mountains canyons. Were there to be an accident, say above the Burnt River, where the railroad line is essentially about 200 ft out hanging on the side of a ridge. That would feed directly into the Snake River, we would have a significant disaster. I personally do not believe that the amount 300k is enough, I think we could expect to see something significantly greater than that. Aside from that I again thank very much DEQ for putting this together it’s an excellent start. It’s going to be a very difficult proposition to make sure the plans that are put forward are appropriate to the task I hope that DEQ is willing to stick with this and make sure going forward everything is very carefully checked. Thank you for your time.</p> | <p>of a Worst Case Scenario oil spill is established in statute and we are unable to change the definition. DEQ is working to require railroad companies to maintain contingency plans to outline response activities and protection strategies in the event of a spill. DEQ strives to protect the environment and people of Oregon.</p> |
| <p>Tracy Farewell – Better Energy LLC – ... diluted tar sands so they can be transported thousands of miles in a pipeline and the chemical mix they add to the tar sands is downright impressive. Unfortunately this includes hydrogen sulfide which is toxic gas. So the scenario if you had tar sands involved in the Mosier accident , that material is designed to dissolve earth cause that is what tar sands oil is and if it dumps out of a rail car it has all the constituents need to transport it into a pipeline . And that makes really good for filling in and evacuating rail cars but during an accident – the picture I’m getting and you guys are the expert.. as far as I can tell. It’s going to dissolve earth all the way to China. Because you can’t stop it .. it was designed to do that. So I sent in some written testimony involving CFR rule 6.. I can’t remember the CFR #. All you have to do is invoke that CFR and you have a good regulation against the high hazards of tar sands oil spills. From Mosier we found out the lag bolts hold the rails onto the rail road ties and at the accident site there were a broken bunch of lag bolts that were rusted at the break. So this is not real encouraging as far as.... Thank you for listening.</p> | <p>Thank you for your comment. DEQ is limited by existing statute and the text of HB 2209 to work within the already established text. Any spill is a serious issue and these plans will better allow state, local, tribal and federal resources to respond in an effective manner and protect our environment, keeping in mind that multiple response strategies are listed as available options and there is specific provisions requiring companies to incorporate the “best technology available” to respond to an incident. Which allows the response activities to match the best established practices when dealing with a spill.</p> |

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| <p>Sheila Dooley, I live at [redacted] Vencil Rd in Mosier and we have a house in downtown Mosier that's less than 500 ft from the rail road tracks and we witnessed the fire resulting from the derailment in June of 2016 and if it was windy that day, it would have incinerated the entire town including our house and the Mosier school which is near the tracks and spread to the surrounding hills. And we got out of the area as soon as possible that day and it was terrifying to watch and wondered if it was about to explode . We could really smell the acrid smoke and this is a very unusual day in Moser because it was not windy for a June day. I am encouraging you to help mitigating a future catastrophe by adopting strong rules for high hazard rail travel that would include contingency plans on oil train routes and the resources to clean up large oil spills , protection for fish and wildlife , provisions for air monitoring and proof of railroad and oil company financial responsibility. I believe there is a lot of stake here, Thank you.</p> | <p>Thank you for your comment. Considerable effort is going in to protecting our sensitive areas, and aggressive protection plans are being developed to protect these areas with the most updated technology and most effective methods, including the drafting of Geographic Response Plans. High Hazard Rail operators are required to maintain insurance and financial coverage so that any costs associated with spill cleanup will be covered. Specific provisions mentioning air monitoring for responders and the local community, as well as notification requirements and sensitive area protections are outlined within the required plan contents.</p> |
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Implementation

Notification

The proposed rules would become effective upon filing on approximately May 21, 2021. DEQ would notify affected parties by:

- Emailing approximately interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - Environmental Cleanup Program

Compliance and enforcement

Affected parties – Burlington Northern Santa Fe Railroad and Union Pacific Railroad will be required to submit contingency plans for approval by Oregon DEQ.

DEQ staff - High Hazard Rail Program staff will be involved in plan review and development of the new Geographic Response Plans.

Measuring, sampling, monitoring and reporting

Affected parties - Burlington Northern Santa Fe Railroad and Union Pacific Railroad will be involved in the drill and exercise requirements that are established in the new rules.

DEQ staff - High Hazard Rail Program staff will be the primary points of contact for the railroads at DEQ for the purposes of contingency planning and the new requirements established under these rules.

Systems

Website – None

Database - None

Invoicing - None

Training

Affected parties - None

DEQ staff - None

Five-Year Review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts some of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4).

Five-year rule review required

No later than April 1, 2022, DEQ will review the newly adopted rules for which ORS 183.405 (1) requires review to determine whether:

- The rule has had the intended effect
- The anticipated fiscal impact of the rule was underestimated or overestimated
- Subsequent changes in the law require that the rule be repealed or amended
- There is continued need for the rule.

The following rules are subject to the five-year review:

| | | | | |
|--------------|--------------|--------------|--------------|--------------|
| 340-141-0250 | 340-141-0260 | 340-141-0265 | 340-141-0270 | 340-141-0280 |
| 340-141-0282 | 340-141-0285 | | | |

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2). DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

Accessibility Information

You may review copies of all documents referenced in this announcement at:

Oregon Department of Environmental Quality

700 NE Multnomah St., Ste. 600

Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Kyrion Gray, 700 NE Multnomah St., 503-229-5280 (800-452-4011, ext. 5622 toll-free in Oregon).

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.

Form Letter signatories

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| Sharon Miller | David Medford | |
| Cheryl Scrivens | Emily Polanshek | |

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Division 141
OIL SPILL CONTINGENCY PLANNING AND FEES

340-141-0001

Purpose and Applicability

(1) The purpose of these rules is to establish:

(a) Fees for covered vessels and facilities;

(b) Contingency preparedness and planning standards for covered vessels and facilities needing approved plans before operating in Oregon; and

(c) Standards for preparation, management and maintenance of contingency plans.

(2) Applicability: The owner or operator of an onshore facility, offshore facility and covered vessel must prepare, submit and use oil spill prevention and emergency response plans in accordance with the requirements of this Division. Federal plans required under 33 ~~CFR~~CFR.F.R. 154, 40 ~~CFR~~CFR.F.R. 109, 40 ~~CFR~~CFR.F.R. 110, or the Federal Oil Pollution Act of 1990 or plans required by other states may be submitted to satisfy plan requirements under this Division, if ~~the~~the ~~Department~~DepartmentDEQ deems that such federal or state requirements equal or exceed those of ~~the~~the ~~Department~~DepartmentDEQ.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.405

Statutes/Other Implemented: ORS 468B.300 - 468B.500

History:

DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0005

Definitions as used in this Division

(1) "Average Most Probable" spill, release or discharge means the probable volume of oil that may spill as defined in a plan considering the history of spills from similar facilities or vessels of the same class operating on the west coast of the United States. It may also be defined as the lesser of one percent of the worst case spill, release or discharge, or 50 barrels, when used as a planning volume.

(2) "Best Achievable Protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures and operational methods that provide the greatest degree of protection available considering:

- (a) The additional protection provided by the measures;
- (b) The technological feasibility of the measures; and
- (c) The cost of the measures.

(3) "Best Achievable Technology" means the technology that provides the greatest degree of protection, taking into consideration processes that are currently in use, processes that have been developed or processes that could feasibly be developed with reasonable expenditures on research and development. In determining what is best achievable technology, the Director will consider the effectiveness, engineering feasibility and commercial availability of the technology.

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

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

(6) "Columbia River" means the length of the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean.

(7) "Commercial Fish Harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, 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.

(8) "Commission" means the Environmental Quality Commission.

(9) "Contingency Plan" or "Plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

(10) "Contract or other approved means" in a response or a plan means:

- (a) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response Zones;
- (b) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response Zones;

(c) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response Zones; or

(d) A written document that:

(A) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response Zones;

(B) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(C) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(D) Is referenced in an oil spill contingency plan for the vessel or facility.

(11) "Covered vessel" means a tank vessel, self-propelled tank vessel, cargo vessel or passenger vessel.

(12) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response-related training, testing, exercises and research or other oil spill removal and related activities.

(13) "~~Department~~DEQ" means the Department of Environmental Quality.

(14) "Director" means the Director of the Department of Environmental Quality.

(15) "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.

(16) "Drill" means the simulated performance of a spill response or task predicted in a plan.

(17) "Effective Daily Recovery Capacity" or "EDRC" means the factor used to estimate limitations on equipment efficiency from variables such as sea state, current velocity or visibility.

(18) "Field Document" means a simplified response plan for onsite use in the event of a spill, summarizing key notification and action elements.

(19) "Facility" means a pipeline or any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a 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 per day. "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~~DEQ or a local government under ORS 466.706–466.882 and 466.994; or

(c) Any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting 10,000 gallons or more of oil per day but does not receive oil from tank vessels, barges or pipelines.

(20) “High Hazard Train Route” means a section of rail lines in this state:

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

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

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

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

~~(21)~~ "Initial assessment" is a task assigned to first responders who are participating with ~~the~~ DepartmentDEQ in a Unified Command or Incident Command System, and includes the following tasks:

(a) Verifying the spill location;

(b) Establishing the type of incident based on products and conditions;

(c) Confirming or correcting the reported quantity released or area extent of the contamination;

(d) Reporting the efficacy of the initial containment;

(e) Projecting immediate resource needs to control the release; and

(f) Reporting local knowledge about the probable impacts of the release.

~~(22)~~ "Interim Storage Site" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. Interim storage sites include trucks, barges and other vehicles used to store recovered oil or oily waste until transport begins.

(~~232~~) "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.

(~~243~~) "Maximum Extent Practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures and best achievable technology considering the effectiveness, engineering feasibility, commercial availability, safety and cost of the measures.

(25) "National Contingency Plan" means the plan prepared and published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA).

(~~264~~) "National Incident Management System" or "NIMS", as established by the Homeland Security Presidential Directive 5 of February 28, 2003 is a consistent nationwide template to enable Federal, State, local and tribal governments and private-sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to and recover from domestic incidents, regardless of cause, size or complexity, including acts of catastrophic terrorism.

(~~275~~) "Navigable Waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(28) "Non-Floating Oil" means asphalt, heavy fuel oil, diluted bitumen, synthetic bitumen, any group V oil or any oil with the physical and chemical properties which may weather or accumulate sediment and become neutrally buoyant or sink in freshwater or saltwater.

(~~296~~) "Non-Persistent Oil" means those petroleum products with physical characteristics less dense than persistent oils, also referred to as Group I petroleum products.

(~~3027~~) "Northwest Area Contingency Plan" means the regional emergency response plan developed in accordance with federal requirements and adopted as an annex to the State of Oregon all hazard plan as required by ORS 466.620.

(~~3128~~) "Offshore Facility" means any facility located in, on or under any of the navigable waters of the state.

(~~3229~~) "Oil" or "Oils" means oil including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge, oil refuse, and any other petroleum-related product.

