ODEQ ENFORCEABLE POLICIES

ENFORCEABLE POLICY SOURCE	ENFORCEABLE POLICY	GENERALLY IMPLEMENTED BY
ORS Chapter 454 *(Sewage and Disposal Systems)* Link to ORS Chapter 454 *Statute Edition 2013 approved in Program*	.605 Definitions for ORS 454.605 to 454.755 .607 Policy .610 Regulation of gray water discharge; permit; rules .655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more .657 Variance from subsurface sewage disposal system rules or standards; conditions; hearing	-Onsite Wastewater Treatment System Permit
ORS Chapter 465 *(Hazardous Waste and Materials)* Link to ORS Chapter 465 *Statute Edition 2001 approved in Program*	EPs within ORS 465.003 to 465.037 EPs within ORS 465.101 to 465.131 EPs within ORS 465.200 to 465.455 EPs within ORS 465.475 to 465.482 EPs within ORS 465.500 to 465.555 EPs within ORS 465.900 to 465.992	
ORS Chapter 468 *(Env Quality Generally)* Link to ORS Chapter 468 *Statute Edition 2013 approved in Program*	.936 Unlawful air pollution in the second degree .939 Unlawful air pollution in the first degree .941 Determination of number of punishable offenses under ORS 468.936 and 468.939 .943 Unlawful water pollution in the second degree .946 Unlawful water pollution in the first degree .949 Determination of number of punishable offenses under ORS 468.943 and 468.946 .951 Environmental endangerment	
ORS Chapter 468A *(Air Quality)* Link to ORS Chapter 468A *Statute Edition 2013 approved in Program*	468A.005 Definitions for air pollution laws 468A.010 Policy 468A.020 Application of air pollution laws 468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules 468A.040 Permits; rules 468A.045 Activities prohibited without permit; limit on activities with permit	-Air Contaminant Discharge Permit -Title V Operating Permit

ODEQ ENFORCEABLE POLICIES

	468A.050 Classification of air contamination sources; registration and reporting of sources; rules; fees	
	468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal	
	468A.060 Duty to comply with laws, rules and standards	
	468A.070 Measurement and testing of contamination sources; rules	
	468A.075 Variances from air contamination rules and standards; delegation to local governments; notices	
Motor Vehicle Pollution Control	EPs within 468A.350 to 468A.455	
Solid Fuel Burning Devices	EPs within 468A.460 to 468A.515	
Chlorofluorocarbons and Halon Control	EPs within 468A.625 to 468A.645	
Aerosol Spray Control	EPs within 468A.650 to 468A.660	
Asbestos Abatement Projects	EPs within 468A.700 to 468A.760	
Indoor Air Pollution Control	EPs within 468A.775 to 468A.785	
Diesel Engines	EPs within 468A.793 to 468A.803	
ORS Chapter 468B	468B.005 Definitions for water pollution control laws	-Section 401 Water Quality Certification (Dredge and Fill, and Hydroelectric) -National Pollutant Discharge Elimination System (NPDES) Permits (General, Individual, and Stormwater) G110 -Water Pollution Control Facilities (WPCF) Permits (General and Individual)
(Water Quality)	468B.015 Policy	
Link to ORS Chapter 468B	468B.020 Prevention of pollution	
Statute Edition 2013 approved in Program	468B.025 Prohibited activities	
Water Pollution Control-Surface Water	468B.040 Certification of hydroelectric power project; comments of affected state agencies	
	468B.045 Certification of change to hydroelectric power project; notification of federal agency	
	468B.046 Reauthorization of hydroelectric project not to limit authority of department related to certification of project for water quality purposes	
	468B.048 Rules for standards of quality and purity; factors to be considered; meeting standards	
	468B.050 Water quality permit; issuance by rule or order; rules	
	468B.052 Fees for water quality permit to operate suction dredge	
	468B.055 Plans and specifications for disposal, treatment and sewerage systems	
	468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable	
	468B.070 Prohibited activities for certain municipalities	
	468B.075 Definitions for 468B.080	

ODEQ ENFORCEABLE POLICIES

	468B.080 Prohibitions relating to garbage or sewage dumping into waters of state
	468B.083 When motor vehicle parts may be placed in waters of state; rules
	468B.085 Depositing vehicles or manufactured structures into water prohibited
	468B.090 Permit authorized for discharge of shrimp and crab processing byproducts; conditions
	468B.093 General permit for discharge of geothermal spring water to surface water
	468B.095 Use of sludge on agricultural, horticultural or silvicultural land; rules
Water Pollution Control-Phosphate Cleansing Agents	468B.120 Definitions for 468B.120 to 468B.135
	468B.125 Policy to reduce phosphorous pollution
	468B.130 Prohibition on sale or distribution of cleaning agents containing phosphorous; rules
	468B.135 Exemptions
Water Pollution Control-Persistent Pollutants	EPs within 468B.138 to 468B.144
Water Pollution Control-Ground Water	468B.150 Definitions for 468B.150 to 468B.190
	468B.155 State goal to prevent ground water contamination
	468B.160 Ground water management and use policy
Animal Waste Control	EPs within 468B.200 to 468B.230
Oil or Haz Material Spillage-Generally	468B.300 Definitions for 468B.300 to 468B.500
	468B.305 Entry of oil into waters of state prohibited; exceptions
	468B.310 Liability for violation of 468B.305; exceptions
	468B.315 Duty to collect and remove oil; dispersal of oil
	468B.320 Action by state; liability for state expense; order; appeal
	468B.337 Liquefied natural gas
Oil or Haz Material Spillage-Contingency Planning	468B.345 Oil spill contingency plan required to operate facility or covered vessel in state or state waters; exceptions
	468B.350 Standards for contingency plans; oil spill response zones; rules
	468B.355 Contingency plans; participation in maritime association; lien; liability of maritime association; exemption from liability
	468B.360 Review of contingency plan
	468B.365 Plan approval; change affecting plan; certificate of approval
	468B.370 Determination of adequacy of plan; practice drills; rules
	468B.375 Inspection of facilities and vessels; coordination with State of Washington
	468B.380 Tank vessel inspection program; rules
	468B.385 Modification of approval of contingency plan; revocation of approval; violation
	468B.390 Compliance with federal Oil Pollution Act of 1990; proof of financial responsibility

ODEQ ENFORCEABLE POLICIES

Oil or Haz Material Spillage-Willful Discharge	468B.450 Willful or negligent discharge of oil; civil penalty; authority of director to mitigate	
	468B.460 Rules	
Oil or Haz Material Spillage-Shipping	468B.475 Legislative finding; need for evidence of financial assurance for ships transporting oil	
	468B.485 Methods of establishing financial assurance	

454.605 Definitions for ORS 454.605 to 454.755. As used in ORS 454.605 to 454.755, unless the context requires otherwise:

(1) "Absorption facility" means a system of open-jointed or perforated piping, alternate distribution units or other seepage systems for receiving the flow from septic tanks or other treatment units and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(2) "Alternative sewage disposal system" means a system incorporating all of the following:

(a) Septic tank or other sewage treatment or storage unit; and

(b) Disposal facility or method consisting of other than an absorption facility but not including discharge to public waters of the State of Oregon.

(3) "Construction" includes installation, alteration or repair.

(4) "Contract agent" means a local unit of government that has entered into an agreement with the Department of Environmental Quality pursuant to ORS 454.725.

(5) "Effluent sewer" means that part of the system of drainage piping that conveys treated sewage from a septic tank or other treatment unit into an absorption facility.

(6) "Governmental unit" means the state or any county, municipality or other political subdivision, or any agency thereof.

(7)(a) "Gray water" means shower and bath waste water, bathroom sink waste water, kitchen sink waste water and laundry waste water.

(b) "Gray water" does not mean toilet or garbage wastes or waste water contaminated by soiled diapers.

(8) "Local unit of government" means any county or municipality.

(9) "Nonwater-carried sewage disposal facility" includes, but is not limited to, pit privies, vault privies and chemical toilets.

ODEQ ENFORCEABLE POLICIES

(10) “Public health hazard” means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(11) “Septic tank” means a watertight receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge to another treatment unit or into the soil outside of the tank through an absorption facility.

(12) “Sewage” means domestic watercarried human and animal wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration, surface waters or industrial waste as may be present.

(13) “Sewage disposal service” means:

(a) The construction of subsurface sewage disposal systems, alternative sewage disposal systems or any part thereof.

(b) The pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(c) The disposal of materials derived from the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(d) Grading, excavating and earthmoving work connected with the operations described in paragraph (a) of this subsection.
(14) “Subsurface sewage disposal system” means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility.

(15) “Zone of aeration” means the unsaturated zone that occurs below the ground surface and the point at which the upper limit of the water table exists.

454.607 It is the public policy of the State of Oregon to encourage:

(1) Improvements to, maintenance of and innovative technology for subsurface and alternative sewage disposal systems and nonwater-carried sewage disposal facilities consistent with the protection of the public health and safety and the quality of the waters of this state; and

(2) The appropriate reuse of gray water for beneficial uses.

454.610 Regulation of gray water discharge; permit; rules.
(1) A person may not construct, install or operate a gray water reuse and disposal system without first obtaining a permit from the Department of Environmental Quality. A gray water reuse and disposal system for which a permit has been issued under this section is exempt from the requirements of ORS 454.655. The Environmental Quality Commission shall adopt rules for permits issued under this section. In adopting the rules, the commissionshall:

ODEQ ENFORCEABLE POLICIES

(a) Consider the recommendations of an advisory committee appointed by the department pursuant to ORS 183.333;
(b) Minimize the burden of permit requirements on property owners; and
(c) Prescribe requirements that allow for separate systems for the treatment, disposal or reuse of gray water. These requirements must ensure the protection of:
(A) Public health, safety and welfare;
(B) Public water supplies; and
(C) Waters of the state, as that term is defined in ORS 468B.005.
(2) Subject to ORS 454.645, the rules adopted by the commission under this section may not prohibit the discharge of gray water if:
(a) Soil and site conditions for such gray water conform to the rules of the department regarding standard subsurface sewage disposal systems or alternative sewage disposal systems, except that such systems may use two-thirds the normal size surface area for a drainfield and shall be preceded by a treatment facility such as, but not limited to, a septic tank; or
(b) Such gray water is discharged into an existing subsurface sewage disposal system or alternative sewage disposal system that is functioning satisfactorily, or a public sewage system that serves the dwelling from which such gray water is derived.

454.655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more.

(1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs limited to replacing minor broken components of the system without first obtaining a permit.
(2) A permit required by subsection (1) of this section shall be issued only in the name of an owner or contract purchaser in possession of the land. However, a permit issued to an owner or contract purchaser carries the condition that the owner or purchaser or regular employees or a person licensed under ORS 454.695 perform all labor in connection with the construction of the subsurface or alternative sewage disposal system.

(3) The applications for a permit required by this section must be accompanied by the permit fees prescribed in ORS 454.745.

(4) After receipt of an application and all requisite fees, subject to ORS 454.685, the department shall issue a permit if it finds that the proposed construction will be in accordance with the rules of the Environmental Quality Commission. A permit may not be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge. The prohibition on the issuance of a permit in this subsection does not apply to a public agency as defined in ORS 454.430.

(5)(a) Unless weather conditions or distance and unavailability of transportation prevent the issuance of a permit within 20 days of the receipt of the application and fees by the department, the department shall issue or deny the permit within 20 days after such date. If such conditions prevent issuance or denial within 20 days, the department shall notify the applicant in writing of the reason for the delay and shall issue or deny the permit within 60 days after such notification.

(b) If within 20 days of the date of the application the department fails to issue or deny the permit or to give notice of conditions preventing such issuance or denial, the permit shall be considered to have been issued.

(c) If within 60 days of the date of the notification referred to in paragraph (a) of this subsection, the department fails to issue or deny the permit, the permit shall be considered to have been issued.

ODEQ ENFORCEABLE POLICIES

(6) Upon request of any person, the department may issue a report, described in ORS 454.755 (1), of evaluation of site suitability for installation of a subsurface or alternative sewage disposal system or nonwater-carried sewage disposal facility. The application for such report must be accompanied by the fees prescribed in ORS 454.755.

(7) With respect to an application for a permit for the construction and installation of a septic tank and necessary effluent sewer and absorption facility for a single family residence or for a farm related activity on a parcel of 10 acres or more described in the application by the owner or contract purchaser of the parcel, the Department of Environmental Quality:

(a) Within the period allowed by subsection (5)(a) of this section after receipt by it of the application, shall issue the permit or deliver to the applicant a notice of intent to deny the issuance of the permit;

(b) In any notice of intent to deny an application, shall specify the reasons for the intended denial based upon the rules of the Environmental Quality Commission for the construction and installation of a septic tank and necessary effluent sewer and absorption facility or based upon the factors included in ORS 454.685 (2)(a) to (j);

(c) Upon request of the applicant, shall conduct a hearing in the manner provided in ORS 454.635 (4) and (5) on the reasons specified in a notice of intent to deny the application with the burden of proof upon the department to justify the reasons specified; and

(d) In the case of issuance of a permit, may include as a condition of the permit that no other permit for a subsurface sewage disposal system or alternative sewage disposal system shall be issued for use on the described parcel while the approved septic tank, effluent sewer and absorption facility are in use on the described parcel.

454.657 Variance from subsurface sewage disposal system rules or standards; conditions; hearing.

(1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468B.005. The commission shall grant such specific variance only where after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

(2) The commission shall adopt rules for granting variances from rules or standards pertaining to subsurface sewage disposal systems in cases of extreme and unusual hardship. The rules shall provide for consideration of the following factors in reviewing applications for variances due to hardship:

(a) Advanced age or bad health of applicants;

(b) Relative insignificance of the environmental impact of granting a variance; and

(c) The need of applicants to care for relatives who are aged or incapacitated or have disabilities.

(3) The department shall strive to aid and accommodate the needs of applicants for variances due to hardship.

(4) Variances granted due to hardship may contain conditions such as permits for the life of the applicant, limiting the number of permanent residents using a subsurface sewage disposal system and use of experimental for specified periods of time.

465.003 – 465.037 465.003 Definitions for ORS 465.003 to 465.034

465.006 Policy (1) In the interest of protecting the public health, safety and the environment, the Legislative Assembly declares that it is the policy of the State of Oregon to encourage reduction in the use of toxic substances and to reduce the generation of hazardous waste whenever technically and economically practicable, without shifting risks from one part of a process, environmental media or product to another. Priority shall be given to methods that reduce the amount of toxics used and, where that is not technically and economically practicable, methods that reduce the generation of hazardous waste.

(2) The Legislative Assembly finds that the best means to achieve the policy set forth in subsection (1) of this section is by:

(a) Providing toxics users and generators with technical assistance;

(b) Requiring toxics users to engage in comprehensive planning and develop measurable performance goals; and

(c) Monitoring the use of toxic substances and the generation of hazardous waste. [1989 c.833 §3]

465.009 Exemption of substance or waste by rule The Environmental Quality Commission by rule may add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034. [1989 c.833 §4]

465.012 Technical assistance to users and generators; priority; restrictions on enforcement resulting from technical assistance (1) The Department of Environmental Quality shall provide technical assistance to toxics users and conditionally exempt generators. In identifying the users and generators to which the department shall give priority in providing technical assistance, the department shall consider at least the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

(c) The toxics related exposures and risks posed to public health, safety and the environment.

(2) In providing technical assistance, the department shall give priority to assisting toxics users and conditionally exempt generators in developing and implementing an adequate toxics use reduction and hazardous waste reduction plan as established under ORS 465.015. The assistance may include but need not be limited to:

(a) Information clearinghouse activities; (b) Telephone hotline assistance;

(c) Toxics use reduction and hazardous waste reduction training workshops;

(d) Establishing a technical publications library;

(e) The development of a system to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures;

(f) The development of a recognition program to publicly acknowledge toxics users and conditionally exempt generators who develop and implement successful toxics use reduction and hazardous waste reduction plans; and

(g) Direct on-site assistance to toxics users and conditionally exempt generators in developing the plans.

(3) The department shall:

(a) Coordinate its technical assistance efforts with industry trade associations and local colleges and universities as appropriate.

(b) Follow up with toxics users who receive technical assistance to determine whether the user or generator implemented a toxics use reduction and hazardous waste reduction plan.

(c) Coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles.

(4) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The Environmental Quality Commission may develop rules to carry out the intent of this subsection. [1989 c.833 §5; 2001 c.924 §9]

465.015 Guidelines for reduction plans; toxics use reduction and waste reduction opportunities; annual progress reports; modification of plans; exemptions
(1) Not later than September 1, 1990, the Environmental Quality Commission shall establish guidelines for toxics use reduction and hazardous waste reduction plans. At a minimum, the guidelines shall include:

(a) A written policy articulating upper management and corporate support for the toxics use reduction and hazardous waste reduction plan and a commitment to implement plan goals.

(b) Plan scope and objectives, including the evaluation of technologies, procedures and personnel training programs to insure unnecessary toxic substances are not used and unnecessary waste is not generated. Specific reduction goals are not required but may be used as a tool for implementing a reduction plan.

(c) Internal analysis of toxic substance usage and hazardous waste streams, with periodic toxics use reduction and hazardous waste reduction assessments, to review individual processes or facilities and other activities where toxic substances are used and waste may be generated and identify opportunities to reduce or eliminate toxic substance usage and waste generation. Such assessments shall evaluate data on the types, amount and hazardous constituents of toxic substances used and waste generated, where and why those toxics were used and waste was generated within the production process or other operations, and potential toxics use reduction and hazardous waste reduction and recycling techniques applicable to those toxic substances and wastes.

(d) Employee awareness and training programs, to involve employees in toxics use reduction and hazardous waste reduction planning and implementation to the maximum extent feasible.

