



State of Oregon  
Department of  
Environmental  
Quality

State of Oregon Department of Environmental Quality

# High Hazard Railroad Contingency

## Planning Rulemaking

### Advisory Committee Meeting #2 Materials

# Land Quality – High Hazard Rail Planning

## Agenda

### Rulemaking Advisory Committee Meeting #2

This meeting is online only.

Tuesday, Aug. 4, 2020, 1 p.m. – 4 p.m.

#### Meeting Information

Join Zoom Meeting: <https://zoom.us/j/91049523734>

Meeting ID: 910 4952 3734

Call in number: 888 475 4499 US Toll-free



State of Oregon  
Department of  
Environmental  
Quality

#### Land Quality

700 NE Multnomah St.,  
Suite 600  
Portland, OR 97232  
Phone: 503-229-5696  
800-452-4011  
Fax: 503-229-6124  
Contact: Kyrion Gray  
Phone: 503-229-5280

[www.oregon.gov/DEQ](http://www.oregon.gov/DEQ)

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enhancing the quality of  
Oregon's air, land and  
water.*

<u>Time</u>	<u>Topic</u>
	<b>Welcome, Overview of Today's Meeting</b>
1:00 p.m.	- Ground rules and etiquette for online presentation - Introductions
1:20 p.m.	<b>Presentation of Fiscal Impact Statement</b>
2:00 p.m.	<b>Feedback and Discussion of Fiscal Impact Statement</b>
2:20 p.m.	<b>Break</b>
	<b>Review of the rules with edits from RAC 1</b>
2:30 p.m.	- Allow RAC members to pose additional questions and provide feedback
3:45 p.m.	<b>Final Business, Next Steps</b>
4:00 p.m.	<b>Adjourn meeting</b>

#### Alternative formats

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



# High Hazard Railroad Contingency Planning 2021

Draft Fiscal Impact Statement

## 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 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 (OFSM) 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 anticipates this fee to be used to implement training exercises. Personnel for these exercises include a Public Training Specialist 2 with the State Police. Anticipated costs for the 2019-2021 biennium 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 for 1 employee (1 FTE) 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 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.

## 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%

<b>Proposed Fees</b>		
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	

<b>Transactions and Revenue</b>				
<b>Biennium</b>	<b>Number of transactions</b>	<b>Number of fee payers</b>	<b>Impact on revenue (+/-)</b>	<b>Total revenue (+/-)</b>
Current biennium	0	0	\$196,622.33	\$196,622.33
Next biennium	0	0	\$620,513.00	\$620,513.00

# 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 Training Specialist 2 with OSP at a cost of \$117,955.67 for the 2019-2021 biennium. DOR will collect fees and perform audit services. DOR's administrative costs will be \$78,666.67. 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 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.

<b>Document title</b>	<b>Document location</b>
Fiscal Impact of Proposed Legislation	<a href="https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/51207">https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/51207</a>
Revenue Impact of Proposed Legislation	<a href="https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/47569">https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureAnalysisDocument/47569</a>

## **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.

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.

## 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.





State of Oregon Department of Environmental Quality

# High Hazard Railroad Contingency Planning Draft Rules – Edits Highlighted

## Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

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

### **Division 141**

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

#### **340-141-0005**

Definitions as used in this Division

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

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

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

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

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

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

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

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

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

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

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

(a) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response Zones;

(b) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response Zones;

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

(d) A written document that:

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

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

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

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

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

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

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

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

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

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

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

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

(19) "Facility" means a pipeline or any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil per day. "Facility" does not include:

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

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

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

(20) ["High Hazard Train Route" means a section of rail lines in this state:](#)

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

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

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

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

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

(a) Verifying the spill location;

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

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

(d) Reporting the efficacy of the initial containment;

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

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

(22~~1~~) "Interim Storage Site" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site. Interim storage sites include trucks, barges and other vehicles used to store recovered oil or oily waste until transport begins.

(23~~2~~) "Maritime Association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups that provides oil spill response planning and spill related communications services within the state.

(24~~3~~) "Maximum Extent Practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures and best achievable technology considering the effectiveness, engineering feasibility, commercial availability, safety and cost of the measures.

(25~~4~~) "National Contingency Plan" means the plan prepared and published under section 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 that 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.

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

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

(374) "Owner or Operator" means:

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

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

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

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

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

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

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

(4138) "Person Having Control Over Oil" includes, but is not limited to, any person using, storing or transporting oil immediately prior to entry of such oil into the navigable waters of the state, and specifically includes carriers and bailees of such oil.

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

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

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

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

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

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

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

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

(5047) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue. "Tank vessel" does not include:

- (a) A vessel carrying oil in drums, barrels or other packages;
- (b) A vessel carrying oil as fuel or stores for that vessel; or
- (c) An oil spill response barge or vessel.

~~(51)48~~ "Trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of the State of Oregon.

~~(52)49~~ "Waters of the State" includes lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

~~(53)0~~ "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(3e)(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 overflow prevention.

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

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

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

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

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

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

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

(c) Seasonal hydrographic and climatic conditions; and

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

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

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

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

(b) The intended result of the activity for each person listed in section (7) and (12) of this section;

(c) Command and control arrangements;

(d) Required coordination; and

(e) Probable obstacles and an estimate of oil movement during the first 72 hours.

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

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

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

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

**History:**

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

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

### **340-141-0210**

Plan Maintenance and Use

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

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

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

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

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

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

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

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

**History:**

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

### **340-141-0250**

**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 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 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 before 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 received for review, 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.

### **340-141-0265** **Contingency 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, 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 (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) 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, and the owner of the equipment must provide, the 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 railroad personnel must use 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 storing 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 before equipment exercises. Prior notice to the Department is not required before notification drills and internal phone number verification exercises.

(c) The Department must receive from the plan holder post drill reports for all tabletop exercises or deployment drills no later than 60 days after the drill or exercise is complete. 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) 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 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.

(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 will 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).

(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) 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 established in ORS 468B.465 Section 13a.