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

(b) Liquefied natural gas.

(339) "Oil Spill Contingency Response Planning Standards" means ~~the Department~~DEQ's standards for reviewing oil spill contingency plans. The planning standards represent ~~the Department~~DEQ's best general estimate of types and quantities of personnel and equipment required to ensure adequate response to any location.

(341) "Oil Spill Response Planning Zones" are geographic areas of the State for which ~~the Department~~DEQ has established minimum planning standards. The Oil Spill Planning Zones are as follows:

(a) "Columbia River Zone" includes the Columbia River from where it enters the State of Oregon from the State of Washington to the point where it leaves the state at river mile zero at the Pacific Ocean, and extending 25 miles inland adjacent to the waterway. It is divided into four sub-Zones:

(A) "Columbia River, Upper River sub-Zone" means the Columbia River from the point where it enters Oregon from the State of Washington to the Bonneville Dam;

(B) "Columbia River, Portland sub-Zone" means the Willamette River below Willamette Falls, and the Columbia River between the Bonneville Dam and river mile 85 at St. Helens;

(C) "Columbia River, Rainier sub-Zone" means the Columbia River between river mile 85 at St. Helens and river mile 40 at Bugby Hole; and

(D) "Columbia River, Astoria sub-Zone" means the Columbia River between river mile 40 at Bugby Hole and river mile zero at the Pacific Ocean.

(b) "Coastal Bays Zone" means all ports on the Oregon coast where covered vessels make calls and extending inland 25 miles;

(c) "Open Ocean Zone" is the Pacific Ocean from the mark of average high tide out to the three mile limit of Oregon's authority; and

(d) "Inland Zone" means areas of Oregon where oil spill risks can be reduced through planning and contingency strategies, and not included in another listed Planning Zone.

(352) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(363) "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.

(374) "Owner or Operator" means:

(a) In the case of an onshore or offshore facility, any person owning or operating the facility.

(b) In the case of a vessel, any person owning, operating or chartering by demise, the vessel.

(c) In the case of an abandoned onshore or offshore facility, or vessel, the person who owned or operated the facility or vessel immediately before its abandonment.

(385) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(396) "Persistent Oil" means those petroleum products with environmental degradation resistance or viscosity characteristics equal to and greater than fuel oil having a specific gravity of more than 0.8, also referred to as Group II and higher petroleum products.

(4037) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, trusts, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the state and any agencies thereof, and the federal government and any agencies thereof.

(4138) "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 specifically includes carriers and bailees of such oil.

(4239) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks used to transport oil between facilities or between facilities and tank vessels.

(430) "Primary Response Contractor" means a response contractor that is identified in a required plan and is committed to the plan holder by contract or other approved means.

(441) "Region of Operation" with respect to the holder of a contingency plan means the area where the operations that require a contingency plan are located.

(452) "Resident" means that the resource is kept ready for use at an address within the planning Zone (or sub-Zone if planning standards specify) in which the facility or vessel is located.

(463) "Response Contractor" means an individual, organization, association, or cooperative that provides or intends to provide equipment, personnel for oil spill containment, cleanup or removal activities.

(474) "Self-propelled tank vessel" means a tank vessel that is capable of moving under its own power.

(485) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(496) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS Chapter 454, 459, 459A, 468, 468A, 468B or 469, 466.005 to 466.385, 466.990(1) and (2) or 466.992 or federal law or while being stored or used for its intended purpose.

(5047) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, 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.

(5148) "Trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of the State of Oregon.

(5249) "Waters of the State" includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(539) "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.
- (b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.405

Statutes/Other Implemented: ORS 468B.300 - 468B.500

History:

DEQ 8-2005, f. & cert. ef. 7-14-05

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0010

Program Administration and Compliance Fees

(1) All offshore and onshore facilities required to develop oil spill prevention and emergency response plans under ORS 468B.345 are required to pay the annual fee established in 468B.405(1). Fees for offshore and onshore facilities are due July 1 each year and cover the following 12 month period.

(2) Covered vessels are required to pay the per trip or daily fee established in 468B.405(1). Fees for covered vessels must be remitted to ~~the Department~~DEQ within 60 days of the conclusion of each trip.

(3) Moneys collected under this rule will be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established by ORS 468B.410. DEQ may not use funds deposited in the Oil Spill Prevention Fund to pay DEQ's costs that it may pay with funds deposited in the High Hazard Train Route Oil Spill Preparedness Fund.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.500

Statutes/Other Implemented: ORS 468B.405

History:

DEQ 18-2010, f. & cert. ef. 12-23-10

DEQ 8-2005, f. & cert. ef. 7-14-05

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0130

Plan Format Requirements

(1) Plans must be prepared using a combination of narrative and graphic formats that provide both detailed spill response information and quick access to general information needed during an emergency response.

(2) Plans must be divided into a system of chapters and appendices. Chapters and appendices must be numbered. Chapters should be reserved primarily for information on emergency response and cleanup operations, such as notification procedures or description of the spill response organization structure. The plan must include at least the information listed in OAR 340-141-0140 for vessels and facilities, or the information listed in OAR 340-141-0265 for Railroads. Appendices should be used primarily for supplemental background information and documentation such as response strategies or descriptions of drills and exercises. The spill prevention strategies may be part of the appendices.

(3) A system of index tabs must be used to provide easy reference to particular chapters and appendices.

(4) Plans must be formatted to allow replacement of revised pages and components without requiring replacement of the entire plan.

(5) Plans must include a simplified field document that summarizes key notification and action elements of the plan and is suitable for onsite use in the event of a spill.

(6) Plans may be submitted and updated electronically if all required plan components are in a form ~~the Department~~DEQ can easily access. ~~The Department~~DEQ will determine which types of electronic media are acceptable for the plan submittal.

(7) Composite plans that rely on standard documents ~~the Department~~DEQ already has on file may incorporate those documents by reference.

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0140

Plan Content Requirements

(1) Submittal Agreement. Each plan must contain a submittal agreement that:

(a) Includes the name, address and phone number of the submitting party;

(b) Verifies acceptance of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel by either signature of the owner or operator or a person with authority to bind the corporation that owns or operates the facility or covered vessel;

(c) Commits to execution of the plan, including any incorporated contingency plans, by the owner or operator of the facility or covered vessel, and verifies authority for the plan holder to make appropriate expenditures in order to execute plan provisions; and

(d) Includes:

(A) In the case of a facility, the name, location including latitude, longitude and river mile, and address of the facility, type of facility, starting date of operations, types of oils (see definition of oil) handled, volume of oil stored and maximum volume of oil capable of being stored.

(B) In the case of a covered vessel, the vessel's name, the name, location and address of the owner or operator, official identification code or call sign, country of registry, common ports of call in Oregon, type of oils (see definition of oil) handled, volume of oil transported as fuel and expected period of operation in state waters.

(C) In the case of a covered vessel enrolled in a cooperative or maritime association plan, the vessel may provide evidence of coverage in lieu of paragraph (B) of this subsection.

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that ~~the Department~~DEQ was notified of the amendment ~~pursuant to~~under OAR 340-141-0220(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Table of Contents. Each plan must include a detailed table of contents based on chapter, section, appendix numbers and titles and tables and figures. If the plan is an integrated plan used to also satisfy USCG and USEPA requirements, a cross reference must be included.

(4) Purpose and Scope. Each plan must describe the purpose and scope of that plan, including:

(a) The region of operation covered by the plan;

(b) The onshore facility, offshore facility or covered vessel operations covered by the plan; and

(c) The size and type of the average most probable spill and the worst case spill from the facility or covered vessel.

(5) Updates. Each plan must describe the events or time periods that will trigger updates of the plan.

(6) Implementation Strategy. Each plan must present a strategy for ensuring use of the plan for spill response and cleanup operations as required by OAR 340-141-0210.

(7) Spill Response System. Each plan must describe the organization of the spill response system, including all task assignments anticipated by the end of the first full operational period, or necessary to manage the resources required by the 12 hour planning standard, given a response to an Average Most Probable Discharge. Plans must use a National Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

(8) Contractor Identification. Each plan must identify the primary response contractor and subcontractors (except equipment rentals or supply vendors) whose services are bound to the plan by a contract or other approved means:

(a) If a plan holder is a member of an oil spill response cooperative and relies on that cooperative to perform or supplement its response operations within the regions of operations covered by the plan, the plan must state the cooperative's name, address, phone number and response capability. The plan must also include proof of cooperative membership; or

(b) If a plan holder is not a member of an oil spill response cooperative, for each contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in (12) and (13) of this section. Copies of written contracts or agreements with contractors must be available for inspection, if requested by ~~the Department~~[DEQ](#).

(9) Relationship to Other Plans. Each plan must briefly describe its relation to all applicable local, state, regional and federal government spill response plans. The plan must describe how

the plan holder's response organization will be integrated into the Northwest Area Contingency Plan.

(10) Spill Detection. Each plan must list procedures that will be used to detect and document the presence and size of a spill, including methods which are effective during low visibility conditions. The plan must also describe the use of mechanical or electronic monitoring or alarm systems (including threshold sensitivities) used to detect oil discharges into adjacent land or water from tanks, pipes, manifolds and other transfer or storage equipment.

(11) Notifications. Each plan must describe procedures that will be taken to immediately notify appropriate parties that a spill has occurred.

(a) The plan holder must maintain a notification call out list that must be available for inspection upon the request of ~~the Department~~ DEQ, and that:

(A) Provides a contact at any time of the day for all spill response personnel identified under section (7) of this rule, including the contact's name, position title, phone number or other means of contact for any time of the day, and an alternate contact in the event the individual is unavailable;

(B) Lists the name and phone number of all government agencies that must be notified in the event of an oil spill ~~pursuant to requirements~~ under ORS 466.635; and

(C) Establishes a clear order of priority for immediate notifications.

(b) The plan must identify a central reporting office or individual who is responsible for implementing the call out process.

(12) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

(a) A job description for each type of spill response position needed as indicated in the spill response organization scheme addressed in section (7) of this rule, or a reference to a recognized NIMS position;

(b) The number of personnel available to perform the duties of each type of spill response position;

(A) This number must be equal to or greater than the number of persons necessary to sustain a response to the worst case spill defined in the plan.

(B) If 24 hour operations are expected, the number of persons available to staff the ICS must be multiplied by the proposed number of operational periods (shifts).

(c) Arrangements for pre-positioning personnel at strategic locations that will meet criteria ~~pursuant to~~ under OAR 340-141-0190(3)(d); and

(d) The type and frequency of spill response operations and safety training that each individual in a spill response position receives to attain the level of qualification demanded by their job description.

(13) Equipment and spill response resources. Each plan must describe equipment and spill resources as follows:

(a) Each plan must list all resident equipment and resident dedicated response vessels used for oil containment, recovery, removal, shoreline and adjacent lands cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. ~~The~~ DepartmentDEQ will accept information about equipment by reference if the equipment is being provided through a primary response contractor as part of the plan. ~~The DepartmentDEQ~~ may request information about the condition and date of manufacture of any listed and referenced equipment to further evaluate its applicability to the planning standards or a response.

