


# Certificate of Financial Responsibility

## Rulemaking Advisory Committee Meeting # 2
## Fuel Tank Seismic Stability Program

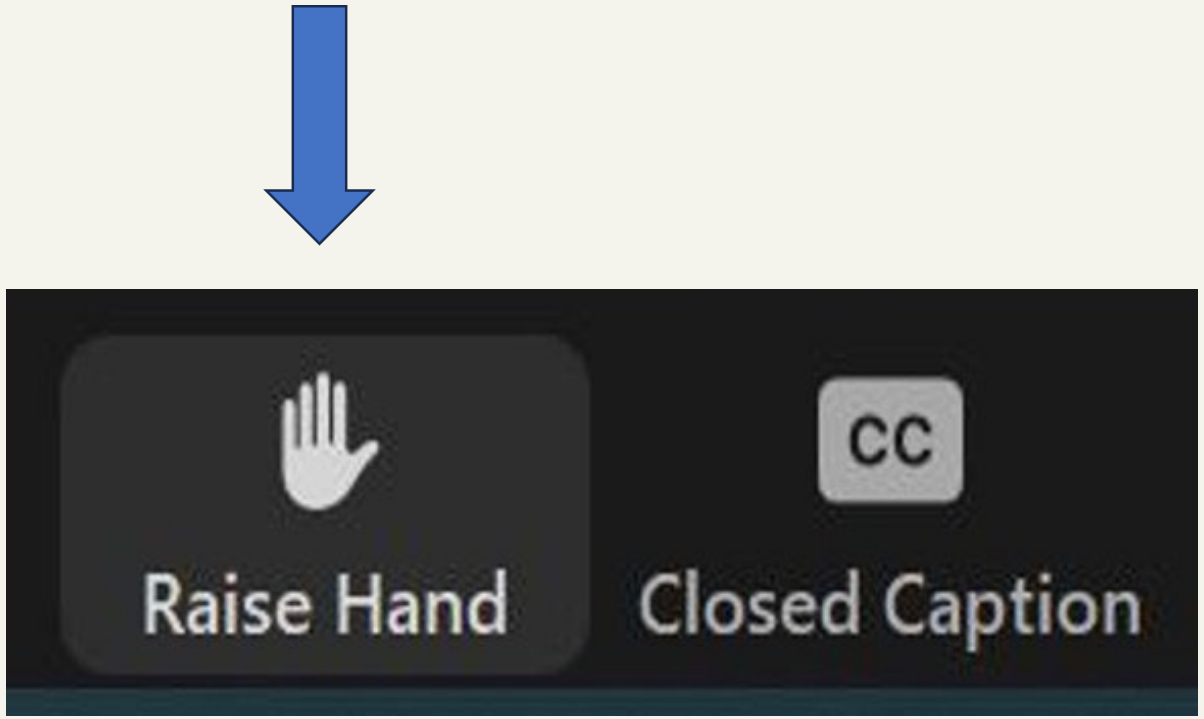
Luke Hanst, Michael Loch, Killian Stoltenburg, Svetlana Lazarev
Oct. 9, 2026
9 a.m. – 12 p.m.
Virtual

State of Oregon
DEQ Department of Environmental Quality

# Zoom Webinar Tips for Panelists

**Thank you for joining us today!**

- Join by audio by either computer or phone, but not both
- For panelist discussion and comments, use the raise hand button to get in the queue. If joining by phone, press *9
- This meeting is being recorded
- For Zoom technical issues, panelists can send a message through the chat






State of Oregon
DEQ Department of Environmental Quality

# RAC Meeting # 2 Agenda

| Time | Topic |
|---|---|
| 9 a.m. | Welcome and Meeting Overview |
| 9:05 a.m. | Rulemaking Scope |
| 9:20 a.m. | 1. Minimum Financial Assurance Determination |
| 9:50 a.m. | 2. Acceptable Financial Assurance Mechanisms |
| 10:20 a.m. | Break |
| 10:30 a.m. | 3. Application, Renewal and Notification Requirements |
| 10:45 a.m. | 4. DEQ Verification Process |
| 11 a.m. | 5. Enforcement Mechanisms |
| 11:15 a.m. | 6. Reviewing Maximum and Minimum Financial Assurance Requirements |
| 11:30 a.m. | Opportunity for Public Comment |
| 11:50 a.m. | Closing remarks |

