



State of Oregon Department of Environmental Quality

# High Hazard Rail Contingency Planning 2021

## Advisory Committee #1 Materials

Contact: Kyrion Gray

### Note for Readers:

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# Land Quality – High Hazard Rail Planning

## Agenda

### Rulemaking Advisory Committee Meeting #1

This meeting is online only.

Thursday, June 11, 2020, 9:00 a.m. – 12 noon

Time	Topic
9:00 a.m.	<b>Welcome, Overview of Today's Meeting</b> <ul style="list-style-type: none"><li>- Ground rules and etiquette for online presentation</li></ul>
9:10 a.m.	<b>Introductions</b> <ul style="list-style-type: none"><li>- Background and expertise of each member</li></ul>
9:30 a.m.	<b>Presentation on High Hazard Rail and House Bill 2209</b> <ul style="list-style-type: none"><li>- Timeline for the program</li><li>- The role of the committee</li><li>- Initial concepts</li><li>- Timeline for High Hazard Rail Program Implementation</li></ul>
10:00 a.m.	<b>Presentation of Proposed New Rules</b> <ul style="list-style-type: none"><li>- Walk through additions to existing rule and the new rules</li></ul>
11:00 a.m.	<b>Questions and input from Committee members</b> <ul style="list-style-type: none"><li>- Allow members to pose questions and provide feedback</li></ul>
11:50 a.m.	<b>Schedule of Next Meeting</b>
12:00 p.m.	<b>Adjourn meeting</b>

### Meeting Information

#### [Join Microsoft Teams Meeting](#)

+1 971-319-4991 United States, Portland (Toll)

Conference ID: 665 344 388#

### Alternative formats

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](mailto:deqinfo@deq.state.or.us).



State of Oregon  
Department of  
Environmental  
Quality

### Land Quality

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Oregon's air, land and  
water.*

## Advisory Committee to Address Oregon High Hazard Rail Transportation Statutes



State of Oregon  
Department of  
Environmental  
Quality

### Background

There has been a substantial increase in crude oil transported by rail through Oregon. Millions of gallons of oil are now transported through the state on a regular basis. Transportation of crude oil by rail was not contemplated when laws regarding hazardous rail transportation (ORS 468B.300 through 468B.500) were enacted. Due to this increase, additional regulations and contingency plans are essential in ensuring the continued protection of our environment and public health.

### A step in the right direction

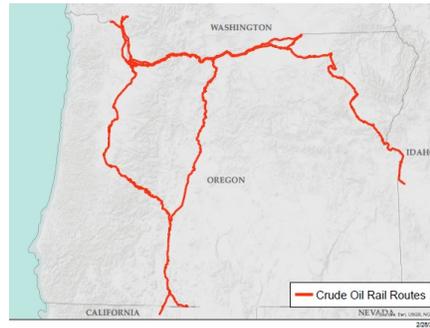
Passage of HB 2209 during the 2019 legislative session specifically addresses contingency planning for high hazard train routes. This law will go a long way to ensure the safe transport of oil through Oregon and the environmental protection of our natural resources.

The aim of this legislation is to not only ensure that adequate contingency planning and response capabilities are met by companies transporting oil in bulk through the state via rail car, but also establishes a requirement for oil spill response drills and exercises, and ensures that rail companies are part of the Geographic Response Plan development.

This multi-faceted approach is a positive step towards better prepared and regulated high hazard rail transport.



Rail cars each capable of transporting thousands of gallons of oil cross the state on a regular basis.



High hazard rail routes in Oregon

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### Updates to OAR 340-141 include:

- Additional definitions to include terms associated specifically with high hazard rail.
- Approval of the tank car fee up to \$20.
- Updates to the language and requirements of the contingency plans to be sent for approval to DEQ.
- Applicability and use of the contingency plans to include high hazard rail operators, require identified points of contact in the event of a spill, and deadlines to submit the contingency plans for approval.
- Content requirements to be included in the contingency plans.
- Requirements for drills and exercises to be performed as listed in the contingency plans.
- The requirements and responsibility of DEQ to review and approve submitted plans.
- Establishing the High Hazard Train Route Oil Spill Preparedness Fund.



State of Oregon Department of Environmental Quality

# High Hazard Railroad Contingency Planning Draft Rules – **Edits Highlighted**

## Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location~~ - and moved to another location

### **Division 141**

### **OIL SPILL CONTINGENCY PLANNING AND FEES**

#### 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" 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 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 island 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 Department 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~~1~~) "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.

(23~~2~~) "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.

(24~~3~~) "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~~4~~) "National Contingency Plan" means the plan prepared and published under section 311(d) of the Federal Water Pollution Control Act, 33 USC 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

(26) "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.

(27~~5~~) "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~~6~~) "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.

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

(30~~27~~) "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.

(31~~28~~) "Offshore Facility" means any facility located in, on or under any of the navigable waters of the state.

(32~~29~~) "Oil" or "Oils" means:

(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.

(33~~0~~) "Oil Spill Contingency Response Planning Standards" means the Department's standards for reviewing oil spill contingency plans. The planning standards represent the Department's best general estimate of types and quantities of personnel and equipment required to ensure adequate response to any location.

(34~~1~~) "Oil Spill Response Planning Zones" are geographic areas of the State for which the Department 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.

(d) In the case of High Hazard Rail, the person who has ultimate control over, and the right to use or sell, oil being shipped.

(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.

~~(51)48~~ "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.

(530) "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.

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

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

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

**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 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. The Department may not use funds deposited in the Oil Spill Prevention Fund to pay the Department's costs that it may pay with funds deposited in the High Hazard Train Route Oil Spill Preparedness Fund.

(4) Each railroad that is required to submit a contingency plan for a high hazard train route under ORS 468B.427 must pay to the Department of Transportation in each year a fee as established in Chapter 581, Oregon Laws 2019 13.a.

(5) The fee described in ORS 468B.435 is \$20 per tank railroad car loaded with oil. The fee must be paid to the Department of Revenue by the owner of oil at the time the oil is transported in the state.

(6) The Department of Revenue must deposit fees collected under this rule in the State Treasury and credit those fees to a suspense account established under ORS 293.445. After payment of administrative expenses incurred by the Department of Revenue established in Chapter 581 Oregon Law 2019 Section 13c(7). The Department of Revenue must transfer the balance of the funds to the High Hazard Train Route Oil Spill Preparedness Fund established under ORS 468.B.435 and to the Oil and hazardous Material by Rail Action Fund established under ORS 453.394.

(7) The Department of Revenue must pay fees collected under ORS 468:B.435 into the State Treasury and deposit those fees into the High Hazard Train Route Oil Spill Preparedness Fund established under ORS 468.B.435. The Department may not use funds in the High Hazard Train Route Oil Spill Preparedness Fund to pay the Department's costs that may pay with moneys deposited in the Oil Spill Prevention 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. 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 can easily access. The Department will determine which types of electronic media are acceptable for the plan submittal.

(7) Composite plans that rely on standard documents the Department 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, or high hazard rail;

(c) Commits to execution of the plan, including any incorporated contingency plans, by the owner or operator of the facility, ~~or~~ covered vessel, or high hazard rail 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 was notified of the amendment pursuant to 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, [or high hazard rail](#) 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 [or high hazard rail](#).

(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. [For vessels and facilities, this includes those resources required and](#) ~~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.

(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, 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 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 Department will accept information about equipment by reference if the equipment is being provided through a primary response contractor as part of the plan. The Department 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) [The plan must address precautions and measures for community air monitoring as well as responder air monitoring procedures.](#)

(f) 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 Department 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.

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

(h) 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, 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 island 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 Department;

(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) 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 that will include any newly recognized need to amend the plan and list of any other lessons learned.

(27) 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 review upon request.

(b) The plan holder must notify the Department 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 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 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.

(28) 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 overflow 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.

(29) 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.

(30) 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.

(31) 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 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

**340-141-0210**

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 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, 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

### 340-141-0250

#### Oil Spill Contingency Plan for High Hazard Rail Applicability

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

(2)(a) A railroad must submit a contingency plan for a high hazard train route to the Department within 90 days 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, or within a longer time period that the Department and the railroad mutually agree on if the Department and railroad agree that the longer time period is necessary.

(b) In addition to meeting the requirement of paragraph (a) of this subsection, and immediately after the date 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 the Department 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 or operates the high hazard train route and for the local primary contacts for the railroad that owns or operates the high hazard train route; and

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

(3) The railroad that owns or operates 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 the Department approves the renewed contingency plan.

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

(6) A failure by a railroad that owns or operates 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.

#### **340-141-0260**

##### **Deadlines to submit Contingency Plans**

Notwithstanding subsection 2(a) of rule 340-141-0250, if a railroad begins operating trains that cause a section of rail lines to meet the definition of a high hazard train route on or before the effective date of 340-141-0250 to 340-141-2090, the railroad must submit a contingency plan for the high hazard train route to the Department no later than 12 months after the effective date of this rule. The Department may adopt a schedule for submitting a contingency plan within the 12-month period.

#### **340-141-0270**

##### **Plan Contents**

All applicable contingency plans under 340-141-0250 must include at least the following:

(1) The requirements listed in OAR 340-141-0140, sections (1)-(9), (12)(a),(b), (13), (16)-(18), (23)-(33);

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

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

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

(3) A contingency plan for a high hazard train route prepared for an agency of the federal government or an adjacent state that satisfies the requirements of this section shall be accepted by the department as a contingency plan required under section 340-141-2050 of this Rule.

### **340-141-0275**

#### **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 340-141-0140 (27).

(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 oil spill containment and recovery equipment deployment exercise.
- (3) A record of all drills and exercises performed must be included in the drill and exercise plan.
- (4) In the event of an actual spill, if the Department participates, reviews and evaluates the spill response and finds that the spill events adequately test the plan, this may count as a required exercise.

#### **340-141-2080**

#### **Department of Environmental Quality Responsibility to Review and Approve Plans**

(1) The Department will review a contingency plan for a high hazard train route submitted under rule 340-141-2050. The Department will approve the contingency plan if the plan:

- (a) Meets the requirements of rule 340-141-2070; and
  - (b) If implemented, is capable, to the maximum extent practicable in terms of personnel, materials and equipment, of removing oil promptly and properly and minimizing any damage to the environment.
- (2) A railroad that owns or operates a high hazard train route must notify the Department in writing promptly of any significant change affecting the contingency plan, including changes in any factor set forth in this rule. The Department may require the railroad to update a contingency plan as a result of these changes.
- (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), the Department 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, the Department will consider the technology's effectiveness, engineering feasibility, technological achievability, and cost.

(4)(a) Before the Department approves a contingency plan required under rule 340-141-0260, the Department 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, the Department 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, the Department 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) The Department'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.



State of Oregon Department of Environmental Quality

# High Hazard RR Contingency Planning Existing Rules

## 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 154, 40 CFR 109, 40 CFR 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 Department deems that such federal or state requirements equal or exceed those of the Department.

**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" 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 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) "Initial assessment" is a task assigned to first responders who are participating with the Department 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.

(21) "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.

(22) "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.

(23) "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.

(24) "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.

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

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

(27) "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.

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

(29) "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.

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

(31) "Oil Spill Response Planning Zones" are geographic areas of the State for which the Department 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.

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

(33) "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.

(34) "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.

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

(36) "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.

(37) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(38) "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.

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

(40) "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.

(41) "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.

(42) "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.

(43) "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.

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

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

(46) "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.

(47) "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.

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

(49) "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.

(50) "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 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.

**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

### **340-141-0100**

Plan Preparation

(1) The owner or operator of each onshore and offshore facility handling or storing 10,000 gallons of oil or more per day and of each covered vessel must prepare a contingency plan for the prevention, containment and cleanup of oil spills from the facility or vessel into the

navigable waters of the state, and for the protection of fisheries and wildlife, other natural resources and public or private property from such spills.

(2) Plans must be in a form usable for oil spill prevention, control, containment, cleanup and disposal operations and must be capable of being located as required by OAR 340-141-0210(1) and (2).

(3) Plans must be thorough and contain enough information, analyses, supporting data and documentation to demonstrate the plan holder's ability to meet the requirements of this division.

(4) Plans must be designed to promptly and properly remove oil and minimize environmental damage to the maximum extent practicable. They must cover a variety of spill sizes, including average most probable spills and worst case spills. At a minimum, plans must meet the plan content criteria specified in OAR 340-141-0140 and meet the planning standards in 340-141-0150.

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

**Statutes/Other Implemented:** ORS 468B.355

**History:**

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

### **340-141-0130**

#### 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. 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 can easily access. The Department will determine which types of electronic media are acceptable for the plan submittal.

(7) Composite plans that rely on standard documents the Department 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 was notified of the amendment pursuant to 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.

(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, 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 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 Department will accept information about equipment by reference if the equipment is being provided through a primary response contractor as part of the plan. The Department 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 Department 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 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, 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 island 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 Department;

(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) 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 that will include any newly recognized need to amend the plan and list of any other lessons learned.

(27) 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 review upon request.

(b) The plan holder must notify the Department 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 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 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.

(28) 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.

(29) 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.

(30) 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.

(31) 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 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's planning standards, or alternative planning standard approved or required by the Department 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'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.

(b) The Department will apply the applicable planning standard when evaluating the adequacy of a plan submitted to the Department for approval, unless the planning standards do not fully reflect the unique circumstances of a particular facility or vessel. If the Department determines that the plan does not fully protect the environment despite compliance with the general planning standards, the Department 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 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 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 CFR 154, 33 CFR 156, 40 CFR 109, 40 CFR 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 deems that such requirements equal or exceed those of the Department, 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 upon request; and

(F) Documentation required under 40 CFR 112.7(e) or 33 CFR 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 CFR 112.7(e)(2)(viii) or 33 CFR 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 CFR 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 CFR 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 CFR 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 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 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 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 CFR 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 40 CFR 112.7(e) and 33 CFR 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 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 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 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 in printed or electronic form. Plans must be submitted to: Department of Environmental Quality, Emergency Response Program, 811 SW 6th Ave., Portland, Oregon 97204. Electronic copies must be sent the Department 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, 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 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 will promptly evaluate the plan for completeness. If the Department determines that a plan is incomplete, the submitter will be notified of deficiencies. The review period will not begin until the Department receives a complete plan. The Department 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 will notify interested persons of any contingency plans under review by the Department, and make such plans available for review to ODFW, DLCD, the State Fire Marshal and any interested person. The Department 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 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 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 may approve a plan without a full review pursuant to 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.

(6) The Department 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 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 gives notification of conditional status to submit and implement required changes to the Department, with the option for an extension at the Department'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 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'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 may, at its discretion:

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

(b) Revoke its approval.

(11) Approval of a plan by the Department 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'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 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 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 finds that the criteria for drill execution and review equal or exceed those of the Department;

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

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

(4) The Department 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'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 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 is not satisfied with the adequacy of the plan or plan implementation during exercises or spill response events.

(6) The Department will review the degree to which the specifications of the plan are implemented during the drill. The Department 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 finds deficiencies in the plan, the Department will report those deficiencies to the plan holder and require the plan holder to make specific amendments to the plan pursuant to requirements of OAR 340-141-0220.

(7) The Department 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 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 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 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 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 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 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 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 finds that, as a result of a change, the plan no longer meets approval criteria pursuant to OAR 340-141-0190, the Department 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 and other plan holders.

(4) Plans must be reviewed by the Department every five years pursuant to ORS 468B.345(3). Plans must be submitted for reapproval unless the plan holder submits a letter

requesting that the Department review the plan already in the Department'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 may review a plan following any spill for which the plan holder is responsible.

(6) The Department 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.

(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 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's preapproval may include:

(a) Waiver of response times specified in a plan; or

(b) Conditions specified by the Department regarding, but not limited to, notification to the Department, 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

**Enrolled**  
**House Bill 2209**

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

CHAPTER .....

AN ACT

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

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

**CONTINGENCY PLANNING FOR HIGH HAZARD TRAIN ROUTES**  
**(Definitions)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(18)] (19) “Oils” or “oil” means:

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

(b) Liquefied natural gas.

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

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

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

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

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

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

(c) An oil spill response barge or vessel.

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

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

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

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

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

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

#### (Entry of Oil Into Waters of The State Prohibited)

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

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

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

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

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

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

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

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

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

### **(Contingency Planning Requirements)**

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

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

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

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

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

(A) Gaps in regulatory oversight;

(B) Incomplete cost recovery by states;

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

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

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

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

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

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

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

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

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

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

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

**SECTION 5. (1) A railroad that owns or operates a high hazard train route in this state shall have an oil spill prevention and emergency response plan that has been approved by the Department of Environmental Quality.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Complies with the contingency plan.

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

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

(a) Periodic training;

(b) Response team exercises; and

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

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

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

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

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

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

468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environmental Quality, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan **required under ORS 468B.345** if the department determines that a change has occurred in the operation of the facility or tank vessel necessitating an amended or supplemental plan, or that the operator's discharge experience demonstrates a necessity for modification.

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

(a) Approval was obtained by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

## **FINANCIAL RESPONSIBILITY**

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

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

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

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

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

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

## **FEEES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **HIGH HAZARD TRAIN ROUTE OIL SPILL PREPAREDNESS FUND**

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

(2) The fund shall consist of:

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

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

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

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

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

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

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

(A) Equipment inventories; and

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

(i) The state;

(ii) Municipalities; or

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

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

**SECTION 15.** ORS 468B.410 is amended to read:

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

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

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

(4) The Oil Spill Prevention Fund may be used by the Department of Environmental Quality to:

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

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

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

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

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

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

## INTERAGENCY RESPONSE PLAN

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

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

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

## STATE FIRE MARSHAL PROVISIONS

**SECTION 17.** ORS 453.392 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**UNIT CAPTIONS**

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

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**Passed by House June 17, 2019**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 29, 2019**

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Peter Courtney, President of Senate

**Received by Governor:**

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

**Approved:**

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

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

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

.....  
Bev Clarno, Secretary of State