(b) For resident equipment and vessels listed under subsection (a) of this section that are not owned by or available exclusively to the plan holder, the plan must also estimate the extent that other contingency plans rely on the same equipment.

(c) For all resident oil containment and recovery equipment, the plan also must include equipment make and model, the manufacturer's nameplate capacity of the response equipment, the EDRC (in barrels per day) and applicable design limits (e.g., maximum wave height capability, suitability for inland waters or open ocean).

(d) Based on information described in subsection (c) of this section, the plan must state the maximum amount of oil that could be recovered per 24-hour period with the equipment used as it is designed.

(e) For purposes of determining plan adequacy under OAR 340-141-0190, and to assess realistic capabilities based on potential limitations by weather, sea state, and other variables, ~~the~~ DepartmentDEQ will use the data presented in subsections (c) and (d) of this section to apply a higher efficiency factor for equipment listed in a plan if that plan holder provides adequate evidence that the higher efficiency factor is warranted for particular equipment or if the United States Coast Guard has approved a higher efficiency rating.

(f) The plan must provide arrangements for pre-positioning of oil spill response equipment at strategic locations that will meet response time criteria ~~pursuant to~~ under OAR 340-141-0190(3)(d).

(g) When calculating the delivery time of equipment to a spill staging area, the plan must use travel speeds consistent with federal speed predictions for the equipment being moved.

(14) Communications. Each plan must describe the communication systems used for spill notification and response operations, including:

(a) Communication procedures that identify who will be responsible for the function, to whom and from whom communication will be established and any special instructions;

(b) The communication function (e.g., ground-to-air) assigned to each channel or frequency used;

(c) The maximum geographic range for each type of communications equipment used; and

(d) The communication system compatibility with key spill response agencies.

(15) Response Operation Sites. Each plan must describe the process used by the plan holder to establish sites needed for spill response operations, including location or location selection criteria for an incident command post, a communications center if located away from the command post and equipment and personnel staging areas.

(16) Response Flow Chart or Timeline. Each plan must describe the response process by:

(a) Presenting a flowchart or decision tree describing the procession of each major stage of spill response operations from spill discovery to completion of cleanup. The flowchart or decision tree must describe the general order and priority in which key spill response activities are performed; and

(b) Describing all key spill response operations in checklist forms, to be used by spill response managers in the event of an oil spill.

(17) Authorities. Each plan must describe responsible authorities by:

(a) Listing the local, state and other government authorities responsible for the emergency procedures peripheral to spill containment and cleanup; and

(b) Describing the plan holder's role in these emergency operation procedures before the proper authorities arrive, including but not limited to, control of fires and explosions, rescue activities, access restriction to the spill impact area and site security.

(18) Damage Control. Each plan must describe equipment and procedures to be used by the facility or covered vessel personnel to minimize the magnitude of the spill and minimize structural damage that could increase the quantity of oil spilled.

(a) For facilities, damage control procedures must include methods to slow or stop pipeline, storage tank, and other leaks, and methods to achieve immediate emergency shutdown.

(b) For tank vessels, damage control procedures must include methods and onboard equipment to achieve vessel stability and prevent further vessel damage, slow or stop pipe, tank, and other leaks and achieve emergency shutdown during oil transfer.

(c) For other covered vessels, damage control procedures must address methods to achieve vessel stability and slow or stop leaks from fuel tanks and lines.

(19) Containment. Each plan must describe, in detail, any nonstandard methods specific to the plan to contain spilled oil and recover it from the environment. When a plan calls for the use of methods that have not been expressly approved by ~~the Department~~ DEQ, the description of the proposed options must include:

(a) The surveillance methods expected to be used to detect and track the extent and movement of the spill; and

(b) A description of methods to be used to contain and remove oil that will be effective for environmentally sensitive locations included in the Zone, or Zones, for which the plan is written.

(20) Response Time. Each plan must briefly describe initial equipment and personnel deployment activities that will accomplish the response standard listed in OAR 340-141-0190(e)(d) and provide:

(a) An estimate of the actual execution time;

(b) The specific location in the Zone where the resident required response equipment is stored; and

(c) The source and management of personnel to deploy the initial response equipment.

(21) Chemical Agents. If the plan holder proposes to use dispersants, coagulants, bioremediants or other chemical agents for response operations under certain conditions, the plan must describe:

(a) Type and toxicity of chemicals, supplemented with material safety data sheets (MSDS) for each product;

(b) The conditions under which the chemicals will be applied, in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-141-0020;

(c) Methods of deployment; and

(d) Location and accessibility of supplies and deployment equipment.

(22) In Situ-Burning. If the plan holder proposes to use in-situ burning for response operations, the plan must describe:

(a) Type of burning operations;

(b) Conditions under which burning will be applied in conformance with all applicable local, state and federal requirements, including the Northwest Area Contingency plan and OAR 340-264-0030 to 0040;

(c) Methods of application; and

(d) Location and accessibility of supplies and deployment equipment.

(23) Environmental Protection. Each plan must describe how environmental protection will be achieved, including:

(a) Protection of sensitive shoreline and insland habitat by diverting or blocking oil movement;

(b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by the DepartmentDEQ;

(c) Rescue and rehabilitation of birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and

(d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(24) Interim Storage. Each plan that has identified that oil will be recovered must plan for the storage of the oil and combined oily waste material potentially created.

(a) Each plan must describe site criteria and methods used for interim storage of oil recovered and oily wastes generated during response and cleanup operations, including sites available within the facility. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.

(b) If use of interim storage sites will require approval by local, state or federal officials, the plan must include information that could expedite the approval process, including a list of appropriate contacts and a brief description of procedures to follow for each applicable approval process.

(c) Interim storage and permanent disposal methods and sites must be sufficient to sustain support for oil recovery operations and manage the entire volume of oil recovered and oily wastes generated.

(d) Interim storage and permanent disposal methods and sites must comply with all applicable local, state and federal requirements.

(25) Health and Safety. Each plan must describe procedures to protect the health and safety of oil spill response workers, and other individuals on-site. Provisions for training, decontamination facilities, safety gear and a safety officer position must be addressed.

(26) A description of steps taken for air monitoring to protect responders and the public including:

(a) A description of air monitoring procedures for the work site,

(b) A description of air monitoring procedures for the surrounding area (including surrounding communities),

(c) A description of a communication plan to inform communities of any risks,

(d) A plan to identify shelter in place and evacuation procedures

(276) Post Spill Review. Each plan must explain post-spill review procedures, including methods to review both the effectiveness of the plan and the need for plan amendments. Post-spill procedures must provide for a debriefing with ~~the Department~~ [DEQ](#) that will include any newly recognized need to amend the plan and list of any other lessons learned.

(287) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-0200 (3).

(a) The plan holder must test and document internal call out procedures at least once every 90 calendar days. The plan holder must retain records of these drills for at least three years and make them available for ~~Department~~ [DEQ](#) review upon request.

(b) The plan holder must notify ~~the Department~~ [DEQ](#) of drills and exercises, at least 60 days before full deployment and tabletop drills, and 10 days prior to equipment exercises. Prior notice to ~~the Department~~ [DEQ](#) is not required before notification drills and internal phone number verification exercises.

(c) The plan holder must send post drill reports for all tabletop exercises or deployment drills to ~~the Department~~ [DEQ](#) no later than 60 days after the completion of the drill or exercise. The executive summary from a National Preparedness for Response Exercise Program (N-PREP) report may be submitted to meet this requirement when the exercise has been designed by the N-PREP staff.

(298) Risk Variables. Each plan must list the spill risk variables within the region of operation covered by the plan, including:

(a) Each plan for a facility must list the following:

(A) Types, physical properties and amounts of oil handled;

(B) A written description and map indicating site topography, stormwater and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage and transfer sites and operations;

(C) A written description of sites or operations with a history of or high potential for oil spills, including key areas that pose significant navigation risk within the region of operation covered by the plan; and

(D) Methods to reduce spills during transfer operations, including overfill prevention.

(b) Each plan for a covered vessel must list the following:

(A) Types, physical properties and amounts of oil handled;

(B) A written description and diagram showing cargo, fuel and ballast tanks; and piping, power plants and other oil storage and transfer sites and operations; and

(C) A written description of operations with a history of or high potential for oil spills, including key areas that pose significant navigation risks within the region of operation covered by the plan.

(3029) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Facility plans required to include river or coastal areas must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours in a current of four knots. Vessel contingency plans must encompass the entire length of the Oregon waterway in the Zone or sub-Zone entered. All plans must describe:

(a) Natural resources, including coastal and aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species and presence of commercial and recreational species;

(b) Public resources, including public beaches, water intakes, drinking water supplies and marinas;

(c) Seasonal hydrographic and climatic conditions; and

(d) Physical geographic features, including relative isolation of coastal regions, beach types, and other geological characteristics. Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan when identifying individual environmental features.

(310) Logistical Resources. Each plan must list the logistical resources within the region of operation covered by the plan, including facilities for fire services, medical services and accommodations; and shoreline access areas, including boat launches.

(324) Response Strategy Outline. Each plan must include a statement of the intended response activities. This statement must describe how the plan resources must be applied to adequately respond during the initial phase of the response to an average most probable and worst case spill, release or discharge. The Response Strategy Outline must begin with a description of the situation to be managed, and must describe:

- (a) Deployment of resources and estimates of response times;
- (b) The intended result of the activity for each person listed in section (7) and (12) of this section;
- (c) Command and control arrangements;
- (d) Required coordination; and
- (e) Probable obstacles and an estimate of oil movement during the first 72 hours.

(32) Financial Responsibility. Each plan must provide evidence that the facility or vessel is in compliance with federal financial responsibility requirements ~~pursuant to~~under ORS 468B.390.

(33) Technical Terms Glossary. Each plan must include a glossary of technical terms and abbreviations used in the plan.

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 8-2005, f. & cert. ef. 7-14-05

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0150

Oil Spill Contingency Planning Standards

- (1) The purpose of this rule is to establish oil spill prevention and emergency response contingency planning standards for onshore and offshore facilities, pipelines and vessels that will, when followed:
- (a) Promote the prevention of oil spills;
 - (b) Promote a consistent west coast approach to oil spill prevention and response;
 - (c) Maximize the effectiveness and timeliness of oil spill response by responsible parties and response contractors;
 - (d) Ensure readiness of equipment and personnel;
 - (e) Support coordination with state, federal and other contingency plans in particular the state plan required under ORS 468B.495 - 468B.500; and
 - (f) Protect Oregon waters and other natural resources from the impacts of oil spills.

(2) A plan that conforms to ~~the Department~~DEQ's planning standards, or alternative planning standard approved or required by ~~the Department~~DEQ as provided in subsection (2)(a) and (2)(b), may be approved if all other planning requirements in this Division are met:

(a) Plans submitted that are based on standards that differ from ~~the Department~~DEQ's planning standards must be supported by a detailed analysis that fully supports the methodology proposed. Alternative planning standards proposed by a plan submitter must be consistent with regional goals, be defended by the plan writer during public review of the plan and be approved by ~~the Department~~DEQ.

