

# House Bill 3225

Sponsored by Representative SMITH WARNER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Environmental Quality Commission to adopt rules applying certain oil spill prevention and emergency response planning requirements to railroads that own or operate high hazard train routes in this state.

Adds railroad cars to definition of "facility" for purposes of liability for oil spillage under oil or hazardous material spillage statutes.

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

Expands definition of "navigable waters" for purposes of applicability of oil or hazardous material spillage statutes to include inland watersheds and drinking water intakes that intersect with high hazard train routes.

For biennium beginning July 1, 2015, authorizes one-time total assessment proportioned among certain railroads. Transfers moneys to Oil Spill Prevention Fund and State Fire Marshal Fund for purposes of certain activities related to high hazard trains.

Becomes operative January 1, 2016.

Establishes annual assessment proportioned among certain railroads. Transfers moneys to Oil Spill Prevention Fund for purposes of certain activities related to high hazard trains. Becomes operative July 1, 2017.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to the safe transport of hazardous materials; creating new provisions; amending ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360, 468B.365, 468B.385 and 468B.412; and prescribing an effective date.

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

## AMENDMENTS TO OIL OR HAZARDOUS MATERIAL SPILLAGE STATUTES

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

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

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

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

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

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

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

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

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

29 (13) **"High hazard train" means a train consisting of more than 25 tanker railroad cars**  
 30 **that are transporting oil or a hazardous material as cargo over navigable waters of the state.**

31 (14) **"High hazard train route" means a section of rail lines in this state over which high**  
 32 **hazard trains operate.**

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

37 [(13)] (16) "Maritime association" means an association or cooperative of marine terminals, fa-  
 38 cilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that pro-  
 39 vides oil spill response planning and spill related communications services within the state.

40 [(14)] (17) "Maximum probable spill" means the maximum probable spill for a vessel operating  
 41 in the navigable waters of the state considering the history of spills of vessels of the same class  
 42 operating on the west coast of the United States.

43 [(15)] (18) "Navigable waters" means:

44 (a) The Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and  
 45 estuaries to the head of tidewater; **and**

**(b) Inland watersheds, and drinking water intakes, that abut high hazard train routes.**

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

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

[(18)] (21) “Oils” or “oil” means oil, including gasoline, crude oil, **bitumen, synthetic crude oil, natural gas condensate**, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product and liquefied natural gas.

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

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

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

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

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

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

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

3 [(30)] **(33)** “Worst case spill” means:

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

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

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

9 468B.340. (1) The Legislative Assembly finds that:

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

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

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

15 (A) Gaps in regulatory oversight;

16 (B) Incomplete cost recovery by states;

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

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

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

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

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

27 **(b) The prevention of oil spills to inland rivers and streams serving as essential habitat  
28 for salmon and other wildlife or as a source of water for consumption, irrigation or other  
29 public use;**

30 **(c) The prevention of spills from railroad cars transporting oil as cargo, particularly from  
31 high hazard trains;**

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

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

35 [(d)] **(f)** The establishment, coordination and duties of safety committees as provided in ORS  
36 468B.415; and

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

39 **SECTION 3. Section 4 of this 2015 Act is added to and made a part of ORS 468B.345 to  
40 468B.415.**

41 **SECTION 4. Notwithstanding ORS 468B.300, as used in ORS 468B.345 to 468B.415,  
42 “facility” has the meaning given that term in ORS 468B.300, except that “facility” does not  
43 include railroad cars.**

44 **SECTION 5.** ORS 468B.345 is amended to read:

45 468B.345. (1)**(a)** Unless an oil spill prevention and emergency response plan has been approved

1 by the Department of Environmental Quality and has been properly implemented, no person shall:

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

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

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

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

9 [(3)] (c) A contingency plan shall be renewed at least once every five years.

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

13 **(2)(a) An oil spill prevention and emergency response plan that has been approved by the  
14 department is required for the operation of a high hazard train route in this state.**

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

18 **(c) A contingency plan for a high hazard train route shall be renewed at least once every  
19 three years.**

20 **SECTION 6. Section 7 of this 2015 Act is added to and made a part of ORS 468B.345 to  
21 468B.415.**

22 **SECTION 7. (1) The Environmental Quality Commission shall adopt rules defining:**

23 **(a) Standards for the preparation of contingency plans for high hazard train routes; and**

24 **(b) Oil spill response zones within the navigable waters of the state that abut high hazard  
25 train routes and the amount of equipment identified in a contingency plan that is required  
26 to be regularly located in the zones.**

27 **(2) The rules adopted under subsection (1) of this section shall:**

28 **(a) To the extent feasible and appropriate, define standards for the preparation of con-  
29 tingency plans for high hazard train routes that are equivalent to the preparation of con-  
30 tingency plans for facilities adopted under ORS 468B.350; and**

31 **(b) Require the owners and operators of high hazard train routes to demonstrate an  
32 ability to meet the requirements of subsection (3) of this section.**

33 **(3) A railroad that owns or operates a high hazard train route in this state shall:**

34 **(a) Offer training at least once every three years to each fire department having juris-  
35 diction along the high hazard train routes owned or operated by the railroad. Training pro-  
36 vided under this paragraph must address:**

37 **(A) General hazards of oil and hazardous substances;**

38 **(B) Techniques to assess hazards to the environment and to the safety of responders and  
39 the public;**

40 **(C) Factors that an incident commander must consider in determining whether to at-  
41 tempt to suppress a fire or to evacuate the public and emergency responders from an area;**

42 **(D) Other strategies for initial response by local emergency responders; and**

43 **(E) Suggested protocol or practices for local responders to safely accomplish activities  
44 associated with items listed in subparagraphs (A) to (D) of this paragraph.**

45 **(b) Communicate at least annually with the State Fire Marshal and with each regional**

1 hazardous material response team having jurisdiction along high hazard train routes owned  
 2 or operated by the railroad, to ensure coordination of emergency response activities between  
 3 the railroad and the regional hazardous material response teams.

4 (c) Following confirmation of a discharge from a high hazard train, deliver and deploy  
 5 sufficient equipment and trained personnel to contain and recover discharged oil or hazard-  
 6 ous substances and to protect the environment and public safety. The railroad must provide  
 7 response capabilities subject to the following timeline:

8 (A) Within one hour of confirmation of the discharge, provide a qualified company em-  
 9 ployee to advise the state on-scene coordinator. The employee may be made available by  
 10 telephone and must be authorized to deploy all necessary response resources of the railroad.

11 (B) Be capable of providing within three hours of confirmation of the discharge:

12 (i) Monitoring equipment and a trained equipment operator to assist in protection of  
 13 responder and public safety; and

14 (ii) Qualified personnel at the discharge site to assess the discharge and to advise the  
 15 state on-scene coordinator.

16 (C) Be capable of delivering and deploying, within eight hours of confirmation of the dis-  
 17 charge, containment booms, boats, oil recovery equipment, trained staff, and all other ma-  
 18 terials needed to provide:

19 (i) On-site containment and recovery of a volume of oil equal to 10 percent of the calcu-  
 20 lated worst case spill at any location along the route; and

21 (ii) Protection of the listed sensitive areas and potable water intakes that are within one  
 22 mile of a discharge site and within eight hours of water travel time downstream in any river  
 23 or stream that the high hazard train route abuts.

24 (D) Be capable of delivering and deploying, within eight hours of confirmation of the  
 25 discharge, additional containment booms, boats, oil recover equipment, trained staff, and all  
 26 other materials needed to provide containment and recovery of a worst case spill and to  
 27 protect the listed sensitive areas and potable water intakes that are at any location along  
 28 the route.

29 (d) Be capable of deploying containment booms from land across sewer outfalls, creeks,  
 30 ditches and other places where oil or hazardous substances may drain, in order to prevent  
 31 access by discharged material. A railroad may arrange with a contractor or other qualified  
 32 public or private entity to supply containment booms under this paragraph. Any arrange-  
 33 ment entered into under this paragraph must be tested by drill at least once every five years.

34 (e) Conduct at least one oil containment, recovery and listed sensitive area protection  
 35 drill every three years, at a location and time chosen by the Department of Environmental  
 36 Quality. The drill must be attended by safety representatives of railroad employees governed  
 37 by the Railway Labor Act, as amended (42 U.S.C. 153 et seq.).

38 **SECTION 8.** ORS 468B.355 is amended to read:

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

45 (2) A contingency plan for a high hazard train route shall be submitted to the department

1 **within 12 months after the commission adopts rules under section 7 of this 2015 Act. The**  
2 **department may adopt a schedule for submission of a contingency plan within the 12-month**  
3 **period.**

4 [(2)] (3) The contingency plan for a facility shall be submitted by the owner or operator of the  
5 facility or by a qualified oil spill response cooperative in which the facility owner or operator is a  
6 participating member.

7 [(3)] (4) The contingency plan for a tank vessel shall be submitted by:

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

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

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

13 [(4)] (5) Subject to conditions imposed by the department, the contingency plan for a tank vessel,  
14 if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank  
15 vessels of a particular class that will be loading or unloading cargo at the facility.

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

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

22 [(6)] (8) A person that has contracted with a facility, [or] covered vessel **or railroad that op-**  
23 **erates a high hazard train route** to provide containment and cleanup services and that meets the  
24 standards established by the commission under ORS 468B.350 **or section 7 of this 2015 Act** may  
25 submit the contingency plan for any facility, [or] covered vessel **or high hazard train route** for  
26 which the person is contractually obligated to provide services. Subject to conditions imposed by the  
27 department, the person may submit a single plan for more than one covered vessel.

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

33 [(8)] (10) A contingency plan prepared for an agency of the federal government or an adjacent  
34 state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the  
35 [*Environmental Quality*] commission may be accepted as a plan under ORS 468B.345. The commission  
36 shall assure that to the greatest extent possible, requirements for a contingency plan under ORS  
37 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

38 [(9)] (11) Covered vessels may satisfy the requirements of submitting a contingency plan under  
39 this section through proof of current assessment participation in an approved plan maintained with  
40 the department by a maritime association.

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

45 [(11)] (13) A maritime association shall have a lien on the responsible vessel if the vessel owner

1 or operator fails to remit any regular operating assessments and shall further have a lien for the  
 2 recovery for any direct costs provided to or for the vessel by the maritime association for oil spill  
 3 response or spill related communications services. The lien shall be enforced in accordance with  
 4 applicable law.

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

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

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

20 [(15)] (17) A person providing a contingency plan for a cargo or passenger vessel under this  
 21 section shall be exempt from liability as provided under ORS 468B.425 for any action taken or  
 22 omitted in the course of providing contingency planning service.

23 **SECTION 9.** ORS 468B.360 is amended to read:

24 468B.360. In reviewing the contingency plan required by ORS 468B.345, the Department of En-  
 25 vironmental Quality shall consider at least the following factors:

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

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

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

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

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

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

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

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

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



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

4 **SECTION 10.** ORS 468B.365 is amended to read:

5 468B.365. (1) The Department of Environmental Quality shall approve a contingency plan only  
 6 if it determines that:

7 (a)(A) The plan **for a covered vessel or facility** meets the requirements of ORS 468B.345 to  
 8 468B.360 and[:]

9 [(a)] the covered vessel or facility demonstrates evidence of compliance with ORS 468B.390;  
 10 [and] or

11 (B) **The plan for a high hazard train route meets the requirements of ORS 468B.345 to**  
 12 **486B.360; and**

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

16 (2) An owner or operator of a covered vessel, **high hazard train route** or facility shall notify  
 17 the department in writing immediately of any significant change affecting the contingency plan, in-  
 18 cluding changes in any factor set forth in this section or in rules adopted by the Environmental  
 19 Quality Commission. The department may require the owner or operator to update a contingency  
 20 plan as a result of these changes.

21 (3) A holder of an approved contingency plan does not violate the terms of the contingency plan  
 22 by furnishing to another plan holder, after notifying the department, equipment, materials or per-  
 23 sonnel to assist the other plan holder in a response to an oil discharge. The plan holder shall re-  
 24 place or return the transferred equipment, materials and personnel as soon as feasible.

25 (4) The department may attach any reasonable term or condition to its approval or modification  
 26 of a contingency plan that the department determines is necessary to [*insure*] **ensure** that the ap-  
 27 plicant:

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

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

32 (c) Complies with the contingency plan.

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

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

37 (a) Periodic training;

38 (b) Response team exercises; and

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

41 (7) The department may consider evidence that oil discharge prevention measures such as dou-  
 42 ble hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic test-  
 43 ing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented  
 44 and, in its discretion, may make exceptions to the requirements of this section to reflect the reduced  
 45 risk of oil discharges from the facility or tank vessel, **or along the high hazard train route**, for

1 which the plan is submitted or being modified.

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

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

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

14 **SECTION 11.** ORS 468B.385 is amended to read:

15 468B.385. (1) Upon request of a plan holder or on the initiative of the Department of Environ-  
16 mental Quality, the department, after notice and opportunity for hearing, may modify its approval  
17 of a contingency plan if the department determines that a change has occurred in the operation of  
18 the facility, **high hazard train route** or tank vessel necessitating an amended or supplemental plan,  
19 or that the operator's discharge experience demonstrates a necessity for modification.

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

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

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

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

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

28 (3) Failure of a holder of an approved or modified contingency plan to comply with the plan or  
29 to have access to the quality or quantity of resources identified in the plan or to respond with those  
30 resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to  
31 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other applicable law.

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

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

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

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

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

42 (d) Comply with terms and conditions attached to the plan by the department under ORS  
43 468B.345 to 468B.380; and

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

**TEMPORARY AND PERMANENT  
RAILROAD SAFETY ASSESSMENTS**

**SECTION 12.** (1) As used in this section, “applicable rail carrier” means a railroad operating in this state that is classified as a Class I or Class II carrier under 49 C.F.R. 1201.

(2) For the biennium beginning July 1, 2015, the Department of Revenue shall levy an assessment on applicable rail carriers. The total assessment under this section shall equal \$3,750,000, with each applicable rail carrier assessed a proportional share of the total assessment that is based on the total track miles operated by the applicable rail carrier within this state.

(3) The department shall collect the assessment provided for under this section and transfer the moneys collected as follows:

(a) 20 percent to the Oil Spill Prevention Fund to be used in the manner described in ORS 468B.410 (4) for activities related to high hazard train routes; and

(b) 80 percent to the State Fire Marshal Fund to be used for the payment of costs related to ensuring adequate emergency response supplies and training to respond to derailments or discharge incidents or spills involving trains carrying oil or other hazardous substances.

**SECTION 13.** Section 12 of this 2015 Act is repealed on July 1, 2017.

**SECTION 14.** Section 15 of this 2015 Act becomes operative on July 1, 2017.

**SECTION 15.** (1) As used in this section, “applicable rail carrier” means a railroad operating in this state that is classified as a Class I or Class II carrier under 49 C.F.R. 1201.

(2) The Department of Environmental Quality shall levy and collect an annual assessment from applicable rail carriers. The total assessment under this section shall equal \$375,000 per year, with each applicable rail carrier assessed a proportional share of the total assessment that is based on the total track miles operated by the applicable rail carrier within this state.

(3) Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund to be used in the manner described in ORS 468B.410 (4) for activities related to high hazard train routes.

**SECTION 16.** ORS 468B.412 is amended to read:

468B.412. (1) By September 30 of each year, [*beginning in 2008,*] the Department of Environmental Quality shall publish a report for the previous fiscal year, commencing on July 1 and ending on June 30, that addresses:

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

**(b) The assessment on applicable rail carriers under section 15 of this 2015 Act; and**

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

(2)(a) The report published by the department under this section must be in a format that allows for the monitoring of fee **and assessment** collection and related activities by the department and for ensuring that adequate but not excessive fees **and assessments** are collected to meet the department’s budgetary needs.

(b) The department shall make the report available to those who paid fees under ORS 468B.405, **those who paid the assessment under section 15 of this 2015 Act** and [*to*] the general public.

**MISCELLANEOUS**

1       **SECTION 17.** (1) Sections 3, 4, 6, 7 and 12 and the amendments to ORS 468B.300, 468B.340,  
2       468B.345, 468B.355, 468B.360, 468B.365, 468B.385 and 468B.412 by sections 1, 2, 5, 8, 9, 10, 11  
3       and 16 of this 2015 Act become operative January 1, 2016.

4       (2) The Environmental Quality Commission, Department of Environmental Quality and  
5       the Department of Revenue may take any action before the operative date specified in sub-  
6       section (1) of this section that is necessary for the commission or the departments to exer-  
7       cise, on and after the operative date specified in subsection (1) of this section any of the  
8       duties, functions and powers conferred on the commission or the departments by sections  
9       3, 4, 6, 7 and 12 and the amendments to ORS 468B.300, 468B.340, 468B.345, 468B.355, 468B.360,  
10      468B.365, 468B.385 and 468B.412 by sections 1, 2, 5, 8, 9, 10, 11 and 16 of this 2015 Act.

11      **SECTION 18.** The unit captions used in this 2015 Act are provided only for the conven-  
12      ience of the reader and do not become part of the statutory law of this state or express any  
13      legislative intent in the enactment of this 2015 Act.

14      **SECTION 19.** This 2015 Act takes effect on the 91st day after the date on which the 2015  
15      regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

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