(e) Institutionalization of the plan to insure an ongoing effort as demonstrated by incorporation of the plan into management practices and procedures.

(f) Implementation of technically and economically practicable toxics use reduction and hazardous waste reduction options, including a plan for implementation. This shall include a description of options considered and an explanation of why options considered were not implemented. The plan shall distinguish between toxics use reduction options and waste reduction options, and the analysis of options considered shall demonstrate that toxics use reduction options were given priority wherever technically and economically practicable.

(2) A toxics user may identify and incorporate into the user's plan and decision making process, the costs associated with the use of toxic chemicals and the generation of hazardous waste including management costs, liability, compliance and oversight costs.

(3) As part of each plan developed under ORS 465.018, a toxics user shall evaluate toxics use reduction and hazardous waste reduction opportunities in the following categories:

(a) Any toxic substance used in quantities in excess of 10,000 pounds a year;

(b) Any toxic substance used in quantities in excess of 1,000 pounds a year that constitutes 10 percent or more of the total toxic substances used; and

(c) For fully regulated generators, any waste representing 10 percent or more by weight of the cumulative waste stream generated per year.

(4) Each toxics user shall explain the rationale for each toxics use reduction and waste reduction opportunity. This rationale shall address any impediments to toxics use reduction and hazardous waste reduction, including but not limited to the following:

(a) The availability of technically practicable toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future.

(b) The economic practicability of available toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future. Examples of situations where toxics use reduction or hazardous waste reduction may not be economically practicable include but are not limited to:

(A) For valid reasons of prioritization, a particular company has chosen to first address other more serious toxics use reduction or hazardous waste reduction concerns;

(B) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts on product quality; or

(C) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use reduction or hazardous waste reduction.

(5) All large users and large quantity generators shall complete annually a toxics use reduction and hazardous waste reduction progress report. (6) An annual progress report shall:

(a) Analyze progress made, if any, in toxics use reduction and hazardous waste reduction; and

(b) Set forth amendments to the toxics use reduction and hazardous waste reduction plan and explain the need for the amendments.

(7) The commission by rule may provide for modifications for small-quantity generators related to the kind of information to be included in the plan.

(8) The commission shall specify by rule the criteria a toxics user or a large user shall meet to achieve and maintain an exemption from the requirements of subsections (1) to (6) of this section. The rule shall allow an exemption under the following circumstances:

(a) A toxics user has instituted an environmental management system that at a minimum complies with the intent of ORS 465.006; or (b) A large user has: (A) Implemented all technically and economically feasible toxics use reduction and waste reduction opportunities;

(B) Determined that further reductions could only be accomplished by producing less of the user's product; and

(C) Developed and implemented an education program approved by the Department of Environmental Quality, designed to increase consumer demand for less toxic or nontoxic products.

(9) To maintain an exemption under subsection (8) of this section, the toxics user or large user shall comply with the requirements of subsection (10) of this section.

(10) The commission by rule shall determine the reporting requirements for users exempted under subsection (8) of this section. At a minimum, these requirements shall provide for obtaining toxics use data equivalent to that reported under ORS 465.024. [1989 c.833 §7; 1997 c.384 §1]

465.018 Time limitation for completion of plan; plan not public record; inspection of plan . (1) All large users and fully regulated generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1991, and all small-quantity generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1992. Upon completion of a plan, the user shall notify the Department of Environmental Quality in writing on a form supplied by the department.

(2) A facility required to complete a toxics use reduction and hazardous waste reduction plan under subsection (1) of this section may include as a preface to its initial plan:

(a) An explanation and documentation regarding toxics use reduction and hazardous waste reduction efforts completed or in progress before the first reporting date; and

(b) An explanation and documentation regarding impediments to toxics use reduction and hazardous waste reduction specific to the individual facility.

(3) The department shall consider information provided under subsection (2) of this section in any review of a facility plan under ORS 465.021.

(4) Except as provided in ORS 465.021, a toxics use reduction and hazardous waste reduction plan developed under this section shall be retained at the facility and is not a public record under ORS 192.410.

(5) For the purposes of this section and ORS 465.012 and 465.021, a toxics user shall permit the Director of the Department of Environmental Quality or any designated employee of the director to inspect the toxics use reduction and hazardous waste reduction plan.

(6) A facility shall determine whether it is required to complete a plan under subsection (1) of this section based on whether its toxics use or waste generation results in the facility meeting the definition of toxics user as defined in ORS 465.003 for the calendar year ending December 31 of the year immediately preceding the September 1 reporting deadline. [1989 c.833 §8]

465.021 Review of plans; determination of inadequacies; revised plan or progress report; log of inadequacy findings; public inspection of log 465.024 Report of quantities of toxics generated; narrative summary; inspection of progress report (1) The Department of Environmental Quality may review a plan or an annual progress report to determine whether the plan or progress report is adequate according to the guidelines established under ORS 465.015. If a toxics user

fails to complete an adequate plan or annual progress report as required under ORS 465.015 and 465.018, the department may notify the user of the inadequacy, identifying the specific deficiencies. The department also may specify a reasonable time frame, of not less than 90 days, within which the user shall submit a modified plan or progress report addressing the specified deficiencies. The department also may make technical assistance available to aid the user in modifying its plan or progress report.

(2) If the department determines that a modified plan or progress report submitted pursuant to subsection (1) of this section is inadequate, the department may, within its discretion, either require further modification or issue an administrative order pursuant to subsection (3) of this section.

(3) If after having received a list of specified deficiencies from the department, a toxics user fails to develop an adequate plan or progress report within a time frame specified pursuant to subsection (1) or (2) of this section, the department may order such toxics user to submit an adequate plan or progress report within a reasonable time frame of not less than 90 days. If the toxics user fails to develop an adequate plan or progress report within the time frame specified, the department shall conduct a public hearing on the plan or progress report. Except as provided under ORS 465.031, in any hearing under this section the relevant plan or progress report shall be considered a public record as defined in ORS 192.410.

(4) In reviewing the adequacy of any plan or progress report, the department shall base its determination solely on whether the plan or progress report is complete and prepared in accordance with ORS 465.015.

(5) The department shall maintain a log of each plan or progress report it reviews, a list of all plans or progress reports that have been found inadequate under subsection (3) of this section and descriptions of corrective actions taken. This information shall be available to the public at the department's office. [1989 c.833 §9]

465.027 Contract for assistance with higher education institution Subject to available funding, the Department of Environmental Quality shall contract with an established institution of higher education to assist the department in carrying out the provisions of ORS 465.003 to 465.034. The assistance shall emphasize strategies to encourage toxics use reduction and hazardous waste reduction and shall provide assistance to facilities under ORS 465.003 to 465.034. The assistance may include but need not be limited to:

(1) Engineering internships;

(2) Engineering curriculum development;

(3) Applied toxics use reduction and hazardous waste reduction research; and

(4) Engineering assistance to users and generators. [1989 c.833 §12]

465.031 Classification of plan or progress report as confidential; trade secrets; restricted use of confidential information (1) Upon a showing satisfactory to the Director of the Department of Environmental Quality by any person that a plan or annual progress report developed under ORS 465.015 or 465.018, or any portion thereof, if made public, would divulge methods, processes or other information entitled to protection as trade secrets, as defined under ORS 192.501, of such person, the director shall classify as confidential such plan or annual progress report, or portion thereof.

(2) To the extent that any plan or annual progress report under subsection (1) of this section, or any portion thereof, would otherwise qualify as a trade secret under ORS 192.501, no action taken by the director or any authorized employee of the department in inspecting or reviewing such information shall affect its status as a trade secret.

ODEQ ENFORCEABLE POLICIES

(3) Any information classified by the director as confidential under subsection (1) of this section shall not be made a part of any public record, used in any public hearing or disclosed to any party outside of the department unless a circuit court determines that evidence is necessary to the determination of an issue or issues being decided at the public hearing. [1989 c.833
§14]

465.034 Application of ORS 465.003 to 465.031
Notwithstanding any other provision of ORS 465.003 to 465.031, nothing in chapter 833, Oregon Laws 1989, shall be considered to apply to any hazardous wastes that become subject to regulation solely as a result of remedial activities taken in response to environmental contamination. [1989 c.833 §16]

465.037 Short title ORS 465.003 to 465.034 shall be known as the Toxics Use Reduction and Hazardous Waste Reduction Act. [1989 c.833 §1]

465.101 Definitions for ORS 465.101 to 465.131 As used in ORS 465.101 to 465.131:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(2) "Cargo tank" means an assembly used for transporting, hauling or delivering petroleum products and consisting of a tank having one or more compartments mounted on a wagon, truck, trailer, truck-trailer, railcar or wheels. "Cargo tank" does not include any assembly used for transporting, hauling or delivering petroleum products that holds less than 100 gallons in individual, separable containers.

(3) "Department" means the Department of Revenue.

(4) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the federal government or any agency of the federal government.

(5) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and number 1 and number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel sold to vessels engaged in interstate or foreign commerce.

(6) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for use or sale in this state. [1989 c.833 §139]

465.104 Fees for petroleum product delivery or withdrawals; exceptions; registration of facility operators (1) Beginning September 1, 1989, the seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal a petroleum products withdrawal delivery fee in the maximum amount of $10.

(2) Beginning September 1, 1989, any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay a petroleum products import delivery fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit the first payment on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be on a quarterly basis.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue by August 1, 1989, or 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products, whichever comes first. [1989 c.833 §140]

465.106 Amount of fee to be set by State Fire Marshal The State Fire Marshal shall establish by rule the amount of the fee required under ORS 465.104 necessary to provide funding for the state's oil, hazardous material and hazardous substance emergency response program, as described in ORS 465.127. [1993 c.707 §3]

465.111 Department of Revenue to collect fee; exemption from fee of protected petroleum products (1) The Department of Revenue shall collect the fee imposed under ORS 465.104.

(2) Any petroleum product which the Constitution or laws of the United States prohibit the state from taxing is exempt from the fee imposed under ORS 465.104. [1989 c.833 §142]

465.114 Extension of time for paying fee; interest on extended payment The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under ORS 465.101 to 465.131. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid. [1989 c.833 §143]

465.117 Records of petroleum products transactions; inspection by Department of Revenue
(1) Each operator of a bulk facility and each person who imports petroleum products into this state shall keep at the person's registered place of business complete and accurate records of any petroleum products sold, purchased by or brought in or caused to be brought in to the place of business. (2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 465.101 to 465.131. [1989 c.833 §144]

465.121 Rules
The Department of Revenue is authorized to establish those rules and procedures for the implementation and enforcement of ORS 465.101 to 465.131 that are consistent with its provisions and are considered necessary and appropriate. [1989 c.833 §145]

ODEQ ENFORCEABLE POLICIES

465.124 Application of ORS chapters 305 and 314 to fee collection
The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpoenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the Department of Revenue under ORS 465.101 to 465.131, except where the context requires otherwise. [1989 c.833 §146; 1995 c.650 §61]

465.127 Disposition of fees; administrative expenses; other uses
All moneys received by the Department of Revenue under ORS 465.101 to 465.131 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of ORS 465.101 to 465.131 and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to carry out the state's oil, hazardous material and hazardous substance emergency response program as it relates to the maintenance, operation and use of the public highways, roads, streets and roadside rest areas in this state as allowed by section 3a, Article IX of the Oregon Constitution. [1989 c.833 §147; 1989 c.935 §4; 1993 c.707 §1

465.131 Fee imposed by ORS 465.104 in addition to fees established by local government The fee imposed by ORS 465.104 is in addition to all other state, county or municipal fees on a petroleum product. [1989 c.833 §148]

465.200 Definitions for ORS 465.200 to 465.510

As used in ORS 465.200 to 465.510 and 465.900:

(1) "Claim" means a demand in writing for a sum certain.

(2) "Commission" means the Environmental Quality Commission.

(3) "Department" means the Department of Environmental Quality.

(4) "Director" means the Director of the Department of Environmental Quality.

(5) "Dry Cleaner Environmental Response Account" means the account created under ORS 465.510.

(6) "Dry cleaning facility" means any active or inactive facility located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than a:

(a) Facility located on a United States military base;

(b) Uniform service or linen supply facility;

(c) Prison or other penal institution; or

(d) Facility engaged in dry cleaning operations only as a dry store and selling less than $50,000 per year of dry cleaning services.

ODEQ ENFORCEABLE POLICIES

(7) “Dry cleaning operator” means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of. If a dry cleaning facility is operated without a business license, both the dry cleaning owner and any person directing the operations shall be considered the dry cleaning operator and shall be jointly and severally liable for the fees and duties imposed on dry cleaning operators.

(8) “Dry cleaning owner” means a person who owns or owned the real property underlying a dry cleaning facility.

(9) “Dry cleaning solvent” means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade.

(10) “Dry store” means a facility that does not include machinery using dry cleaning solvents, including but not limited to a pickup store, dropoff store, call station, agency for dry cleaning, press shop, and pickup and delivery service not otherwise operated by a dry cleaning facility.

(11) “Environment” includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(12) “Facility” means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(13) “Fund” means the Hazardous Substance Remedial Action Fund established by ORS 465.381.

(14) “Guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 465.200 to 465.510 and 465.900.

(15) “Hazardous substance” means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 465.400.

(16) “Inactive dry cleaning facility” means property formerly used, but not currently used, for providing dry cleaning services.

(17) “Natural resources” includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(18) “Oil” includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

(19) “Owner or operator” means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. “Owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

ODEQ ENFORCEABLE POLICIES

(20) “Person” means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government including any agency thereof.

(21) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person’s employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

(22) “Remedial action” means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. “Remedial action” includes, but is not limited to:

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.
(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(23) “Remedial action costs” means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(24) “Removal” means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, that may otherwise result from a release or threat of release. “Removal” also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

ODEQ ENFORCEABLE POLICIES

(25) “Retail sale or transfer” means a transfer of title or possession, exchange or barter, conditional or otherwise, for a purpose other than resale in the ordinary course of business.

(26) “Transport” means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, the term “transport” shall include any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) “Underground storage tank” has the meaning given that term in ORS 466.706.

(28) “Waters of the state” has the meaning given that term in ORS 468B.005. [Formerly 466.540; 1995 c.427 §1]

465.205 Legislative findings . (1) The Legislative Assembly finds that: (a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and (b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action. (2) Therefore, the Legislative Assembly declares that: (a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities. (b) It is the purpose of ORS 465.200 to 465.510 and 465.900 to: (A) Protect the public health, safety, welfare and the environment; and (B) Provide sufficient and reliable funding for the Department of Environmental Quality to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment. [Formerly 466.547]

465.210 Authority of department for removal or remedial action . (1) In addition to any other authority granted by law, the Department of Environmental Quality may:

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 465.200 to 465.510 and 465.900; and

(b) Recover the state’s remedial action costs.

(2) The Environmental Quality Commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98- 616. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency. (3) Nothing in ORS 465.200 to 465.510 and 465.900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L.

465.215 List of facilities with confirmed release (1) For the purposes of providing public information, the Director of the Department of Environmental Quality shall develop and maintain a list of all facilities with a confirmed release as defined by the Environmental Quality Commission under ORS 465.405.

(2) The director shall make the list available for the public at the offices of the Department of Environmental Quality.

ODEQ ENFORCEABLE POLICIES

(3) The list shall include but need not be limited to the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred; (d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility; (f) Manner of release of the hazardous substance;

(g) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility; (h) Status of removal or remedial actions at the facility; and

(i) Other items the director determines necessary. (4) At least 60 days before a facility is added to the list the director shall notify by certified mail or personal service the owner and operator, if known, of all or any part of the facility that is to be included in the list. The notice shall inform the owner and operator that the owner and operator may comment on the decision of the director to add the facility to the list within 45 days of receiving the notice. The decision of the director to add a facility to the list is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550. [Formerly 466.557]

465.220 Comprehensive statewide identification program; notice (1) The Department of Environmental Quality shall develop and implement a comprehensive statewide program to identify any release or threat of release from a facility that may require remedial action.

(2) The department shall notify all daily and weekly newspapers of general circulation in the state and all broadcast media of the program developed under subsection (1) of this section. The notice shall include information about how the public may provide information on a release or threat of release from a facility.

(3) In developing the program under subsection (1) of this section, the department shall examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances.

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under ORS 465.235. [Formerly 466.560]

465.225 Inventory of facilities needing environmental controls; preliminary assessment; notice to operator; criteria for adding facilities to inventory. (1) For the purpose of providing public information, the Director of the Department of Environmental Quality shall develop and maintain an inventory of all facilities for which:

(a) A confirmed release is documented by the department; and

(b) The director determines that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment.

ODEQ ENFORCEABLE POLICIES

(2) The determination that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed under subsection (1) of this section shall be based upon a preliminary assessment approved or conducted by the department.

(3) Before the department conducts a preliminary assessment, the director shall notify the owner and operator, if known, that the department is proceeding with a preliminary assessment and that the owner or operator may submit information to the department that would assist the department in conducting a complete and accurate preliminary assessment.

(4) At least 60 days before the director adds a facility to the inventory, the director shall notify by certified mail or personal service the owner and operator, if known, of all or any part of the facility that is to be included in the inventory. The decision of the director to add a facility to the inventory is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550.

(5) The notice provided under subsection (4) of this section shall include the preliminary assessment and shall inform the owner or operator that the owner or operator may comment on the information contained in the preliminary assessment within 45 days after receiving the notice. For good cause shown, the department may grant an extension of time to comment. The extension shall not exceed 45 additional days.

(6) The director shall consider relevant and appropriate information submitted by the owner or operator in making the final decision about whether to add a facility to the inventory.