(b) ~~The Department~~DEQ will apply the applicable planning standard when evaluating the adequacy of a plan submitted to ~~the Department~~DEQ for approval, unless the planning standards do not fully reflect the unique circumstances of a particular facility or vessel. If ~~the Department~~DEQ determines that the plan does not fully protect the environment despite compliance with the general planning standards, ~~the Department~~DEQ will provide a detailed written explanation of its decision outlining the basis for its decision and the specific changes needed in the submitted plan.

(3) Plan writers must identify in their plans adequate resources to protect the areas potentially affected by a spill from their facility or vessel. The plan must state how the Planning Standards, including any performance standards, will be achieved. Required resources are further described in section (4)(a), (4)(b) and (4)(c) of this rule. The lands and waters of the state are divided into Zones and sub-Zones for planning purposes. Planning standards are established for each Zone and sub-Zone covered by this Division:

(a) Facilities located in a sub-Zone of the Columbia River must meet the following planning standards, except as provided in subsections (g) and (h) of this section:

(A) By 1 hour after the discovery of a spill, the facility must have deployed containment boom around the spill source. The length of boom on hand for this purpose must be at least four times the length of the largest vessel, or combined vessel lengths, potentially at that facility. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.

(B) By 2 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The amount of boom deployed and available in reserve to be deployed, if needed, must be eight times the length of the largest vessel, or combined vessel lengths, potentially at that facility.

(C) By 6 hours after the discovery of a spill, the facility must arrange for recovery of spilled oil. There must be equipment and personnel on site with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the facility's worst case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the facility must have 35,000 feet of boom deployed or available at the designated staging area for equipment deployment. Facilities

handling only nonpersistent oils need to have 15,000 feet of boom at this time. All facilities must have the ability at or before this time to recover the lesser of 36,000 barrels of oil or 15 percent of the worst-case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(E) By 24 hours after the discovery of a spill, the facility must have in place equipment and personnel with the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the facility must have in place equipment and personnel with the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.

(b) Facilities located in the Coastal Bays Zone must meet the following planning standards:

(A) By 1 hour after the discovery of a spill, the facility must have deployed containment boom around the spill source. The length of boom on hand for this purpose must be at least four times the length of the largest vessel, or combined vessel lengths, potentially at that facility. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.

(B) By 2 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The amount of boom deployed and available in reserve to be deployed if needed must be eight times the length of the largest vessel, or combined vessel lengths, potentially at that facility.

(C) By 6 hours after the discovery of a spill, the facility must arrange for recovery of spilled oil. There must be equipment and personnel on site with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the facility's worst-case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the facility must have 35,000 feet of boom deployed or available at the designated staging area for equipment deployment. Facilities handling only nonpersistent oils need to have 10,000 feet of boom at this time. All facilities must have the ability to recover oil at or before this time and have in place equipment and personnel with the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(E) By 24 hours after the discovery of a spill, the facility must have deployed or have at the designated staging area for equipment deployment an amount of boom equal to 35,000 feet. Facilities handling only nonpersistent oils need to have 15,000 feet of boom at this time. All facilities must have in place equipment and personnel with the ability to recover from the water

the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the facility must have the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.

(c) Offshore facilities located in the Open Ocean Zone;

(A) By 1 hour after the discovery of a spill, the offshore facility must have begun deploying the open ocean rated boom required to be at the facility. This must be an amount of boom equal to the full perimeter of the offshore facility plus the length of the largest vessel or barge, or combined vessel lengths, moored at the offshore facility.

(B) By 6 hours after the discovery of a spill, responders listed in the plan must be prepared to participate in an initial assessment of the release. The offshore facility must also have the ability to begin recovering oil so an amount equal to 10 percent of the worst-case spill volume can be recovered in the next 24 hours and stored on site.

(C) By 12 hours after the discovery of a spill, the offshore facility must have the ability to deploy protective boom at all sensitive coastal locations within 25 miles of the offshore facility. Facilities must have the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. Facilities must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(D) By 24 hours after the discovery of a spill, the offshore facility must have the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours.

(E) By 48 hours after the discovery of a spill, the offshore facility must have the ability to establish shoreline cleanup resources and wildlife rescue services. The facility must have the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours.

(d) Covered vessels operating in any sub-Zone of the Columbia River must meet the following planning standards:

(A) By 2 hours after the discovery of a spill, the responders listed in the operator's plan must be prepared to participate in an initial assessment of the release. Responders listed in the plan must have initiated deployment of containment boom around the source except in the case of passenger vessels, and vessels at risk of exacerbating the situation, where a deflection deployment for safety reasons may be used. The amount of boom being deployed must be the lesser of 1000 feet, or a length equal to four times the length of the vessel. The boom must be placed in the water in a location and fashion so as to safely contain and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the staging area

equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases the plan must include, by contract or other approved means, a boat crew capable of deploying and tending the required boom to be operating on site at this time.

(B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel available to be on site at this time with the ability to recover the lesser of 12,000 barrels of oil, or an amount of oil equal to two percent of the vessel's worst-case spill, from the water in the next 24 hours. The vessel plan must also provide for the delivery of 10,000 feet of containment boom.

(C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 40,000 feet of boom. There must be a recovery system capable of removing the lesser of 36,000 barrels of oil or five percent of the worst case spill volume from the water in the next 24 hours. Plans must include the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(D) By 24 hours after the discovery of a spill, the vessel operator must have deployed, or have at the designated staging area for equipment deployment, equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.

(E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange for an increased ability to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst-case spill in the next 24 hours.

(e) Covered vessels operating in the Coastal Bays Zone must meet the following planning standards:

(A) By 2 hours after the discovery of a spill, the responders listed in the plan must be prepared to participate in an initial assessment of the release. Responders listed in the plan must have initiated deployment of containment boom around the source, or in the case of passenger vessels a deflection deployment for safety reasons. The amount of boom being deployed must be the lesser of 1,000 feet, or a length equal to four times the length of the vessel. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the staging area equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases the plan must include, by contract or other approved means, a boat crew capable of deploying and tending the required boom to be operating on site at this time.

(B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site at this time with the ability to recover the lesser of 12,000 barrels of oil or an amount of oil equal to two percent of the vessel's worst-case spill from the water in the next 24 hours. The vessel plan must also have provided for the delivery to the site of 6,500 feet of containment boom.

(C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 9,500 feet of boom. There must be a recovery system on site capable of removing the lesser of 36,000 barrels of oil or five percent of the worst case spill volume from the water in the next 24 hours. Vessels must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(D) By 24 hours after the discovery of a spill, the vessel operator must have 14,000 feet of boom deployed, or at the designated staging area for equipment deployment, and equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.

(E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst-case spill volume in the next 24 hours.

(f) Covered vessels operating in the Open Ocean Zone:

(A) By 2 hours after the discovery of a spill, the responders listed in the plan must mobilize personnel, prepare to conduct an initial site assessment and site safety characterization of the spill area and arrange for aircraft for aerial observations. Transport of appropriate boom must take place in preparation for deployment at the source. In the case of passenger vessels, booming strategies must take into account the safety of passengers. Amount of boom must be the lesser of 1,000 feet, or a length equal to four times the length of the vessel. Booming strategies must maximize containment and facilitate recovery of the greatest amount of oil from the water. Additional boom must be available at the response resource staging area equal to the balance of four times the length of the vessel if the vessel is more than 250 feet in length. In all cases, the plan must have listed by contract or other approved means qualified personnel to accomplish the requirements of this paragraph.

(B) By 6 hours after the discovery of a spill, the vessel operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site capable of recovering the lesser of 12,000 barrels of oil from the water or an amount of oil equal to two percent of the vessel's worst-case spill in the next 24 hours. The vessel plan must also have provided for the delivery to the site of 10,000 feet of containment boom.

(C) By 12 hours after the discovery of a spill, the vessel operator must have the ability to deploy 40,000 feet of boom. There must be on site a recovery system capable of removing from the water the lesser of 36,000 barrels of oil or three percent of the worst case spill volume in the next 24 hours. Vessel operators must have the ability to assess the impact of a spill on wildlife. Responders listed in the plan must have the ability to identify shoreline impacts.

(D) By 24 hours after the discovery of a spill, the vessel operator must have deployed, or have at the designated staging area for equipment deployment, equipment and operators with the ability to recover the lesser of 48,000 barrels of oil or 12 percent of the worst case spill volume from the water in the next 24 hours.

(E) By 48 hours after the discovery of a spill, the vessel operator must be able to arrange to recover oil from the water to the lesser of 60,000 barrels of oil or 17 percent of the worst-case spill volume in the next 24 hours.

(g) Pipelines located in, or crossing, a planning Zone where there is a potential for spilling or releasing oil to navigable waters of the state must meet the following planning standards:

(A) By 1 hour after the discovery of a spill, the pipeline operator must completely shut down the pipeline.

(B) By 2 hours after the discovery of a spill, the pipeline operator or its dedicated response contractor must have deployed 1,000 feet of containment boom around the spill source entering the water. The boom must be placed in the water in a location and fashion so as to contain and facilitate recovery of the greatest amount of oil from the water.

(C) By 6 hours after the discovery of a spill, the pipeline operator must have arranged for recovery of spilled oil. There must be equipment and personnel on site capable of recovering the lesser of 12,000 barrels of oil or an amount of oil equal to 10 percent of the pipeline's worst-case spill from the water in the next 24 hours.

(D) By 12 hours after the discovery of a spill, the pipeline operator must have 15,000 feet of boom deployed or at the designated staging area for equipment deployment. All pipelines must have the ability to recover oil at or before this time and have in place equipment and personnel with the ability to recover the lesser of 36,000 barrels of oil or 15 percent of the worst case spill volume from the water in the next 24 hours. The pipeline operator must have the ability to assess the damage potentially done to wildlife and shorelines in the impacted area of the spill.

(E) By 24 hours after the discovery of a spill, the pipeline operator must increase the ability to recover oil from the water to the lesser of 48,000 barrels of oil or 20 percent of the worst case spill volume in the next 24 hours. The pipeline operator must have arranged for sufficient boom of an appropriate design to be deployed for the protection of sensitive wildlife habitats within the potential drift of oil in 24 hours.

(F) By 48 hours after the discovery of a spill, the pipeline operator must increase the ability to recover oil from the water to the lesser of 60,000 barrels of oil or 25 percent of the worst case spill volume in the next 24 hours. The pipeline operator must have arranged for sufficient boom of an appropriate design to be deployed for the protection of sensitive wildlife habitats within the potential drift of oil in 48 hours.

(h) Pipelines located in, or crossing, the Inland Zone must meet the following planning standards:

(A) By 1 hour after the discovery of a spill, the pipeline operator must complete a shutdown of the pipeline.

