

## Responses to Questions Raised During the November 7, 2024 Board Briefing Re: Fuel Tank Financial Responsibility Policy

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- **Why was 2 million gallons used as the threshold?**

The policy is designed to align with the State of Oregon [Fuel Tank Seismic Stability](#) program. That program, by statute, regulates facilities with a fuel storage capacity of 2 million gallons or more.

According to OR [DEQ](#) there are 8 facilities in Multnomah County with 50,000 - 1 million gallons of fuel storage, or about 1.7 million gallons of unregulated fuel storage.

- **What is the economic impact of the policy in terms of costs being passed on to consumers?**

The cost of commodities like fuels is impacted by various factors, including supply and demand, global markets, and even geopolitics. According to the US Energy Information Administration, the retail price of gasoline includes four main components: the cost of crude oil, refining costs and profits, distribution and marketing costs and profits, and taxes.

Regulations and taxes can impact the cost of commodities although the exact magnitude of a local regulation is difficult to predict. As with any regulation, a balance must be struck between the cost of the regulation and the cost of regulatory inaction. Some [states](#) have also mandated fuel price transparency to limit price gouging.

- **What outreach has been done to the impacted industry?**

District 1 has hosted several meetings with industry groups. These have included meetings with the Western State Petroleum Association, the Working Waterfront Coalition, Northwest Natural, and Zenith Energy. The draft policy and a comment form have been [published online](#).

- **What are the names of the impacted entities?**

Chevron American Fuels and Lubricants - Willbridge Terminal; Kinder Morgan - Willbridge Terminal; Kinder Morgan - Linnton Terminal; McCall Oil and Chemical Corporation - McCall Terminal; Northwest Natural - Portland LNG Facility; Owens Corning Trumbull Asphalt Plant; Pacific Terminal Services - Portland Terminal; PDX Fuel Company, LLC - Portland International Fuel Facility; Phillips 66 Pipeline LLC - Phillips 66 Terminal; Seaport Midstream Partners - Portland Terminal; Shore Terminals LLC - Portland Terminal; Triton West LLC - Shell Portland Terminal; Zenith Energy Management - Zenith Portland Terminal.

- **What is the rationale for exempting public entities?**

Unlike private entities, public entities cannot quit or abandon the market and have a direct line of accountability to voters. It is also a moot point since there are no public entities that store fuel or hazardous materials in quantities that would be regulated under the draft ordinance.

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- **Is the policy intent to encourage accelerated compliance or simply compliance with the State Fuel Tank Seismic Stability program?**

One of the stated policy intents is to encourage compliance with the State's Fuel Tank Seismic Stability program. Semantically, encouraging compliance with a mandatory program can be interpreted as redundant since compliance is already required under the program's rules. This policy further encourages compliance by creating a mechanism through which the impacted facilities must further internalize the cost of a catastrophic oil spill that would occur due to a CSZ earthquake.<sup>1</sup> The policy may also encourage faster compliance with the mandated Risk Mitigation Implementation Plan because doing so would reduce the required provable level of financial responsibility under the Multnomah County ordinance.

- **How does the financial formula work?**

Two factors are used to determine the total amount of financial assurance that will be required under the draft policy: the total storage capacity of the facility (measured in gallons and barrels), and the status of the facility-mandated Risk Mitigation Implementation Plan (pre and post-final report(s) to the OR DEQ). Before the Risk Mitigation Implementation Plan final report(s) has been submitted and approved by DEQ the facility will need to obtain financial assurance at a rate of \$342 per barrel of storage capacity. After the Risk Mitigation Implementation Plan report(s) have been submitted and approved by DEQ the facility will need to obtain financial assurance at a rate of \$46 per barrel of storage capacity. The dollar amounts will adjust over time to keep pace with inflation.

The per barrel amounts were calculated using the damage estimates from the County's [CEI Hub Seismic Risk Analysis report](#). The monetized costs from CSZ earthquake-induced spills were calculated to be approximately \$2.8 billion, with the upper-cost estimate for a worst-case spill being \$2,791,187,575 and the lower-cost estimate being \$385,398,592.<sup>2</sup> The upper and lower damage estimates were divided by the total storage capacity of all facilities in the hub to arrive at a per-barrel cost. Based on the total storage capacity of the CEI Hub of 350,600,000 gallons, this translates to upper and lower per-barrel cost estimates of \$342 per barrel and \$46 per barrel, respectively. Based on evidence from prior spills, the Multnomah County report noted that total costs and damages would likely be many multiples of the monetized amounts.

By contrast, the Washington State [Financial Responsibility for Oil Spill](#) program uses a \$12,500 per barrel amount, up to a maximum of \$300 million financial responsibility for Class 1 onshore storage facilities. The \$12,500 figure is based on the [1993 Mercer Study](#) that calculated oil spill response and damages costs at \$12,500 - \$18,900 per barrel in 1992 US Dollars.

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<sup>1</sup> Internalized cost, or internalizing an externality, is the process of incorporating the costs or benefits of an economic activity into the decision-making process of the parties involved. The goal is to ensure that the costs and benefits of the activity are reflected in the prices paid by the participants.

<sup>2</sup> The dollar value from report were adjusted for inflation.

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- **What regulatory requirements do facilities already have? Is this policy duplicative?**

Both federal and state laws provide legal mechanisms for establishing liability for spills into navigable waters and recovering costs and damages from responsible facilities. However, these laws do not include any safeguards in the form of financial assurance or responsibility requirements that would help ensure that facilities have the resources to cover the costs and damages from a spill and existing programs may be insufficient to cover the total costs and damages from a major CEI Hub spill or release. Finally, the statutes include exceptions for spills caused by “acts of God,” which means that CEI Hub facilities could potentially avoid liability—and responsibility for costs and damages—for a spill caused by a Cascadia Subduction Zone (CSZ) earthquake.

The Oil Pollution Act (OPA) is the primary federal statute governing liability for oil spills and the costs of remediating them. The OPA sets out requirements and duties for regulated entities, ‘responsible parties,’ to prepare for, respond to, and pay damages for oil spills. The OPA also sets liability limits for onshore facilities, like those in the CEI Hub, and establishes a fund for paying damages over the liability caps; the Oil Spill Liability Trust Fund (OSLTF). Total payments from the OSLTF are capped at \$1 billion per incident, and payments for natural resource damages are capped at \$500 million per incident. The OSLTF also does not cover personal injury claims. The liability limits for individual onshore facilities are currently capped at approximately \$672 million.

While the OPA’s liability limit and the \$1 billion cap on OSLTF payments seem sufficient to cover the costs associated with a typical oil spill, the total costs from a CEI Hub spill resulting from a CSZ event could exceed these caps. Moreover, the OSLTF could come under strain in the context of a CSZ event given the geographic scope and severity of such an incident extends across a large geographic area.

In Multnomah County, the risk that total damages and cleanup costs could exceed the OSLTF cap would be even higher if a CSZ event is deemed an “act of God” under the OPA, in which case CEI Hub facilities could also submit claims to recover costs from the OSLTF. The ECONorthwest analysis estimated that cleanup costs from a CSZ-related spill could reach \$1.4 billion, and damages covered under the OPA could be as high as \$803 million. The analysis also estimated that public health impacts from a spill could cost as much as \$248 million, which CEI Hub facilities would not be liable for under the OPA. Based on these estimates, costs related to a worst-case CEI Hub spill could potentially exceed the OSLTF payment cap by \$648 million. If a CSZ earthquake is deemed an act of God, the total costs could exceed the OSLTF cap by more than \$1.4 billion.

While onshore facilities are not required to demonstrate proof of financial responsibility under the OPA or State Law, deepwater ports are required to demonstrate proof of financial responsibility. Whether or not the draft ordinance is duplicative in the case of deepwater ports,

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would depend on the type of financial instrument that the facility uses to satisfy the Federal requirement. If the instrument is consistent with the draft ordinance, then the OPA/State proof of financial responsibility should also satisfy the County requirement.

- **How is the worst-case spill defined?**

The draft statute defines worst-case spill or release as the largest possible spill or release from a facility, based on the facility's total storage capacity of oils, liquid fuel products, or hazardous material.

- **How has risk management at the County been involved in the development of this policy?**

To the point of the BCC briefing on 11/07/2024, the Multnomah County Risk Management division was not consulted on the development of the draft ordinance. The Risk Management Division's duties and powers are described in Chapter 7 of the Multnomah County Code. Additional engagement will be conducted with the division.

- **What is the County's perspective on the risk of the facility?**

The County's [CEI Hub Seismic Risk Analysis report](#) summarizes the individual and collective risks posed by large fuel storage facilities in the CEI Hub.

- **What is the timeline for passing the legislation?**

The current schedule is for a first reading of the ordinance to be held on November 21, 2024, and the second reading to be held on December 5, 2024.

- **Does the policy create new liability?**

No. The policy relies on liability created under Federal and State law.

- **Are there insurance policies available in the amounts described in this policy?**

Yes. Environmental protection liability insurance is a product that companies can buy in the market. These are not standard policies and are negotiated between the company purchasing the policy and the company issuing the policy. The final details of the ordinance would have a material impact on the nature of that policy and the potential availability of the policy in the market.

The draft ordinance allows facilities to purchase insurance, or other mechanisms, individually or in aggregate to cover the total required amount for proof of financial responsibility. A similar program was established in Washington State, where the maximum amount of financial

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responsibility for an onshore facility is capped at \$300 million. This amount was selected in response to oil industry feedback that insurance policies over \$300 million were unavailable in the market. At the per barrel amounts in the current draft ordinance and total volumes of storage capacity at the regulated facilities, none of the facilities would approach the \$300 million cap specified in the Washington program. This is due to the substantially lower total per barrel amount used to calculate coverage in the draft Multnomah County policy.