(7) The director shall review the information submitted and add the facility to inventory if the director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment. [1989 c.485 §3]

465.230 Removal of facilities from inventory; criteria (1) According to rules adopted by the Environmental Quality Commission, the Director of the Department of Environmental Quality shall remove a facility from the list or inventory, or both, if the director determines:

(a) Actions taken at the facility have attained a degree of cleanup and control of further release that assures protection of present and future public health, safety, welfare and the environment;

(b) No further action is needed to assure protection of present and future public health, safety, welfare and the environment; or

(c) The facility satisfies other appropriate criteria for assuring protection of present and future public health, safety, welfare and the environment.

(2) The director shall not remove a facility if continuing environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare and the environment, so long as such controls are related to removal or remedial action. [1989 c.485 §4]

465.235 Public inspection of inventory; information included in inventory; organization; report; action plan (1) According to rules adopted by the Environmental Quality Commission, the Director of the Department of Environmental Quality shall remove a facility from the list or inventory, or both, if the director determines:

(a) Actions taken at the facility have attained a degree of cleanup and control of further release that assures protection of present and future public health, safety, welfare and the environment;

(b) No further action is needed to assure protection of present and future public health, safety, welfare and the environment; or

(c) The facility satisfies other appropriate criteria for assuring protection of present and future public health, safety, welfare and the environment.

(2) The director shall not remove a facility if continuing environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare and the environment, so long as such controls are related to removal or remedial action. [1989 c.485 §4]

465.240 Inventory listing not prerequisite to other remedial action Nothing in ORS 465.225 to 465.240, 465.405 and 465.410 or placement of a facility on the list under ORS 465.215 shall be construed to be a prerequisite to or otherwise affect the authority of the Director of the Department of Environmental Quality to undertake, order or authorize a removal or remedial action under ORS 465.200 to 465.510 and 465.900. [1989 c.485 §6]

465.245 Preliminary assessment of potential facility When the Department of Environmental Quality receives information about a release or a threat of release from a potential facility, the department shall evaluate the information and document its conclusions and may approve or conduct a preliminary assessment. However, if the department determines there is a significant threat to present or future public health, safety, welfare or the environment, the department shall approve or conduct a preliminary assessment according to rules of the Environmental Quality Commission. The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department. [Formerly 466.563]

465.250 Accessibility of information about hazardous substances; entering property or facility; confidentiality . (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the Department of Environmental Quality or its authorized representative, disclose or make available for inspection and copying such information, documents or records.

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out removal or remedial action or any other action authorized by ORS 465.200 to 465.510 and 465.900.

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [Formerly 466.565]

465.255 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions . (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in subsection (1)(c) to (e) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator. (b) Any owner or operator if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. “Act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(c) Any fiduciary exempted from liability in accordance with rules adopted by the Environmental Quality Commission under ORS 465.440.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the Department of Environmental Quality and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 465.200 to 465.510 and 465.900.

(c) Nothing in ORS 465.200 to 465.510 and 465.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person. (d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

ODEQ ENFORCEABLE POLICIES

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 465.200 to 465.510 and 465.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 465.400 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 465.200 to 465.510 and 465.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, willful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [Formerly 466.567; 1991 c.680 §9; 1991 c.692 §1]

465.257 Right of contribution from other person liable for remedial action costs; allocation of orphan share (1) Any person who is liable or potentially liable under ORS 465.255 may seek contribution from any other person who is liable or potentially liable under ORS 465.255. When such a claim for contribution is at trial and the court determines that apportionment of recoverable costs among the liable parties is appropriate, the share of the remedial action costs that is to be borne by each party shall be determined by the court, using such equitable factors as the court deems appropriate, including but not limited to the following:

(a) The amount of hazardous substances contributed to the facility;

(b) The degree of toxicity or hazard posed by the hazardous substances to public health, safety and welfare, and to the environment;

(c) The degree of involvement in the release of the hazardous substance by the liable persons;

(d) The relative culpability or negligence of the liable persons;

(e) The degree of cooperation by the liable persons with the government or with persons who have a financial interest in the facility;

(f) The extent of the participation by the liable person in response actions at the facility;

(g) The length of time the facility was owned or operated by the liable person during the time the release occurred;

(h) Whether the acts or omissions that resulted in a release were in material compliance with applicable laws, standards, regulations, licenses or permits;

(i) The economic benefit derived from the facility or from the acts or omissions that resulted in a release;

(j) The circumstances and conditions involved in the facility's conveyance, including the price paid and any discounts granted; and

(k) The quality of evidence concerning liability and equitable shares.

(2) At the time of trial, if a person who is otherwise liable under ORS 465.255 is no longer subject to a judgment due to bankruptcy, dissolution or death (an orphan share), the court may, in its discretion, allocate that person's equitable share to the other liable persons in proportion to their equitable shares or on any other equitable basis taking into consideration any relationship between the orphan share's liable person and each other liable person. [1995 c.662 §5]

ODEQ ENFORCEABLE POLICIES

465.260 Removal or remedial action; reimbursement of costs; liability; damages (1) The Director of the Department of Environmental Quality may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 465.200 to 465.510 and 465.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 465.255 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 465.255 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 465.255 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 465.255 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [Formerly 466.570]

465.265 "Person" defined for ORS 465.265 to 465.310 As used in ORS 465.265 to 465.310, "person" includes but need not be limited to a person liable under ORS 465.255. Except as provided in ORS 465.275 (2), "person" does not include the state or any state agency or the federal government or any agency of the federal government. [1989 c.833 §103]

ODEQ ENFORCEABLE POLICIES

465.270 Legislative findings and intent . (1) The Legislative Assembly finds that:

(a) The costs of cleanup may result in economic hardship or bankruptcy for individuals and businesses that are otherwise financially viable;

(b) These persons may be willing to clean up their sites and pay the associated costs; however, financial assistance from private lenders may not be available to pay for the cleanup; and

(c) It is in the interest of the public health, safety, welfare and the environment to establish a program of financial assistance for cleanups, to help individuals and businesses maintain financial viability, increasing the share of cleanup costs paid by responsible persons and ultimately decreasing amounts paid from state funds.

(2) Therefore, the Legislative Assembly declares that it is the intent of ORS 465.265 to 465.310:

(a) To assure that moneys for financial assistance are available on a continuing basis consistent with the length and terms provided by the financial assistance agreements; and

(b) To provide authority to the Department of Environmental Quality to develop and implement innovative approaches to financial assistance for cleanups conducted under ORS 465.200 to 465.510 or, at the discretion of the department, under other applicable authorities. [1989 c.833 §102]

465.275 Remedial action and financial assistance program; contracts for implementation . (1) The Department of Environmental Quality may conduct: (a) A financial assistance program, including but not limited to loan guarantees, to assist persons in financing the cost of remedial action.

(b) Activities necessary to carry out the purpose of ORS 465.381, 468.220, 468.230 and 465.265 to 465.310, including but not limited to entering into contracts or agreements, making and guaranteeing loans, taking security and instituting appropriate actions to enforce agreements made under ORS 465.285.

(2) The department may enter into a contract or agreement for services to implement a financial assistance program with any person, including but not limited to a financial institution or a unit of local, state or federal government. The services may include but need not be limited to evaluating creditworthiness of applicants, preparing and marketing financial assistance packages and administering and servicing financial assistance agreements. [1989 c.833 §104]

465.280 Rules; insuring tax deductibility of interest on bonds . In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.381, 468.220, 468.230 and 465.265 to 465.310 and to insure that interest on bonds issued under ORS 468.195 to be used for removal or remedial action of hazardous substances is not includable in gross income under the United States Internal Revenue Code. [1989 c.833 §105]

465.285 Requirements for financial assistance; contents of agreements . (1) The Department of Environmental Quality may provide financial assistance only to persons who meet all of the following eligibility requirements:

(a) The department has determined that removal or remedial action proposed by the applicant is necessary to protect the public health, safety and welfare or the environment.

(b) The applicant demonstrates to the department's satisfaction that the applicant either is unable to obtain financing for the removal or remedial action from other sources or that financing for the removal or remedial action is not available to the applicant at reasonable rates and terms.

(c) The applicant demonstrates to the department's satisfaction that there is a reasonable likelihood the applicant has the ability to repay. (d) The applicant agrees to conduct the removal or remedial action according to an agreement with the department.

(e) Any other requirement the department considers necessary or appropriate.

(2) A financial assistance agreement shall include any provision the department considers necessary, but shall at least include the following provisions:

(a) Terms of the financial assistance; and

(b) A statement that moneys obligated by the department under the agreement are limited to moneys in the Hazardous Substance Remedial Action Fund expressly designated by the department for financial assistance purposes. [1989 c.833 §106]

465.290 Financial assistance agreement not General Fund obligation; cost estimates; security; recovery of costs; compromise of obligations (1) The obligation of the Department of Environmental Quality to provide financial assistance or to advance money under a financial assistance agreement made under ORS 465.285 shall not constitute an obligation against the General Fund or any other state fund except against the Hazardous Substance Remedial Action Fund to the extent moneys in the Hazardous Substance Remedial Action Fund are expressly designated by the department for such financial assistance purposes.

(2) The department may provide a remedial action cost estimate for use by the department, a lender or a guarantor in determining the amount of financial assistance, evaluating the creditworthiness of a borrower, providing loan guarantees or as the department considers appropriate.

(3) When financial assistance is provided to a local governmental unit, the agreement may be secured as the department requires for adequate security.

(4) The department may take any action under ORS 465.260, 465.330 or 465.335 or other applicable authority to recover costs incurred or moneys advanced under a financial assistance agreement. Costs incurred or money advanced under a financial assistance agreement entered into under ORS 465.285 shall be remedial action costs. At the department's discretion, the department may file a claim of lien for such remedial action costs in accordance with the procedures set forth in ORS 465.335 (1), (2)(a) to (c), (3) and (4).

(5) The department may settle, compromise or release all or part of any obligation arising under a financial assistance agreement so long as the department's action is consistent with the purposes of ORS 465.265 to 465.310. [1989 c.833 §107]

465.295 Decision regarding financial assistance not subject to judicial review Notwithstanding any provision of ORS 183.310 to 183.550, the decision of the Department of Environmental Quality to approve or deny financial assistance under ORS 465.265 to 465.310 or the department's determination of the amount or use of a remedial action cost estimate under ORS 465.290 shall not be subject to appeal to the Environmental Quality Commission or subject to judicial review. [1989 c.833 §108]

ODEQ ENFORCEABLE POLICIES

465.300 Records and financial assistance applications exempt from disclosure as public record Financial records and other information that are submitted to the Department of Environmental Quality as part of an application for financial assistance under ORS 465.265 to 465.310 shall be exempt from disclosure under ORS 192.410 to 192.505, unless the public interest requires disclosure in a particular instance. [1989 c.833 §109]

465.305 Application fees The Environmental Quality Commission may establish by rule reasonable fees for applicants for financial assistance sufficient to pay for the costs of the Department of Environmental Quality of carrying out the provisions of ORS 465.265 to 465.310. [1989 c.833 §110]

465.310 Accounting procedure for financial assistance moneys For the purposes of ORS 465.265 to 465.310, the Department of Environmental Quality may place moneys for the purpose of providing financial assistance in reserve status or subaccounts within the Hazardous Substance Remedial Action Fund. Moneys placed in reserve status or subaccounts under this section in connection with a financial assistance agreement shall not be subject to claims under ORS 465.260 or otherwise except as provided in the financial assistance agreement. [1989 c.833 §111]

465.315 Standards for degree of cleanup required; Hazard Index; risk protocol; hot spots of contamination; exemption (1)(a) Any removal or remedial action performed under the provisions of ORS 465.200 to 465.510 and 465.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assures protection of present and future public health, safety and welfare and of the environment.

(b) The Director of the Department of Environmental Quality shall select or approve remedial actions that are protective of human health and the environment. The protectiveness of a remedial action shall be determined based on application of both of the following:

(A) The acceptable risk level for exposures. For protection of humans, the acceptable risk level for exposure to individual carcinogens shall be a lifetime excess cancer risk of one per one million people exposed, and the acceptable risk level for exposure to noncarcinogens shall be the exposure that results in a Hazard Index number equal to or less than one. “Hazard Index number” means a number equal to the sum of the noncarcinogenic risks (hazard quotient) attributable to systemic toxicants with similar toxic endpoints. For protection of ecological receptors, if a release of hazardous substances causes or is reasonably likely to cause significant adverse impacts to the health or viability of a species listed as threatened or endangered pursuant to 16 U.S.C. 1531 et seq. or ORS 496.172, or a population of plants or animals in the locality of the facility, the acceptable risk level shall be the point before such significant adverse impacts occur.

(B) A risk assessment undertaken in accordance with the risk protocol established by the Environmental Quality Commission in accordance with subsection (2)(a) of this section.

(c) A remedial action may achieve protection of human health and the environment through:

(A) Treatment that eliminates or reduces the toxicity, mobility or volume of hazardous substances;

(B) Excavation and off-site disposal;

(C) Containment or other engineering controls;

(D) Institutional controls;

(E) Any other method of protection; or

(F) A combination of the above.

(d) The method of remediation appropriate for a specific facility shall be determined through an evaluation of remedial alternatives and a selection process to be established pursuant to rules adopted by the commission. The director shall select or approve a protective alternative that balances the following factors:

(A) The effectiveness of the remedy in achieving protection;

(B) The technical and practical implementability of the remedy;

(C) The long term reliability of the remedy;

(D) Any short term risk from implementing the remedy posed to the community, to those engaged in the implementation of the remedy and to the environment; and

(E) The reasonableness of the cost of the remedy. The cost of a remedial action shall not be considered reasonable if the costs are disproportionate to the benefits created through risk reduction or risk management. Subject to the preference for treatment of hot spots, where two or more remedial action alternatives are protective as provided in paragraph (b) of this subsection, the least expensive remedial action shall be preferred unless the additional cost of a more expensive alternative is justified by proportionately greater benefits within one or more of the factors set forth in subparagraphs (A) to (D) of this paragraph. The director shall use a higher threshold for evaluating the reasonableness of the costs for treating hot spots than for remediation of areas other than hot spots.

(e) For contamination constituting a hot spot as defined by the commission pursuant to subsection (2)(b) of this section, the director shall select or approve a remedial action requiring treatment of the hot spot contamination unless treatment is not feasible considering the factors set forth in paragraph (d) of this subsection. For contamination constituting a hot spot under subsection (2)(b)(A) of this section, the director shall evaluate, with the same preference as treatment, the excavation and offsite disposal of the contamination at a facility authorized for such disposal under state or federal law. For excavation and offsite disposal of contamination that is a hazardous waste as described in ORS 466.005, the director shall consider the method and distance for transportation of the contamination to available disposal facilities in selecting or approving a remedial action that is protective under subsection (1)(d) of this section. If requested by the responsible party or recommended by the Department of Environmental Quality, the director may select or approve excavation and off-site disposal as the remedial action for contamination constituting a hot spot under subsection (2)(b)(A) of this section.

(f) The Department of Environmental Quality shall develop or identify generic remedies for common categories of facilities considering the balancing factors set forth in paragraph (d) of this subsection. The department's development of generic remedies shall take into consideration demonstrated remedial actions and technologies and scientific and engineering evaluation of performance data. Where a generic remedy would be protective and satisfy the balancing factors under paragraph (d) of this subsection at a specific facility, the director may select or approve the generic remedy for that site on a streamlined basis with a limited evaluation of other remedial alternatives.

(g) Subject to paragraphs (b) and (d) of this subsection, in selecting or approving a remedial action, the director shall consider current and reasonably anticipated future land uses at the facility and surrounding properties, taking into account current land use zoning, other land use designations, land use

plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction, and concerns of the facility owner, neighboring owners and the community.

(2) Within 18 months after July 18, 1995, the commission shall adopt rules:

(a) Establishing a risk protocol for conducting risk assessments. The risk protocol shall:

(A) Require consideration of existing and reasonably likely future human exposures and significant adverse effects to ecological receptor health and viability, both in a baseline risk assessment and in an assessment of residual risk after a remedial action;

(B) Require risk assessments to include reasonable estimates of plausible upper-bound exposures that neither grossly underestimate nor grossly overestimate risks;

(C) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range of size of the populations likely to be exposed to the risk, current and reasonably likely future land uses, and quantitative and qualitative descriptions of uncertainties;

(D) Identify appropriate sources of toxicity information;

(E) Define the use of probabilistic modeling;

(F) Identify criteria for the selection and application of fate and transport models;

(G) Define the use of high-end and central-tendency exposure cases and assumptions;

(H) Define the use of population risk estimates in addition to individual risk estimates;

(I) To the extent deemed appropriate and feasible by the commission considering available scientific information, define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways, including how the acceptable risk levels set forth in subsection (1)(b)(A) of this section shall be applied in relation to cumulative risks; and

(J) Establish appropriate sampling approaches and data quality requirements.

(b) Defining hot spots of contamination. The definition of hot spots shall include:

(A) Hazardous substances that are present in high concentrations, are highly mobile or cannot be reliably contained, and that would present a risk to human health or the environment exceeding the acceptable risk level if exposure occurs.

(B) Concentrations of hazardous substances in ground water or surface water that have a significant adverse effect on existing or reasonably likely future beneficial uses of the water and for which treatment is reasonably likely to restore or protect such beneficial use within a reasonable time.

(3) Except as provided in subsection (4) of this section, the director may exempt the on-site portion of any removal or remedial action conducted under ORS 465.200 to 465.510 and 465.900 from any requirement of ORS 466.005 to 466.385 and ORS chapters 459, 468, 468A and 468B. Without affecting substantive requirements, no state or local permit, license or other authorization shall be required for, and no procedural requirements shall apply to, the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the director under this section, unless

the permit, license, authorization or procedural requirement is necessary to preserve or obtain federal authorization of a state program or the person performing a removal or remedial action elects to obtain the permit, license or authorization or comply with the procedural requirement. The person performing a removal or remedial action shall notify the appropriate state or local governmental body of the permits, licenses, authorizations or procedural requirements waived under this subsection and, at the request of the governmental body, pay applicable fees. Any costs paid as a fee to a governmental body under this subsection shall not also be recoverable by the governmental body as remedial action costs.