(B) By 2 hours after the discovery of a spill, the pipeline operator must have assigned personnel and emergency equipment to locate the exact point of release. The pipeline operator must have arranged for the equipment and response personnel necessary to contain the spill.

(C) By 6 hours after the discovery of a spill, the pipeline operator must have the ability to complete the assessment of the spill. The pipeline operator must have the ability to rapidly get resources to the spill location using preplanned caches of materials where no local resources are resident.

(D) By 12 hours after the discovery of the spill, the pipeline operator must have the ability to recover freestanding liquid oil from the environment equal to five percent of the worst-case spill in the next 24 hours. The pipeline operator must have the ability to assess and mitigate the damage potentially done to wildlife, wildlife habitat and natural resources in the impacted area of the spill.

(E) By 24 hours after the discovery of a spill, the pipeline operator must have deployed or have at the designated staging area for equipment deployment an amount of equipment capable of removing 10 percent of the worst case spill volume from the land and any impacted water in the next 24 hours.

(F) By 48 hours after the discovery of a spill, the pipeline operator must increase the ability to remove oil from the environment to the lesser of 60,000 barrels in the next 24 hours, or 15 percent of the worst case spill volume. The pipeline operator must have arranged for sufficient equipment, of an appropriate design, to be deployed for the protection of sensitive wildlife habitats within the potential spread or travel of the oil in 24 hours.

(4) Resources identified in a plan to meet planning standards must include these conditions and qualifications:

(a) The required resources listed in the plans for facilities, not including transmission pipelines or pipeline terminals, must be the property of the plan holder or specifically available to the plan holder through a contract or other approved means. Those resources required for the first and second hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six hour planning standards, the resources on the Columbia River may also be those normally resident in an adjacent sub-Zone. To meet the planning standard on the Columbia River at 12 hours, the materials may be from resources resident in the Zone. Those resources required for the first through the sixth hours in a coastal bay must be stocks of materials and labor sources resident within the impacted Zone. To meet the 12-hour planning standards in Coastal and Inland Zones, the resources may be from an adjacent planning Zone.

(b) The required resources listed in a covered vessel plan must be the property of the plan holder, or specifically available to the plan holder through a contract or other approved means. Those resources necessary and available to meet planning standards for the initial response, and through the first two hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six-hour planning standard, the resources may be

from an adjacent sub-Zone. To meet the 12-hour planning standards the resources on the Columbia River must be those normally resident in that Zone. To meet planning standards at two hours and six hours in Coastal Bay Zone, the resources must be resident in the specific bay. To meet planning standards at 12 hours in the Coastal Bay Zone, the resources may be from an adjacent Zone.

(c) The required resources listed for a pipeline plan must be the property of the plan holder, or specifically available to the plan holder through a contract or other approved means. Those resources required for the first and second hours on the Columbia River must be stocks of materials and labor sources resident within the impacted sub-Zone. To meet the six-hour planning standards, the resources on the Columbia River may also be those normally resident in an adjacent sub-Zone. To meet the 12-hour planning standard on the Columbia River, the materials may be from resources resident in the Zone. Those resources required for the first through the sixth hours in a Coastal Bay Zone must be stocks of materials and labor sources resident within the impacted Zone. To meet planning standards at 12 hours in Coastal and Inland Zones, the resources may be from an adjacent planning Zone.

(5) For all facilities, pipelines and covered vessels subject to planning standards in this rule, if equipment to recover oil from the water is required, the plan must identify interim storage for the recovered oil and oily water. Interim storage qualifications are described in section 0140 (24), the required content of contingency plans section of this rule, and are also addressed in OAR 340-142-0080. ~~The Department~~DEQ will set plan specific interim storage planning standards, or apply a default interim storage capacity equal to three times the effective daily recovery capacity (EDRC) of the equipment used to achieve the recovery percentages or volumes given in the planning standards of section (3). EDRC is used in planning standards to adjust the total recovery ability of a particular piece of oil spill recovery equipment to a lower value compensating for any incidental water it may recover. Unless otherwise approved by ~~the Department~~DEQ the nameplate efficiency for a piece of equipment will be derated to 20 percent of its manufacturer's claim. Requirements for the 6 to 12 hour planning standards must show how the plan will meet the need for interim storage.

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.350

History:

DEQ 184-2018, minor correction filed 04/16/2018, effective 04/16/2018

DEQ 104-2018, minor correction filed 04/10/2018, effective 04/10/2018

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0160

Prevention Strategies for Facilities

(1) The owner or operator of each onshore and offshore facility must develop spill prevention strategies that will, when implemented, provide the best achievable protection from damages caused by the discharge of oil into the waters of the state. The strategies may be in the form of:

(a) Appendices to oil spill prevention and emergency response plans required under this chapter;
or

(b) A standalone prevention plan that meets all requirements of OAR 340-141-0100 to 340-141-0230.

(2) Spill Prevention Countermeasure and Control Plans (SPCC), Operation Manuals and other prevention documents prepared to meet federal requirements under 33 ~~CFRC.F.R.~~ 154, 33 ~~CFRC.F.R.~~ 156, 40 ~~CFRC.F.R.~~ 109, 40 ~~CFRC.F.R.~~ 112, or the Federal Oil Pollution Act of 1990 or plans prepared to meet the requirements of other states may be submitted to satisfy requirements under this chapter if ~~the Department~~DEQ deems that such requirements equal or exceed those of ~~the Department~~DEQ, or if the plans are modified or appended to satisfy requirements of this Division.

(3) Spill prevention strategies must at a minimum provide all of the following:

(a) Documentation of types and frequency of spill prevention training provided to applicable personnel;

(b) Evidence that the facility has an operations manual;

(c) A description of a drug and alcohol awareness program that provides training and information materials to all employees on recognition of alcohol and drug abuse treatment opportunities, and applicable company policies;

(d) Evidence of a maintenance and inspection program that includes:

(A) Summary of the frequency and type of all regularly scheduled inspection and preventative maintenance procedures for tanks, pipelines, key storage, transfer, or production equipment including associated pumps, valves, and flanges, and overpressure safety devices and other spill prevention equipment;

(B) Description of integrity testing of storage tanks and pipelines using such techniques as hydrostatic testing and visual inspection, including but not limited to the frequency of tests, means of identifying that a leak has occurred and measures to reduce spill risk if test material is product;

(C) External and internal corrosion detection and repair;

(D) Damage criteria for equipment repair or replacement;

(E) Maintenance and inspection records of the storage and transfer facilities and related equipment will be made available to ~~the Department~~DEQ upon request; and

(F) Documentation required under 40 ~~CFRC.F.R.~~ 112.7(e) or 33 ~~CFRC.F.R.~~ 154, Subparts C and D may be used to address elements of this subsection.

(e) A description of the use of containment boom at facilities transferring persistent oil, including:

(A) Type(s) of boom used based upon the varied conditions within the region(s) of operation; and

(B) Methods of boom placement and anchoring.

(f) Identification of spill prevention technology currently in use, including if applicable:

(A) Tank and pipeline materials and design;

(B) Storage tank overflow alarms, tank overflow cutoff switches, low level alarms and automatic transfer shutdown systems, including methods to alert operators, system accuracy and tank fill margin remaining at time of alarm activation before overflow would occur at maximum pumping rate (documentation required under 40 [CFRC.F.R.](#) 112.7(e)(2)(viii) or 33 [CFRC.F.R.](#) 154.310(a)(12-13) may be used to address some or all of these elements);

(C) Leak detection systems for both active and nonactive pipeline conditions including detection thresholds in terms of duration and percentage of pipeline flow limitations on system performance due to normal pipeline events, and procedures for operator response to leak alarms (documentation required under 40 [CFRC.F.R.](#) 112.7(e)(3) may be used to address some or all of these elements);

(D) Rapid pump and valve shutdown procedures, including means of ensuring that surge and overpressure conditions do not occur, rates of valve closure, sequence and time duration (average and maximum) for entire procedure, automatic and remote control capabilities utilized and visual displays of system status for operator use (documentation required under 40 [CFRC.F.R.](#) 112.7(e)(3) may be used to address some or all of these elements);

(E) Minimization of post-shutdown residual drainout from pipes, including criteria for locating valves, identification of all valves (including types and means of operation) that may be open during a transfer process, and any other techniques for reducing drain out;

(F) Means of relieving pressure due to thermal expansion of liquid in pipes during periods of nonuse;

(G) Secondary containment, including contents of the largest tank plus space for precipitation, and material design and permeability of the containment area (documentation required under 40 [CFRC.F.R.](#) 112.7(e)(1) and (2)(ii)–(iv) may be used to address some or all of these elements);

(H) Surge control systems;

(I) Internal and external corrosion control coatings or wrappings and instruments;

(J) Storm water and other drainage retention, treatment and discharge systems, including maximum storage capacities and identification of any applicable discharge permits (documentation required under 40 [CFR.C.F.R.](#) 112.7(e)(1) and (2)(iii) and (ix) may be used to address some or all of these elements); and

(K) Criteria for suspension of operations while leak detection or other spill control systems are inoperative.

(g) A description of facility site security systems, including:

(A) Procedures for controlling and monitoring facility access;

(B) Lighting (documentation required under 33 [CFR.C.F.R.](#) 154.570 may be used to address some or all of this element);

(C) Signage; and

(D) Right-of-way identification or other measures to prevent third party damage (documentation required under 40 [CFR.C.F.R.](#) 122.7(e)(3)(v) and (9) may be used to address some or all of this element).

(h) History of any discharges of oil to the land or waters of the state in excess of 25 barrels (1,050 gallons) which occurred during the five-year period prior to the plan submittal date. For each discharge, describe:

(A) Quantity;

(B) Type of oil;

(C) Geographic area;

(D) Analysis of cause, including source(s) of discharged oil and contributing factors (e.g., equipment failure, employee error, adverse weather, etc.); and

(E) Measures taken to remedy the cause and prevent reoccurrence.

(i) A detailed and comprehensive site risk analysis that:

(A) Evaluates the construction, age, corrosion, inspection and maintenance, operation and oil spill risk of the transfer, production and storage system including piping, tanks, pumps, valves and associated equipment;

(B) Evaluates spill minimization and containment systems;

(C) Incorporates information required in subsection (f) of this section;

(D) Is prepared under the supervision of (and bears the seal of) a licensed professional engineer; and

(E) Includes documentation required under 40 ~~CFRC.F.R.~~ 112.7(b) and (e) may be used to address some or all of the elements in this subsection.

(j) A description of how the facility will incorporate those measures that will provide best achievable protection to address the spill risks identified in the risk analyses required in subsection (i) of this section. (Information documented ~~pursuant to~~under 40 ~~CFRC.F.R.~~ 112.7(e) and 33 ~~CFRC.F.R.~~ 154.310 may be used to address some or all of the elements of this subsection.)

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019

DEQ 105-2018, minor correction filed 04/10/2018, effective 04/10/2018

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0170

Prevention Strategies for Vessels

(1) Each covered vessel must have spill prevention strategies that when implemented will provide the best achievable protection from damages caused by the discharge of oil into the waters of the state.