# DEQ Key Team Members

- **Svetlana Lazarev**, FTSS Manager
- **Luke Hanst**, Rulemaking Lead
- **Killian Stoltenburg**, Rulemaking Support
- **Heidi Williams**, FTSS Engineer
- **Ian Johnson**, FTSS Inspector
- **Kasia Burns,** FTSS Administrative Coordinator
- **Miachel Loch**, Public Affairs Specialist, Facilitator
- **Jennifer Flynt**, Public Affairs Specialist
- **Kali Sullivan**, Senior Legislative Analyst
- **Emil Hnidey**, Rules Coordinator
- **Esther Wesbrook**, Compliance & Enforcement
- **And others!**

# Technical Review Panel

- **Beth Gilden & Rohan Khanvilkar** – Portland State University, Center for Public Service
- **Diana Davis** – Washington Dept. of Ecology, Financial Responsibility Unit Supervisor
- **Jay Wilson** – Clackamas County Emergency Response
- **John Talberth** – Center for Sustainable Economy, President & Senior Economist
- **Jeff Wyatt** – Hanford Cleanup Board, Chair
- **Dustin Wilson** – McCall Oil & Chemical Corp., Director of Operations
- **Ehsan Kianirad** – Liberty Mutual Insurance
- **Richard Franklin** – U.S. Environmental Protection Agency

# RAC Members

| Name | Organization |
|---|---|
| Rep. Thuy Tran | Oregon House of Representatives, District 45 |
| Keri Handaly | Environmental Policy Analyst, Confederated Tribes of Grand Ronde |
| Sarah Hardisty | Tribal Response Resource Specialist, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians |
| Arjorie Arberry-Baribeault | Environmental Justice Coordinator, Beyond Toxics Eugene |
| Antonio Machado | Director, Northwest Regulatory Affairs and Fuels, Western States Petroleum Association |
| Cassie Cohen | Executive Director, Portland Harbor Community Coalition |
| Chris West | President/Owner, Pac/West Resources |
| Daniel Hurley | Public Works Director, Lane County Public Works |

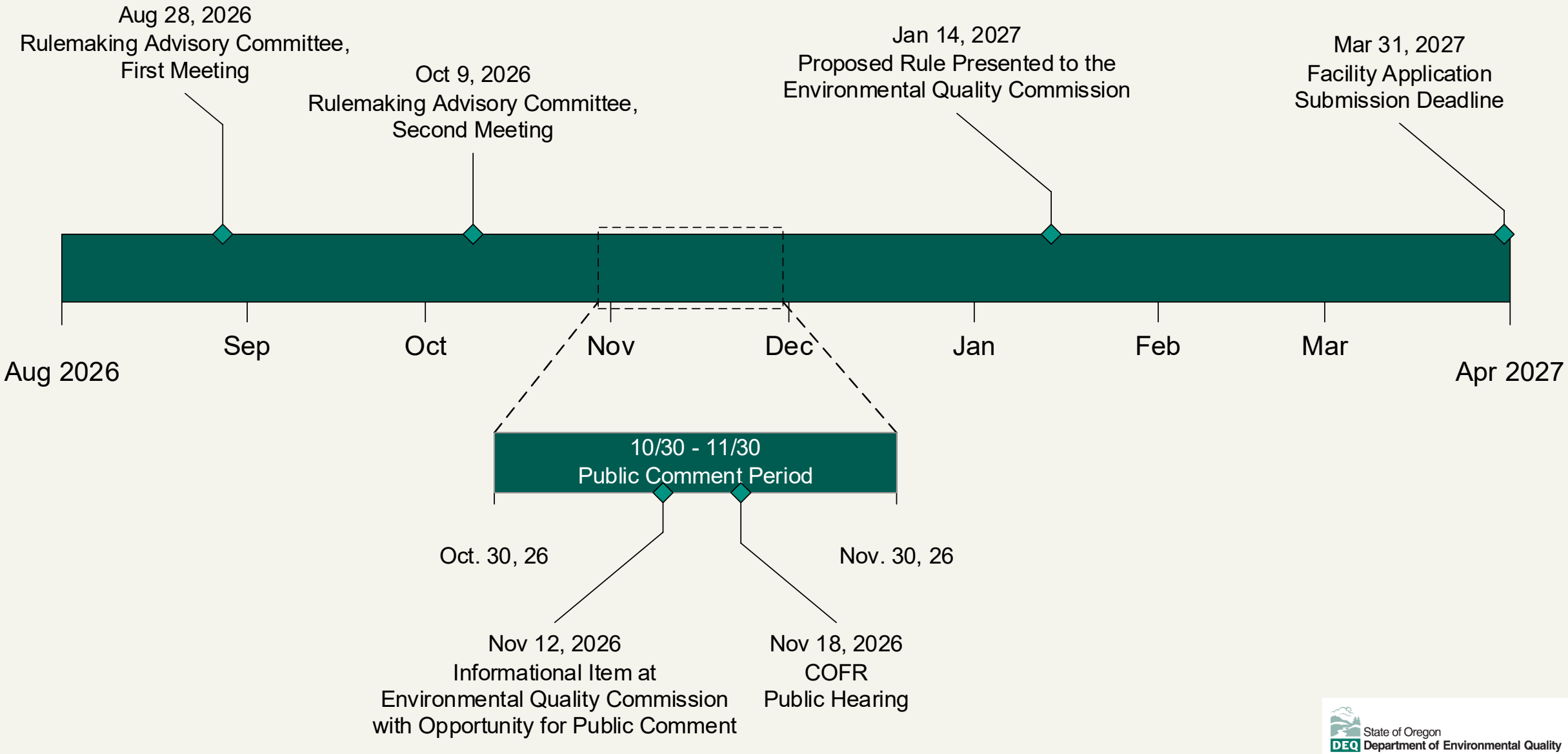
# RAC Members (continued)

| Name | Organization |
|---|---|
| Jay Jackson | Senior Project Manager, Kinder Morgan |
| Tom Armstrong | Supervising Planner, City of Portland |
| John Wasiutynski | Director, Multnomah County Office of Sustainability |
| Kevin White | Structural Engineer, Oregon Seismic Safety Policy Advisory Commission |
| Sharla Moffett | Oregon Business and Industry |
| Lindsey Hutchison | Staff Attorney, Willamette Riverkeeper |
| Nichole Rutherford | City Manager, City of Coos Bay |
| Nikki Mandell | Member, CEI Hub Task Force |
| Raven Collins | Senior Policy Advisor, Oregon Dept. of Consumer and Business Services, Division of Financial Regulation |

# RAC #2 Meeting Materials

- Meeting Agenda
- Frequently Asked Questions
- Response to RAC #1 Comments
- Updated Discussion Draft for COFR Rules
- Draft Forms
- COFR Draft Fiscal and Racial Equity Impact Statement
- PSU Research on Minimum Financial Assurance Requirements

# COFR Rulemaking Timeline






State of Oregon
DEQ Department of Environmental Quality

# Public Involvement

Opportunities to stay engaged:

- Email updates (GovDelivery)
- Online documents
- Public comment period including public hearing
- Public comment at end of this meeting (raise hand function)
- ~Two minutes per person



# HB 4100 (2026) Rulemaking Scope

## Required Rule Elements:

1. Reasonable Minimum Financial Assurance Requirements
2. Standards for Acceptable Financial Assurance Mechanisms
3. Application Process and Reporting Requirements
4. Process for Reviewing and Verifying COFR Applications
5. Enforcement of COFR Requirements
6. Process for Reviewing and Adjusting Financial Assurance Requirements Every Three Years Beginning January 1, 2030

HB 4100 does not assign new liabilities. Regulated facilities are strictly liable for oil spills under the Oil Pollution Act of 1990 and ORS 466.640. HB 4100 ensures funds remain available to pay for those liabilities, creating a framework in which a facility cannot financially disappear after a major incident.

# “Parking Lot”

## Activities Deferred to Program Implementation

- DEQ established parking lot for concepts in need of continued development
- Tentative timeline for future development:
  - Recruit positions authorized by legislature, Spring 2027
  - First COFR applications due March 31, 2027, and reviewed by DEQ
  - COFR dry-run tabletop exercise ~ July 2027
  - Incorporate lessons learned into future process
    - (e.g., supplemental rulemaking ~ January 2028)
  - COFR renewals and review of financial assurance minimum and maximum, 2030

# HB 4100 (2026) Rulemaking Scope

Required Rule Elements:

1. **Reasonable Minimum Financial Assurance Requirements**
2. Standards for Acceptable Financial Assurance Mechanisms
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# 1. Minimum Financial Assurance Determination

## Authority from H4100:

Section 4(2)(a), “Establish reasonable minimum amounts of financial assurance based on an evaluation of:

- (A) The type, size and operational risk of bulk oils or liquid fuels terminals;
- (B) The maximum volume of oil, liquid fuel or hazardous materials handled by bulk oils or liquid fuels terminals;
- (C) Historical spill or release response costs and projected cleanup expenses in the areas where bulk oils or liquid fuels terminals operate;
- (D) The environmental sensitivity of the areas where bulk oils or liquid fuels terminals operate;
- (E) Commercially available financial assurance mechanisms, including maximum coverages offered; and
- (F) Financial assurance requirements in other jurisdictions”

# 1. Minimum Financial Assurance Determination

- Applicable COFR precedents:
  - Washington and California calculate Financial Assurance Requirement as:
    $12,500 per barrel in facility worst-case spill scenario
    Up to $300 million financial assurance maximum
    - Washington and California's COFR program is embedded in their state's spill response program and COFR is attached to SPCC Facility Response Plan, Oregon's is not.
  - Washington provides an "Option B":
    - " A facility may submit to ecology a request for an alternative calculation to determine financial responsibility required under this chapter. (a) The request must demonstrate financial responsibility capable of covering the response costs and damages that could occur during a reasonable worst-case spill of oil from that facility into the navigable waters of the state..."

# 1. Minimum Financial Assurance Determination

- Considered and found inadequate for Oregon:
  - Directly connecting the design spill scenario to a facility's SPCC Facility Response Plan worst-case discharge scenario
    - Considering the single largest tank alone fails to account for earthquakes and known vulnerabilities at regulated facilities
    - Adjusting worst-case discharge scenarios in pursuit of facility-specific alternative financial assurance requirements creates potential downstream conflicts with facility SPCC planning requirements

- "Parking Lot"
  - Alternative financial assurance calculations (i.e., an Option B) that allow a facility to propose a more rigorous estimation of possible spill scenarios to use as the design spill volume to be multiplied by $12,500 per barrel
    - At this time, no facilities will have completed RMIP implementation in the next three-year period except for those decommissioning tanks and leaving the program
    - DEQ intends to provide a well-developed Option B for facilities in the 2030 COFR cycle

# 1. Minimum Financial Assurance Determination

**Estimated Liability Per Barrel (<u>Unit Cost</u>):**

- (C) Historical spill or release response costs and projected cleanup expenses
- (D) Environmental Sensitivity
- (E) Commercially available financial assurance mechanisms (acts as a feasibility check)
- (F) Financial assurance requirements in other jurisdictions

**Potential Spill Volume in Barrels (<u>Volume</u>):**

- (A) Type, size and operational risk
- (B) Maximum volumes handled

**Unit Cost * Volume =**

**Minimum Financial Assurance Requirement**

# 1. Minimum Financial Assurance Determination

**Estimating Liability Per Barrel (Unit Cost).**

- Spill response and cleanup cost per barrel average : ~$6,300
- NRDA and remediation per barrel average: ~$8,400
- Fire damages average: Unaccounted, not estimated in existing literature

- **$12,500 Per Barrel Is A Reasonable Floor**

- **Unit Cost Is Standard To All Facilities,** existing data is insufficient for a per-facility or per-material determination of unit cost

# 1. Minimum Financial Assurance Determination

## Estimating Potential Spill Volume In Barrels (Volume)

- Precedents provide formulas but do not consider earthquakes (e.g., SPCC)
- Consideration of total capacity must be moderated by plausible spills
- ECONorthwest (2022) finds that >90% of bulk storage tanks are pre-code and estimate 28% to 58% of total capacity could spill in a major earthquake
- DEQ estimates and facility reports to OSFM suggest **50% average fill** is reasonable
- Fire code limits tank capacity to 95% with mechanical overflow protection

# 1. Minimum Financial Assurance Determination

- Proposed Rule Language:

  "The owner or operator of a facility must demonstrate financial assurances in the amount equal to **$12,500 per barrel** times **0.5 of 95% of the total facility volumetric (shell) capacity**, up to the maximum financial assurance requirement."

- List of Associated Form(s)

➢ ORDEQ COFR Application & Checklist – facilities provide total capacity and calculate their financial assurance requirement

# 1. Minimum Financial Assurance Determination

RAC Q&A and Discussion (20 minutes)

# HB4100 (2026) Rulemaking Scope

Required Rule Elements:

1. Reasonable Minimum Financial Assurance Requirements
2. **Standards for Acceptable Financial Assurance Mechanisms**
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# 2. Acceptable Financial Assurance Mechanisms

**Authority from HB4100:**

- HB4100 Section 4(2)(b), the rule must establish standards for financial assurance mechanisms that may be used, alone or in combination, to demonstrate financial assurance for spill-related liabilities.
- Section 4(2)(c), the rule must establish standards for self-insurance… including:
  - a test of the owner's or operator's (i) Solvency; or (ii) Current credit rating;
  - quarterly reports to DEQ
  - a guarantee for the amount of financial assurance required.

# 2. Acceptable Financial Assurance Mechanisms

**Function of Financial Assurance Mechanisms:**

- State and federal laws assign **strict liability** to the owners of a petroleum product or other hazardous material, requiring them to pay for response and cleanup, environmental remediation and other damages associated with a spill or release
  - ORS 466.640, "Strict Liability for Spill or Release"
  - Oil Pollution Act of 1990, or OPA '90
  - Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or CERCLA

- Financial assurance mechanisms provide DEQ with **binding agreements** to ensure funds will be available to pay for claims for which the responsible party is liable

- Financial assurance mechanisms are activated by DEQ upon notification that the responsible party is failing to pay for claims for which they are liable

# 2. Acceptable Financial Assurance Mechanisms

- Applicable COFR precedents
  - Existing state and federal regulations provided initial rule language and template forms for financial assurance mechanisms, DEQ modified for Oregon

- FAQs
  - Standby Trust Funds are a required component for most financial assurance mechanisms; DEQ is the “trustee,” claimants are “beneficiaries”
  - Parametric insurance and other financial assurance mechanisms present potential issues due to a single-hazard approach

# 2. Acceptable Financial Assurance Mechanisms

- Considered and found outside the intention of HB4100
  - Required use of a specific mechanism or combination of mechanisms

- "Parking Lot"
  - Deeper evaluation of the applicability of parametric insurance and other financial assurance mechanisms
  - Clarifying DEQ procedures as the trustee for standby trust funds
  - Continuing to coordinate with and clarify federal funding and liability frameworks for spills of oil or hazardous materials

# 2. Acceptable Financial Assurance Mechanisms

**Identified Mechanisms**

- Insurance
- Self-insurance
- Surety Bonds
- Letters of Credits
- Guarantees
- Certificates of Deposit
- Other Financial Assurance Mechanisms

**List of draft forms**

- Certificate of Insurance Form
- **Endorsement Form**
- Surety Bond Form
- **Guarantee Form**
- Letter of Credit Form
- **Chief Financial Officer Agreement Form**
- Certificate of Deposit Form
- **Standby Trust Agreement Form**

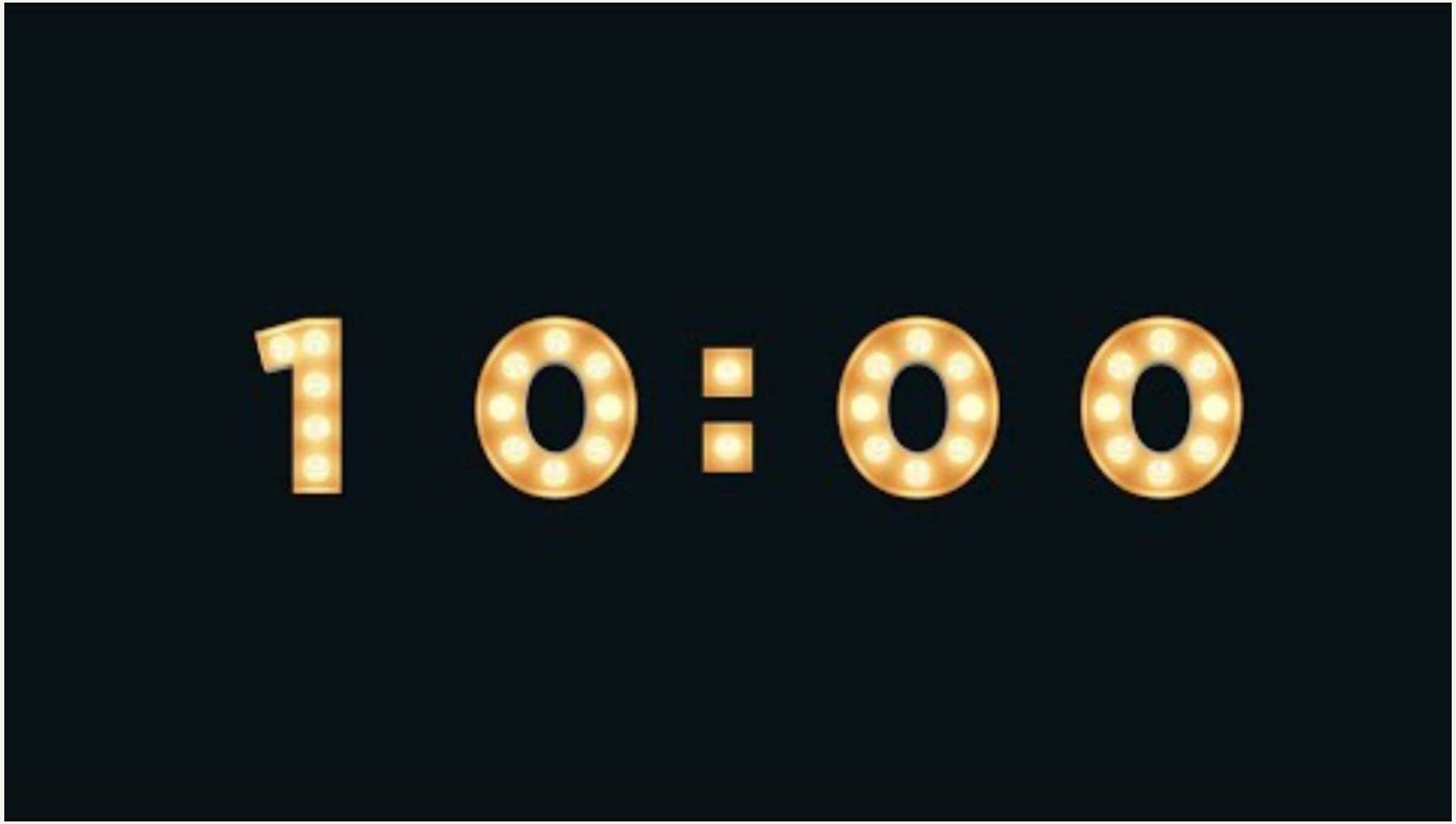
# 2. Acceptable Financial Assurance Mechanisms

- New proposed language clarifying no earthquake exemptions:
  - "Financial assurance mechanisms used to meet the requirements of these rules must not carry exemptions for spills caused by earthquakes or other natural hazards and must cover spills or release response and cleanup expenses, fire damage and natural resource damage assessments and remediation"
- New proposed language clarifying unique financial assurances for facilities:
  - "Financial assurance mechanisms used to meet the requirements of these rules must not be shared by any other facility or equipment located in areas subject to shared natural hazard risks including facilities located in areas at risk of impacts from a Cascadia Subduction Zone earthquake."

# 2. Acceptable Financial Assurance Mechanisms

RAC Q&A and Discussion (20 minutes)

# Break (10 minutes)






State of Oregon
DEQ Department of Environmental Quality

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# 3. Application, Renewal and Notification Requirements

**Authority from HB4100, Section 4(2):**

- "(e) Require that, before a certificate of financial responsibility is issued to a bulk oils or liquid fuels terminal, one or more financial assurance mechanisms will cover the bulk oils or liquid fuels terminals potential spill-related liabilities.
- (f) establish initial deadlines for bulk oils or liquid fuels terminals to apply for a certificate of financial responsibility.
- (g) Require that a certificate of financial responsibility be renewed:
  - (A) Every three years; and (B) each time there is a change in ownership…
- (h) Establish policies and procedures for enforcing this section, including:
  - " (A) A process for verifying a bulk oils or liquid fuels terminal's evidence of financial assurances"

# 3. Application, Renewal and Notification Requirements

- Background research
  - State and federal programs provide existing application processes and internal review procedures; DEQ adopted existing rule language and form language where applicable

- HB4100 set three-year COFR duration and some renewal conditions (e.g., new ownership)

# 3. Application, Renewal and Notification Requirements

- Summary of Proposed Rule Language, OAR 340-300-0011:
  - Facilities are required to apply using Oregon DEQ Certificate of Financial Responsibility Application and Checklist form as a cover sheet and must include mechanism-specific forms and other supporting evidence
  - Facilities will email signed PDF copies to the DEQ COFR Team
  - Facilities must renew COFRs every three years, upon change of ownership or if DEQ finds their existing COFR to be invalid due to significant changes
  - Facilities must notify DEQ of significant changes to their COFRs

# 3. Acceptable Financial Assurance Mechanisms

RAC Q&A and Discussion (10 minutes)

# HB4100 (2026) Rulemaking Scope

Required Rule Elements:

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# 4. DEQ Verification Process

- **Authority from HB4100:**

Section 4 (2) (h) (A): A process for verifying a bulk oils or liquid fuels terminal's evidence of financial assurance;

# 4. DEQ Verification Process

- Background research
  - WA ECY provides precedents and mentorship
  - DEQ has a contract with ECY and will receive supplemental trainings

- Critical review considerations are:
  - Completeness and accuracy of all application forms
  - Acceptability of insurance policies (i.e., no disqualifying exemptions)
  - Validating financial tests for self-insurance and parent company guarantees (performed quarterly)

# 4. DEQ Verification Process

- Proposed Rule Language :

  “DEQ will review applications for completeness and will request additional information with a response deadline or will issue an Oregon COFR upon verification that the application meets the requirements of these rules.”

# 4. DEQ Verification Process

RAC Q&A and Discussion (10 minutes)



State of Oregon
DEQ Department of Environmental Quality

# HB4100 (2026) Rulemaking Scope

Required Rule Elements:

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5. **Enforcement of COFR Requirements**
6. Process for Reviewing and Adjusting Financial Assurance Requirements Every Three Years Beginning Jan. 1, 2030

# 5. Enforcement Mechanisms

- **Authority from HB4100:**
  Section 4 (2) (h) Establish policies and procedures for enforcing this section, including: (B) Standards for restricting or suspending the operations of a bulk oils or liquid fuels terminals that do not satisfy the requirements of this section”

# 5. Enforcement Mechanisms

- Background research:
  - ➢ Other states have COFR in their spills program, invalid COFRs lead to invalid response plans lead to cease and desist orders
    - ○ DEQ COFR program is not tied to a facility response plan
  - ➢ DEQ Office of Compliance and Enforcement reviewed similar authorities across the agency for precedents

# 5. Enforcement Mechanisms

**Proposed Enforcement Approach**:

- DEQ becomes aware of an invalid COFR or other noncompliance
- DEQ issues notice of noncompliance with remedial actions and deadline
- DEQ begins seeking civil penalties for noncompliance
- If the noncompliance persists for 30 days, DEQ may issue an order to suspend facility operations with an effective date

# 5. Enforcement Mechanisms

- Proposed Rule Language:
  - Division 340-012-0064, Classification of Violations defines civil penalties for different violations
  - 340-300-0011 (13): “If a facility fails to obtain a valid COFR within 30 days of DEQ notifying it of noncompliance and continues to operate without an approved COFR, DEQ may issue an order requiring the facility to suspend its operations. DEQ will notify the facility in writing of the grounds for the order and the effective date of the order. The facility may request a hearing before the effective date of the order. The facility must make the request for a hearing in writing and state the grounds for the request. The hearing will be conducted according to the procedures in ORS Chapter 183 and OAR Chapter 340, Division 011.”

# 5. Enforcement Mechanisms

RAC Q&A and Discussion (10 minutes)

# HB4100 (2026) Rulemaking Scope

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# 6. Reviewing Max & Min FA Requirements

**Authority from HB4100:**

Section 4: “(5) The commission shall, at regular times established by the commission by rule, update the minimum amounts of financial assurance established under subsection (2)(a) of this section to reflect:

(a) Inflation and other economic conditions;

(b) Industry changes and improvements;

(c) Emerging risks; and

(d) Lessons learned from spill or release response efforts

Section 4: (4)(a) Rules adopted under this section may not require a bulk oils or liquid fuels terminal to obtain an amount of financial assurance that is greater than $300 million. (b) Once every three years, the department shall evaluate and may adjust the maximum amount of financial assurance listed in paragraph (a) of this subsection. If the department adjusts the maximum amount of financial assurance, the department shall adjust the amount of financial assurance required for each bulk oils or liquid fuels terminal accordingly.

Section 7. Notwithstanding section 4 (4) of this 2026 Act, the Department of Environ mental Quality may not evaluate or adjust the maximum amount of financial assurance listed in section 4 (4) of this 2026 Act before Jan. 1, 2030.

# 6. Reviewing Max & Min FA Requirements

**Proposed Rule Language OAR 340-300-0013:**

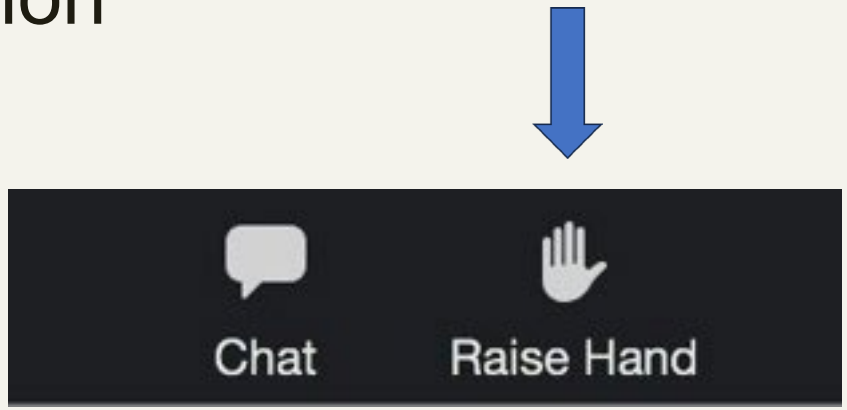
- (1) Every three years beginning Jan. 1, 2030, DEQ will evaluate and may adjust the maximum financial assurance requirement. If DEQ adjusts the maximum financial assurance requirement, DEQ will adjust the amount of financial assurance required for each facility accordingly.
- (2) Every three years beginning Jan. 1, 2030, DEQ shall update the minimum financial assurance requirements to reflect: (a) Inflation and other economic conditions; (b) Industry changes and improvements; (c) Emerging Risks; (d) Lessons learned from spill or release response efforts.
- (3) Adjusted maximum and minimum financial assurance requirements will take effect at the time of the facility's next COFR renewal.

# 6. Reviewing Max & Min FA Requirements

RAC Q&A and Discussion (10 minutes)

# Verbal comments

- ~2 minute for each commenter
- Raise your hand to comment
- We'll call folks in the order their hand was raised and shows up on our list
- Press *9 if you're listening by phone
- State your first and last name, and affiliation if you're speaking on behalf of an organization






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# 1 minute left

# 15 seconds left

# Please wrap up

# Next Steps

- Please continue providing comments to DEQ
  - Comments on RAC #2 Meeting Materials requested by Oct. 16, 2026
- Public Comment Period October 30 – Nov. 30, 2026
- November 12, 2026, EQC informational item and public comment
- Public hearing Nov. 18, 2026
- Proposed rules to Environmental Quality Commission Jan. 12, 2027
- Facilities apply March 31, 2027

# Closing remarks

**Thank you!**

- Rulemaking Advisory Committee
- Technical Review Panelists
- State of Washington Department of Ecology
- Portland State University Center for Public Service
- Partners and Community

**Looking forward: Mitigation and Resilience**

# Title VI and alternate formats

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