(4) Notwithstanding any provision of subsection (3) of this section, any on-site treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1)(a) of this section and any activities conducted in a public right of way under a removal or remedial action pursuant to this section shall comply with the requirements of the applicable jurisdiction.

(5) Nothing in this section shall affect the authority of the director to undertake, order or authorize an interim or emergency removal action.

(6) Nothing in this section or in rules adopted pursuant to this section shall prohibit the application of rules in effect on July 18, 1995, that use numeric soil cleanup standards to govern remediation of motor fuel and heating oil releases from underground storage tanks. [Formerly 466.573; 1993 c.560 §102; 1995 c.662 §1; 1999 c.740 §1]

465.320 Notice of cleanup action; receipt and consideration of comment; notice of approval Except as provided in ORS 465.260 (3), before approval of any remedial action to be undertaken by the Department of Environmental Quality or any other person, or adoption of a certification decision under ORS 465.325, the department shall:

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [Formerly 466.575]

465.325 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability (1) The Director of the Department of Environmental Quality, in the director's discretion, may enter into an agreement with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 465.400. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183.310 to 183.550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

ODEQ ENFORCEABLE POLICIES

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 465.200 to 465.510 and 465.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 465.260 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (5)(c) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 465.255 or 465.260 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 465.200 to 465.510 and 465.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 465.320. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

ODEQ ENFORCEABLE POLICIES

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 465.255.
(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility. (b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 465.250 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 465.260. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 465.255. In resolving contribution claims, the court shall allocate remedial action costs among liable parties in accordance with ORS 465.257.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement. (c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 465.200 to 465.510 and 465.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 465.400 (2).

(C) The person is in full compliance with a consent decree under subsection (4)(a) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

ODEQ ENFORCEABLE POLICIES

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 465.200 to 465.510 and 465.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 465.255 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 465.400 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon: (i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened

release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and (ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in paragraph (f)(A) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 465.260 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 465.255 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility: ‘

(A) The amount of the hazardous substance contributed by that person to the facility; and (B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 465.200 to 465.510 and 465.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subsection (7)(b)(A) and (B) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

ODEQ ENFORCEABLE POLICIES

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 465.260, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 465.320.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 465.200 to 465.510 and 465.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [Formerly 466.577; 1995 c.662 §2]

465.327 Agreement to release party from potential liability to state to facilitate cleanup and reuse of property; eligible parties; terms of agreement (1) In order to facilitate cleanup and reuse of contaminated property, the Department of Environmental Quality may, through a written agreement, provide a party with a release from potential liability to the state under ORS 465.255, if:

(a) The party is not currently liable under ORS 465.255 for an existing release of hazardous substance at the facility;

(b) Removal or remedial action is necessary at the facility to protect human health or the environment; (c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing contamination, increase health risks or interfere with remedial measures necessary at the facility; and (d) A substantial public benefit will result from the agreement, including but not limited to:

(A) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with this section;

(B) A commitment to perform substantial remedial measures at the facility in accordance with this section;

(C) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(D) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

(2) In determining whether to enter an agreement under this section, the department shall consult with affected land use planning jurisdictions and consider reasonably anticipated future land uses at the facility and surrounding properties.

(3) An agreement under this section may be set forth in an administrative consent order or other administrative agreement or in a judicial consent decree entered in accordance with ORS 465.325. Any such agreement may include provisions considered necessary by the department, and shall include:

(a) A commitment to undertake the measures constituting a substantial public benefit;

(b) If remedial measures are to be performed under the agreement, a commitment to perform any such measures under the department's oversight; (c) A waiver by the party of any claim or cause of action against the State of Oregon arising from contamination at the facility existing as of the date of acquisition of ownership or operation of the facility;

(d) A grant of an irrevocable right of entry to the department and its authorized representative for purposes of the agreement or for remedial measures authorized under this section;

(e) A reservation of rights as to an entity not a party to the agreement; and

(f) A legal description of the property.

(4) Subject to the satisfactory performance by the party of its obligations under the agreement, the party shall not be liable to the State of Oregon under ORS 465.200 to 465.510 and 465.900 for any release of a hazardous substance at the facility existing as of the date of acquisition of ownership or operation of the facility. The party shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership of the facility. This release from liability shall not affect a party's liability for claims arising from any:

(a) Release of a hazardous substance at the facility after the date of acquisition of ownership or operation;

(b) Contribution to or exacerbation of a release of a hazardous substance;

(c) Interference or failure to cooperate with the department or other persons conducting remedial measures under the department's oversight at the facility;

(d) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the facility; and

(e) Violation of federal, state or local law.

(5) Any agreement entered under this section shall be recorded in the real property records from the county in which the facility is located. The benefits and burdens of the agreement, including the release from liability, shall run with the land, but the release from liability shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of a hazardous substance at the facility as of the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation. [1995 c.662 §4]

465.330 State remedial action costs; payment; effect of failure to pay (1) The Department of Environmental Quality shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 465.255 or 465.260 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the Director of the Department of Environmental Quality, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381 if the moneys received pertain to a removal or remedial action taken at any facility. [Formerly 466.580]

465.333 Recovery of costs of program development, rulemaking and administrative actions as remedial action costs; determination of allocable costs Notwithstanding ORS 291.050 to 291.060, the Department of Environmental Quality may recover, as remedial action costs, the costs of program development, rulemaking and other administrative actions required by the provisions of ORS 465.315, 465.325 and 465.327. After July 18, 1995, the department may recover such costs by requiring any person liable under ORS 465.255 or 465.260 or any person otherwise undertaking removal or remedial action under the department's oversight to pay such costs. Each person shall pay that portion of costs under ORS 465.315, 465.325 and 465.327 that the department determines to be allocable to removal or remedial action at the person's facility, using generally accepted accounting principles and as necessary to be charged per facility to recover the department's costs of implementing ORS 465.315, 465.325 and 465.327. [1995 c.662 §8]

465.335 Costs, penalties and damages as lien; enforcement of lien (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 465.255, 465.260 or 465.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the discretion of the Department of Environmental Quality, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 465.255, 465.260 or 465.900. [Formerly 466.583]

465.340 Contractor liability; indemnification (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 465.200 to 465.510 and 465.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, willful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an employer who is a contractor to any employee of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employee or an employee of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employee shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 465.255 (2)(b)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in subsection (1)(d) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 465.200 to 465.510 and 465.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 465.200 to 465.510 and 465.900.

(3)(a) The Director of the Department of Environmental Quality may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 465.200 to 465.510 and 465.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, willful or wanton misconduct, or which constituted intentional misconduct. (b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 465.260 or 465.325.

(c) For purposes of ORS 465.200 to 465.510 and 465.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 465.255, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 465.255 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 465.200 to 465.510 and 465.900 at a facility, or any removal under ORS 465.200 to 465.510 and 465.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in paragraph (b)(A) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 465.260 or 465.325.

(b) "Contractor" means: (A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and (B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action.

465.375 Monthly fee of operators; amount; use of moneys (1) Every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a permit issued under ORS 466.005 to 466.385 and 466.992 shall pay a hazardous waste management fee by the 45th day after the last day of each month for all waste brought into the facility during that month for treatment by incinerator or for disposal by landfill at the facility. The operator of the facility shall provide to every person who disposes of waste at the facility a statement showing the amount of the hazardous waste management fee paid by the person to the facility.

(2) The hazardous waste management fee under subsection (1) of this section shall be $20 a ton.

(3) In addition to the portion of the fee under subsection (2) of this section, $10 per ton shall be included as part of the hazardous waste management fee.

(4) The additional amounts collected under subsection (3) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(5) At least 50 percent of the fees collected under subsection (3) of this section shall be used by the department to implement ORS 466.068. [Formerly 466.587; 1991 c.721 §1; 1995 c.552 §1] Note: Section 2, chapter 443, Oregon Laws 1997, provides: Sec. 2. (1) Notwithstanding ORS 465.375 (2) and (3), for the period beginning July 1, 2001, and ending January 1, 2004, the hazardous waste management fee under ORS 465.375 shall be:

(a) $7.50 per ton for waste that is emission control dust or sludge from the primary production of steel in electric furnaces, identified as United States Environmental Protection Agency hazardous waste number K061, provided that the facility has a plan and a schedule approved by the Department of Environmental Quality to develop and evaluate a treatment process for the waste. The treatment process shall be designed to achieve treatment levels similar to the treatment levels required for the hazardous waste if it were delisted in Alaska, Idaho or Washington under 40 C.F.R. 260.22, adopted under the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580) and the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as amended, or a state-authorized Resource Conservation and Recovery Act program. The department may withdraw approval of the plan if the facility does not implement the plan in accordance with the approved schedule.

(b) For the type of waste described in this paragraph, either $20 per ton for 2,500 tons or less of waste received by the facility in a calendar year from the same initial generator, or $10 per ton for all waste received by the facility in a calendar year from the same initial generator if the facility receives more than 2,500 tons from that generator in the year, if the waste is:

(A) PCB under Oregon or federal law;

(B) Hazardous debris;

(C) Hazardous waste that becomes subject to regulation solely as a result of removal or remedial action taken in response to environmental contamination; or

(D) Hazardous waste that results from corrective action or closure of a regulated or nonregulated hazardous waste management unit.

(c) Notwithstanding the requirement of ORS 465.375 (1) that a hazardous waste management fee be paid for all waste brought into the facility for treatment by incinerator or for disposal by landfill at the facility, $15 per ton for waste that is hazardous waste when received and treated at the facility so that the waste is no longer a solid waste as defined in ORS 459.005. (d) $2 per ton for waste that is:

(A) A characteristic hazardous waste at the point of generation and that has been treated at the facility or at an off-site location so that the waste no longer exhibits the characteristics of hazardous waste and so that the waste complies with any applicable land disposal requirements;

(B) Liquid waste when the waste is received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any characteristics of hazardous waste and so that the resulting liquid is managed at a permitted unit at the facility;

(C) Solid waste resulting from cleanup activities that must be disposed of in a facility for the disposal of hazardous waste as a result of restrictions imposed under ORS 459.055 (8) or 459.305 (7); or

(D) Solid waste that is not hazardous waste or PCB under a state or federal law at the point of generation and that is not a hazardous waste under Oregon law. (2) One-third of the amount collected under subsection (1) of this section shall be deposited in the State Treasury to the credit of an account of the department. Such moneys are continuously appropriated to the department to be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(3) Two-thirds of the amount collected under subsection (1) of this section shall be deposited in the State Treasury to the credit of the Hazardous Substance Remedial Action Fund created under ORS 465.381 to be used for the purposes described in ORS 465.381 (5). [1997 c.443 §2; 1999 c.332 §1; 2001 c.400 §1]

465.378 Department to work with other states to avoid disruption of waste flows The Department of Environmental Quality shall work cooperatively with other states to avoid disrupting or changing waste flows between states that may be caused by the establishment or adjustment of state disposal fees. [1995 c.552 §4]

465.381 Hazardous Substance Remedial Action Fund; sources; uses; Orphan Site Account; uses (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned by the fund shall be credited to the fund.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the Department of Environmental Quality under ORS 465.375.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs. Moneys recovered from responsible parties for costs paid by the department from the Orphan Site Account established under subsection (6) of this section shall be credited to the Orphan Site Account.

(c) Moneys received under the schedule of fees established under ORS 453.402 (2)(c) and 459.236 for the purpose of providing funds for the Orphan Site Account, which shall be credited to the Orphan Site Account established under subsection (6) of this section.

(d) Any penalty, fine or punitive damages recovered under ORS 465.255, 465.260, 465.335 or 465.900.

(e) Fees received by the department under ORS 465.305.

(f) Moneys and interest that are paid, recovered or otherwise received under financial assistance agreements.

(g) Moneys appropriated to the fund by the Legislative Assembly.

(h) Moneys from any grant made to the fund by a federal agency.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection

(5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the department's remedial action costs;

(b) Funding any action or activity authorized by ORS 465.200 to 465.510 and 465.900, including but not limited to providing financial assistance pursuant to an agreement entered into under ORS 465.285; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, and as amended by P.L. 99-499.

(6)(a) The Orphan Site Account is established in the Hazardous Substance Remedial Action Fund in the State Treasury. All moneys credited to the Orphan Site Account are continuously appropriated to the department for:

(A) Expenses of the department related to facilities or activities associated with the removal or remedial action where the department determines the responsible party is unknown or is unwilling or unable to undertake all required removal or remedial action; and

(B) Grants and loans to local government units for facilities or activities associated with the removal or remedial action of a hazardous substance.

(b) The Orphan Site Account may not be used to pay the state's remedial action costs at facilities owned by the state. However, this paragraph does not prohibit the use of Orphan Site Account moneys for remedial action on submerged or submersible lands as those terms are defined in ORS 274.005 and tidal submerged lands as defined in ORS 274.705.

(c) The Orphan Site Account may be used to pay claims for reimbursement filed and approved under ORS 465.260 (7).

(d) If bonds have been issued under ORS 468.195 to provide funds for removal or remedial action, the department shall first transfer from the Orphan Site Account to the Pollution Control Sinking Fund, solely from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236 for such purposes, any amount necessary to provide for the payment of the principal and interest upon such bonds. Moneys from repayment of financial assistance or recovered from a responsible party shall not be used to provide for the payment of the principal and interest upon such bonds.

(7)(a) Of the funds in the Orphan Site Account derived from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account, and of the proceeds of any bond sale under ORS 468.195 supported by the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account, no more than 25 percent may be obligated in any biennium by the

department to pay for removal or remedial action at facilities determined by the department to have an unwilling responsible party, unless the department first receives approval from the Legislative Assembly.

(b) Before the department obligates money from the Orphan Site Account derived from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236 for the purpose of providing funds for the Orphan Site Account, or the proceeds of any bond sale under ORS 468.195 supported by fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account for removal or remedial action at a facility determined by the department to have an unwilling responsible party, the department must first determine whether there is a need for immediate removal or remedial action at the facility to protect public health, safety, welfare or the environment. The department shall determine the need for immediate removal or remedial action in accordance with rules adopted by the Environmental Quality Commission. [1993 c.707 §5 (enacted in lieu of 465.380); 1999 c.534 §1]

465.386 Commission authorized to increase fees; basis of increase; amount of increase (1) Notwithstanding the totals established in ORS 459.236, after July 1, 1993, the Environmental Quality Commission by rule may increase the total amount to be collected annually as a fee and deposited into the Orphan Site Account under ORS 459.236. The commission shall approve an increase if the commission determines:

(a) Existing fees being deposited into the Orphan Site Account are not sufficient to pay debt service on bonds sold to pay for removal or remedial actions at sites where the Department of Environmental Quality determines the responsible party is unknown or is unwilling or unable to undertake all required removal or remedial action; or

(b) Revenues from the sale of bonds cannot be used to pay for activities related to removal or remedial action, and existing fees being deposited into the Orphan Site Account are not sufficient to pay for these activities.

(2) The increased amount approved by the commission under subsection (1) of this section:

(a) Shall be no greater than the amount needed to pay anticipated costs specifically identified by the Department of Environmental Quality at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(b) Shall be subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board during the interim period between sessions. [1993 c.707 §7 (enacted in lieu of 465.385); 1999 c.534 §2]

465.391 Effect of certain laws on liability of person Nothing in ORS 453.396 to 453.408, 453.414, 459.236 and 459.311, including the limitation on the amount a local government unit must contribute under ORS 459.236 and 459.311, shall be construed to affect or limit the liability of any person. [1993 c.707 §9 (enacted in lieu of 465.390)]

465.400 Rules; designation of hazardous substance 1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.200 to 465.510 and 465.900.

ODEQ ENFORCEABLE POLICIES

(2)(a) Within one year after July 16, 1987, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account:

(A) The long-term uncertainties associated with land disposal;

(B) The goals, objectives and requirements of ORS 466.005 to 466.385;

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance;

(E) Long-term maintenance costs; (F) The potential for future remedial action costs if the alternative remedial action in question were to fail;

(G) The potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and

(H) The cost effectiveness.

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment.

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur. [Formerly 466.553]

465.405 Rules; "confirmed release"; "preliminary assessment" (1) The Environmental Quality Commission shall adopt by rule:

(a) A definition of "confirmed release" and "preliminary assessment"; and

(b) Criteria to be applied by the Director of the Department of Environmental Quality in determining whether to remove a facility from the list and inventory under ORS 465.230.

(2) In adopting rules under this section, the commission shall exclude from the list and inventory the following categories of releases to the extent the commission determines the release poses no significant threat to present or future public health, safety, welfare or the environment:

(a) De minimis releases;

(b) Releases that by their nature rapidly dissipate to undetectable or insignificant levels;

(c) Releases specifically authorized by and in compliance with a current and legally enforceable permit issued by the Department of Environmental Quality or the United States Environmental Protection Agency; or

(d) Other releases that the commission finds pose no significant threat to present and future public health, safety, welfare or the environment.