(2) Prevention documents prepared to meet federal requirements under the Oil Pollution Act of 1990 or plans prepared to meet the requirements of other states may be used to satisfy the criteria of this section.

(3) Vessel owners or operators will make maintenance and inspection records, and oil transfer procedures available to ~~the Department~~DEQ upon request.

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0180

Plan Submittal

(1) Before operating in Oregon, facilities must submit plans for review as follows:

(a) Except as provided in (c), plans for facilities must be submitted to ~~the Department~~DEQ at least 90 days before oil is moved into or out of the facility.

(b) Plans for covered vessels of 300 gross tons or more which transit the Columbia River and Willamette River must be submitted to ~~the Department~~[DEQ](#) at least 90 days before that vessel enters navigable waters of the state.

(c) Plans for existing pipelines in the Inland Zone must be submitted by June 30, 2003. After June 30, 2003 plans for new pipelines must be submitted 90 days before pipeline operations commence.

(2) One complete copy of the plan (including appendices) must be submitted to ~~the Department~~[DEQ](#) in printed or electronic form. Plans must be submitted to: Department of Environmental Quality, Emergency Response Program, ~~811 SW 6th~~[700 NE Multnomah AveSt., Suite 600, Portland, Oregon 9720497232](#). Electronic copies ~~must~~may be sent ~~to the Department~~[DEQ](#). ~~on either standard computer disk or compact disk~~. A printed copy of the complete plan showing all revisions may be required during the public review period. The plan holder may be required to supply up to four printed copies of the final plan.

(3) Onshore and offshore facility plans may be submitted by:

(a) The facility owner or operator; or

(b) An oil spill response cooperative or maritime association in which the facility owner or operator is a participating member.

(4) Tank vessel plans may be submitted by:

(a) The tank vessel owner or operator;

(b) The owner or operator of a facility at which the tank vessel unloads cargo, in conformance with requirements under OAR 340-141-0150(1); or

(c) An oil spill response cooperative or maritime association in which the tank vessel owner or operator is a participating member.

(5) Cargo and passenger vessel plans may be submitted by:

(a) The vessel owner or operator;

(b) The agent for the vessel resident in this state;

(c) An oil spill response cooperative or maritime association in which the tank vessel owner or operator is a participating member; or

(d) A primary response contractor.

(6) Subject to the conditions imposed by ~~the Department~~DEQ, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(7) A single plan may be submitted for more than one facility or covered vessel owned by the same person, provided that the plan contents meet the requirements of OAR 340-141-0100 to 340-141-0230 for each facility, pipeline or covered vessel listed.

(8) The plan submitter may request that proprietary information be kept confidential under ORS 192.501(2). If a plan submitter wishes to claim that any provision in a plan is a trade secret, the submitter must specifically notify ~~the Department~~DEQ of its claim and identify those provisions in the plan that are claimed to be trade secrets.

Statutory/Other Authority: ORS 468.020 & 468B.395

Statutes/Other Implemented: ORS 468B.355

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0190

Plan Review

(1) Upon receipt of a plan, ~~the Department~~DEQ will promptly evaluate the plan for completeness. If ~~the Department~~DEQ determines that a plan is incomplete, the submitter will be notified of deficiencies. The review period will not begin until ~~the Department~~DEQ receives a complete plan. ~~The Department~~DEQ will allow 30 days for the submitter to supply the missing components of the plan. After 30 days the plan will be returned without approval to the submitter.

(2) ~~The Department~~DEQ will notify interested persons of any contingency plans under review by ~~the Department~~DEQ, and make such plans available for review to ODFW, DLCD, the State Fire Marshal and any interested person. ~~The Department~~DEQ will provide a 30-day period for agencies and other interested persons to comment on a plan.

(3) A Plan will be approved if, in addition to meeting criteria in OAR 340-141-0100 through 340-141-0170, it demonstrates that when implemented, it will:

(a) Provide for prompt and proper response to and cleanup of a variety of spills, including average most probable spills and worst-case spills;

(b) Provide for prompt and proper protection of the environment from oil spills;

(c) Provide for immediate notification and mobilization of resources upon discovery of a spill;
and

(d) Provide for initial deployment of response equipment and personnel at the site of the spill within one hour of discovery for facilities and two hours of discovery for covered vessels given suitable safety conditions.

(4) When reviewing plans, ~~the Department~~DEQ will, in addition to the above criteria, consider the following:

(a) The volume and type of oil(s) addressed by the plan;

(b) The history and circumstances of prior spills by similar types of facilities, including spill reports by ~~Department~~DEQ spill responders;

(c) The presence of operating hazards;

(d) The sensitivity and value of natural resources within the Oil Spill Response Planning Zones and geographic area covered by the plan;

(e) Any pertinent local, state, federal agency or public comments received on the plan; and

(f) The extent that reasonable, cost-effective spill prevention measures have been incorporated into the plan.

(5) ~~The Department~~DEQ may approve a plan without a full review ~~pursuant to~~under this rule if that plan has been approved by a federal agency or other state using approval criteria that equal or exceed those of ~~the Department~~DEQ.

(6) ~~The Department~~DEQ will endeavor to notify the facility or covered vessel owner or operator within five working days after the review is completed whether the plan has been approved.

(7) If the plan is approved, the facility or covered vessel owner or operator will receive a certificate of approval describing the conditions of approval, including an expiration date not to exceed five years.

(8) ~~The Department~~DEQ may approve a plan conditionally by requiring the owner or operator of a facility or covered vessel owner or operator to operate with specific precautionary measures until unacceptable components of the plan are resubmitted and approved.

(a) Precautionary measures may include, but are not limited to, placing spill containment boom around all vessels during oil transfers, reducing oil transfer rates, increasing personnel levels, or restricting operations to daylight hours. Precautionary measures may also include additional requirements to ensure availability of response workers and equipment.

(b) A plan holder will have 30 calendar days after ~~the Department~~DEQ gives notification of conditional status to submit and implement required changes to ~~the Department~~DEQ, with the option for an extension at ~~the Department~~DEQ's discretion. Plan holders who fail to meet

conditional requirements or provide required changes in the time allowed will lose conditional approval status.

(c) ~~The Department~~DEQ may use plan approval with conditions as an alternate to rejecting a plan with minor defects.

(9) If plan approval is denied, the owner or operator of the facility or covered vessel will be given a written explanation of ~~the Department~~DEQ's reasons for disapproval and a list of actions needed to gain approval. The facility or covered vessel must not commence or continue oil storage, transport, transfer, production or other operations until a plan for that facility or covered vessel has been approved.

(10) If a plan holder demonstrates an inability to comply with an approved contingency plan or otherwise fails to comply with requirements of this Division, ~~the Department~~DEQ may, at its discretion:

(a) Place conditions on approval ~~pursuant to~~under section (8) of this rule; or

(b) Revoke its approval.

(11) Approval of a plan by ~~the Department~~DEQ does not constitute an express assurance regarding the adequacy of the plan or constitute a defense to liability imposed under state law.

(12) A plan holder may request a hearing on ~~the Department~~DEQ's decision under OAR 340, division 11.

Statutory/Other Authority: 468B.390 & ORS 468.020

Statutes/Other Implemented: ORS 468B.365

History:

DEQ 106-2018, minor correction filed 04/10/2018, effective 04/10/2018

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0200

Drills, Exercises, and Inspections

(1) ~~The Department~~DEQ may require plan holders of approved plans to participate in one announced drill or one unannounced limited drill annually.

(2) As a condition of plan approval, ~~the Department~~DEQ may require that the plan holder successfully conduct drills of the elements of a plan submitted for approval.

(3) Requirements under sections (1) and (2) of this rule may be met:

(a) By drills led by other state, local or federal authorities, if ~~the Department~~DEQ finds that the criteria for drill execution and review equal or exceed those of ~~the Department~~DEQ;

(b) By drills initiated by the plan holder, if ~~the Department~~DEQ participates, reviews and evaluates the drill, and if ~~the Department~~DEQ finds that the drill adequately tests the plan; or

(c) By responses to actual spill events, if ~~the Department~~DEQ participates, reviews and evaluates the spill response, and if ~~the Department~~DEQ finds that the spill event adequately tests the plan.

(4) ~~The Department~~DEQ may excuse a primary response contractor from full deployment participation in more than one drill if, in the past 12 months, the primary response contractor has performed to ~~the Department~~DEQ's satisfaction in a full deployment drill in an exercise listed in section (3) of this rule or has satisfactorily responded to a significant spill event in Oregon.

(5) ~~The Department~~DEQ may require the facility or covered vessel owner or operator to participate in additional drills beyond those required in section (1) of this rule if ~~the Department~~DEQ is not satisfied with the adequacy of the plan or plan implementation during exercises or spill response events.

(6) ~~The Department~~DEQ will review the degree to which the specifications of the plan are implemented during the drill. ~~The Department~~DEQ will endeavor to notify the facility or covered vessel owner or operator of the review results within 30 calendar days following the drill. If ~~the Department~~DEQ finds deficiencies in the plan, ~~the Department~~DEQ will report those deficiencies to the plan holder and require the plan holder to make specific amendments to the plan pursuant to ~~under~~ requirements of OAR 340-141-0220.

(7) ~~The Department~~DEQ may publish an annual report on plan drills, including a summary of response times, actual equipment and personnel use, recommendations for plan requirement changes and industry response to those recommendations.

(8) ~~The Department~~DEQ may require the plan holder to publish an annual report on plan drills including a summary of response times, active equipment and personnel use and recommendations for improvement.

(9) ~~The Department~~DEQ may verify compliance with this Division by unannounced inspections in accordance with ORS 468B.370.

Statutory/Other Authority: ORS 468.020 & 468B.390

Statutes/Other Implemented: ORS 468B.370 - 468B.380

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0210

Plan Maintenance and Use

(1) At least one copy of the plan must be kept in a central location accessible at any time by the incident commander or spill response manager named in accordance with OAR 340-141-0140(7). Each facility covered by the plan must possess a copy of the plan and keep it in a conspicuous and accessible location.

(2) A field document prepared under OAR 340-141-0130(5) must be available to all appropriate personnel. Each covered vessel covered by the plan must possess a copy of the field document and keep it in a conspicuous and accessible location.

