

# Chapter 468B

(Partial)

2005 EDITION

## Water Quality

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**WATER POLLUTION CONTROL  
(Generally)**

**468B.005 Definitions for water pollution control laws.** As used in the laws relating to water pollution, unless the context requires otherwise:

(1) "Disposal system" means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems.

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(3) "Nonpoint source" means any source of pollution other than a point source.

(4) "Point source" means any discernible, confined and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include agricultural storm water discharges and return flows from irrigated agriculture.

(5) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(6) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(7) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or

conducting wastes to an ultimate point for treatment or disposal.

(8) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

(9) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

(10) "Water" or "the waters of the state" include 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. [Formerly 449.075 and then 468.700; 2003 c.469 §1]

**468B.010 Authority of commission over water pollution; construction.** (1) Except as otherwise provided in ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930, insofar as the authority of the Environmental Quality Commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468B.015. [Formerly 449.070 and then 468.705]

**468B.015 Policy.** Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without

first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives. [Formerly 449.077 and then 468.710]

**468B.020 Prevention of pollution.** (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468B.015.

(2) In order to carry out the public policy set forth in ORS 468B.015, the Department of Environmental Quality shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048. [Formerly 449.095 and then 468.715]

**468B.025 Prohibited activities.** (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079 and then 468.720; 1997 c.286 §5]

**468B.030 Effluent limitations; rules.** In relation to the waters of the state, the Environmental Quality Commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance

of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081 and then 468.725]

**468B.032 Alternative enforcement proceeding; request; public notice; fees.** (1) In addition to enforcement proceedings pursuant to ORS 468.090 for a violation of a provision, rule, permit or order under this chapter, the Department of Environmental Quality shall implement the procedures established under this section upon the request of the person to whom the notice of the civil penalty or other formal enforcement action is addressed if the person files the request within 20 days from the date of service of the notice. The written request shall serve in lieu of any other prescribed response.

(2) The department shall provide public notice of, and reasonable opportunity to comment in writing on, the civil penalty or other formal enforcement action.

(3) After the comment period closes, the department may determine either to modify the civil penalty or other formal enforcement action based on any comment received under subsection (2) of this section or to reissue the original civil penalty or other formal enforcement action. The department shall serve the person to whom the notice of civil penalty or other formal enforcement action was addressed with a copy of any comments filed and a new notice that includes the determination of the department. The person shall then have 20 days from the date of service of the new notice in which to make written application for a hearing.

(4) The department shall give notice to any person who commented under subsection (2) of this section of the new notice that includes the determination of the department under subsection (3) of this section. The department also shall give notice to any person who commented under subsection (2) of this section if a hearing is requested under subsection (3) of this section.

(5) If a person does not apply for a hearing under subsection (3) of this section, a person who commented under subsection (2) of this section may request that the department hold a hearing if the person who commented makes the request in writing within 30 days of the mailing of the notice given under subsection (4) of this section. However, the department shall hold a hearing

only if the request includes material evidence that the department did not consider when the department issued the civil penalty or other formal enforcement action. If the department denies the request for a hearing, the department shall provide a copy of the denial and the reasons for the denial to the requester and shall provide public notice of the denial that includes the reasons for the denial.

(6) In a hearing under subsection (3) or (5) of this section, the person subject to the civil penalty or other formal enforcement action and any person who commented under subsection (2) of this section shall have a reasonable opportunity to be heard and to present evidence. The department shall conduct the hearing in accordance with ORS 183.745.

(7) If a person does not request a hearing pursuant to subsection (3) or (5) of this section, the department shall issue the civil penalty or other formal enforcement action.

(8) For purposes of judicial review under ORS 183.480 to 183.500, a person who comments under subsection (2) of this section and includes a request in writing to be a party to the civil penalty or other formal enforcement action shall have standing to be a party to an agency proceeding subject to judicial review of a final order. For the procedures established by this section only, the civil penalty or other formal enforcement action shall be deemed to be commenced for purposes of the state's implementation of section 309(g)(6) of the Federal Water Pollution Control Act, as amended, when the department first notifies a person in writing that a violation has been documented and that the violation is being referred for formal enforcement action or will result in a civil penalty or other formal enforcement action.

(9) The Environmental Quality Commission shall ensure that state enforcement procedures for implementing section 309(g)(6) of the Federal Water Pollution Control Act, as amended, are comparable to and not greater than the federal enforcement procedures for enforcing that federal Act.