ODEQ ENFORCEABLE POLICIES

(3) The director shall exclude from the list and inventory releases the director determines have been cleaned up to a level that: (a) Is consistent with rules adopted by the commission under ORS 465.400; or (b) Poses no significant threat to present or future public health, safety, welfare or the environment. [1989 c.485 §7]

465.410 Ranking of inventory according to risk; rules In addition to the rules adopted under ORS 465.405, the Environmental Quality Commission shall adopt by rule a procedure for ranking facilities on the inventory based on the shortterm and long-term risks they pose to present and future public health, safety, welfare or the environment. [1989 c.485 §8]

465.420 Remedial Action Advisory Committee The Director of the Department of Environmental Quality shall appoint a Remedial Action Advisory Committee in order to advise the Department of Environmental Quality in the development of rules for the implementation of ORS 465.200 to 465.510 and 465.900. The committee shall be comprised of members representing at least the following interests: (1) Citizens; (2) Local governments; (3) Environmental organizations; and (4) Industry. [Formerly 466.555]

465.425 "Security interest holder" defined for ORS 465.430 to 465.455 As used in ORS 465.430 to 465.455, "security interest holder" means a person who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in a facility. [1991 c.680 §2]

465.430 Legislative findings (1)(a) The Legislative Assembly finds that existing federal and state law related to liability of a security interest holder for environmental contamination is unclear, and that such lack of clarity has created uncertainty on the part of security interest holders as to whether security interest holders are liable for environmental contamination caused by their borrowers or other third parties.

(b) The Legislative Assembly therefore declares that clarification regarding such potential liability in a manner consistent with federal statutes and regulations is desirable in order to provide certainty for security interest holders and to encourage responsible practices by security interest holders and borrowers to protect the public health and the environment.

(2)(a) The Legislative Assembly also finds that uncertainty exists in state law as to potential liability of certain fiduciaries for environmental contamination at property held in their fiduciary capacity.

(b) The Legislative Assembly therefore declares that it is in the public interest to provide an exemption from such potential liability in certain circumstances. [1991 c.680 §3]

465.435 Rules relating to exemption from liability for security interest holder . (1) The Environmental Quality Commission may adopt rules necessary to clarify the scope and meaning of the exemption from liability under ORS 465.255 of a security interest holder. The rules shall:

(a) Identify activities that are consistent with holding and protecting a security interest in a facility and therefore exempt from liability under ORS 465.255;

(b) Identify the extent to which a security interest holder may undertake activities to oversee the affairs of a borrower for purposes of protecting a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255;

(c) Identify the activities a security interest holder may undertake in connection with foreclosure on a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255; and (d) Allow a security interest holder to encourage and require responsible environmental management by borrowers.

(2) In adopting rules under subsection (1) of this section, the commission shall: (a) Exclude the mere capacity or unexercised right to influence a facility's management of hazardous substance from activities that might void a security interest holder's exemption from liability; and (b) Distinguish activities that are consistent with holding, protecting and foreclosing of a security interest, and that are therefore exempt from liability, from activities that constitute actual participation in the management of a facility that may be grounds for liability under ORS 465.255.

(3) In adopting rules under subsection (1) of this section, the commission shall consider and, to the extent consistent with subsections (1) and (2) of this section, adopt rules parallel in effect to any federal statute or regulation, adopted and effective on or after May 1, 1991, pertaining to the scope and meaning of the exemption from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (P.L. 96-510 and 99-499), of a security interest holder. [1991 c.680 §4]

465.440 Rules relating to exemption from liability for fiduciary In accordance with the purposes of ORS 465.425 to 465.455, the Environmental Quality Commission by rule shall define the instances in which a person acting under ORS chapter 709 and in a fiduciary capacity shall be exempt from liability for environmental contamination at property the fiduciary holds in a fiduciary capacity. In adopting the rules, the commission shall consider and, to the extent appropriate, provide exemptions from liability for the fiduciaries that are similar in purpose and effect to those exemptions provided for security interest holders under rules adopted under ORS 465.435. [1991 c.680 §5]

465.445 Advisory committee
The Director of the Department of Environmental Quality shall appoint an advisory committee to advise the Department of Environmental Quality and the Environmental Quality Commission in the development of rules under ORS 465.435 and 465.440. [1991 c.680 §6]

465.450 Limitation on commission's discretion to adopt rules
Notwithstanding the discretion otherwise allowed under ORS 465.435, if federal law is enacted or regulations are adopted and become effective after May 1, 1991, the Environmental Quality Commission shall adopt rules under ORS 465.435. [1991 c.680 §7]

465.455 Construction of ORS 465.425 to 465.455 Nothing in ORS 465.425 to 465.455 or any rule adopted under ORS 465.435 or 465.440 shall be construed to impose liability on a security interest holder or fiduciary or to expand the liability of a security interest holder or fiduciary beyond that which might otherwise exist. [1991 c.680 §8]

468.936 Unlawful air pollution in the second degree.
(1) A person commits the crime of unlawful air pollution in the second degree if the person knowingly violates any applicable requirement of ORS chapter 468A or a permit, rule or order adopted or issued under ORS chapter 468A.
(2) Subject to ORS 153.022, unlawful air pollution in the second degree is a specific fine violation punishable by a fine of not more than $25,000.

ODEQ ENFORCEABLE POLICIES

468.939 Unlawful air pollution in the first degree.
(1) A person commits the crime of unlawful air pollution in the first degree if the person, in violation of ORS chapter 468A or any rule, permit, order or any applicable requirement adopted or issued under ORS chapter 468A, knowingly discharges, emits or allows to be discharged or emitted any air contaminant into the outdoor atmosphere, and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful air pollution in the first degree is a Class B felony.

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful air pollution in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding $200,000 in addition to any other sentence imposed under subsection (2) of this section.

468.941 Determination of number of punishable offenses under ORS 468.936 and 468.939. Notwithstanding ORS 161.067, each day on which a violation occurs or continues under ORS 468.936 or 468.939 is a separately punishable offense.

468.943 Unlawful water pollution in the second degree.
(1) A person commits the offense of unlawful water pollution in the second degree if the person with criminal negligence violates ORS chapter 468B or any rule, standard, license, permit or order adopted or issued under ORS chapter 468B.
(2) Subject to ORS 153.022, unlawful water pollution in the second degree is a Class A misdemeanor. Notwithstanding ORS 161.635, the maximum fine for a violation is $25,000.

468.946 Unlawful water pollution in the first degree.
(1) A person commits the crime of unlawful water pollution in the first degree if the person, in violation of ORS chapter 468B or any rule, standard, license, permit or order adopted or issued under ORS chapter 468B, knowingly discharges, places or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape or be carried into the waters of the state and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful water pollution in the first degree is a Class B felony.

ODEQ ENFORCEABLE POLICIES

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful water pollution in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding $200,000 in addition to any other sentence imposed under subsection (2) of this section.

468,949 Determination of number of punishable offenses under ORS 468.943 and 468.946. Notwithstanding ORS 161.067, each day on which a violation occurs or continues under ORS 468.943 or 468.946 is a separately punishable offense.

468.951 Environmental endangerment.
(1) A person commits the crime of environmental endangerment if the person:

(a) Knowingly commits the crime of unlawful disposal, storage or treatment of hazardous waste in the first degree, unlawful transport of hazardous waste in the first degree, unlawful air pollution in the first degree or unlawful water pollution in the first degree; and

(b) As a result, places another person in imminent danger of death or causes serious physical injury.

(2) Environmental endangerment is a felony punishable:

(a) If the defendant is an individual and notwithstanding ORS 161.625, by imprisonment of not more than 15 years, a fine of not more than $1,000,000, or both.

(b) If the defendant is other than an individual and notwithstanding ORS 161.625, by a fine of not more than $2,000,000.

(c) Notwithstanding ORS 161.625, in the case of a second or subsequent conviction under this section, by imprisonment of not more than 30 years, a fine of not more than $5,000,000, or both.

(3) As used in this section, “serious physical injury” has the meaning given in ORS 161.015.

468A.005 Definitions for air pollution laws. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:
(1) “Air-cleaning device” means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

(2) “Air contaminant” means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

(3) “Air contamination” means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

ODEQ ENFORCEABLE POLICIES

(4) “Air contamination source” means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(5) “Air pollution” means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

(6) “Area of the state” means any city or county or portion thereof or other geographical area of the state as may be designated by the Environmental Quality Commission.

468A.010 Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon:

(a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public
welfare of the state.

(b) To provide for a coordinated statewide program of air quality control and to allocate between the state and the units of local government responsibility for such control.

(c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs.

(2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned.

468A.020 Application of air pollution laws.
(1) Except as provided in subsection

(2) of this section, the air quality laws contained in ORS chapters 468, 468A and 468B do not apply to:

(a) Agricultural operations, including but not limited to:

(A) Growing or harvesting crops;

(B) Raising fowl or animals;

(C) Clearing or grading agricultural land;

(D) Propagating and raising nursery stock;

(E) Propane flaming of mint stubble; and

(F) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the period beginning October 1 and ending May 31 of the following year.

(b) Equipment used in agricultural operations, except boilers used in connection with propagating and raising nursery stock.

(c) Barbecue equipment used in connection with any residence.

(d) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except solid fuel burning devices, as defined in ORS 468A.485, that are subject to regulation under this section and ORS 468A.140 and 468A.460 to 468A.515.

(e) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the agency is necessary.

(f) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.

(2) Subsection (1) of this section does not apply to the extent:

(a) Otherwise provided in ORS 468A.555 to 468A.620, 468A.790, 468A.992, 476.380 and 478.960;

(b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or

(c) Necessary for the Environmental Quality Commission, in the commission's discretion, to implement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions.

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules.
(1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

ODEQ ENFORCEABLE POLICIES

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

ODEQ ENFORCEABLE POLICIES

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to taminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof.

468A.040 Permits; rules. (1) By rule the Environmental Quality Commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. A permit subject to the federal operating permit program shall be issued in accordance with the rules adopted under ORS 468A.310.

ODEQ ENFORCEABLE POLICIES

(2) If a request for review of the final Department of Environmental Quality action, or any part thereof, is made on an application for a permit issued under the federal operating permit program established under ORS 468A.310 in accordance with the rules adopted by the commission, the effect of the contested conditions and any conditions that are not severable from those contested shall be stayed upon a showing that compliance with the contested conditions during the pendency of the appeal would require substantial expenditures or losses that would not be incurred if the permittee prevails on the merits of the review and there exists a reasonable likelihood of success on the merits. The department may require that the contested conditions not be stayed if the department finds that substantial endangerment of public health or welfare would result from the staying of the conditions.

(3) Any source under an existing permit shall:

(a) Comply with the conditions of the existing permit during any modification or reissuance proceeding; and

(b) To the extent conditions of any new or modified permit are stayed under subsection (2) of this section, comply with the conditions of the existing permit that correspond to the stayed conditions, unless compliance would be technologically incompatible with compliance with other conditions of the new or modified permit that have not been stayed.

(4) For purposes of this section, a small scale local energy project, as defined in ORS 470.050, located in a maintenance area or nonattainment area, and any infrastructure related to that project located in the same area, is considered to provide a net air quality benefit to the extent required by this chapter if the project provides reductions in each air contaminant in the maintenance area or nonattainment area equal to the ratio specified in rules adopted by the commission, unless the department determines that the project will pose a material threat to compliance with air quality standards in the maintenance area or nonattainment area.

(5) As used in this section:

(a) “Maintenance area” has the meaning given that term in rules adopted by the commission.

(b) “Nonattainment area” has the meaning given that term in rules adopted by the commission.

468A.045 Activities prohibited without permit; limit on activities with permit.

(1) Without first obtaining a permit pursuant to ORS 468.065, 468A.040 or 468A.155, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468A.040 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468A.040.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468A.040 in excess of the permissive discharges or emission specified under an existing permit.

ODEQ ENFORCEABLE POLICIES

468A.050 050 Classification of air contamination sources; registration and reporting of sources; rules; fees.

(1) By rule the Environmental Quality Commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Department of Environmental Quality and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution.

(3) By rule the commission may establish a schedule of fees for the registration of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain a permit under ORS 468A.040 or 468A.155 but chooses instead to register if allowed by the commission by rule. The commission shall base the fees on the anticipated cost of developing and implementing programs related to the different classes, including but not limited to the cost of processing registrations, compliance inspections and enforcement. A registration must be accompanied by any fee specified by the commission by rule, and a subsequent annual registration fee is payable as prescribed by rule of the commission.

(4)(a) By rule the commission may establish a schedule of fees for reporting of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject to the federal operating permit program pursuant to ORS 468A.310.

(b) Before establishing fees pursuant to this subsection, the commission shall consider the total fees for each class of sources subject to reporting under this subsection and for which permits are required under ORS 468A.040 or 468A.155 or the federal operating permit program under ORS 468A.315.

(c) The commission shall limit the fees established under this subsection to the anticipated cost of developing and implementing reporting programs. Any fees collected under this subsection for any air contamination source issued a permit under ORS 468A.040 or 468A.155 or sources subject to the federal operating permit program under ORS 468A.310 must be collected as part of the fee for that specific permit.

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

(1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions 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 and applicable rules or standards adopted pursuant thereto.

ODEQ ENFORCEABLE POLICIES

(3) If the commission determines that the proposed construction is in accordance with the provisions 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 and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions 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 and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, “construction” includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source.

468A.060 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468A.055 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard.

468A.070 Measurement and testing of contamination sources; rules.

(1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

ODEQ ENFORCEABLE POLICIES

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law.

468A.075 Variances from air contamination rules and standards; delegation to local governments; notices.

(1) The Environmental Quality Commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.
(5) A variance may be revoked or modified by the grantor thereof after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification.

468A.350 – 468A.455 Definitions for ORS 468A.350 to 468A.400. As used in ORS 468A.350 to 468A.400:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468A.365 (3).

ODEQ ENFORCEABLE POLICIES

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468A.365 (1), whichever criteria are stricter.

(3) "Motor vehicle" includes any selfpropelled vehicle used for transporting persons or commodities on public roads and highways but does not include a vehicle of special interest as that term is defined in ORS 801.605, if the vehicle is maintained as a collector's item and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property, or a racing activity vehicle as defined in ORS 801.404.

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle.

468A.355 Legislative findings. For purposes of ORS 468A.350 to 468A.400, the Legislative Assembly finds:

(1) That the emission of pollutants from motor vehicles is a significant cause of air pollution in many portions of this state.

(2) That the control and elimination of such pollutants are of prime importance for the protection and preservation of the public health, safety and well-being and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.

(3) That the state has a responsibility to establish procedures for compliance with standards which control or eliminate such pollutants.

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property.

468A.360 Motor vehicle emission and noise standards; copy to Department of Transportation.

(1) After public hearing and in accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt motor vehicle emission standards. For the purposes of this section, the commission may include, as a part of such standards, any standards for the control of noise emissions adopted pursuant to ORS 467.030.

(2) The commission shall furnish a copy of standards adopted pursuant to this section to the Department of Transportation and shall publish notice of the standards in a manner reasonably calculated to notify affected members of the public.

468A.363 Purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300. The Legislative Assembly declares the purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300 is to:

(1) Insure that the health of citizens in the Portland area is not threatened by recurring air pollution conditions.

(2) Provide necessary authority to the Environmental Quality Commission to implement one of the critical elements of the air quality maintenance strategy for the Portland area related to improvements in the motor vehicle inspection program.

ODEQ ENFORCEABLE POLICIES

(3) Insure that the Department of Environmental Quality is able to submit an approvable air quality maintenance plan for the Portland area through the year 2006 to the Environmental Protection Agency as soon as possible so that area can again be designated as an attainment area and impediments to industrial growth imposed in the Clean Air Act can be removed.

(4) Direct the Environmental Quality Commission to use existing authority to incorporate the following programs for emission reduction credits into the air quality maintenance plan for the Portland area:

(a) California or United States Environmental Protection Agency emission standards for new lawn and garden equipment sold in the Portland area.

(b) Transportation-efficient land use requirements of the transportation planning rule adopted by the Land Conservation and Development Commission.

(c) Improvements in the vehicle inspection program as authorized in ORS 468A.350 to 468A.400, including emission reduction from on-road vehicles resulting from enhanced testing, elimination of exemptions for 1974 and later model year vehicles, and expansion of inspection program boundaries.

(d) An employer trip reduction program that provides an emission reduction from onroad vehicles.

(e) A parking ratio program that limits the construction of new parking spaces for employment, retail and commercial locations.

(f) Emission reductions resulting from any new federal motor vehicle fuel tax.

(g) State and federal alternative fuel vehicles fleet programs that result in emission reductions.

(h) Installation of maximum achievable control technology by major sources of hazardous air pollutants as required by the federal Clean Air Act, as amended, resulting in emission reductions.

(i) As a safety margin, or as a substitute in whole or in part for other elements of the plan, emission reductions resulting from any new state gasoline tax or for any new vehicle registration fee that allows use of revenue for air quality improvement purposes.

468A.365 Certification of motor vehicle pollution control systems and inspection of motor vehicles; rules. The Environmental Quality Commission shall:

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control systems. In determining the criteria the commission shall consider the following:

(a) The experience of any other state or the federal government;

(b) The cost of the system and of its installation;

(c) The durability of the system;

(d) The ease of determining whether the system, when installed on a motor vehicle, is functioning properly; and

(e) Any other factors which, in the opinion of the commission, render such a system suitable for the control of motor vehicle air pollution or for the protection of the health, safety and welfare of the public.

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification. The rules may prescribe a more rigorous inspection procedure in the areas designated under ORS 815.300 (2)(a), including any expansion of such boundary under ORS 815.300 (2)(b), in order to reduce

air pollution emissions in those areas of the state. No such rule shall require testing for certification more often than once during the period for which registration or renewal of registration for a motor vehicle is issued. No rule shall require testing for certification of a motor vehicle that is exempted from the requirement for certification under ORS 815.300.

(3) Issue certificates of approval for classes of motor vehicle pollution control systems which, after being tested by the commission or by a method acceptable to the commission, the commission finds meet the criteria adopted under subsection (1) of this section.

(4) Designate by rule classifications of motor vehicles for which certified systems are available.

(5) Revoke, suspend or restrict a certificate of approval previously issued upon a determination that the system no longer meets the criteria adopted under subsection (1) of this section pursuant to procedures for a contested case under ORS chapter 183.

(6) Designate suitable methods and standards for testing systems and inspecting motor vehicles to determine and insure compliance with the standards and criteria established by the commission.

(7) Except as provided in ORS 468A.370, contract for the use of or the performance of tests or other services within or without the state.

468A.370 Cost-effective inspection program; contracts for inspections. The Environmental Quality Commission shall determine the most cost-effective method of conducting a motor vehicle pollution control system inspection program as required by ORS 468A.365. Upon finding that savings to the public and increased efficiency would result and the quality of the program would be adequately maintained, the commission may contract with a unit of local government or with a private individual, partnership or corporation authorized to do business in the State of Oregon, for the performance of tests or other services associated with conducting a motor vehicle pollution control system inspection program.

468A.375 Notice to state agencies concerning certifications. The Department of Environmental Quality shall notify the Department of Transportation and the Oregon State Police whenever certificates of approval for motor vehicle pollution control systems are approved, revoked, suspended or restricted by the Environmental Quality Commission.

468A.380 Licensing of personnel and equipment; certification of motor vehicles; rules.

(1) The Environmental Quality Commission by rule may:

(a) Establish criteria and examinations for the qualification of persons eligible to inspect motor vehicles and motor vehicle pollution control systems and execute the certificates described under ORS 815.310, and for the procedures to be followed in such inspections.

(b) Establish criteria and examinations for the qualification of equipment, apparatus and methods used by persons to inspect motor vehicles and motor vehicle pollution control systems.

(c) Establish criteria and examinations for the testing of motor vehicles.

(2) Subject to rules of the commission, the Department of Environmental Quality shall:

ODEQ ENFORCEABLE POLICIES

(a) Issue licenses to any person, type of equipment, apparatus or method qualified pursuant to subsection (1) of this section.

(b) Revoke, suspend or modify licenses issued pursuant to paragraph (a) of this subsection in accordance with the provisions of ORS chapter 183 relating to contested cases.

(c) Issue certificates of compliance for motor vehicles which, after being tested in accordance with the rules of the commission, meet the criteria established under subsection (1) of this section and the standards adopted pursuant to ORS 468A.350 to 468A.385 and 468A.400.

468A.385 Determination of compliance of motor vehicles.

(1) The Environmental Quality Commission shall establish and maintain procedures and programs for determining whether motor vehicles meet the minimum requirements necessary to secure a certificate under ORS 815.310.

(2) Such procedures and programs include, but are not limited to, the installation of a certified system and the adjustment, tune-up, or other mechanical work performed on the motor vehicle in accordance with the requirements of the commission.

468A.387 Operating schedules for testing stations.

(1) The Department of Environmental Quality shall establish flexible weekday operating schedules for testing stations that conduct motor vehicle pollution control system inspections described under ORS 468A.365 that extend the hours of operation beyond 5 p.m. for some testing stations for some days of the week.

(2) After determining the hours of operation for testing stations under subsection (1) of this section, the department shall advertise the hours of operation in as many ways as practicable, including but not limited to:

(a) Enclosing information about the hours of operation in all mailings and notices related to motor vehicle emission testing and motor vehicle registration renewal notices;

(b) Posting the hours of operation at Department of Transportation field offices;

(c) Broadcasting public service announcements; and

(d) Using appropriate Internet and other electronic media services that may be available.

468A.390 Designation of areas of the state subject to motor vehicle emission inspection program; rules.

(1) If the need for a motor vehicle pollution control system inspection program is identified for an area in the State of Oregon Clean Air Act Implementation Plan, then the Environmental Quality Commission, by rule, shall designate boundaries, in addition to the areas specified in ORS 815.300 (2)(a) and (b), within which motor vehicles are subject to the requirement under ORS 815.300 to have a certificate of compliance issued under ORS 468A.380 to be registered or have the registration of the vehicle renewed.

(2) Whenever the Environmental Quality Commission designates boundaries under this section within which vehicles are subject to the requirements of ORS 815.300, the commission shall notify the Department of Transportation and shall provide the Department of Transportation with information necessary to perform the Department of Transportation's duties under ORS 815.300.

468A.395 Bond or letter of credit; remedy against person licensed under ORS 468A.380; cancellation of license.

(1) Any person licensed to issue certificates of compliance pursuant to ORS 468A.380 shall file with the Department of Environmental Quality a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter of credit shall be executed to the State of Oregon in the sum of $1,000. It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the Environmental Quality Commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325.

(2) In addition to any other remedy that a person may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325 by a person licensed pursuant to ORS 468A.380, the injured person has the right of action against the business employing such licensed person and a right of action in the person's own name against the surety upon the bond or the letter of credit issuer.

(3) The license issued pursuant to ORS 468A.380 of any person whose bond is canceled by legal notice shall be canceled immediately by the department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond or the letter of credit issuers shall be relieved from liability accruing subsequent to such cancellation by the department.

468A.400 Fees; collection; use.

(1) The Department of Environmental Quality shall:

(a) Establish and collect fees for application,examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468A.380 and within the following limits: (A) The fee for licensing shall not exceed $5. (B) The fee for renewal of licenses shall not exceed $1.

(b) Establish fees for the issuance of certificates of compliance. The department may classify motor vehicles and establish a different fee for each such class. The fee for the issuance of certificates shall be established by the Environmental Quality Commission in an amount based upon the costs of administering this program. Before establishing the fees, the commission shall determine the most cost effective program consistent with Clean Air Act requirements for each area of the state pursuant to ORS 468A.370.

(2) The department shall collect the fees established pursuant to subsection (1)(b) of this section at the time of the issuance of certificates of compliance as required by ORS 468A.380 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution

Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468A.380 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The Department of Environmental Quality may enter into an agreement with the Department of Transportation to collect the licensing and renewal fees described in subsetion (1)(a) of this section subject to the fees being paid and credited as provided in subsection (3) of this section.

468A.405 Authority to limit motor vehicle operation and traffic; rules. The Environmental Quality Commission and regional air pollution control authorities organized pursuant to 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 by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons.

468A.410 Administration and enforcement of rules adopted under ORS 468A.405. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Department of Transportation, shall cooperate with the Environmental Quality Commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468A.405.

468A.415 Legislative findings. The Legislative Assembly finds that extending additional statewide controls and fees on industrial and motor vehicle sources of air pollution may not be sufficient to attain and maintain desired air quality standards in the Portland-Vancouver air quality maintenance area. Additional approaches are needed to address growth in vehicle miles of travel that satisfy mobility needs and allow for economic growth while meeting the air quality goals for the region.

468A.420 Oxygenated motor vehicle fuels; when required by rule.

(1) The Environmental Quality Commission shall adopt rules consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state.

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

(a) Oxygenated fuels to be used during any portion of the year during which the nonattainment area is prone to high ambient concentrations of carbon monoxide.

(b) The use of oxygenated fuels in carbon monoxide nonattainment areas on or before November 1, 1992.

ODEQ ENFORCEABLE POLICIES

(3) An oxygenated fuel shall contain 2.7 percent or more oxygen by weight. Methods to achieve this requirement may include but need not be limited to the use o ethanol blends.

468A.455 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468A.405 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations.

468A.460 – 468A.515 468A.460 Policy. In the interest of the public health and welfare it is the policy of the State of Oregon to control, reduce and prevent air pollution caused by solid fuel burning devices. The Legislative Assembly declares that it is also the policy of the State of Oregon to reduce solid fuel burning device emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the air quality effects of those emissions, by ensuring that solid fuel burning devices used in Oregon meet emission performance standards established under ORS 468A.465 and by ensuring compliance with ORS 468A.460 to 468A.515.

468A.465 Certification requirements for new solid fuel burning devices; rules.

(1) A person may not advertise to sell, offer to sell or sell a new solid fuel burning device in Oregon unless, pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality certifies that the device meets emission performance standards, certification labeling standards and all other requirements set forth in rules adopted by the commission. Before adopting emission performance standards under this section, the commission shall consider any emission performance standards proposed or adopted by the United States Environmental Protection Agency.

(2) In addition to devices certified under subsection (1) of this section, the department may certify new solid fuel burning devices that have been certified by the United States Environmental Protection Agency pursuant to:

(a) 40 C.F.R. part 60, subpart AAA, as in effect on the date the commission first adopts rules under subsection (1) of this section; or

(b) Any equivalent or more stringent standard adopted by the United States Environmental Protection Agency subsequent to such date.

468A.467 Prohibition on burning certain materials in solid fuel burning devices. A person may not cause or allow any of the following materials to be burned in a solid fuel burning device, a masonry heater, a pellet stove, a trash burner or any device described in ORS 468A.485 (4)(b):

(1) Garbage;

(2) Treated wood;

(3) Plastic or plastic products;

(4) Rubber or rubber products;

(5) Animal carcasses;

(6) Products that contain asphalt;

(7) Waste petroleum products;

(8) Paint;

(9) Chemicals;

(10) Paper or paper products, except for paper used to kindle a fire; or

(11) Any other materials described in rules adopted by the commission.

468A.485 Definitions for ORS 468A.460 to 468A.515. As used in ORS 468A.460 to 468A.515:

(1) "Masonry heater" has the meaning given that term in the American Society for Testing and Materials (ASTM) E1602-03, Standard Guide for Construction of Solid Fuel Burning Masonry Heaters, as in effect on January 1, 2010, or the meaning given that term by rule of the Environmental Quality Commission.

(2) "Pellet stove" means a heating device that uses wood pellets, or other biomass fuels designed for use in pellet stoves, as its primary source of fuel.

(3) "Residential structure" has the meaning given that term in ORS 701.005.

(4)(a) "Solid fuel burning device" means any device that burns wood, coal or other nongaseous or nonliquid fuels for aesthetic, space-heating or water-heating purposes in a private residential structure or a commercial establishment and that has a heat output of less than one million British thermal units per hour.

(b) "Solid fuel burning device" does not include:

(A) Masonry fireplaces built on homesites, or factory-built fireplaces, that are designed to be used with an open combustion chamber, that are without features to control air-to-fuel ratios and that meet minimum emission performance standards adopted by the commission, or all masonry fireplaces and factory-built fireplaces if the commission does not adopt any standards;

(B) Woodstoves built before 1940 that have an ornate construction and a current market value substantially higher than a common woodstove manufactured during the same period;

(C) Pellet stoves that meet minimum emission performance standards adopted by the commission, or all pellet stoves if the commission does not adopt any standards;

(D) Masonry heaters that meet minimum emission performance standards adopted by the commission, or all masonry heaters if the commission does not adopt any standards;

(E) Central, wood-fired furnaces that are indoors, ducted and thermostatically controlled, that have a dedicated cold air inlet and a dedicated hot air outlet that connect to the heating ductwork for the entire residential structure and that meet minimum emission performance standards adopted by the commission, or all central, wood-fired furnaces if the commission does not adopt any standards; and

(F) Other solid fuel burning devices identified in rules adopted by the commission.

ODEQ ENFORCEABLE POLICIES

(5)(a) “Trash burner” means any equipment that is used to dispose of waste by burning.

(b) “Trash burner” does not include an air contamination source that has been issued an air quality permit as described in ORS 468A.040.

(6) “Treated wood” means wood of any species that has been chemically impregnated, painted or similarly modified to prevent weathering and deterioration.

468A.490 Residential Solid Fuel Heating Air Quality Improvement Fund; uses.

(1) There is established within the State Treasury a fund known as the Residential Solid Fuel Heating Air Quality Improvement Fund, separate and distinct from the General Fund.

(2) All moneys appropriated or received as gifts or grants for the purposes of this section shall be credited to the Residential Solid Fuel Heating Air Quality Improvement Fund.

(3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS 293.701 to 293.857. Interest from the moneys deposited in the fund and earnings from investment of the moneys in the fund shall accrue to the fund.

(4) All moneys in the fund are continuously appropriated to the Department of Environmental Quality to:

(a) Pay all costs incurred by the department for evaluating projects and programs, including projects and programs proposed by local communities or qualifying organizations, for project management and oversight of funds awarded for projects and programs selected in accordance with this section and for documenting the benefit to air quality from such projects;

(b) Fund the program established under subsection (5) of this section;

(c) Fund activities to enhance enforcement of ORS 468A.460 to 468A.515;

(d) Fund public education programs related to compliance with ORS 468A.460 to 468A.515; and

(e) Fund public education programs related to the benefits of the use of solid fuel burning devices certified pursuant to ORS 468A.460 to 468A.515.

(5) The department shall use moneys available under subsection (4) of this section to establish a program designed to reduce the emission of air contaminants by providing grants, loans or other subsidies for the replacement or removal of solid fuel burning devices that were not certified by the department pursuant to ORS 468A.465. In addition to any other requirements established by rules adopted by the Environmental Quality Commission, the program shall provide that:

(a) All forms of new high-efficiency, low air contaminant-emitting heating systems are allowed, except vent-free heating appliances;

(b) Any solid fuel burning device removed under the program must be destroyed;

(c) Any replacement device selected under the program must be installed in conformance with building code requirements and the manufacturer’s specifications including but not limited to venting specifications; and

(d) To be eligible, program participants shall participate in any home energy audit program provided at no charge to the homeowner and shall obtain all information available regarding subsidies for cost-effective weatherization. The department shall make the information required in this subsection readily available to program participants.

ODEQ ENFORCEABLE POLICIES

(6) The department may enter into an agreement with a local government or a regional authority in order to implement the program established under subsection (5) of this section.

468A.495 Prohibition on installation of used solid fuel burning devices; exceptions; rules.

1) The state building code under ORS 455.010 shall prohibit installations of used solid fuel burning devices, except devices that were certified for sale as new:

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the commission by rule may prohibit the installation of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

468A.500 Prohibition on sale of noncertified solid fuel burning devices; rules.

(1) A person may not advertise for sale, offer to sell or sell, within this state, a used solid fuel burning device unless the device was certified for sale as new:

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the commission by rule may prohibit the advertisement for sale, offer to sell or sale of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

468A.505 Removal; exceptions; confirmation of removal; rules.

(1) In connection with the sale of a residential structure, all used solid fuel burning devices, other than cookstoves, in the residential structure or on the real property sold with the residential structure, must be removed and destroyed unless the solid fuel burning devices were certified for sale as new:

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the Department of Environmental Quality pursuant to ORS 468A.465.

(2) Notwithstanding subsection (1) of this section, if pursuant to ORS 468A.465 the Environmental Quality Commission adopts more stringent standards than those described in subsection (1) of this section for the certification of new solid fuel burning devices, the commission by rule may require the removal and destruction of some or all used solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The used solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The used solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

(3) This section does not apply to:

(a) Masonry heaters;

(b) Masonry fireplaces described in ORS 468A.485 (4)(b)(A); and

(c) Central, wood-fired furnaces described in ORS 468A.485 (4)(b)(E).

(4) The removal and destruction of a used solid fuel burning device under this section is the responsibility of the seller of the residential structure, unless the seller and buyer agree in writing that it is the buyer's responsibility. If the seller retains responsibility, the seller shall remove and destroy the device prior to the closing date of the sale of the residential structure. If the buyer accepts responsibility, the buyer shall remove and destroy the device within 30 days after the closing date of the sale of the residential structure.

(5) The person responsible for removal and destruction of a used solid fuel burning device under this section shall provide to the department written confirmation of the removal and destruction, pursuant to rules adopted by the commission.

(6) The failure of a seller or buyer of a residential structure to comply with this section does not invalidate an instrument of conveyance executed in the sale.

468A.515 Residential solid fuel heating curtailment program requirements; exemptions; rules.

(1) If a local government or regional authority has not adopted or is not adequately implementing a curtailment program in any area of the state where such a program is required under the Clean Air Act, the Environmental Quality Commission may adopt by rule, and the Department of Environmental Quality may operate and enforce, a program to curtail residential solid fuel heating during periods of air stagnation as described in subsection (2) of this section. The department shall suspend operation and enforcement of a program adopted under this subsection upon a determination by the department that the local government or regional authority has adopted and is adequately implementing the required curtailment program.

(2) Any programs adopted by the commission pursuant to subsection (1) of this section to curtail residential solid fuel heating during periods of air stagnation shall provide for two stages of curtailment based on the severity of projected air quality conditions. Except as provided in subsection (4) of this section, the programs shall apply to all heating by means of solid fuel, including but not limited to solid fuel burning devices, masonry heaters, pellet stoves, trash burners and all

devices described in ORS 468A.485 (4)(b). The programs shall provide that use of a solid fuel burning device, masonry fireplace or other solid fuel burning device identified in rules adopted by the commission be curtailed only at the more severe stage of projected air quality if the solid fuel burning device, masonry fireplace or other solid fuel burning device identified in rules adopted by the commission was certified for sale as new:

(a) By the United States Environmental Protection Agency pursuant to 40 C.F.R. part 60, subpart AAA; or

(b) By the department pursuant to ORS 468A.465.

(3) Notwithstanding subsection (2) of this section, if pursuant to ORS 468A.465 the commission adopts more stringent standards than those described in subsection (2) of this section for the certification of new solid fuel burning devices, the commission by rule may require curtailment during the less severe stage of projected air quality of some or all solid fuel burning devices certified for sale as new under less stringent standards if:

(a) The solid fuel burning devices were manufactured at least 15 years prior to the date on which the commission adopts more stringent standards; or

(b) The solid fuel burning devices are located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

(4) Programs adopted by the commission to curtail residential solid fuel heating during periods of air stagnation do not apply to:

(a) A person who is classified at less than or equal to 125 percent of poverty level pursuant to guidelines established by the commission taking into account federal poverty guidelines;

(b) A person whose residence is equipped solely with a solid fuel burning device that meets any additional requirements as described in rules adopted by the commission;and

(c) Pellet stoves, unless the pellet stove is located in a nonattainment area in this state that does not attain compliance with standards for particulate matter established by the commission pursuant to ORS 468A.025.

468A.625 - 468A.645 468A.625 Definitions for ORS 468A.630 to 468A.645. As used in ORS 468A.630 to 468A.645:

(1) “Chlorofluorocarbons” includes:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (trichlorotrifluoroethane);

(d) CFC-114 (dichlorotetrafluoroethane); and

(e) CFC-115 ((mono)chloropentafluoroethane).

(2) “Halon” includes:

(a) Halon-1211 (bromochlorodifluoroethane);

(b) Halon-1301 (bromotrifluoroethane); and

(c) Halon-2402 (dibromotetrafluoroethane).

ODEQ ENFORCEABLE POLICIES

468A.630 Legislative findings.

(1) The Legislative Assembly finds and declares that chlorofluorocarbons and halons are being unnecessarily released into the atmosphere, destroying the Earth's protective ozone layer and causing damage to all life.

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Reduce the use of these compounds;

(b) Recycle these compounds in use; and

(c) Encourage the substitution of less dangerous substances.

468A.635 Restrictions on sale, installation and repairing of items containing chlorofluorocarbons and halon; rules.

(1) After July 1, 1990, no person shall sell at wholesale, and after January 1, 1991, no person shall sell any of the following:

(a) Chlorofluorocarbon coolant for motor vehicles in containers with a total weight of less than 15 pounds.

(b) Handheld halon fire extinguishers for residential use.

(c) Party streamers and noisemakers that contain chlorofluorocarbons.

(d) Electronic equipment cleaners, photographic equipment cleaners and disposable containers of chilling agents that contain chlorofluorocarbons and that are used for noncommercial or nonmedical purposes.

(e) Food containers or other food packaging that is made of polystyrene foam that contains chlorofluorocarbons.

(2)(a) One year after the Environmental Quality Commission determines that equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is affordable and available, no person shall engage in the business of installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons with approved recovery and recycling equipment.

(b) Until one year after the operative date of paragraph (a) of this subsection, the provisions of paragraph (a) of this subsection shall not apply to:

(A) Any automobile repair shop that has fewer than four employees; or

(B) Any automobile repair shop that has fewer than three covered bays.

(3) The Environmental Quality Commission shall establish by rule standards for approved equipment for use in recovering and recycling chlorofluorocarbons in automobile air conditioners.

468A.640 Department program to reduce use of and recycle compounds. Subject to available funding, the Department of Environmental Quality may establish a program to carry out the purposes of ORS 468A.625 to 468A.645, including enforcement of the provisions of ORS 468A.635.

ODEQ ENFORCEABLE POLICIES

468A.645 State Fire Marshal; program; halons; guidelines. The State Fire Marshal shall establish a program to minimize the unnecessary release of halons into the environment by providing guidelines for alternatives to full-scale dump testing procedures for industrial halon-based fire extinguishing systems.

468A.650 – 468A.660 468A.650 Legislative findings. The Legislative Assembly finds that:

(1) Scientific studies have revealed that certain chlorofluorocarbon compounds used in aerosol sprays may be destroying the ozone layer in the earth's stratosphere;

(2) The ozone layer is vital to life on earth, preventing approximately 99 percent of the sun's mid-ultraviolet radiation from reaching the earth's surface;

(3) Increased intensity of ultraviolet radiation poses a serious threat to life on earth including increased occurrences of skin cancer, damage to food crops, damage to phytoplankton which is vital to the production of oxygen and to the food chain, and unpredictable and irreversible global climatic changes;

(4) It has been estimated that production of ozone destroying chemicals is increasing at a rate of 10 percent per year, at which rate the ozone layer will be reduced 13 percent by the year 2014;

(5) It has been estimated that there has already been one-half to one percent depletion of the ozone layer;

(6) It has been estimated that an immediate halt to production of ozone destroying chemicals would still result in an approximate three and one-half percent reduction in ozone by 1990; and

(7) There is substantial evidence to believe that inhalation of aerosol sprays is a significant hazard to human health.

468A.655 Prohibition on sale or promotion; exemption for medical use.

(1) Unless otherwise provided by law, after March 1, 1977, no person shall sell or offer to sell or give as a sales inducement in this state any aerosol spray which contains as a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen.

(2) Nothing in this section prohibits the sale of any aerosol spray containing any propellant described in subsection (1) of this section if such aerosol spray is intended to be used for a legitimate medical purpose in the treatment of asthma or any respiratory disorder; or such aerosol spray is intended to be used for a legitimate medical purpose and the State Board of Pharmacy determines by administrative rule that the use of the aerosol spray is essential to such intended use.

468A.660 Wholesale transactions permitted. Nothing in ORS 468A.655 shall prevent wholesale transactions, including but not limited to the transportation, warehousing, sale, and delivery of any aerosol spray described in ORS 468A.655 (1).

468A.700 – 468A.760 468A.700 Definitions for ORS 468A.700 to 468A.760. As used in ORS 468A.700 to 468A.760:

ODEQ ENFORCEABLE POLICIES

(1) “Accredited” means a provider of asbestos abatement training courses is authorized by the Department of Environmental Quality to offer training courses that satisfy department requirements for contractor licensing and worker training.

(2) “Agent” means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.

(3) “Asbestos” means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummungtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(4) “Asbestos abatement project” means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage,handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

(5) “Asbestos-containing material” means any material containing more than one percent asbestos by weight.

(6) “Contractor” means a person that undertakes for compensation an asbestos abatement project for another person. As used in this subsection, “compensation” means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

(7) “Facility” means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including but not limited to ships.

(8) “Friable asbestos material” means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(9) “Person” means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political subdivision, the state and any agency of the state or any other entity, public or private, however organized.

(10) “Trained worker” means a person who has successfully completed specified training in and can demonstrate knowledge of the health and safety aspects of working with asbestos.

(11) “Worker” means an employee or agent of a contractor or facility owner or operator.

468A.705 Legislative findings. The Legislative Assembly finds and declares that:

(1) Asbestos-containing material in a friable condition, or when physically or chemically altered, can release asbestos fibers into the air. Asbestos fibers are respiratory

hazards proven to cause lung cancer, mesothelioma and asbestosis and as such, are a danger to the public health.

(2) There is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health.

(3) Asbestos-containing material found in or on facilities or used for other purposes within the state is a potential health hazard.

(4) The increasing number of asbestos abatement projects increases the exposure of contractors, workers and the public to the hazards of asbestos.

(5) If improperly performed, an asbestos abatement project creates unnecessary health and safety hazards that are detrimental to citizens and to the state in terms of health, family life, preservation of human resources, wage loss, insurance, medical expenses and disability compensation payments.

ODEQ ENFORCEABLE POLICIES

(6) It is in the public interest to reduce exposure to asbestos caused by improperly performed asbestos abatement projects through the upgrading of contractor and worker knowledge, skill and competence.

468A.707 Asbestos abatement program; rules; contractor licensing; worker certification.

(1) The Environmental Quality Commission by rule shall:

(a) Establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training.

(b) Establish the date after which a contractor must be licensed under ORS 468A.720 and a worker must hold a certificate under ORS 468A.730.

(c) Establish criteria and provisions for granting an extension of time for contractor licensing and worker certification, which may consider the number of workers and the availability of accredited training courses.

(2) The program established under subsection (1) of this section shall include at least:

(a) Criteria for contractor licensing and training;

(b) Criteria for worker certification and training;

(c) Standardized training courses; and

(d) A procedure for inspecting asbestos abatement projects.

(3) In establishing the training requirements under subsections (1) and (2) of this section, the commission shall adopt different training requirements that reflect the different levels of responsibility of the contractor or worker, so that within the category of contractor, sublevels shall be separately licensed or exempted and within the category of worker, sublevels shall be separately certified or exempted. The commission shall specifically address as a separate class, those contractors and workers who perform small scale, short duration renovating and maintenance activity. As used in this subsection, “small scale, short duration renovating and maintenance activity” means a task for which the removal of asbestos is not the primary objective of the job, including but not limited to:

(a) Removal of asbestos-containing insulation on pipes;

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) Replacement of an asbestos-containing gasket on a valve;

(d) Installation or removal of a small section of drywall; or

(e) Installation of electrical conduits through or proximate to asbestos-containing materials.

(4) The Department of Environmental Quality, on behalf of the commission, shall consult with the Department of Consumer and Business Services and the Oregon Health Authority about proposed rules for the asbestos abatement program to assure that the rules are compatible with all other state and federal statutes and regulations related to asbestos abatement.

ODEQ ENFORCEABLE POLICIES

(5) The Department of Environmental Quality shall cooperate with the Department of Consumer and Business Services and the Oregon Health Authority to promote proper and safe asbestos abatement work practices and compliance with the provisions of ORS 279B.055 (2)(g), 279B.060 (2)(g), 279C.365 (1)(j), 468.126, 468A.135 and 468A.700 to 468A.760.

468A.710 License required for asbestos abatement project.

(1) Except as provided in ORS 468A.707 (1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.707 and 468A.745, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the Department of Environmental Quality under ORS 468A.720.

(2) A contractor carrying out an asbestos abatement project shall be responsible for the safe and proper handling and delivery of waste that includes asbestos-containing material to a landfill authorized to receive such waste.

468A.715 Licensed contractor required; exception.

(1) Except as provided in subsection

(2) of this section, an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects. (2) A facility owner or operator whose own employees maintain, repair, renovate or demolish the facility may allow the employees to work on asbestos abatement projects only if the employees comply with the training and certification requirements established under ORS 468A.730.

468A.720 Qualifications for license; application.

(1) The Department of Environmental Quality shall issue an asbestos abatement license to a contractor who:

(a) Successfully completes an accredited training course for contractors.

(b) Requires each employee or agent of the contractor who works on or is directly responsible for an asbestos abatement project to be certified under ORS 468A.730.

(c) Certifies that the contractor has read and understands the applicable state and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations.

(2) A contractor shall apply for a license or renewal of a license according to the procedures established by rule by the Environmental Quality Commission.

468A.725 Grounds for license suspension or revocation.

(1) The Department of Environmental Quality may suspend or revoke an asbestos abatement license issued to a contractor under ORS 468A.720 if the licensee:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the qualifications for a license or to comply with rules adopted by the Environmental Quality Commission under ORS 468A.700 to 468A.760.

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement.

(d) Permits an untrained worker to work on an asbestos abatement project.

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement.

(2) In addition to any penalty provided by ORS 468.140, the department may suspend or revoke the license or certification of any person who violates the conditions of ORS 468A.700 to 468A.755 or rules adopted under ORS 468A.700 to 468A.755.

468A.730 Worker certificate required; qualifications; renewal application; suspension or revocation.

(1) Except as provided in ORS 468A.707 (1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.745, no worker shall work on an asbestos abatement project unless the person holds a certificate issued by the Department of Environmental Quality or the department's authorized representative under subsection (2) of this section.

(2) The department or an authorized representative of the department shall issue an asbestos abatement certificate to a worker who successfully completes an accredited asbestos abatement training course approved by the department.

(3) If the commission determines there is a need for a category of workers to update the workers' training in order to meet new or changed conditions, the commission may require the worker, as a condition of certificate renewal, to successfully complete an accredited asbestos abatement review course.

(4) A worker or the facility owner or operator shall submit an application for an asbestos abatement certificate and renewal of a certificate according to procedures established by rule by the Environmental Quality Commission.

(5) The department may suspend or revoke a certificate if a worker fails to comply with applicable health and safety rules or standards.

468A.735 Alternatives to protection requirements; approval. Subject to the direction of the Environmental Quality Commission, the Director of the Department of Environmental Quality may approve, on a case-by-case basis, an alternative to a specific worker and public health protection requirement for an asbestos abatement project if the contractor or facility owner or operator submits a written description of the alternative procedure and demonstrates to the director's satisfaction that the proposed alternative procedure provides worker and public health protection equivalent to the protection that would be provided by the waived provisions.

468A.740 Accreditation requirements; rules.

(1) The Environmental Quality Commission by rule shall provide for accreditation of courses that satisfy training requirements contractors must comply with to qualify for an asbestos abatement license under ORS 468A.720 and courses that workers must successfully complete to become certified under ORS 468A.730.

ODEQ ENFORCEABLE POLICIES

(2) The accreditation requirements established by the commission under subsection (1) of this section shall reflect the level of training that a course provider must offer to satisfy the licensing requirements under ORS 468A.720 and the certification requirements under ORS 468A.730.

(3) In order to be accredited under subsection (1) of this section, a training course shall include at a minimum material relating to:

(a) The characteristics and uses of asbestos and the associated health hazards;

(b) Local, state and federal standards relating to asbestos abatement work practices;

(c) Methods to protect personal and public health from asbestos hazards;

(d) Air monitoring;

(e) Safe and proper asbestos abatement techniques; and

(f) Proper disposal of waste containing asbestos.

(4) In addition to the requirements under subsection (3) of this section, the person providing a training course for which accreditation is sought shall demonstrate to the satisfaction of the Department of Environmental Quality the ability and proficiency to conduct the training.

(5) Any person providing accredited asbestos abatement training shall make available to the department for audit purposes, at no cost to the department, all course materials, records and access to training sessions.

(6) Applications for accreditation and renewals of accreditation shall be submitted according to procedures established by rule by the commission.

(7) The department may suspend or revoke training course accreditation if the provider fails to meet and maintain any standard established by the commission.

(8) The commission by rule shall establish provisions to allow a worker or contractor trained in another state to use training in other states to satisfy Oregon licensing and certification requirements, if the commission finds that the training received in the other state would meet the requirements of this section.

468A.745 Rules; variances; training; standards; procedures. The Environmental Quality Commission shall adopt rules to carry out its duties under ORS 279B.055 (2)(g), 279B.060 (2)(g), 279C.365 (1)(j), 468A.135 and 468A.700 to 468A.760. In addition, the commission may:

(1) Allow variances from the provisions of ORS 468A.700 to 468A.755 in the same manner variances are granted under ORS 468A.075.

(2) Establish training requirements for contractors applying for an asbestos abatement license.

(3) Establish training requirements for workers applying for a certificate to work on asbestos abatement projects.

(4) Establish standards and procedures to accredit asbestos abatement training courses for contractors and workers.

(5) Establish standards and procedures for licensing contractors and certifying workers.

(6) Issue, renew, suspend and revoke licenses, certificates and accreditations.

ODEQ ENFORCEABLE POLICIES

(7) Determine those classes of asbestos abatement projects for which the person undertaking the project must notify the Department of Environmental Quality before beginning the project.

(8) Establish work practice standards, compatible with standards of the Department of Consumer and Business Services, for the abatement of asbestos hazards and the handling and disposal of waste materials containing asbestos.

(9) Provide for asbestos abatement training courses that satisfy the requirements for contractor licensing under ORS 468A.720 or worker certification under ORS 468A.730.

468A.750 Fee schedule; waiver; disposition; rules.

(1) By rule and after hearing, the Environmental Quality Commission shall establish a schedule of fees for:

(a) Licenses issued under ORS 468A.720;

(b) Worker certification under ORS 468A.730;

(c) Training course accreditation under ORS 468A.740; and

(d) Notices of intent to perform an asbestos abatement project under ORS 468A.745 (7).

(2) The fees established under subsection (1) of this section shall be based upon the costs of the Department of Environmental Quality in carrying out the asbestos abatement program established under ORS 468A.707.

(3) In adopting the schedule of fees under this section the commission shall include provisions and procedures for granting a waiver of a fee.

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Department of Environmental Quality. Such moneys are continuously appropriated to the Department of Environmental Quality to pay the department's expenses in administering and enforcing the asbestos abatement program.

468A.755 Exemptions.

(1) Except as provided in subsection (2) of this section, ORS 468A.700 to 468A.750 do not apply to an asbestos abatement project in a private residence if:

(a) The residence is occupied by the owner; and

(b) The owner occupant is performing the asbestos abatement work.

(2) Any person exempt from ORS 468A.700 to 468A.750 under subsection (1) of this section shall handle and dispose of asbestos-containing material in compliance with standards established by the Environmental Quality Commission under ORS 468A.745.

ODEQ ENFORCEABLE POLICIES

468A.760 Content of bid advertisement. Any public agency requesting bids or proposals for a proposed project shall first make a determination of whether or not the project requires a contractor licensed under ORS 468A.720. The public agency shall include such requirement in the bid or proposal advertisement under ORS 279B.055 (2)(g), 279B.060 (2)(g) and 279C.365 (1)(j).

468A.775 – 468A.785 468A.775 Indoor air quality sampling; accreditation and certification programs.

(1) The Environmental Quality Commission shall establish a voluntary accreditation program for those providing indoor air quality sampling services or ventilation system evaluations for public areas, office workplaces or private residences. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section.

(2) The Environmental Quality Commission shall establish a voluntary contractor certification program for contractors providing remedial action for residential indoor air pollution. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section.

468A.780 Schedule of fees; accreditation and certification programs; rules. The Environmental Quality Commission shall establish by rule a schedule of annual fees, not to exceed $500 per participating contractor, to pay the Department of Environmental Quality's costs in operating the:

(1) Voluntary accreditation program under ORS 468A.775 (1); and

(2) Voluntary contractor certification program under ORS 468A.775 (2).

468A.785 Pilot programs.

(1) Upon the advice of the Indoor Air Pollution Task Force, the Environmental Quality Commission may establish a pilot program for any product designed for household or office use that is not adequately regulated by federal law that may be a threat to human health by contaminating indoor air.

(2) The Environmental Quality Commission may establish a voluntary product labeling pilot program to identify products with a low potential for causing indoor air pollution.