(3) A facility, ~~or~~ covered vessel, ~~or high hazard rail~~ owner or operator or their designee must implement the plan in the event of a spill. The owner or operator of the facility or covered vessel must receive approval from ~~the Department~~ [DEQ](#) before it conducts any major aspect of the spill response contrary to the plan unless:

(a) Such actions are necessary to protect human health and safety;

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) The plan holder has been directed to perform such actions by ~~the Department~~ [DEQ](#), [EPA](#), [Pipeline Hazardous Materials Safety Administration \(PHMSA\)](#) or the United States Coast Guard.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.390

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0220

Plan Update Timeline

(1) ~~The Department~~ [DEQ](#) must be notified in writing as soon as possible and within 24 hours of any significant change that could affect implementation of the plan, including a significant decrease in available spill response equipment or personnel. Decreases are significant if they prevent the owner or operator from carrying out the requirements of the plan in the time specified in the Oil Spill Contingency Response Planning Standards for the Zones or sub-Zones of operation. The plan holder must also provide a schedule for the prompt return of the plan to full operational status. A receipt confirmed e-mail or facsimile will be considered written notice for purposes of this section. Changes that are not considered significant include minor variations in equipment or personnel characteristics, call out lists or operating procedures. Failure to notify ~~the Department~~ [DEQ](#) of significant changes constitutes noncompliance with this rule as well as an inability to comply with an approved plan under OAR 340-141-0210(3).

(2) If ~~the Department~~ [DEQ](#) finds that, as a result of a change, the plan no longer meets approval criteria ~~pursuant to~~ [under](#) OAR 340-141-0190, ~~the Department~~ [DEQ](#) may, in its discretion, place conditions on approval, require additional drills or inspections or revoke approval in accordance with OAR 340-141-0190(8). Plan holders are encouraged to maintain backup response resources in order to ensure that their plans can always be fully implemented.

(3) Within 30 calendar days of an approved change in the plan, the owner or operator of the facility or covered vessel must distribute the amended pages of the plan to ~~the Department~~ [DEQ](#) and other plan holders.

(4) Plans must be reviewed by ~~the Department~~DEQ every five years ~~pursuant to~~under ORS 468B.345(3). Plans must be submitted for reapproval unless the plan holder submits a letter requesting that ~~the Department~~DEQ review the plan already in ~~the Department~~DEQ's possession. The plan holder must submit the plan or such a letter at least 90 calendar days before expiration of the plan.

(5) ~~The Department~~DEQ may review a plan following any spill for which the plan holder is responsible.

(6) ~~The Department~~DEQ may require plan holders of approved plans to renew the signed letter of intent required by OAR 340-141-0100 annually to confirm that there has been no change to the plan or the plan holder's commitment to its use.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.390

Statutes/Other Implemented: ORS 468B.345 - 468B.365

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0230

Noncompliance with Plan Requirements

(1) No person may cause or permit the operation of an onshore or offshore facility in the state, or a covered vessel within the navigable waters of the state without a properly implemented oil spill prevention and emergency response plan approved by ~~the Department~~DEQ.

(2) No person may cause or permit the operation of a facility or covered vessel without proof of financial responsibility in compliance with ORS 468B.390, which requires the equivalent of the federal requirement.

(3) Any violation of this division will be subject to the enforcement and penalty provisions of ORS 468.140, and OAR 340 division 012.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.390

Statutes/Other Implemented: ORS 468B.345 - 468B.390

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0240

Equipment Mutual Aid

(1) ~~The Department~~DEQ may preapprove the transfer of equipment, materials or personnel by a plan holder to another plan holder, or person, when necessary to assist in response to an oil discharge.

(2) ~~The Department~~DEQ's preapproval may include:

- (a) Waiver of response times specified in a plan; or
- (b) Conditions specified by ~~the Department~~DEQ regarding, but not limited to, notification to ~~the Department~~DEQ, return or replacement of equipment, materials or personnel and measures necessary to prevent or reduce the potential for discharges during the period of reduced response capability.
- (3) Preapproval under this rule does not require plan modification or update.

Statutory/Other Authority: ORS 468.020 & 468B.345 - 468B.390

Statutes/Other Implemented: ORS 468B.365

History:

DEQ 2-2003, f. & cert. ef. 1-31-03

340-141-0250

Definitions as used in the following sections specific to high hazard train route-contingency planning requirements

(1) “Average Most Probable” spill, release or discharge for high hazard train routes means the probable volume of oil that may spill as defined in a plan considering the history of spills. It may also be defined as the lesser of one percent of the worst case spill, release or discharge, or 50 barrels, when used as a planning volume.

(2) “Owner” means the owner or operator who has ultimate control over the high hazard rail line for contingency planning requirements.

(3) “Worst case spill” means 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 rail route.

Statutory/Other Authority: ORS 468B.300 & 468B.340

Statutes/Other Implemented: ORS 468B.300 – 468B.500

History:

340-141-0260

Oil Spill Contingency Plan for High Hazard Rail Applicability

(1) A railroad that owns a high hazard train route in this state must have an oil spill contingency plan that has been approved by DEQ.

(2)(a) The owner of a high hazard rail route must submit a contingency plan for a high hazard train route to DEQ within 90 days after the date of operation of trains that cause a section of rail lines to meet the definition of a high hazard train route on that section of rail lines, or within a longer time period that DEQ and the railroad mutually agree on if DEQ and railroad agree that the longer time period is necessary. A railroad operating a high hazard train route prior to January 1, 2021 must submit a contingency plan by January 1, 2021.

(b) In addition to meeting the requirement of paragraph (a) of this subsection, and immediately after the date the railroad begins operating trains that cause a section of rail lines to meet the definition of a high hazard train route on that section of rail lines, a railroad must provide notice to DEQ that the railroad began operating a high hazard train route. Notice provided under this paragraph must 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 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 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) The railroad that owns the high hazard train route must submit a contingency plan for 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 remains in effect until DEQ approves the revised contingency plan.

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

(6) A failure by a railroad that owns a high hazard train route to comply with section (5) of this rule, or to comply with a contingency plan submitted under section (5) of this rule does not preclude the railroad from operating the high hazard train route.

(7) 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 rule shall be accepted by DEQ as a contingency plan required under section 340-141-0260 of this Rule.

Statutory/Other Authority: ORS 468.020 & 468B.437

Statutes/Other Implemented: ORS 468B.427 & 468B.429 & 468B.431

History:

340-141-0265

Contingency Plan Contents

All applicable contingency plans under 340-141-0260 must include at least the following:

(1) Submittal Agreement. Each plan must contain a submittal agreement that:

(a) Includes the name, address and phone number of the submitting party;

(b) Verifies acceptance of the plan, including any incorporated contingency plans, by the owner of the high hazard train route by either signature of the owner or a person with authority to bind the corporation that owns the high hazard train route.;

(c) Commits to execution of the plan, including any incorporated contingency plans, by the owner of the high hazard train route and verifies authority for the plan holder to make appropriate expenditures in order to execute plan provision and includes; the location (latitude and longitude) of the train route, the railroad mileposts, the product being transported and the maximum amount and type that the entire train consist is capable of transporting.

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that DEQ was notified of the amendment under OAR 340-141-0285(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

(3) Table of Contents. Each plan must include a detailed table of contents based on chapter, section, appendix numbers and titles and tables and figures. If the plan is an integrated plan used to also satisfy PHMSA requirements, a cross reference must be included.

(4) Purpose and Scope. Each plan must describe the purpose and scope of that plan, including:

(a) The region of operation covered by the plan;

(b) The high hazard train route operations covered by the plan; and

(c) The size and type of the average most probable spill and the worst case spill from the high hazard train route.

(5) Updates. Each plan must describe the events or time periods that will trigger updates of the plan.

(6) Implementation Strategy. Each plan must present a strategy for ensuring use of the plan for spill response and cleanup operations as required by OAR 340-141-0265 (7).

(7) Spill Response System. Each plan must describe the organization of the spill response system. This includes those resources required and, or necessary to manage the resources given a response to an Average Most Probable Discharge and worst case spill. Plans must use a National

Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

(8) Contractor Identification. Each plan must identify the Oil Spill Removal Organization (OSRO), oil spill response cooperative, or primary response contractor and subcontractors (except equipment rentals or supply vendors) whose services are bound to the plan by a contract or other approved means:

(a) If a plan holder is a member of an oil spill response cooperative and relies on that cooperative to perform or supplement its response operations within the regions of operations covered by the plan, the plan must state the cooperative's name, address, phone number and response capability. The plan must also include proof of cooperative membership; or

(b) If a plan holder is not a member of an oil spill response cooperative, for the OSRO or contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in (10) and (11) of this section. Copies of written contracts or agreements with contractors must be available for inspection, if requested by [DEQ](#).

(9) Relationship to Other Plans. Each plan must briefly describe its relation to all applicable local, state, regional and federal government spill response plans. The plan must describe how the plan holder's response organization will be integrated into the Northwest Area Contingency Plan.

(10) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

(a) A job description for each type of spill response position needed as indicated in the spill response organization scheme addressed in section (7) of this rule, or a reference to a recognized NIMS position;

(b) The number of personnel available to perform the duties of each type of spill response position;

(A) This number must be equal to or greater than the number of persons necessary to sustain a response to the worst case spill defined in the plan.

(B) If 24 hour operations are expected, the number of persons available to staff the ICS must be multiplied by the proposed number of operational periods (shifts).

(11) Equipment and spill response resources. Each plan must describe equipment and spill resources as follows:

(a) Each plan must list response equipment including response vessels used for oil containment, recovery, removal, shoreline and adjacent lands cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. DEQ will accept information about equipment by reference if the equipment is being provided through an OSRO or response contractor as part of the plan. DEQ may request information about the condition and date of manufacture of any listed and referenced equipment to further evaluate its applicability a response. If the plan relies on USCG--classified OSROs or response contractors who list their equipment in a shared and publicly available database, this information may be included by reference in lieu of a full list in the plan.

(b) For equipment and vessels listed under subsection (a) of this section that are not owned by or available exclusively to the plan holder, the plan must also estimate the extent that other contingency plans rely on the same equipment.

(c) For all oil containment and recovery equipment, that is owned by the Planholder and/or a non USCG-classified OSRO, the plan also must include equipment make and model, the manufacturer's nameplate capacity of the response equipment, the EDRC (in barrels per day) and applicable design limits (e.g., maximum wave height capability, suitability for inland waters).

(d) Based on information described in subsection (c) of this section, the plan must state the maximum amount of oil that could be recovered per 24-hour period with the equipment used as it is designed.

(e) For purposes of determining plan adequacy under OAR 340-141-0280, and to assess realistic capabilities based on potential limitations by weather and other variables, DEQ will use the data presented in subsections (c) and (d) of this section to apply a higher efficiency factor for equipment listed in a plan if that plan holder provides adequate evidence that the higher efficiency factor is warranted for particular equipment or if the United States Coast Guard has approved a higher efficiency rating.

(f) The plan must provide arrangements for pre-positioning of oil spill response equipment at strategic locations.

(g) When calculating the delivery time of equipment to a spill staging area, the plan must use travel speeds consistent with federal speed predictions for the equipment being moved.

(12) Response Flow Chart or Timeline. Each plan must describe the response process by:

(a) Presenting a flowchart or decision tree describing the procession of each major stage of spill response operations from spill discovery to completion of cleanup. The flowchart or decision tree must describe the general order and priority in which key spill response activities are performed; and

(b) Describing all key spill response operations in checklist forms, to be used by spill response managers in the event of an oil spill.