(10) Any person who submits a request under subsection (1) of this section shall submit with the request a basic process fee in the amount of \$2,000 and a refundable hearings fee in the amount of \$3,650 to pay the expenses of the department incurred under this section. If a hearing is not conducted under this section, the department shall return the refundable hearing fee to the person who submitted the request under subsection (1) of this section. All fees received under this subsection shall be deposited into the State Treasury to the credit of an account of the department. Such moneys

are continuously appropriated to the department for payment of the costs of the department in carrying out the provisions of this section. [1999 c.975 §2]

**468B.035 Implementation of Federal Water Pollution Control Act; rules.** (1) The Environmental Quality Commission may perform or cause to be performed any acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and federal regulations or guidelines issued pursuant to the Act. The commission may adopt, modify or repeal rules, pursuant to ORS chapter 183, for the administration and implementation of this subsection.

(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS chapter 183 for the administration and implementation of this subsection. [Formerly 468.730; 2001 c.248 §3]

**Note:** Sections 5 and 6, chapter 523, Oregon Laws 2005, provide:

**Sec. 5.** On or before January 31 of each year, the Department of Environmental Quality shall report to the Environmental Quality Commission and to an appropriate committee of the Legislative Assembly on the department's efforts in administering a watershed approach toward water pollution control permitting. The report shall include, but need not be limited to, information that indicates:

- (1) Whether the department is issuing permits on a watershed basis.
- (2) The level of permit backlog, if any.
- (3) The time frame that the department took to apply general permit coverage to applicants.
- (4) The timeliness of the review and tracking of discharge monitoring reports.
- (5) The timeliness of the issuance of permit non-compliance notifications. [2005 c.523 §5]

**Sec. 6.** Section 5 of this 2005 Act is repealed on January 2, 2010. [2005 c.523 §6]

### (Surface Water)

**468B.040 Certification of hydroelectric power project; comments of affected state agencies.** (1) The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a

decision as to whether to approve or deny such certification, the director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification only after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine whether the approval or denial is consistent with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards established in ORS 543A.025 (2) to (4), rules adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. If the proposed certification is for a project that is subject to federal relicensing but that operates under a water right that does not ex-

pire, and the Hydroelectric Application Review Team develops a unified state position under ORS 543A.400 (4)(b), the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. [Formerly 468.732; 1993 c.544 §1; 1997 c.449 §40]

**468B.045 Certification of change to hydroelectric power project; notification of federal agency.** Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 of the Federal Water Pollution Control Act P.L. 92-500, as amended:

(1) The director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for a change to a federally licensed project, as defined in ORS 543A.005, that has been reauthorized under ORS 543A.060 to 543A.300, or for a change to a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine consistency with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards established in ORS 543A.025 (2) to (4), rules

adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) On the basis of the evaluation and determination under subsections (1) and (2) of this section, the director shall notify the appropriate federal agency that:

(a) The proposed change to the project is approved; or

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification. [Formerly 468.734; 1993 c.544 §2; 1997 c.449 §40a]

**468B.046 Reauthorization of hydroelectric project not to limit authority of department related to certification of project for water quality purposes.** (1) Except as provided in ORS 543A.110, nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A shall be construed to limit or affect any authority of the Director of the Department of Environmental Quality under existing law to establish conditions for any certification granted under ORS 468B.040, 468B.045 and 33 U.S.C. 1341, including but not limited to conditions for monitoring, review and enforcement of compliance with the certification and water quality standards during construction, operation and decommissioning of a project.

(2) Nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A, including but not limited to review of applications by the Hydroelectric Application Review Team, shall affect the authority of the Director of the Department of Environmental Quality to act on a request for water quality certification as necessary to avoid certification being deemed waived under the one-year period prescribed by 33 U.S.C. 1341(a)(1). [1997 c.449 §40d]

**468B.047 Fees for state certification under section 401 of Federal Water Pollution Control Act; rules; disposition of fees.** (1) The Environmental Quality Commission may establish, by rule, a schedule of fees for state certification under section 401 of the Federal Water Pollution Control Act, PL 92-500 as amended. The commission shall not assess fees under subsections (1) and (2) of this section for activities:

(a) That have an operating permit for surface mining under ORS chapter 517;

(b) Relating to commercial sand and gravel removal operations;

(c) Involving removal of less than 500 cubic yards of material; or

(d) Involving a fill of less than two acres.

(2) As used in subsections (1) and (2) of this section, "fill" and "removal" have the meanings given in ORS 196.800.

(3) Any fees received under subsections (1) and (2) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality and are continuously appropriated to meet the administrative expenses of the state certification program under subsections (1) and (2) of this section. [Formerly 468.068]

**468B.048 Rules for standards of quality and purity; factors to be considered; meeting standards.** (1) The Environmental Quality Commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468B.015. In establishing such standards, the commission shall consider the following factors:

(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;

(c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters;

(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) The minimum dissolved oxygen content of the waters that shall be maintained;

(f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;

(g) The extent to which any substance must be excluded from the waters for the protection and preservation of public health; and

(h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner.

(2) Standards established under this section shall be consistent with policies and

programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536.220 to 536.540.

(3) Subject to the approval of the Department of Environmental Quality, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards. [Formerly 449.086 and then 468.735]

**468B.050 Water quality permit; issuance by rule or order; rules.** (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, a person may not:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) The Department of Environmental Quality or the State Department of Agriculture may issue a permit under this section as an individual, general or watershed permit. A permit may be issued to a class of persons using the procedures for issuance of an order or for the adoption of a rule. Notwithstanding the definition of "order" or "rule" provided in ORS 183.310, in issuing a general or watershed permit by order pursuant to this section, the State Department of Agriculture or Department of Environmental Quality:

(a) Is not required to direct the order to a named person or named persons; and

(b) May include in the order agency directives, standards, regulations and state-

ments of general applicability that implement, interpret or prescribe law or policy.

(3) The State Department of Agriculture or the Department of Environmental Quality may define "confined animal feeding operation" by rule for purposes of implementing this section. [Formerly 449.083 and then 468.740; 1997 c.286 §6; 2001 c.248 §4; 2005 c.523 §4]

**468B.051 Fees for water quality permit.** Not more than once each calendar year, the Environmental Quality Commission may increase the fees established under ORS 468.065 for permits issued under ORS 468B.050. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the permit program or three percent, whichever is lower. [2005 c.523 §2]

**Note:** 468B.051 was added to and made a part of ORS chapter 468B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**468B.052 Fees for water quality permit to operate suction dredge.** Notwithstanding the authority of the Environmental Quality Commission provided in ORS 468.065 to establish a schedule of fees for permits issued under ORS 468B.050 and in lieu of any fee established under the schedule of fees, a person who operates a suction dredge having a suction hose with an inside diameter of eight inches or less shall, upon application for or renewal of a permit issued under 468B.050, pay to the Department of Environmental Quality:

(1) For an individual permit:

(a) A one-time application fee of \$300; and

(b) An annual renewal fee of \$25.

(2) For a general permit, either:

(a) A \$25 annual fee for each year the person registers under the general permit; or

(b) A \$100 fee for a five-year registration under the general permit. [2005 c.729 §3]

**468B.053 Alternatives to obtaining water quality permit; rules.** In lieu of a permit required under ORS 468B.025 or 468B.050, the Environmental Quality Commission by rule may:

(1) Exempt de minimis discharges from permit requirements.

(2) Establish performance-based criteria for exempt operations and discharges.

(3) Require an operator or person discharging waste exempt under subsection (1) of this section to:

(a) Comply with the criteria established under subsection (2) of this section; and

(b) Monitor performance and certify and report the results to the Department of Environmental Quality. [1997 c.286 §2]

**Note:** 468B.053 was added to and made a part of ORS chapter 468B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**468B.055 Plans and specifications for disposal, treatment and sewerage systems.** (1) The Department of Environmental Quality may require that plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems be submitted to the department for its approval or rejection.

(2) If the department requires that plans and specifications be submitted under subsection (1) of this section, construction, installation or modification may not be commenced until the plans and specifications submitted to the department are approved. If the disposal or discharge is for a chemical process mine, as defined in ORS 517.953, departmental review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.989. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department. [Formerly 468.742; 2005 c.523 §7]

**468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable.** (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the Environmental Quality Commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration.

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration, within a period of 60 days from the date of mailing by registered or certified mail of written demand therefor.

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the State of Oregon upon relation of the Department of Environmental Quality or State De-

partment of Fish and Wildlife or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered. [Formerly 449.103 and then 468.745]

**468B.062 Use attainability analysis of certain waters of state.** Consistent with the Federal Water Pollution Control Act, P.L. 92-500, as amended, the Department of Environmental Quality may determine whether selected segments of the waters of the state are capable of attaining designated uses. In conducting its use attainability analysis, the department shall include appropriate documentation and defensible data for determining whether subcategories or seasonal uses should be designated. The Director of the Department of Environmental Quality shall appoint an advisory group to nominate those waters of the state for which use attainability analysis is most warranted. [1997 c.770 §2]

**468B.064 Follow-up assessments of waters of state that exceed numeric temperature criteria.** (1) The Department of Environmental Quality may perform follow-up assessments of waters of the state that are included in the 1994-1996 list pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, for exceeding numeric temperature water quality criteria. The department shall give priority in performing follow-up assessments to those waters of the state listed primarily on the basis of temperature data from 1991 to 1994 and for which follow-up data are now available. The department may use follow-up data collected by a watershed council, university, soil and water conservation district or any other individual or group using data collection protocols approved by the department.

(2) Subject to available resources, the department shall act promptly to update the list developed pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, when appropriate based on the follow-up assessments under subsection (1) of this section. [1997 c.770 §3]

**468B.066 Report on development of use attainability analysis.** The Department of Environmental Quality shall report regularly to the joint legislative committee created pursuant to ORS 171.551 on the development of the use attainability analysis under ORS 468B.062 and 468B.064. [1997 c.770 §4; 1999 c.270 §4]

**468B.070 Prohibited activities for certain municipalities.** (1) No municipality shall:

(a) Dump polluting substances into any public or private body of water that empties directly or indirectly into any navigable body of water in or adjacent to a municipality, except by permit issued by the Department of Environmental Quality.

(b) Dump polluting substances into any open dump or sanitary landfill where by drainage or seepage any navigable body of water in or adjacent to a municipality may be affected adversely unless:

(A) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(B) The Environmental Quality Commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(C) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery.

(2) As used in this section:

(a) "Municipality" means any city having a population of 250,000 or more or any home-rule county having a population of 350,000 or more.

(b) "Polluting substances" means dead animal carcasses, excrement, and putrid, nauseous, noisome, decaying, deleterious or offensive substances including refuse of any kind or description.

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468.195 to 468.245 unless:

(a) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(b) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery. [Formerly 449.113 and then 468.755]

**468B.075 Definitions for ORS 468B.080.**  
As used in ORS 468B.080:

(1) "Buildings or structures" includes but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such.

(2) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food.

(3) "Sewage" means human excreta as well as kitchen, bath and laundry wastes. [Formerly 449.140 and then 468.765; 2005 c.22 §341]

**468B.080 Prohibitions relating to garbage or sewage dumping into waters of state.** (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the Department of Environmental Quality. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150 and then 468.770]

**468B.083 When motor vehicle parts may be placed in waters of state; rules.**

(1) The Environmental Quality Commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

(a) The possibility of pollution;

(b) The aesthetics of such use;

(c) The utility of such use in reclamation projects;

(d) The degradation of the waters, stream beds or banks; and

(e) The nature of the waters such as tidewater, slough or running stream.

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies,

shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section. [Formerly 468B.065]

**468B.085 Depositing vehicles or manufactured structures into water prohibited.** Subject to ORS 468B.083, a person, including a person in the possession or control of land, may not deposit, discard or place the chassis, body or shell of a motor vehicle as defined by ORS 801.360, a vehicle as defined by ORS 801.590, a manufactured structure as defined in ORS 446.561 or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where the materials are likely to escape or be carried into the waters of the state by any means. [Formerly 449.109 and then 468.775; 2003 c.655 §77]

**468B.090 Permit authorized for discharge of shrimp and crab processing by-products; conditions.** (1) The Department of Environmental Quality may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468B.050 or 468B.053 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

(a) No toxic substances shall be present in the by-products discharged.

(b) The oxygen content of the estuarine waters shall not be reduced.

(c) The discharge shall not create a public nuisance.

(d) Other beneficial uses of the estuary shall not be adversely affected.

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [Formerly 468.777; 1997 c.286 §7]

**468B.093 General permit for discharge of geothermal spring water to surface water.** (1) The Director of the Department of Environmental Quality shall issue a general permit for the discharge of geothermal spring water to surface water. The general permit shall cover any activity with the following characteristics:

(a) The chemical nature of the water is not changed;

(b) The temperature of the water remains unchanged or is reduced; and

(c) The surface water into which the geothermal spring water is discharged is the naturally occurring junction of the geothermal spring water and surface water.

(2) Nothing in subsection (1) of this section shall be construed to preclude the director from issuing a general permit for any

other activity involving the discharge of geothermal spring water.

(3) As used in this section, "geothermal spring water" means water that emerges naturally from the earth as a result of gravity flow or artesian pressure and that is capable of being used for heating as a result of the naturally occurring thermal characteristics of the water. [1997 c.547 §2]

**468B.095 Use of sludge on agricultural, horticultural or silvicultural land; rules.**

The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

(1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing;

(2) Requirements for sludge treatment and processing before sludge is applied;

(3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied;

(4) Records that a sludge applicator must keep;

(5) Restrictions on public access to and cropping of land on which sludge has been applied; and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [Formerly 468.778]

**Note:** 468B.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### (Forest Operations)

**468B.100 Definitions for ORS 468B.105 and 468B.110.** As used in ORS 468B.105 and 468B.110, "forestlands" and "operation" have the meaning for those terms provided in ORS 527.620. [1991 c.919 §22a]

**468B.105 Review of water quality standard affecting forest operations.**

Upon request of the State Board of Forestry, the Environmental Quality Commission shall review any water quality standard that affects forest operations on forestlands. The commission's review may be limited to or coordinated with the triennial or any other regularly scheduled review of the state's water quality standards, consistent with ORS 468B.048 and 468B.110 and applicable federal law. [1991 c.919 §23]

**468B.110 Authority to establish and enforce water quality standards by rule or order; limitation on authority; in-**

**stream water quality standards.** (1) Except as provided in subsection (2) of this section, as necessary to achieve and maintain standards of water quality or purity adopted under ORS 468B.048, the Environmental Quality Commission or Department of Environmental Quality may, by rule or order, impose and enforce limitations or other controls which may include total maximum daily loads, wasteload allocations for point sources and load allocations for nonpoint sources, as provided in the Federal Water Pollution Control Act (33 U.S.C. § 1321) and federal regulations and guidelines issued pursuant thereto.

(2) Unless required to do so by the provisions of the Federal Water Pollution Control Act, neither the Environmental Quality Commission nor the Department of Environmental Quality shall promulgate or enforce any effluent limitation upon nonpoint source discharges of pollutants resulting from forest operations on forestlands in this state. Implementation of any limitations or controls applying to nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770. However, nothing in this section is intended to affect the authority of the commission or the department provided by law to impose and enforce limitations or other controls on water pollution from sources other than forest operations.

(3) When the Environmental Quality Commission establishes instream water quality standards to protect designated beneficial uses in the waters of the state, it shall consider, where applicable, available scientific information including, but not limited to, stream flow, geomorphology and other factors representing the variability and complexity of hydrologic systems and intrinsic water quality conditions.

(4) When the Environmental Quality Commission establishes instream water quality standards, it will also issue guidelines describing how the department and the commission will determine whether water quality standards in waters affected by nonpoint source activities are being met. In developing these guidelines, the commission shall include, where applicable, those physical characteristics such as stream flow, geomorphology, seasons, frequency, duration, magnitude and other factors which represent the variability and complexity of forested and other appropriate hydrologic systems. [1991 c.919 §24; 2003 c.14 §302]

### (Phosphate Cleansing Agents)

**468B.120 Definitions for ORS 468B.120 to 468B.135.** As used in ORS 468B.120 to 468B.135:

(1) "Cleaning agent" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household commercial premises. "Cleaning agent" does not include foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleaning agents exempted under ORS 468B.135.

(2) "Commercial premises" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, including but not limited to laundries, hotels, motels and food or restaurant establishments.

(3) "Person" means any individual, firm, partnership or corporation.

(4) "Phosphorus" means elemental phosphorus. [1991 c.764 §3]

**468B.125 Policy to reduce phosphorous pollution.** (1) The Legislative Assembly of the State of Oregon finds that:

(a) Phosphorous loading of the waters of the state is a serious pollution problem affecting water quality in some river basins in the state.

(b) Phosphate detergents contribute significant phosphorous loading to the treated waste water released to the surface waters of the state.

(c) When phosphorous loading becomes a serious pollution problem, federal and state water quality standards may require advanced waste water treatment facilities at public expense, in addition to primary and secondary treatment facilities.

(2) Therefore, the Legislative Assembly declares that it is a policy of this state to reduce phosphorous pollution at its source to maintain existing water quality and to enhance cost-effective waste water treatment where phosphorous pollution becomes a serious pollution problem. [1991 c.764 §2]

**468B.130 Prohibition on sale or distribution of cleaning agents containing phosphorus; rules.** (1) Except as provided in subsection (2) of this section, no person may sell, offer to sell or distribute for sale within Oregon, any cleaning agent containing more than 0.5 percent phosphorus by weight.

(2) A cleaning agent used in automatic dishwashers may be sold, offered for sale or distributed in Oregon if the cleaning agent

contains 8.7 percent or less phosphorus by weight.

(3) All cleaning agents that are sold in this state shall be labeled with the percent of phosphorus by weight, including equivalency in grams of phosphorus per recommended use level.

(4) The Environmental Quality Commission shall adopt rules governing the labeling requirements imposed by subsection (3) of this section. [1991 c.764 §4; 2003 c.14 §303]

**468B.135 Exemptions.** ORS 468B.130 (1) and (2) do not apply to any cleaning agent:

(1) Used in dairy, beverage or food processing equipment;

(2) Used as an industrial sanitizer, brightener, acid cleaner or metal conditioner, including phosphoric acid products or trisodium phosphate;

(3) Used in hospitals, veterinary hospitals or clinics or health care facilities;

(4) Used in agricultural production and the production of electronic components;

(5) Used in a commercial laundry for laundry services provided to a hospital, veterinary hospital or clinic or health care facility;

(6) Used by industry for metal cleaning or conditioning;

(7) Manufactured, stored or distributed for use or sale outside Oregon;

(8) Used in any laboratory, including a biological laboratory, research facility, chemical, electronic or engineering laboratory;

(9) Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, stoves, tubs or other food preparation surfaces and plumbing fixtures;

(10) Used as a water softening chemical, antiscaling chemical or corrosion inhibitor intended for use in closed systems, including but not limited to boilers, air conditioners, cooling towers or hot water systems; and

(11) For which the Department of Environmental Quality determines that the prohibition under ORS 468B.130 (1) and (2) will either:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent. [1991 c.764 §5]

#### (Ground Water)

**468B.150 Definitions for ORS 468B.150 to 468B.190.** As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the Department of Human Services under ORS 448.268.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

(4) "Fertilizer" has the meaning given that term in ORS 633.311.

(5) "Pesticide" has the meaning given that term in ORS 634.006. [Formerly 468.691; 1995 c.690 §7; 2001 c.914 §24]

**Note:** 468B.150 to 468B.188 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468B.155 State goal to prevent ground water contamination.** The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses. [Formerly 468.692]

**Note:** See note under 468B.150.

**468B.160 Ground water management and use policy.** In order to achieve the goal set forth in ORS 468B.155, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in ORS 468B.155.

(3) Statewide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows. [Formerly 468.693]

**Note:** See note under 468B.150.

**468B.162 Coordination of ground water activities.** (1) The Department of Environmental Quality shall coordinate the following:

(a) Interagency management of ground water as necessary to achieve the goal set forth in ORS 468B.155.

(b) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under ORS 468B.180. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

(2) The Department of Environmental Quality shall provide staff for project oversight and for those activities authorized under ORS 468B.165 to 468B.188, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

(3) In addition to its duties under subsection (1) of this section, the department shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources and grants awarded under ORS 468B.169. [Formerly 536.108; 1999 c.1074 §4]

**Note:** See note under 468B.150.

**468B.164 Encouragement of federal actions.** In carrying out its coordination activities under ORS 468B.162, the Department of Environmental Quality shall encourage federal agency actions that are consistent with the water policies of the State of Oregon. [Formerly 536.112]

**Note:** See note under 468B.150.

**468B.165 Ground water contaminants; maximum levels; rules.** (1) Within 90 days after receiving the recommendations of the technical advisory committee under ORS 468B.166, the Environmental Quality Commission shall begin rulemaking to first adopt

final rules establishing maximum measurable levels for contaminants in ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335.

(2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.311 to 633.479 and 633.994 or the use of pesticides under ORS chapter 634. [Formerly 468.694; 2001 c.914 §25]

**Note:** See note under 468B.150.

**468B.166 Technical advisory committee; duties; membership.** (1) The Department of Environmental Quality shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the Environmental Quality Commission shall first consider the federal standard, and if the Environmental Quality Commission does not adopt the federal standard, the method shall require the Environmental Quality Commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

- (a) A toxicologist;
- (b) A health professional;
- (c) A water purveyor;
- (d) A biologist; and
- (e) Technically capable members of the public representing the following groups:
  - (A) Citizens;
  - (B) Local governments;
  - (C) Environmental organizations;
  - (D) Industrial organizations; and
  - (E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum

measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only. [Formerly 536.137]

**Note:** See note under 468B.150.

**468B.167 Ground water resource protection strategy; advisory committees.** (1) The Department of Environmental Quality shall implement the following ground water resource protection strategy:

(a) Coordinate projects and activities of other agencies designed to reduce impacts on ground water from:

- (A) Commercial and industrial activities;
- (B) Commercial and residential use of fertilizers and pesticides;
- (C) Residential and sewage treatment activities; and
- (D) Any other activity that may result in contaminants entering the ground water.

(b) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground water resource.

(c) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(d) Award grants for the implementation of projects approved under the criteria established under ORS 468B.171.

(e) Develop and maintain a centralized repository for information about ground water, including but not limited to:

- (A) Hydrogeologic characterizations;
- (B) Results of local and statewide monitoring or testing of ground water;
- (C) Data obtained from ground water quality protection research or development projects; and
- (D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(f) Identify research or information about ground water that needs to be conducted or made available.

(g) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to the protection of the ground water resource incorporate the state's intent to the fullest extent practicable.

(h) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the department in the performance of its functions, the department may establish such advisory and technical committees as the department considers necessary. These committees may be continuing or temporary. The department shall determine the representation, membership, terms and organization of the committees and shall appoint their members. [Formerly 536.125]

**Note:** See note under 468B.150.

**468B.169 Requests for funding, advice or assistance for ground water projects.**

(1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 468B.179 or 468B.182 may submit to the Department of Environmental Quality a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the department. The requester may submit the request either to the department or to a ground water management committee organized under ORS 468B.179 OR 468B.182.

(3) The department shall approve only those requests that meet the criteria established by the department under ORS 468B.171. [Formerly 536.129]

**Note:** See note under 468B.150.

**468B.171 Awarding grants; purpose; rules.** (1) Of the moneys available to the Department of Environmental Quality to award as grants under ORS 468B.169, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The department may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in ORS 468B.155; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the department shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the department.

(5) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt by rule guidelines and criteria for awarding grants under this section. [Formerly 536.133]

**Note:** See note under 468B.150.

**468B.175 Declaration of area of ground water concern.** (1) If, as a result of its statewide monitoring and assessment activities under ORS 468B.190, the Department of Environmental Quality confirms the presence in ground water of contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

(2) Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration. [Formerly 468.696]

**Note:** See note under 468B.150.

**468B.177 Actions of department after declaration of area of ground water concern.** After a declaration of an area of ground water concern, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall:

(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;

(2) Focus research and public education activities on the area of ground water concern;

(3) Provide for necessary monitoring in the area of ground water concern;

(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and

(5) If not developed by the ground water management committee, develop a draft and final local action plan. [Formerly 536.141]

**Note:** See note under 468B.150.

**468B.179 Ground water management committee; appointment; duties.** (1) Upon the request of a local government, or as required under ORS 468B.177 or 468B.182, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;

(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;

(c) Evaluation and recommendations of alternative practices;

(d) Recommendations regarding demonstration projects needed in the area;

(e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and

(f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the department to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under ORS 468B.169 for limited funding for staff or for expenses of the ground water management committee. [Formerly 536.145]

**Note:** See note under 468B.150.

**468B.180 Declaration of ground water management area; standards.** (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its statewide monitoring and assessment activities under ORS 468B.190, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

(3) Before declaring a ground water management area under subsections (1) and (2) of this section, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration. [Formerly 468.698]

**Note:** See note under 468B.150.

**468B.182 Alternative appointment of ground water management committee.** After the declaration of a ground water management area, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under ORS 468B.177. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under ORS 468B.177 shall continue to address the ground water issues raised as a result of the declaration of a ground water management area. [Formerly 536.153]

**Note:** See note under 468B.150.

**468B.183 Duties of ground water management committee after declaration of ground water management area.** After the declaration of a ground water management area, a ground water management committee created under ORS 468B.179 shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under ORS 468B.184 to 468B.187 regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to ORS 468B.179 to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration. [Formerly 536.149]

**Note:** See note under 468B.150.

**468B.184 Designation of lead agency for development of action plan; contents of action plan.** (1) After a ground water management area is declared, the Department of Environmental Quality shall designate a lead agency responsible for developing an action plan and request other agencies to assume appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the affected ground water aquifer. The action plan shall include, but need not be limited to:

(a) Identification of practices that may be contributing to the contamination of ground water in the area;

(b) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water management area;

(c) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(d) A proposed time schedule for:

(A) Implementing the lead agency's recommendations;

(B) Achieving estimated reductions in concentrations of the ground water contaminants; and

(C) Public review of the action plan;

(e) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(f) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(g) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(h) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(i) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(j) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(2) If a ground water management area is located on agricultural lands or in an area designated as an exclusive farm use zone under ORS 215.203, the State Department of Agriculture shall be responsible for developing the portion of the action plan that addresses farming practices as defined in ORS 30.930. [Formerly 536.157]

**Note:** See note under 468B.150.

**468B.186 Comment on plan; final plan.**

(1) After completion and distribution of the draft action plan under ORS 468B.184, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan. [Formerly 536.161]

**Note:** See note under 468B.150.

**468B.187 Acceptance or rejection of action plan; rules.** (1) The Department of Environmental Quality shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the department and other agencies participating in development of the plan. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the department within 30 days.

(2) Within 120 days after the department accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings. [Formerly 536.165]

**Note:** See note under 468B.150.

**468B.188 Repeal of declaration of ground water management area.** (1) If, after implementation of the action plan developed by affected agencies under ORS

468B.184 to 468B.187, the ground water improves so that the levels of contaminants no longer exceed the levels established under ORS 468B.180, the Department of Environmental Quality shall determine whether to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Department of Environmental Quality must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground water in the area and that the Department of Environmental Quality finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Department of Environmental Quality terminates any mandatory controls imposed under the action plan created under ORS 468B.184 to 468B.187, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the department finds can be implemented at the local level without the necessity of state enforcement authority. [Formerly 536.169]

**Note:** See note under 468B.150.

**468B.190 Ground water monitoring and assessment.** (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing statewide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to identify:

- (a) Areas of the state that are especially vulnerable to ground water contamination;
- (b) Long-term trends in ground water quality;
- (c) Ambient quality of the ground water resource of Oregon; and
- (d) Any emerging ground water quality problems.

(2) The Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the statewide monitoring and assessment program conducted under this section to the Department of Environmental Quality for inclusion in the central repository of information about Oregon's ground water resource established pursuant to ORS 468B.167. [Formerly 468B.185]

**ANIMAL WASTE CONTROL**

**468B.200 Legislative findings.** The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state. [Formerly 468.686]

**468B.203 Applicability of 468B.200 to 468B.230.** The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 is consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended. [2001 c.248 §6]

**468B.205 Definition of confined animal feeding operation; rules.** (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.

(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules. [Formerly 468.687; 2001 c.248 §7]

**468B.210 Maximum number of animals per facility; determination.** (1) All permits for confined animal feeding operations issued under ORS 468B.050 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.943. [Formerly 468.688; 1993 c.422 §33]

**468B.215 Fees; permit conditions; review.** (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.255.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C.

1342, a fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation of four months or less duration or that does not have waste water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state.

(3) The Department of Environmental Quality or the State Department of Agriculture may impose on the permit required for a confined animal feeding operation only those conditions necessary to ensure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(4) A permit for a confined animal feeding operation may be revoked or modified by the Department of Environmental Quality or the State Department of Agriculture or may be terminated upon request by the permit holder. An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture. [Formerly 468.689; 2001 c.248 §8]

**468B.217 Memorandum of understanding with Department of Agriculture.** (1) The Environmental Quality Commission and the State Department of Agriculture shall enter into a memorandum of understanding providing for the State Department of Agriculture to operate a program for the prevention and control of water pollution from a confined animal feeding operation.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the control and prevention of water pollution from a confined animal feeding operation.

(b) May enter onto and inspect, at any reasonable time, a confined animal feeding operation or appurtenant land for the purpose of investigating a source of water pollution or to ascertain compliance with a statute, rule, standard or permit condition relating to the control or prevention of water pollution from the operation. The State Department of Agriculture shall have access to a pertinent record of a confined animal feeding operation including but not limited to a blueprint, design drawing and specification, maintenance record or log, or an operating

rule, procedure or plan. [1993 c.567 §2; 2003 c.14 §304]

**468B.220 Civil penalty for violation of permit requirement.** Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of \$500 in addition to other penalties that the Director of the Department of Environmental Quality may assess. [Formerly 468.690]

**468B.225 Prerequisite for investigation; written complaint; security deposit.** (1) Prior to conducting an investigation of an animal feeding operation under ORS 468B.217 on the basis of a complaint, the State Department of Agriculture shall:

(a)(A) Require the person making the complaint to specify the complaint in writing; or

(B) Make a detailed written record of the complaint; and

(b) Determine which provision of ORS chapter 468 or 468B, which rule adopted under ORS chapter 468 or 468B or which permit issued under ORS chapter 468 or 468B the operator of the animal feeding operation may have violated.

(2) If, upon investigation under ORS 468B.217 on the basis of a complaint received under subsection (1) of this section, the State Department of Agriculture determines that an animal feeding operation has not violated a provision of ORS chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or the conditions of a permit issued under ORS chapter 468 or 468B, and the department has reason to believe that the complaint was groundless and made for the purpose of harassing the operator, the department may refuse to consider future complaints made by the person. [1996 c.5 §6 (enacted in lieu of 468B.224); 2001 c.248 §9]

**468B.230 Department of Agriculture civil penalty authority.** (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS chapter 468 or 468B or any rule adopted under, or a permit issued under ORS chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the State Department of Agriculture finds that a different period of time is more

appropriate to describe a specific violation event.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, the State Department of Agriculture may not impose a civil penalty under subsection (1) of this section for a first violation by an owner or operator of a confined animal feeding operation:

(a) That is more than \$2,500; and

(b) Unless the State Department of Agriculture notifies the violator that the violation must be eliminated no later than 30 business days from the date the violator receives the notice. If the violation requires more than 30 days to correct, the State Department of Agriculture may allow such time as is necessary to correct the violation. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty.

(3) The State Department of Agriculture may not impose a civil penalty under subsection (1) of this section that exceeds \$10,000 for a subsequent violation.

(4) In imposing a civil penalty under this section, the State Department of Agriculture may consider:

(a) The past history of the owner or operator in taking all feasible steps or procedures necessary and appropriate to correct a violation.

(b) A past violation of a rule or statute relating to a water quality plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the cause of the violation was as a result of an unavoidable accident, negligence or an intentional act.

(f) Whether the owner or operator cooperated in an effort to correct the violation.

(g) The extent to which the violation threatens the public health and safety.

(5) No notice of violation or period for compliance shall be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation.

(6) A civil penalty collected by the State Department of Agriculture under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on animal

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waste management and to carry out animal waste management demonstration or research projects.

(7) Any civil penalty imposed under this section shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission, the Department

of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation. [1993 c.567 §3; 2001 c.248 §10]

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