



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality
High Hazard Railroad Contingency
Planning 2021
Advisory Committee Meeting #3 Materials

Contact: Kyrion Gray

Note for Readers:

This package contains multiple documents. If you want to read more than one document at a time, you can open multiple copies of this PDF by downloading the PDF and then opening it in Adobe. You can then either:

- Click on the “Windows” item in the top ribbon
- Click on “New Window”
- A second copy of the PDF will open in a new window

Or:

- Click on “File” in the top ribbon
- Click on “Open” in the top ribbon
- Double click on the name of the PDF you want to open
- A second copy of the PDF will open in a separate tab in the same window

Land Quality – High Hazard Rail Planning



Agenda

Rulemaking Advisory Committee Meeting #3

This meeting is online only.

Date, TBA

Time	Topic	Land Quality 700 NE Multnomah St., Suite 600 Portland, OR 97232 Phone: 503-229-5696 800-452-4011 Fax: 503-229-6124 Contact: Kyriion Gray Phone: 503-229-5280
Hour 1	Welcome, Overview of Today's Meeting <ul style="list-style-type: none">- Ground rules and etiquette for online presentation- Roll Call/ Ground-rules and plans for the meeting Open for discussion on Rules and edits/ changes	
Hour 1	Brief review of changes to Fiscal Impact Statement and other changes -Commence RAC member 10 minute window open for comments and questions	
Hour 2	Half-way Notification Allow RAC members to pose additional questions and provide feedback	<i>DEQ is a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.</i>
Hour 3	Final Business	
Hour 3	Adjourn meeting	
End Hour 3		

Meeting Information

Join Zoom Meeting

TBA

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.



State of Oregon Department of Environmental Quality

Advisory Committee Member Comments During Meeting #2

High Hazard Railroad Contingency Planning 2021

Comments on Fiscal Impact		
Comment	RAC Member	Suggested Course of Action
“Crude oil” vs “Oil” used consistently through the document	Nic Winslow	Go through document to ensure consistency
Update name of OSP position	Mike Heffner	Change name to “Public Safety Training Specialist”
DOR costs are \$50,000 vice listed amount of \$78,000	Cindy Roberts	Re-examine numbers, refer to correct document – DOR reports \$236,000 for this Biennium
Gross Revenue Fee should be addressed	Cindy Roberts	Add GRF section but clarify that it is already in statute – but should be acknowledged
OSP costs will not be included in this Biennium	Mike Heffner	Update numbers to reflect costs for 2021-23 biennium
Don’t use the word “product”	Nic Winslow	Go through document to update term throughout

Comments on Draft Rules		
Comment	RAC Member	Suggested Course of Action
General Comments		
Hard to track changes between first and second draft	Michael Lang	“Greenline” changes to make them clear
Consistent language needed “oil”, “owner”, “operator”	Cindy Roberts/ Nic Winslow	Owner or operator of the high hazard rail line is pretty well defined and does not include the “train” operator. Will see if we can clarify.
Section 0005:		
Definitions in 0005 state they cover the full “division” this contradicts new definitions in 0290	Cindy Roberts	Discuss amongst DEQ staff if alternative is needed
Owner of oil vs. owner of rail lines not defined clearly	Cindy Roberts	Will attempt to clarify. Need citation which is not clear.
Use of term “owner” vs. “Operator”	Nic Winslow	Go back to text and ensure the terms are consistent

Definition of National Contingency Plan needs to meet PHMSA Standard from 40 CFR 109	Cindy Roberts	Reach out to EPA to ensure NCP definition is current and acceptable Change back to statute
Section 0250:		
Add definitions “rail route operator” and “rail route owner”	Nic Winslow	Examine definitions with DEQ staff for clarity
Section 0260:		
This sections needs to clarify difference between owner/operator vs. HHTR owner	Nic Winslow	Confirm definition based on 0250 Clarified in new revision
Deadline to submit plan should be adjusted from 1/1/21 to 4/1/21 due to COVID and business reductions	Cindy Roberts	Unable to adjust timeline according to A.G.
Section 0265:		
Add OSRO in contractor section in 0265	Nic Winslow and Cindy Roberts	Add OSRO to contract section
0265(c) the size and type of avg. most probable spill is conjecture and not in the bill – it should be removed	Cindy Roberts	Needs to remain in order to evaluate contingency plan
Drill and exercise notification – DEQ should provide provisions for this notification (as done in WA and CA)	Cindy Roberts	Discuss with RR – no provision needed if adequate communications are established with the Department -examine feasibility
Risks and Logistics requirements are too specific – allow RR to reference NWACP and GRPs	Cindy Roberts / Nic Winslow (see below)	Shore up wording – can allow NWACP as reference
0265 (21) – Plan holders should be able to reference NWACP vs. list “environmental variables”	Nic Winslow	Shore up wording – can allow NWACP as reference
Response Strategy Outline – needs to come out due to GRP being the responsibility	Cindy Roberts / Nic Winslow (see below)	While not in charge of establishing GRPs, clarify language that RR are expected to incorporate them into their plans as they become available

of agency administering ACP (per OPA-90)		
0265(21) should just reference 40 CFR part 112 appendix C and NWACP	Nic Winslow	Clarify language in rule – look at referencing 40 CFR 40 CFR part 112 appendix C refers to facilities, it is our understanding that the HHRL should not be classified as facilities. May need further clarification on this comment.
(15) should address resources at risk and booming	Richard Franklin	Blocking or diverting oil movement should include booming as a method.
Add specific provision to (15) about fish/aquatic species	Richard Franklin/ Michael Lang	Specific mention should be added
Provision for spill site and community air monitoring should be more clear	Michael Lang	Re-word provision and make sure community air monitoring provision is listed. Should this be part of the safety analysis or stand alone?
(1)(c) maximum lading or maximum capacity needs to be clarified	Nic Winslow	Clarify based on direction from DEQ – “maximum amount and type that the entire train consist is capable of transporting”
0265 (11) add section listing “OSRO” in lieu of equipment, personnel, etc. list	Nic Winslow	OSRO definition clarified
0265 (20)(d) – diagram of tank not required. Responders are already trained on how to deal with tank cars	Nic Winslow	Leave in or have provision for adequate training of responders? Must include for local responders.
0265 (21)(a,b) – Some information on commercial and recreational species should not be publically available to protect them from public use	Nic Winslow	Agree – consider finding a way to eventually reference GRPs
0265 (23) Plan represents a planning standard – not a guarantee	Nic Winslow	This verbiage is from earlier in 340-141. It is still applicable. We could add “example spill scenario” Also agree we are planning and evaluating the plan on best practices. There are no guarantees due to unknown circumstances.
Section 0270:		
Response times should not be publicly released – just a “compliant” or “non-compliant” will do	Cindy Roberts	This is consistent with Oil Spill Contingency planning standards in 340-141-0200 (7)

Documentation of drills should list core PREP items	Nic Winslow	Include language about NPREP to cover those elements
0270 (4) –DEQ should add language specifying that RR must submit drill documentation for DEQ review, and which drills require review and whether Department ‘drill credit’ must be received vs. or whether self-certification under PREP is also allowed. If drill credit must be approved, OR should adopt NPREP the drill/exercise program and confirm components with which plan holders must comply	Nic Winslow	<p>Add provision about DEQ approval of drills?</p> <p>“A record of all drills and exercises designed to meet all Oregon requirements must be included in the drill and exercise plan”</p> <p>DEQ’s practice is to provide an approval letter or notice of areas to be improved and negotiate a timeline for retesting</p>
Section 0280:		
Types of changes DEQ considers to be significant should be provided. For consideration, look at PHMSA requirements	Nic Winslow	Agree to use subset of PHMSA requirements. Add to 0280 (2) examples of significant changes would include 3-7 make them (a)-(d)
Section 0290:		
0290 (3) should reference 468B.435 and the HHTR gross revenue fee	Nic Winslow	Change reference to 468B.435
Definition of oil needs to be clear		Oil that is fuel is not applicable to the fee
If one oil company only transports 5 cars, but the train has 25 oil cars from another company, do the oil companies need to be notified that their tank cars qualify for the “per tank” fee?	RAC member	<p>Once the train qualifies as HHR consist, the fee will be collected by DOR. <i>If the minimum number of tank cars is not met, then there is no tank fee to be collected... however, the gross revenue fee will still need to be paid.*</i></p> <p><i>*Confirm with AG</i></p>



State of Oregon Department of Environmental Quality

Draft Fiscal Impact Statement

High Hazard Railroad Contingency Planning 2021

Introduction

DEQ invites public input on proposed permanent rule amendments to chapter 340 of the Oregon Administrative Rules.

Fee Analysis

These proposed rules would establish new fees. EQC authority to act on the proposed fees is ORS 468B.437.

The owner of oil transported by railroad must pay the Department of Revenue a fee not to exceed \$20 for each car. The owner of oil must pay the fee on a quarterly basis. The fees will be deposited into a suspense account at DOR. After DOR has garnished administration costs, the fee revenue will be transferred to both the High Hazard Train Route Oil Spill Preparedness Fund and the Oil and Hazardous Material Transportation by Rail Action Fund. The revenue split between the funds will be determined by rule. DEQ and the office of the State Fire Marshal (OSFM) must both establish the fee amount by rule. DOR is authorized to conduct audits of fee payers and provide enforcement activity. Any moneys remaining in the funds on the date the legislature repeals the authorizing legislation must be refunded to the payers without interest.

Brief description of proposed fees

Proposed fees established under ORS 468B.435 (13)(c) authorize a fee up to \$20 per tank car to be paid by the owner of the ~~crude~~ oil that is transporting the oil along the high hazard rail route of the state. DEQ proposes setting a fee of \$20 per tank car.

Reasons

The proposed fees would address a new fee created by statute of \$20 per rail car.

DEQ and OSFM anticipates this fee to be used to implement training exercises. Personnel for these exercises include a Public Safety Training Specialist 2 with-OSFM the State Police. There are no Anticipated costs for OSFM for the 2019-2021 biennium-, however, DOR costs are \$236,000 which include system development to collect and transfer the fee~~are \$196,622.00 to fund 1 employee for 6 months (0.5 FTE) with OSP including DOR admin costs~~. Anticipated costs for the 2021-2023 biennium are ~~\$620,513~~ 475,000 for OSFM 1 employee(1 FTE) and including DOR costs for administering the fund.

Use of the funding is described in ORS 468B.435 (3)(a),(b),(c) and (d) as well as ORS 453.392 (1)(d).

Fee proposal alternatives considered

There are no alternatives proposed at this time.

Fee payer

The owner of the ~~product~~oil that is being transported will pay the fee.

Affected party involvement in fee-setting process

The rulemaking advisory committee members included the chair of Clean Rivers Cooperative as well as multiple companies involved with the transit of oil via rail. Clean Rivers Cooperative is a member based organization that includes members of the petroleum industry and regulated maritime contingency plan holders.

Summary of impacts

Given the indeterminate status of the other funds (fee) revenue that will support this program, this analysis will provide estimates of the costs when implemented to the full extent of the conceptualized program. Affected agencies will use existing personnel to begin initial implementing the law. If revenues are not sufficient to support the associated workload, the affected agencies may return to the Emergency Board or an Interim Legislative Session to request additional funding resources.

Without this fee, OSFM may not be able to adopt a schedule to include a triennial tabletop exercise, a triennial statewide exercise of a spill or release from rail transport and a multi-agency, multi-jurisdictional and multi-disciplinary oil or hazardous material spill or release exercise.

An additional Gross Revenue Fee of 0.05% of the combined gross operating revenues derived within Oregon of all total revenue of railroads that qualify as High Hazard Railroad operators is being charged. This fee is established by statute.

Fee payer agreement with fee proposal

The proposed fees were presented at the first RAC meeting and no opposition was mentioned. No fee payers are currently on the RAC, nor located within the state. One facility in Oregon unloads crude oil from tank cars and is not subject to the fee.

How long will the current fee sustain the program?

This is a new program and a new fee. There is no fee being modified, the current fee will go into effect if the Environmental Quality Commission adopts it. The fee is due to sunset on January 2, 2027.

Current Fees		
Program costs covered by fees	\$0	0%
Program costs covered by General Fund	\$0	0%

Fee Last Changed	
------------------	--

Proposed Fees		
Expected change in revenue (+/-)	\$196,622.33	100%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	After publication in 2021	

Transactions and Revenue				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium	0	0	\$196,622.330.00	\$196,622.330.00
Next biennium	0	0.5	\$475,000620,513.00	\$620,513.00475.000

Statement of fiscal and economic impact

DEQ is unable to quantify the total cumulative effect. However, based on the fee of \$20 per tank car, and numbers provided during the 2019 legislative session, the total amount for that year would have been \$320,000. The funds generated from these fees will go directly to funding state agencies and their involvement in the exercise planning and execution process.

Fiscal and Economic Impact

Given the indeterminate status of the other funds (fee) revenue which will support this program, this analysis will provide estimates of the costs to the full extent of the conceptualized program. The affected agencies will use existing personnel to develop rules. If revenues are not sufficient to support the associated workload, the affected agencies may return to the Emergency Board or an Interim Legislative Session to request additional funding resources. The legislation specifies the information that must be included in the contingency plan, which could include some level of railroad participation in OSFM spill/release exercises. This rulemaking proposes that the owner of oil transported by railroad must pay the DOR a fee of \$20 for each car, most of which DOR will transfer to both the High Hazard Train Route Oil Spill Preparedness Fund and the Oil and Hazardous Material Transportation by Rail Action Fund. DOR is authorized to conduct audits of fee payers and provide enforcement activity. Any moneys remaining in the funds on the date of repeal of this legislation must be refunded to the payers without interest.

Statement of Cost of Compliance

State agencies

DEQ anticipates the need for 1 Public Safety Training Specialist 2 with OSFMP at a cost of ~~\$117,955.67 0.00~~ for the 2019-2021 biennium. DOR will collect fees and perform audit services. DOR's administrative costs will be ~~\$78,666.67 236,000.00~~. DOR administration fees will be taken out of the amount collected and OSP/OSFM will receive funds from DOR to allow for implementing the training exercises, which will be managed by a full-time Public Safety Training Specialist 2.

Local governments

No additional fiscal impacts, associated with this legislation, are anticipated to local governments as participation in the training exercises is not mandated. Participation is assumed to be at the discretion of the local budgetary authority and subject to existing funding levels.

Public

DEQ does not anticipate the proposed rules having a significant impact on the public because these fees only apply to large businesses.

Large businesses - businesses with more than 50 employees

The entities subject to these fees are all large businesses. Therefore, the costs described above apply to large businesses.

Small businesses – businesses with 50 or fewer employees

ORS 183.336 Cost of Compliance Effect on Small Businesses

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

DEQ does not anticipate the proposed rules having significant adverse impact on small businesses.

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

The proposed rules do not require any additional activities for small businesses.

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

The proposed rules will not require any additional resources.

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

DEQ did not involve small businesses in this process, because the only parties affected by this are oil companies.

Documents relied on for fiscal and economic impact

The requirement to list the documents relied on to determine fiscal impact is separate from and in addition to the similar list in the Rules affected, authorities, supporting documents section above.

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

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.335 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,

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

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the approved minutes dated DATE August 4, 2020.

The committee determined that the proposed rules ~~would~~ would not have a significant adverse impact on small businesses in Oregon.

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Explain the outcome of the above review.

The above review was conducted and the RAC members agrees that there would be no significant adverse impact on small businesses in Oregon.

Housing cost

ORS 183.534 requires DEQ to consider the rules' impact on the cost of housing. Include the applicable phrases and delete the others:

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules ~~would~~ would not affect the development costs because: the fee applies only to the owner of the product that is being transported.

Committee members concur, no impact on housing costs.



State of Oregon Department of Environmental Quality

Draft Rules – All Edits Highlighted

High Hazard Railroad Contingency Planning Rulemaking

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

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 inland location, that is one quarter mile or less from waters of the state; and

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

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

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

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

(2122) "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.

(2223) "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.

(2324) "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.

(2425) "National Contingency Plan" means the plan prepared and published under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, (hereinafter CERCLA), and by section 311(d) of the Clean Water Act (CWA), 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (OPA).

(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.

(2527) "Navigable Waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(2628) "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.

(2730) "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.

(2831) "Offshore Facility" means any facility located in, on or under any of the navigable waters of the state.

(2932) "Oil" or "Oils" means ~~oil~~:

(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.

(30b) Liquefied natural gas.

(33) "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.

(3434) "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.

(~~3235~~) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(~~3336~~) "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.

(~~3437~~) "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.

(~~3538~~) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(~~3639~~) "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.

(~~3740~~) "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.

| (3841) "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.

| (3942) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks used to transport oil between facilities or between facilities and tank vessels.

| (4043) "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.

| (4144) "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.

| (4245) "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.

| (4346) "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.

| (4447) "Self-propelled tank vessel" means a tank vessel that is capable of moving under its own power.

| (4548) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

| (4649) "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.

| (4750) "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)(51)** "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)(52)** "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)(53)** "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. 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.

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;

(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(e³)(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) A description of steps taken for air monitoring to protect responders and the public including:

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

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

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

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

(27) 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.

| (2728) 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.

| (2829) 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.

- | (2930) 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.
- | (3031) 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.
- | (3132) 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.
- | (3233) 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.

| (3334) 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

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

(1) “Average Most Probable” spill, release or discharge for high hazard train routes means the probable volume of oil that may spill as defined in a plan considering the history of spills.

It may also be defined as the lesser of one percent f the worst case spill, release or discharge, or 50 barrels, when used as a planning volume.

(2) "Owner" means the owner or operator who has ultimate control over the high hazard rail line for contingency planning requirements. This does not include the train owner or operator unless the train owner or operator also owns or operates the high hazard train route.

(3) "Worst case spill" means the greater of:

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

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

340-141-0260

Oil Spill Contingency Plan for High Hazard Rail Applicability

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

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

(b) In addition to meeting the requirement of paragraph (a) of this subsection, and immediately after the date the railroad begins operating trains that cause a section of rail lines to meet the definition of a high hazard train route on that section of rail lines, a railroad must provide notice to 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 revised contingency plan.

(5) The Department will respond to the submission of a contingency plan or a contingency plan revision for a high hazard train route within 90 days of the date that the contingency plan or the contingency plan revision is submitted, or within a longer time period that 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 revision within the requisite time period constitutes approval of the contingency plan or the contingency plan revision.

(6) A failure by a railroad that owns 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.

340-141-0265

Contingency Plan Contents

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

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

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

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

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

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of

the section amended, the date that the old section was replaced with the amended section, verification that the Department was notified of the amendment pursuant to OAR 340-141-0285(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

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

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

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

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

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

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

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

(7) Spill Response System. Each plan must describe the organization of the spill response system. This includes those resources required and, or necessary to manage the resources given a response to an Average Most Probable Discharge and worst case spill. Plans must use a National Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

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

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

(b) If a plan holder is not a member of an oil spill response cooperative, for the OSRO or contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each

contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in (10) and (11) of this section. Copies of written contracts or agreements with contractors must be available for inspection, if requested by 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) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

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

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

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

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

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

(a) Each plan must list response equipment including response vessels used for oil containment, recovery, removal, shoreline and adjacent lands cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. The Department will accept information about equipment by reference if the equipment is being provided through an OSRO or 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 a response.

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

(c) For all oil containment and recovery equipment, the plan also must include equipment make and model, the manufacturer's nameplate capacity of the response equipment, the

EDRC (in barrels per day) and applicable design limits (e.g., maximum wave height capability, suitability for inland waters).

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

(e) For purposes of determining plan adequacy under OAR 340-141-0190, and to assess realistic capabilities based on potential limitations by weather 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.

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

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

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

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

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

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

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

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

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

- (a) Protection of sensitive and aquatic species, shoreline and inland habitat by diverting or blocking oil movement;
- (b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by the Department;
- (c) Rescue and rehabilitation of sensitive and aquatic species, birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and
- (d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(16) Interim Storage. Each plan that has identified that oil will be recovered must plan for transporting or storage of the 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 available storage sites. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.
- (b) 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.

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

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

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

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

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

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

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

(20) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-02870

(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 equipment deployment, tabletop exercises, and functional 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.

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

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

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

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

(d) A written description and diagram showing the tank cars, piping and intakes; and

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

(22) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Contingency plans for a high hazard rail route are required to include rivers and drinking water sources. The plan must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours in a current of four knots. All plans must describe:

- (a) Natural resources, including aquatic habitat types and sensitivity by season, breeding sites, presence of state or federally listed endangered or threatened species and presence of commercial and recreational species;
- (b) Public resources, including public access, water intakes and drinking water supplies;
- (c) Seasonal hydrographic and climatic conditions; and
- (d) Physical geographic features, including geological characteristics. Plans may reference numbered Geographic Response Plan strategies (GRPs) in the Northwest Area Contingency Plan when identifying individual environmental and cultural resource features.

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

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

- (a) Deployment of resources and estimates of response times;
- (b) The intended result of the activity for each person listed in section (8) and (10) of this section;
- (c) Command and control arrangements;
- (d) Required coordination; and
- (e) Probable obstacles and an estimate of oil movement during the first 72 hours if release is to an inland or coastal waterway.

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

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

(27) Procedures and information related to supporting the early detection of an oil spill or release and timely notification of appropriate federal, state, local, tribal and other authorities about an oil spill or release as applicable state and federal law require, including but not limited to:

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

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

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

(d) Information demonstrating that the railroad that owns 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.

(28) 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 340-141-0260 of this Rule.

340-141-0270

Drill and Exercise Requirements for High Hazard Rail

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

(2) The exercises listed in the plan must at a minimum include the following:

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

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

- (c) A triennial oil spill or release response functional exercise; and
- (d) A triennial full-scale, multiagency, multijurisdictional and multidisciplinary oil spill containment and recovery equipment deployment exercise.
- (e) The triennial drill may include the executive summary from a National Preparedness for Response Exercise Program (N-PREP) report, which may be submitted to meet this requirement when the exercise has been designed by the N-PREP staff federal NPREP requirements.

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

(4) A record of all drills and exercises designed to meet all Oregon requirements must be included in the drill and exercise plan.

(5) 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 rail 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

(6) 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.

(7) 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.

340-141-0280

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 340-141-0260. The Department will approve the contingency plan if the plan:

(a) Meets the requirements of rule 340-141-0265; and

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

(2) A railroad that owns 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. Examples of significant changes include changes to the following:

(a) Emergency Response Procedures

(b) The Qualified Individual(s) named

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

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

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

(3) The contingency plan must require the applicant to use the best technology available at the time the contingency plan was submitted or renewed. For purposes of this subsection 340-141-0280 (3), 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.

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

340-141-0282

Plan Maintenance and Use

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

(2) A High Hazard Rail owner or operator or their designee must implement the plan in the event of a spill. The owner or operator of the High Hazard Rail Line 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.

340-141-0285

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. 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 constitute noncompliance with this rule as well as an inability to comply with the approved plan under OAR 340-141-0282 (3).

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

(3) Within 30 calendar days of an approved change in the plan, the owner or operator of the high hazard rail line 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.427(4). 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 resubmit 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 340-141-0265 annually to confirm that there has been no change to the plan or the plan holder's commitment to its use.

340-141-0290

High Hazard Railroad Contingency Planning Fees

(1) Definitions as used in this section:

(a) "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.

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

(c) "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.

(d) "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.

(2) 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 of \$20 for each tank railroad car loaded with oil.

(a) 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.

(b) 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.

(3) 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 is established in ORS 468B.435 Section 13a.



State of Oregon Department of Environmental Quality

Draft Rules – Changes Between Advisory Committee Meeting 1 and Meeting 2 Highlighted

High Hazard Railroad Contingency Planning Rulemaking

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

(25) "National Contingency Plan" means the plan prepared and published under section [105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9605, as amended by the Superfund Amendments and Reauthorization Act of 1986 \(SARA\), Pub. L. 99-499, \(hereinafter CERCLA\), and by section 311\(d\) of the Federal Clean Water Pollution Control Act, \(CWA\), 33 USC U.S.C. 1321\(d\), as amended by the Oil Pollution Act of 1990 \(P.L. 101-380, OPA\).](#)

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

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

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

(32) "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) "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) "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.
- (35) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.
 - (36) "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.
 - (37) "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.
 - (38) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(39) "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.

(40) "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.

(41) "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.

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

(43) "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.

(44) "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.

(45) "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.

(46) "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.

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

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

(49) "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.

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

(52) "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.

(53) "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 468B.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 468B.435 into the State Treasury and deposit those fees into the High Hazard Train Route Oil Spill Preparedness Fund established under ORS 468B.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)~~(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.

~~(g)~~(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).

~~(h)~~(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(e³)(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, air monitoring for the responders and the surrounding area 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

340-141-0210

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, 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

Definitions as used in the following sections specific to high hazard train routes

1 “Owner” means the person who has ultimate control over the high hazard rail line.

2 “Worst case spill” means the greater of:

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

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

340-141-0260

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~~contingency 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. [A railroad operating a high hazard train route prior to January 1, 2021 must submit a contingency plan by April 1, 2021.](#)

(b) In addition to meeting the requirement of paragraph (a) of this subsection, and immediately after the date the railroad begins operating trains that cause a section of rail lines to meet the definition of a high hazard train route on that section of rail lines, a railroad must provide notice to 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.

340-141-02600265

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

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

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

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

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that 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 PHMSA requirements, a cross reference must be included.

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

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

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

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

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

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

(7) Spill Response System. Each plan must describe the organization of the spill response system. This includes those resources required and, or necessary to manage the resources given a response to an Average Most Probable Discharge and worst case spill. Plans must use a National Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

(8) Contractor Identification. Each plan must identify the 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 OAR 340-141-0140, sections (1)-(9), (12)(a)-(b), 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) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

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

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

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

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

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

(a) Each plan must list 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 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.

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

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

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

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

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

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

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

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

(a) Protection of sensitive 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.

(16) 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 available storage sites. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.
- (b) 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.

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

(18) 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.

(19) 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 340-141-0280

- (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.

(20) 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 high hazard rail route must list the following:

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

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

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

(D) A written description and diagram showing the tank cars, piping and intakes; and

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

(21) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Contingency plans for a high hazard rail route are required to include 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. 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 and cultural resource features.

(22) 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.

(23)-(33); 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:

(2)(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 if release is to an inland or coastal waterway.

(24) A railroad that operates a high hazard rail route must submit to the Department a financial responsibility statement as defined in ORS 468B.433(2) along with their contingency plan and provide an updated financial responsibility statement at least once every five years together with submission of a renewed contingency Plan.

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

(26) 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)(27)~~ 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~~0260 of this Rule.

~~340-141-0275~~

340-141-0270

Drill and Exercise Requirements for High Hazard Rail

(1) All applicable contingency plans must have a section that describes a plan for drills and exercises as described in OAR 340-141-0140 (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.

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

(3) A record of all drills and exercises performed must be included in the drill and exercise plan.

| (4)(4) 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.

(5) 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.

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

(7) 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.

340-141-2090

High Hazard Railroad Contingency Planning Fees

(1) Definitions as used in this section:

(a) “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.

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

(c) “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.

(d) “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.
- (2) 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 of \$20 for each tank railroad car loaded with oil.
- (a) 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.
- (b) 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.
- (3) 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 in established in ORS 468B.465 Section 13a.



State of Oregon Department of Environmental Quality

Draft Rules – Changes Post Advisory Committee Meeting 2 Highlighted

High Hazard Railroad Contingency Planning 2021

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

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-inland~~ location, that is one quarter mile or less from waters of the state; and

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

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

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

(21) "Initial assessment" is a task assigned to first responders who are participating with the 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) "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) "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) "Maximum Extent Practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures and best achievable technology considering the effectiveness, engineering feasibility, commercial availability, safety and cost of the measures.

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

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

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

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

(32) "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) "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) "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.
- (35) "Oily Waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.
- (36) "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.
- (37) "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.~~
- (38) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(39) "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.

(40) "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.

(41) "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.

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

(43) "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.

(44) "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.

(45) "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.

(46) "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.

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

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

(49) "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.

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

(52) "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.

(53) "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. 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.

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;
 - (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(3)(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~~inland habitat by diverting or blocking oil movement;
- | (b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by 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. 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, ~~air monitoring for the responders and the surrounding area~~ and a safety officer position must be addressed.

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

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

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

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

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

(27) 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.

(2728) 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.

(2829) 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.

| (2930) 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.

| (3031) 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.

| (3132) 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.

| (3233) 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.

| (3334) 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, 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

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

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

+

(2) "Owner" means the person owner or operator who has ultimate control over the high hazard rail line for contingency planning requirements. This does not include the train owner or operator unless the train owner or operator also owns or operates the high hazard train route.

2(3) "Worst case spill" means the greater of:

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

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

340-141-0260

Oil Spill Contingency Plan for High Hazard Rail Applicability

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

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

(b) In addition to meeting the requirement of paragraph (a) of this subsection, and immediately after the date the railroad begins operating trains that cause a section of rail lines to meet the definition of a high hazard train route on that section of rail lines, a railroad must

provide notice to 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~~revised contingency plan.
- (5) The Department will respond to the submission of a contingency plan or a contingency plan ~~renewal~~revision for a high hazard train route within 90 days of the date that the contingency plan or the contingency plan ~~renewal~~revision 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~~revision within the requisite time period constitutes approval of the contingency plan or the contingency plan ~~renewal~~revision.
- (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.

340-141-0265 **Contingency Plan Contents**

All applicable contingency plans under 340-141-~~0250~~0260 must include at least the following:

- (1) Submittal Agreement. Each plan must contain a submittal agreement that:
 - (a) Includes the name, address and phone number of the submitting party;

- (b) Verifies acceptance of the plan, including any incorporated contingency plans, by the owner of the high hazard train route by either signature of the owner or a person with authority to bind the corporation that owns the high hazard train route.;
- (c) Commits to execution of the plan, including any incorporated contingency plans, by the owner of the high hazard train route and verifies authority for the plan holder to make appropriate expenditures in order to execute plan provision and includes; the location (latitude and longitude) of the train route, the railroad mileposts, the product being transported and the maximum amount and type that the ~~tank cars are~~entire train consist is capable of transporting.

(2) Amendments. Each plan must include a log sheet to record amendments to the plan. The log sheet must be placed at the front of the plan. The log sheet must provide for a record of the section amended, the date that the old section was replaced with the amended section, verification that the Department was notified of the amendment pursuant to OAR 340-141-~~0220~~0285(3) and the initials of the individual making the change. A description of the amendment and its purpose must also be included in the log sheet, or filed in the form of an amendment letter immediately after the log sheet.

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

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

- (a) The region of operation covered by the plan;
- (b) The high hazard train route operations covered by the plan; and
- (c) The size and type of the average most probable spill and the worst case spill from the high hazard train route.

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

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

(7) Spill Response System. Each plan must describe the organization of the spill response system. This includes those resources required and, or necessary to manage the resources given a response to an Average Most Probable Discharge and worst case spill. Plans must use a National Incident Management System (NIMS) incident management system, as described in the Northwest Area Contingency Plan (NWACP).

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

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

(b) If a plan holder is not a member of an oil spill response cooperative, for ~~each~~[the OSRO](#) or contractor, the plan must state that contractor's name, address, phone number or other means of contact at any time of the day, and response capability (e.g., land spills only). For each contractor, the plan must include a letter of intent signed by the contractor which indicates the contractor's commitment to respond within the specified time period, with personnel and equipment listed in ~~(42)~~[10](#) and ~~(43)~~[11](#) 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) Response Personnel. Each plan must describe the personnel, including contract personnel available, to respond to an oil spill, including:

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

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

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

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

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

(a) Each plan must list ~~all resident response~~ equipment ~~and resident dedicated~~[including](#) response vessels used for oil containment, recovery, removal, shoreline and adjacent lands

cleanup and wildlife rescue and rehabilitation. Each plan must also list all relied upon communication tools. The Department will accept information about equipment by reference if the equipment is being provided through ~~a primary~~an OSRO or 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 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.

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

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

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

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

- (a) Listing the local, state, tribal and other government authorities responsible for the emergency procedures peripheral to spill containment and cleanup; and
- (b) Describing the plan holder's role in these emergency operation procedures before the proper authorities arrive, including but not limited to, control of fires and explosions, rescue activities, access restriction to the spill impact area and site security.

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

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

- (a) Protection of sensitive and aquatic species, shoreline and ~~island~~inland habitat by diverting or blocking oil movement;
- (b) Priorities for sensitive area protection in the region of operation covered by the plan as provided in a Geographic Response Strategy of the Northwest Area Contingency Plan, or designated by the Department;
- (c) Rescue and rehabilitation of sensitive and aquatic species, birds, marine mammals and other wildlife contaminated or otherwise affected by the oil spill; and
- (d) Measures taken to reduce damages to the environment caused by shoreline and adjacent land cleanup operations.

(16) Interim Storage. Each plan that has identified that oil will be recovered must plan for ~~the~~transporting or 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 available storage sites. Interim storage methods and sites must be designed to prevent contamination of the storage area by recovered oil and oily wastes.
- (b) 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.

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

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

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

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

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

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

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

~~(19)~~(20) Drills and Exercises. All approved plans must be verified by drills and exercises. Each plan must describe the schedule and type of drills and other exercises that will be practiced to ensure readiness of the plan elements, including drills that satisfy OAR 340-141-~~0280~~02870

(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 equipment deployment and tabletop drills exercises, and 10 days prior to equipment functional~~ 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.

(2021) Risk Variables. Each plan for a high hazard train route must list the spill risk variables within the region of operation covered by the plan, including:

(a) ~~Each plan for a high hazard rail route must list the following:~~

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

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

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

(Dd) A written description and diagram showing the tank cars, piping and intakes; and

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

(2122) Environmental Variables. Each plan must list the environmental variables within the region of operation covered by the plan. Contingency plans for a high hazard rail route are required to include ~~river or coastal areas~~rivers and drinking water sources. The plan must identify the environmental variables from the probable point of release to the point the oil could travel in 24 hours in a current of four knots. 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~~access, water intakes, and 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 and cultural resource features.

(2223) 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.

(2324) Response Strategy Outline. Each plan must include a statement of the intended response activities. This statement must describe how the plan resources must be applied to

adequately respond during the initial phase of the response to an average most probable and worst case spill, release or discharge. The Response Strategy Outline must begin with [an example spill scenario, including](#) a description of the situation to be managed, and must describe:

- (a) Deployment of resources and estimates of response times;
- (b) The intended result of the activity for each person listed in section (78) and (4210) of this section;
- (c) Command and control arrangements;
- (d) Required coordination; and
- (e) Probable obstacles and an estimate of oil movement during the first 72 hours if release is to an inland or coastal waterway.

(2425) A railroad that operates a high hazard rail route must submit to the Department a financial responsibility statement as defined in ORS 468B.433(2) along with their contingency plan and provide an updated financial responsibility statement at least once every five years together with submission of a renewed contingency Plan.

(2526) Technical Terms Glossary. Each plan must include a glossary of technical terms and abbreviations used in the plan.

(2627) 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.

~~(2728)~~ 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 340-141-0260 of this Rule.

340-141-0270

Drill and Exercise Requirements for High Hazard Rail

(1) All applicable contingency plans must have a section that describes a plan for drills and exercises as described in OAR 340-141-~~0140~~(27)~~0270~~.

(2) The exercises listed in the plan must at a minimum include the following:

- (a) An annual oil spill or release notification exercise;
- (b) A triennial oil spill or release response tabletop exercise;
- (c) A triennial oil spill or release response functional exercise; and

(d) A triennial full-scale, multiagency, multijurisdictional and multidisciplinary oil spill containment and recovery equipment deployment exercise.

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

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

(4) A record of all drills and exercises ~~performed~~designed to meet all Oregon requirements must be included in the drill and exercise plan.

(45) 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 rail~~ 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.~~

(5) 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.

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

(7) 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.

340-141-20800280

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-~~20500260~~. The Department will approve the contingency plan if the plan:

(a) Meets the requirements of rule 340-141-~~20700265~~; 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. Examples of significant changes include changes to the following:

(a) Emergency Response Procedures

(b) The Qualified Individual(s) named

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

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

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

(3) The contingency plan must require the applicant to use the best technology available at the time the contingency plan was submitted or renewed. For purposes of this subsection 340-141-0280 (3), 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.

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

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

(2) A High Hazard Rail owner or operator or their designee must implement the plan in the event of a spill. The owner or operator of the High Hazard Rail Line 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.

340-141-0285

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. 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 constitute noncompliance with this rule as well as an inability to comply with the approved plan under OAR 340-141-0282 (3).

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

(3) Within 30 calendar days of an approved change in the plan, the owner or operator of the high hazard rail line 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.427(4). 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 resubmit the plan or suh 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 340-141-0265 annually to confirm that there has been no change to the plan or the plan holder's commitment to its use.

340-141-0290

High Hazard Railroad Contingency Planning Fees

(1) Definitions as used in this section:

(a) "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.

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

(c) "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.

(d) "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.

(2) 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 of \$20 for each tank railroad car loaded with oil.

(a) 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.

(b) 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.

(3) 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 is established in ORS 468B.~~435~~ 465 Section 13a.