(13) Authorities. Each plan must describe responsible authorities by:

(a) Listing the local, state, tribal and other government authorities responsible for the emergency procedures peripheral to spill containment and cleanup; and

(b) Describing the plan holder's role in these emergency operation procedures before the proper authorities arrive, including but not limited to, control of fires and explosions, rescue activities, access restriction to the spill impact area and site security.

(14) Damage Control. Each plan must describe equipment and procedures to be used by the railroad personnel to minimize the magnitude of the spill and minimize structural damage that could increase the quantity of oil spilled. This includes necessary actions to slow or stop any leaks as well as stabilizing the cars to ensure no further damage may be incurred.

(15) Environmental Protection. Each plan must describe how environmental protection will be achieved, including:

(a) Protection of sensitive and aquatic species, shoreline and inland habitat by diverting or blocking oil movement;

(b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by DEQ;

(c) Rescue and rehabilitation of sensitive and aquatic species, birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and

(d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(16) Interim Storage. Each plan that has identified that oil will be recovered must plan for transporting or storage of the entire volume of oil and combined oily waste material potentially created.

(a) Each plan must describe criteria and methods used for interim storage of oil recovered and oily wastes generated during response and cleanup operations, including available storage sites. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.

(b) Interim storage and permanent disposal methods and sites must comply with all applicable local, state and federal requirements.

(17) Health and Safety. Each plan must describe procedures to protect the health and safety of oil spill response workers, and other individuals on-site. Provisions for training, decontamination facilities, safety gear and a safety officer position must be addressed.

(18) A description of steps taken for air monitoring to protect responders and the public including:

(a) A description of air monitoring procedures for the work site

(b) A description of air monitoring procedures for the surrounding area (including surrounding communities)

(c) A description of a communication plan to inform communities of any risks

(d) A plan to identify shelter in place and evacuation procedures

(19) Post Spill Review. Each plan must explain post-spill review procedures, including methods to review both the effectiveness of the plan and the need for plan amendments. Post-spill procedures must provide for a debriefing with DEQ that will include any newly recognized need to amend the plan and list of any other lessons learned.

(20) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-0270

(a) The plan holder must test and document internal call out procedures at least once every 90 calendar days. The plan holder must retain records of these drills for at least three years and make them available for DEQ review upon request.

(b) The plan holder must notify DEQ of drills and exercises, at least 60 days before equipment deployment, tabletop exercises, and functional exercises. Prior notice to DEQ is not required before notification drills and internal phone number verification exercises.

(c) The plan holder must send post drill reports for all tabletop exercises or deployment drills to DEQ no later than 60 days after the completion of the drill or exercise. The executive summary from a National Preparedness for Response Exercise Program (NPREP) report may be submitted to meet this requirement when the exercise has been designed by the NPREP staff.

(21) Risk Variables. Each plan for a high hazard train route must list the spill risk variables within the region of operation covered by the plan, including:

(a) Types, physical properties and amounts of oil handled;

(b) A written description and map indicating route topography, storage and transfer sites;

(c) A written description of sites or operations with a history of or high potential for oil spills, including key areas that pose significant spill risk within the region of operation covered by the plan;

(d) Methods to reduce spills during transfer operations, including overfill prevention.

(e) Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan and publically available geographical information system-based (GIS) databases managed by state and federal agencies and tribes when identifying Risk Variables.

(22) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Contingency plans for a high hazard rail route are required to include rivers and drinking water sources. The plan must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours using the calculation method described in 40 C.F.R. 112 Appendix C-III. All plans must describe:

(a) Natural resources, including aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species and presence of commercial and recreational species;

(b) Public resources, including public access, water intakes drinking water supplies;

(c) Seasonal hydrographic and climatic conditions; and

(d) Physical geographic features, including geological characteristics.

(e) In lieu of (a) through (d) above, plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan and publically available geographical information system-based (GIS) databases managed by state and federal agencies and tribes when identifying individual environmental variables and cultural resource features.

(23) Logistical Resources. Each plan must list the logistical resources within the region of operation covered by the plan, including facilities for fire services, medical services and accommodations; and shoreline access areas, including boat launches.

(a) Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan and publically available geographical information system-based (GIS) databases managed by state and federal agencies and tribes when identifying Logistical Resources.

(24) Response Strategy Outline. Each plan must include a statement of the intended response activities. This statement must describe how the plan resources must be applied to adequately respond during the initial phase of the response to an average most probable and worst case spill, release or discharge. The Response Strategy Outline must begin with an example spill scenario, including a description of the situation to be managed, and must describe:

(a) Deployment of resources and estimates of response times;

(b) The intended result of the activity for each person listed in section (8) and (10) of this section;

(c) Command and control arrangements;

(d) Required coordination; and

(e) Probable obstacles and an estimate of oil movement during the first 72 hours if release is to an inland or coastal waterway.

(25) A railroad that owns a high hazard rail route must submit to [DEQ](#) a financial responsibility statement as defined in ORS 468B.433 along with their contingency plan and provide an updated financial responsibility statement at least once every five years together with submission of a renewed contingency Plan.

(26) Technical Terms Glossary. Each plan must include a glossary of technical terms and abbreviations used in the plan.

(27) 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 as applicable state and federal law require, 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 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

Statutory/Other Authority: ORS 468.020 & 468B.437

Statutes/Other Implemented: ORS 468B.345 – 468B.500

History:

340-141-0270

Drill and Exercise Requirements for High Hazard Rail

(1) All applicable contingency plans must have a section that describes a plan for drills and exercises as described in OAR 340-141-0270.

(2) The exercises listed in the plan must at a minimum include 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 full-scale, multiagency, multijurisdictional and multidisciplinary oil spill containment and recovery equipment deployment exercise.

(e) The triennial drill may include the executive summary from a National Preparedness for Response Exercise Program (NPREP) report, which may be submitted to meet this requirement when the exercise has been designed by the NPREP staff **utilizing** federal NPREP requirements.

(3) Drills and exercises listed in this plan may include NPREP objectives to meet federal NPREP requirements.

(4) A record of all drills and exercises designed to meet all Oregon requirements must be **available for inspection and accessible for DEQ to review.**

(5) **DEQ** will review the degree to which the specifications of the plan are implemented during the drill. **Self-certification under NPREP is allowed as long as DEQ is notified about the drill and documentation can be provided.** **DEQ** will endeavor to notify the rail owner of the review results within 30 calendar days following the drill. If **DEQ** finds deficiencies in the plan, **DEQ** will report those deficiencies to the plan holder and require the plan holder to make specific amendments to the plan.

(6) **DEQ** may require the plan holder to publish an annual report on plan drills including a summary of response times, active equipment and personnel use and recommendations for improvement.

(7) In the event of an actual spill, if **DEQ** reviews and evaluates the spill response and finds that the spill events adequately test the plan, this may count as a required exercise.

Statutory/Other Authority: ORS 468.020 & 468B.437

Statutes/Other Implemented: ORS 468B.429 & 468B.395 & 453.392

History:

340-141-0280

Department of Environmental Quality Responsibility to Review and Approve Plans

(1) **DEQ** will review a contingency plan for a high hazard train route submitted under rule 340-141-0260. **DEQ** will approve the contingency plan if the plan:

(a) Meets the requirements of rule 340-141-0265; 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 a high hazard train route must notify DEQ in writing promptly of any significant change affecting the contingency plan, including changes in any factor set forth in this rule. DEQ may require the railroad to update a contingency plan as a result of these changes. Examples of significant changes include changes to the following:

(a) Emergency Response Procedures

(b) The Qualified Individual(s) named

(c) A change in the National Contingency Plan or an Area Contingency Plan that has significant impact on the equipment appropriate for response activities

(d) A change in the type of oil transported, if the type affects the required response resources

(e) Any other information relating to circumstances that may affect full implementation of the plan

(3) The contingency plan must require the applicant to use the best technology available at the time the contingency plan was submitted or renewed. For purposes of this subsection 340-141-0280(3), DEQ will consider as the best technology that technology that provides the greatest degree of protection, taking into consideration processes that are currently in use anywhere in the world. In determining what is the best technology available, DEQ will consider the technology's effectiveness, engineering feasibility, technological achievability, and cost.

(4)(a) Before DEQ approves a contingency plan required under rule 340-141-0260, DEQ will 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 subsection (a) of this section, before approving or modifying a contingency plan for a high hazard train route, DEQ will 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 section must 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, DEQ will issue to the plan holder a certificate stating that the contingency plan has been approved. The certificate will 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) DEQ's approval of a contingency plan 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.

Statutory/Other Authority: ORS 468B.395 & ORS 468B.437

Statutes/Other Implemented: ORS 468B.431

History:

340-141-0282

Plan Maintenance and Use

(1) At least one copy of the plan must be kept in a central location accessible at any time by the incident commander or spill response manager named in accordance with OAR 340-141-0265(7).

(2) A High Hazard Rail owner or their designee must implement the plan in the event of a spill. The owner of the High Hazard Rail Line must receive approval from DEQ before it conducts any major aspect of the spill response contrary to the plan unless:

(a) Such actions are necessary to protect human health and safety;

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) The plan holder has been directed to perform such actions by the Department or the United States Coast Guard.

Statutory/Other Authority: ORS 468B.437

Statutes/Other Implemented: ORS 468B.305

History:

340-141-0285

Plan Update Timeline

(1) DEQ must be notified in writing as soon as possible and within 24 hours of any significant change that could affect implementation of the plan, including a significant decrease in available spill response equipment or personnel. Decreases are significant if they prevent the owner from carrying out the requirements of the plan. The plan holder must also provide a schedule for the prompt return of the plan to full operational status. A receipt confirmed e-mail or facsimile will be considered written notice for purposes of this section. Changes that are not considered significant include minor variations in equipment or personnel characteristics, call out lists or operating procedures. Failure to notify DEQ of significant changes constitute noncompliance with this rule as well as an inability to comply with the approved plan under OAR 340-141-0282 (3).

(2) If DEQ finds that as a result of a change, the plan no longer meets approval criteria under OAR 340-141-0280, DEQ may, in its discretion, place conditions on approval, require additional drills or inspections or revoke approval in accordance with OAR 340-141-0280(1). Plan holders are encouraged to maintain backup response resources in order to ensure that their plans can always be fully implemented.

(3) Within 30 calendar days of an approved change in the plan, the owner of the high hazard rail line must distribute the amended pages of the plan to DEQ and other plan holders.

(4) Plans must be reviewed by DEQ every five years under ORS 468B.427(4). Plans must be submitted for reapproval unless the plan holder submits a letter requesting that DEQ review the plan already in DEQ's possession. The plan holder must resubmit the plan or such a letter at least 90 calendar days before expiration of the plan.

(5) DEQ may review a plan following any spill for which the plan holder is responsible.

(6) DEQ may require plan holders of approved plans to renew the signed letter of intent required by OAR 340-141-0265 annually to confirm that there has been no change to the plan or the plan holder's commitment to its use.

Statutory/Other Authority: ORS 468B.437

Statutes/Other Implemented: ORS 468B.395 & 468B.431

History: