

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. _____

Establishing Requirement for Owners or Operators of Certain Industrial Facilities to Obtain Certificate of Financial Responsibility and Authorizing Rulemaking.

(Language ~~*stricken~~ is deleted; underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- A. Ensuring financial responsibility for covered entities handling oil, liquid fuel and hazardous materials is essential to protecting the County's natural resources, economy and public health.
- B. Covered entities must be financially capable of covering all spill-related liabilities, including spill or release response, remediation and damages.
- C. Requirements for certificates of financial responsibility established by the County should ensure that covered entities maintain sufficient financial assurances to address potential spill-related liabilities, including initial emergency response expenses.
- D. Rules adopted by the County should align with federal and state standards, where appropriate, while addressing County-specific risks and needs.

Multnomah County Ordains as Follows:

Section 1. MCC 7.200 is added as follows:

§ 7.200 DEFINITIONS

As used in MCC 7.200 through 7.201 unless the context requires otherwise, the following terms and their derivations shall have the meanings provided below:

- (A) **CERTIFICATE OF FINANCIAL RESPONSIBILITY** means a certification issued by the Department that confirms that a covered entity has demonstrated the financial ability to cover potential spill-related liabilities.
- (B) **COVERED ENTITY** means an industrial facility located in Multnomah County that is primarily engaged in the transport or bulk storage of oils or liquid fuel products and is characterized by having:
 - (1) Marine, pipeline, railroad or vehicular transport access;
 - (2) Transloading facilities for transferring shipments of oils or liquid fuel products between transportation modes; and

- (3) One or more bulk storage tanks with a combined capacity of two million gallons or more.
- (C) **DEPARTMENT** means the Department of County Management.
- (D) **FINANCIAL ASSURANCE MECHANISM OR FINANCIAL ASSURANCE** means an instrument or other evidence that establishes financial ability to cover spill-related liabilities, including but not limited to:
- (1) Evidence of insurance;
 - (2) Surety bonds;
 - (3) A letter of credit;
 - (4) A trust; or
 - (5) Other evidence of financial responsibility deemed acceptable by the Department.
- (E) **HAZARDOUS MATERIAL** has the meaning given that term in ORS 466.605 (2025).
- (F) **LIQUID FUEL** means any predominately hydrocarbon compound or mixture for use as engine or heating fuel that exists as a noncorrosive liquid at atmospheric pressure, including, but not limited to, gasoline, tractor fuel, kerosene, jet fuel, diesel, and heating oil.
- (G) **OIL OR OILS** includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.
- (H) **OWNER OR OPERATOR** means any person or entity that owned, leased, operated, controlled or exercised significant control over the operation of a covered entity. "Owner or operator" does not include a person or entity that, without participating in the management of a covered entity, holds indicia of ownership primarily to protect a security interest in the covered entity.
- (I) **SPILL OR RELEASE** means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil, liquid fuel or hazardous material into the air or into or on any land or waters of the state located in Multnomah County.
- (J) **SPILL-RELATED LIABILITY** means the costs associated with an oil, liquid fuel or hazardous material spill or release, including but not limited to:
- (1) Spill or release response and cleanup expenses;
 - (2) Fire damage;
 - (3) Natural resource damage assessments and restoration;
 - (4) Costs incurred by a federally recognized Indian tribe in responding to or remediating the impacts of a spill or release;

- (5) Third-party economic and property damage claims; or
- (6) Civil penalties imposed by any applicable law.

Section 2. MCC 7.201 is added as follows:

§ 7.201 CERTIFICATE OF FINANCIAL RESPONSIBILITY REQUIRED; RULEMAKING

(A) The owner or operator of a covered entity shall acquire and maintain a certificate of financial responsibility in accordance with rules adopted by the Department.

(B) Rules adopted by the Department must:

- (1) Establish reasonable minimum amounts of financial assurance based on an evaluation that includes, but is not limited to:
 - (a) The type, size and operational risk of covered entities;
 - (b) The maximum volume of oil, liquid fuel or hazardous materials handled by covered entities;
 - (c) Historical spill or release response costs and projected cleanup expenses in the areas where covered entities operate;
 - (d) The environmental sensitivity of the areas where covered entities operate;
 - (e) Commercially available financial assurance mechanisms, including maximum coverages offered; and
 - (f) Financial assurance requirements in other jurisdictions.
- (2) Describe acceptable financial assurance mechanisms, which must include, at a minimum:
 - (a) Multnomah County as the beneficiary;
 - (b) An immediate pay-out for spill-related liabilities after a spill or release;
 - (c) Coverage of the spill-related liabilities that result in costs to the County for the period of one year;
 - (d) Estimate of County costs shall include but are not limited to public health response, emergency management and sheltering, and lost revenue;
- (3) Allow covered entities to co-purchase or co-create a financial assurance mechanism.
- (4) Require that, before a certificate of financial responsibility is issued to a covered entity, one or more financial assurance mechanisms will cover the covered entity's potential spill-related liabilities.

- (5) Establish policies and procedures for enforcing this section, including:
 - (a) A process for verifying a covered entity's evidence of financial assurance;
 - (b) Standards for restricting or suspending the operations of covered entities that do not satisfy the requirements of this section;
 - (c) The amount and imposition of a civil penalty for each day that a covered entity operates without a certificate of financial assurance; and
 - (d) A process for appealing any determination made by the Department.
- (6) Be consistent with the requirements of state and federal law, including the federal Oil Pollution Act of 1990 (P.L. 101-380), while accounting for County-specific needs.
- (7) Not establish a preference for one form of financial assurance mechanism over another.

(D) The Department shall, at regular times established by rule, update the minimum amounts of financial assurance established under subsection (B)(1) of this section to reflect:

- (1) Inflation and other economic conditions;
- (2) Industry changes and improvements;
- (3) Emerging risks; and
- (4) Lessons learned from spill or release response efforts.

(E) (1) An advisory committee will be appointed by the Chair and approved by the Board to advise the Department Director in drafting rules under this section and ensure that the requirements for financial responsibility established under this section are fair and effective.

(2) The advisory committee should include, but is not limited to, the following positions:

- (a) One for an industry representative;
- (b) One for an environmental advocate;
- (c) Two for City Councilors from the City of Portland;
- (d) One for a designee of the Board of County Commissioners;
- (e) One for a representative from federally recognized tribal governments with federally reserved treaty rights to the affected area;
- (f) One for a representative of the environmental justice communities; and

(g) One for a representative of affected communities.

(3) The advisory committee may consult with or be advised by any person with expertise relevant to the duties of the advisory committee.

Section 3. EFFECTIVE DATE

This Ordinance will take effect on the 30th day after signature by the Chair of the Board of Commissioners, and is enforceable the 30th day after adoption of the rules in Section 2.

FIRST READING:

SECOND READING AND ADOPTION:

(type in meeting date) _____

(type in meeting date) _____

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jessica Vega Pederson, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By:

(Name & Title of Approving Attorney)

SUBMITTED BY: *(Department Director or Elected Official)*