468A.793 – 468A.803 468A.793 Goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions. The Environmental Quality Commission shall establish a goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions to no more than one case per million individuals by 2017. In setting the goal, the commission shall include a target to substantially reduce the risk to school children from diesel engine emissions produced by Oregon school buses by the end of 2013. The Department of Environmental Quality is directed to track and report to the Legislative Assembly on the progress in meeting this goal.

468A.795 Definitions. As used in ORS 468A.795 to 468A.803 and sections 11 to 16, chapter 855, Oregon Laws 2007:

(1) "Combined weight" has the meaning given that term in ORS 825.005.

ODEQ ENFORCEABLE POLICIES

(2) “Cost-effectiveness threshold” means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) “Heavy-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) “Incremental cost” means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) “Medium-duty truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) “Motor vehicle” has the meaning given that term in ORS 825.005.

(7) “Nonroad Oregon diesel engine” means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) “Oregon diesel engine” means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) “Oregon diesel truck engine” means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) “Public highway” has the meaning given that term in ORS 825.005.

(11) “Repower” means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) “Retrofit” means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) “Scrap” means to destroy and render inoperable.

(14) “Truck” means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

468A.796 School buses; retrofitting of engines; replacement. All school buses with diesel engines operated in Oregon must be:

(1) Retrofitted with 2007 equivalent engines and 2007 fine particulate matter capture technology by January 1, 2017; or

(2) Replaced with school buses manufactured on or after January 1, 2007, by January 1, 2025. A school bus replaced under this subsection may not be used for transportation of any type.

468A.797 Standards for certified cost of qualifying repower or retrofit; rules.

(1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit, including but not limited to rules establishing the certified cost for purposes of the tax credit established in section 12, chapter 855, Oregon Laws 2007.

(2) For the purposes of subsection (1) of this section, certified cost:

ODEQ ENFORCEABLE POLICIES

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold.

468A.799 Standards for qualifying repower of nonroad diesel engine or retrofit of diesel engine; rules. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine, including but not limited to rules establishing repower or retrofit qualifications for purposes of the tax credit established in section 12, chapter 855, Oregon Laws 2007. (2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant, loan or tax credit under ORS 468A.803 or section 12, chapter 855, Oregon Laws 2007, has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant, loan or tax credit. [2007 c.855 §8]

Note: The amendments to 468A.799 by section 8a, chapter 855, Oregon Laws 2007, become operative January 2, 2018. See section 8b, chapter 855, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

468A.799. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant or loan under ORS 468A.803 has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant or loan.

468A.801 Clean Diesel Engine Fund; interest.

ODEQ ENFORCEABLE POLICIES

(1) The Clean Diesel Engine Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited to the fund. The moneys in the fund are continuously appropriated to the Department of Environmental quality to be used for the purposes described in ORS 468A.803.

(2) The Clean Diesel Engine Fund consists of:

(a) Funds appropriated by the Legislative Assembly;

(b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C. 7401 et seq., or other federal laws; and

(c) Any other revenues derived from gifts or grants given to the state for the purpose of providing financial assistance to owners or operators of diesel engines for the purpose of repowering, retrofitting or scrapping diesel engines to reduce diesel engine emissions.

468A.803 Uses of Clean Diesel Engine Fund; rules.

(1) The Department of Environmental Quality shall use the moneys in the Clean Diesel Engine Fund to award:

(a) Grants and loans to the owners and operators of Oregon diesel engines for up to 100 percent of the certified costs of qualifying retrofits as described in ORS 468A.797 and 468A.799;

(b) Grants and loans to the owners and operators of nonroad Oregon diesel engines for up to 25 percent of the certified costs of qualifying repowers as described in ORS 468A.797 and 468A.799; and

(c) Grants to the owners of Oregon diesel truck engines to scrap those engines.

(2) Subject to and consistent with federal law, any moneys received from the federal government that are deposited in the Clean Diesel Engine Fund under ORS 468A.801 (2)(b) must be used for initiatives to reduce emissions from diesel engines. Subsections (1), (3) to (5) and (7) of this section and ORS 468A.797 and 468A.799 do not apply to use of moneys in the Clean Diesel Engine Fund received from the federal government.

(3) In determining the amount of a grant or loan under this section, the department must reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, other grants or loans, or any other public financial assistance.

(4) The department may certify third parties to perform qualifying repowers and retrofits and may contract with third parties to perform such services for the certified costs of qualifying repowers and retrofits. The department may also contract with institutions of higher education or other public bodies as defined by ORS 174.109 to train and certify third parties to perform qualifying repowers and retrofits.

ODEQ ENFORCEABLE POLICIES

(5) The department may not award a grant to scrap an Oregon diesel truck engine under subsection (1)(c) of this section unless the engine was manufactured prior to 1994 and the engine is in operating condition at the time of the grant application or, if repairs are needed, the owner demonstrates to the department's satisfaction that the engine can be repaired to an operating condition for less than its commercial scrap value. The Environmental Quality Commission shall adopt rules for a maximum grant awarded under subsection (1)(c) of this section for an engine in a heavy-duty truck and for an engine in a medium-duty truck. A grant awarded under subsection (1)(c) of this section may not be combined with any other tax credits, grants or loans, or any other public financial assistance, to scrap an Oregon diesel truck engine.

(6) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses of the department in administering the program described in this section.

(7) The commission shall adopt rules to implement this section and ORS 468A.801, including but not limited to establishing preferences for grant and loan awards based upon percentage of engine use in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping, repowering or retrofitting an engine will benefit sensitive populations or areas with elevated concentrations of diesel particulate matter, or such other criteria as the commission may establish. The rules adopted by the commission shall reserve a portion of the financial assistance available each year for applicants that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall provide for simplified access to financial assistance for those applicants.

(8) The department may perform activities necessary to ensure that recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable requirements. If the department determines that a recipient has not complied with applicable requirements, it may order the recipient to refund all grant or loan moneys and may impose penalties pursuant to ORS 468.140.

Sec. 15. (1) The Environmental Quality Commission shall adopt rules to implement this section and sections 12, 13 [sections 12 and 13 are compiled as notes under 315.356] and 16 of this 2007 Act, including rules:

(a) Imposing a nonrefundable application fee of $50 for applications for cost certification of repowers or retrofits that qualify for the tax credit allowed under section 12 of this 2007 Act.

(b) Imposing a nonrefundable application processing fee. The amount of the fee shall be the amount that in the judgment of the commission is needed for the Department of Environmental Quality to recoup its expenses in administering the tax credit cost certification under section 16 of this 2007 Act.

(2) The Environmental Quality Commission shall consult with the Department of Revenue prior to adopting or amending rules under this section.

ODEQ ENFORCEABLE POLICIES

Sec. 16. (1) A person seeking a tax credit under section 12 of this 2007 Act or a person seeking to transfer a tax credit cost certification under section 13 of this 2007 Act shall first apply to the Department of Environmental Quality for certification of the cost of a repower or retrofit of an engine that qualifies for the tax credit under section 12 of this 2007 Act.

(2) The application must contain the following information:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) A statement that the engine on which the repower or retrofit was performed is owned by the applicant and is intended to be an Oregon diesel engine;

(c) A description of the technologies used in the repower or retrofit that are sufficient for the department to determine if the repower or retrofit qualifies for the tax credit;

(d) Invoices or other documentation of the cost and payment of the repower or retrofit; and

(e) Any other information required by the department or required under rules adopted by the Environmental Quality Commission.

(3) The taxpayer shall file the application within one year following the date of the invoice for the qualifying repower or retrofit. The application may not be accepted unless the application includes payment of the nonrefundable fees imposed under rules adopted under section 15 of this 2007 Act.

(4) The department shall consider completed applications and determine if the application describes a repower or retrofit that qualifies for a tax credit under section 12 of this 2007 Act and, if qualified, the certified cost of the repower or retrofit. In determining the amount of a tax credit under this section, the department shall reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, grants, loans or any other public financial assistance. The department shall send written notice of the certified cost to the taxpayer. The department may not certify more than $3 million of tax credits under this section during each calendar year.

(5) If the department determines that a repower or retrofit does not qualify for a tax credit under section 12 of this 2007 Act or certifies a lesser amount than was sought in the application, the taxpayer may appeal the determination as a contested case under ORS chapter 183.

ODEQ ENFORCEABLE POLICIES

(6) The department shall deposit fees collected under this section in a miscellaneous receipts account established in the State Treasury for the benefit of the department. Amounts in the account are continuously appropriated to the department for the purpose of reimbursing the department for expenses incurred in administering this section.

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.

ODEQ ENFORCEABLE POLICIES

(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.

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 through innovative approaches, including but not limited to the appropriate reuse of water and wastes;

(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.

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 ofnew 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.

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

ODEQ ENFORCEABLE POLICIES

(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.

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.

ODEQ ENFORCEABLE POLICIES

(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 expire, 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.

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.

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.

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

ODEQ ENFORCEABLE POLICIES

(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.

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 conductany 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 statements 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.

468B.052Fees for water quality permit to operate suction dredge; rules.

ODEQ ENFORCEABLE POLICIES

(1) Unless the Environmental Quality Commission, as provided in ORS 468.065, establishes different fees for permits issued under ORS 468B.050, 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:

(a) For an individual permit:

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

(B) An annual renewal fee of $25.

(b) 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.

(2)(a) In addition to the fees described in subsection (1) of this section, by rule the commission may establish an additional fee for a permit issued under ORS 468B.050 for a person to operate a suction dredge described in this section. The fee must be adequate to cover the costs of administration, compliance, monitoring and enforcement related to the permit.

(b) After a fee is established by the commission pursuant to this subsection, the fee is subject to the limitations on increases imposed by ORS 468B.051.

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 mining operation, as defined in ORS 517.952, 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.

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 Department 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.

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;

ODEQ ENFORCEABLE POLICIES

(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.

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

(1) "Buildings or structures" includes but

(2) is not limited to floating buildings and

(3) structures, houseboats, moorages, marinas,

(4) or any boat used as such.

(5) (2) "Garbage" means putrescible animal

(6) and vegetable wastes resulting from the handling,

(7) preparation, cooking and serving of

(8) food.

(9) (3) "Sewage" means human excreta as

(10) well as kitchen, bath and laundry wastes.

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.

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.

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.

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.

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. 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.

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.

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

ODEQ ENFORCEABLE POLICIES

(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 and 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.

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.

468B.130 Prohibition on sale or distribution of cleaning agents containing phosphorus; rules.
(1) Except as provided in subsection (2) of this section, a person may not 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 commercial 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.

ODEQ ENFORCEABLE POLICIES

(4) The Environmental Quality Commission may adopt rules governing the labeling requirements imposed by subsection (3) of this section.

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, antiscale 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.

468B.138 – 468B.144 Definitions for ORS 468B.138 to 468B.144. As used in ORS 468B.138 to 468B.144:

(1) “Legacy” means a pollutant, the use of which has been banned or restricted for several years, that remains at detectable levels in sediment and tissue samples.

(2) “Municipality” means a city or special district that operates and maintains a sewage treatment facility.

(3) “Permittee” means a municipality in possession of a National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the Department of Environmental Quality pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(4) “Persistent pollutant” means a substance that is toxic and either persists in the environment or accumulates in the tissues of humans, fish, wildlife or plants. [2007 c.696 §2]

ODEQ ENFORCEABLE POLICIES

468B.139 Report; consultation with governments, agencies and organizations; surcharge. (1) The Department of Environmental Quality shall conduct a study of persistent pollutants discharged in the State of Oregon and report the results of that study to an appropriate interim committee of the Legislative Assembly related to the environment by June 1, 2010.

(2) The department's report shall include, but is not limited to, the following components:

(a) A priority listing of persistent pollutants that pose a threat to the waters of this state, as defined in ORS 196.800, and have documented harmful effects on the health and well-being of humans, fish or wildlife, especially aquatic species, based on factors including, but not limited to:

(A) Toxicological and bioaccumulative factors;

(B) The feasibility of reduction options;

(C) Data concerning pollutant dose and

response; and

(D) Data regarding the magnitude and significance of specific ongoing and legacy

discharges.

(b) Identification of individual point, nonpoint and legacy sources of priority listed persistent pollutants from existing data, including an analysis identifying the quantity, concentration and volume of such pollutants discharged by individual sources on an annual basis.

(c) An evaluation and assessment of source reduction and technological control measures that can reduce the discharge of persistent pollutants into the waters of this state, including an assessment of the costs and effectiveness of such measures and which measures should be prioritized for reducing such pollutants.

(3) The department may contract with a private organization to conduct the study required under this section.

(4) The department shall consult with interested local and tribal governments, state and federal agencies and other private organizations in preparing the report required under this section.

(5)(a) The department shall prepare and report the priority listing described in subsection

(2)(a) of this section to the Seventy fifth Legislative Assembly, in the manner provided by ORS 192.245, on or before June 1, 2009.

(b) After June 1, 2009, the department shall report to the Legislative Assembly or an interim committee related to the environment Whenever the department adds to, or removes from, the priority listing described in subsection (2)(a) of this section a persistent pollutant.

(6) For the purpose of defraying the cost of conducting and administering the study under this section, the department may impose a surcharge on permits issued by the department to permittees. Moneys collected under this subsection shall be deposited into the Persistent Pollutant Control Account established under ORS 468B.143. [2007 c.696 §3]

468B.140 Plans to reduce discharges

of persistent pollutants. (1)(a) By July 1, 2011, each permittee shall submit to the Department of Environmental Quality a plan for reducing the permittee's discharges of persistent pollutants listed on the priority listing described in ORS 468B.139 (2)(a):

(A) That occur in concentrations greater than the maximum contaminant levels established by the National Primary Drinking Water Regulations adopted pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; or

(B) For which no maximum contaminant levels have been adopted, but that the Environmental Quality Commission determines by rule should be included in permittees' plans for reducing permittees' discharges of priority-listed persistent pollutants.

(b) Determinations made by the commission under this subsection regarding persistent pollutants are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048.

(2) Plans submitted to the department pursuant to subsection (1) of this section shall include, but are not limited to:

(a) A specific description of the concentrations and estimated annual quantity of persistent pollutants that are discharged, based on water quality sampling data.

(b) The identification of measures to reduce the discharge of persistent pollutants.

(c) The identification of focused goals for reduction of persistent pollutants.

(3) Measures identified to reduce persistent pollutants may include, but are not limited to:

(a) Collecting legacy pesticides;

(b) Reducing the use of mercury amalgams by dental offices;

(c) Implementing technological control measures;

(d) Working with businesses and manufacturers to reduce discharges through material process changes;

(e) Collecting arm cuffs from blood pressure monitors;

(f) Requiring contractors to return heating, ventilating and air-conditioning system thermostats;

(g) Recycling fluorescent lamps;

(h) Recycling rechargeable batteries;

(i) Monitoring abandoned mining sites;

(j) Managing sediments contaminated with persistent pollutants;

(k) Instituting policies for cleaning school laboratories;

(L) Instituting pharmaceutical take-back programs; and

(m) Taking steps to reduce the presence of mercury in schools.

ODEQ ENFORCEABLE POLICIES

(4) The department shall require, as a condition of receiving a new or renewed National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the department pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more, that municipal applicants:

(a) Implement plans to reduce the discharge of persistent pollutants according to pollution reduction goals adopted by applicants for new permits.

(b) Implement plans to reduce the discharge of persistent pollutants according to pollution reduction goals adopted by applicants and submit updated discharge reduction plans with applications to renew a permit.

(5) The department shall incorporate a plan submitted pursuant to subsection (1) of this section by a municipal applicant into a new or renewed National Pollutant Discharge Elimination System or water pollution control facility permit issued to the applicant. [2007 c.696 §4]

468B.141 Rules. In accordance with applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt rules necessary for the administration of ORS 468B.139 and 468B.140. [2007 c.696 §5]

468B.142 Order compelling compliance with rules; injunction; security not required; attorney fees. (1) The Department of Environmental Quality may apply to any circuit court for an order compelling compliance with any rule adopted by the Environmental Quality Commission under ORS 468B.141. If the court finds that the defendant is not complying with any rule so adopted, the court shall grant an injunction requiring compliance. The court, on motion

and affidavits, may grant a preliminary injunction ex parte upon such terms as are just.

(2) The department need not give security before the issuance of an injunction under this section.

(3) The court may award reasonable attorney fees and costs to the department if the department prevails in an action under this section. [2007 c.696 §6]

468B.143 Persistent Pollutant Control Account; establishment; uses. The Persistent Pollutant Control Account is established,
separate and distinct from the General Fund. Moneys may be credited to the account from any public or private source. Moneys in the account are continuously appropriated to the Department of Environmental Quality and may be used only for the purposes described in ORS 468B.139 to 468B.142. [2007 c.696 §7]

468B.144 Moneys received under ORS 468B.142; disposition. All moneys received by the Department of Environmental Quality under ORS 468B.142 shall be deposited to the credit of the Persistent Pollutant Control Account established under ORS 468B.143.

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 Oregon Health Authority 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.

ODEQ ENFORCEABLE POLICIES

(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.

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.

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.

468B.200 - 468B.230 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.

ODEQ ENFORCEABLE POLICIES

(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.222 [1995 s.s. c.3 §37a; repealed by 1996 c.5 §3 (468B.223 enacted in lieu of 468B.222)]

468B.223 [1996 c.5 §4 (enacted in lieu of 468B.222); repealed by 2001 c.248 §14]

468B.224 [1995 s.s. c.3 §37b; repealed by 1996 c.5 §5 (468B.225 enacted in lieu of 468B.224)]

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.226 [1995 s.s. c.3 §37c; repealed by 1996 c.5 §7 (468B.227 enacted in lieu of 468B.226)]

468B.227 [1996 c.5 §8 (enacted in lieu of 468B.226); repealed by 2001 c.248 §14]

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 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.

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

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

ODEQ ENFORCEABLE POLICIES

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

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

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

(5) “Covered vessel” means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

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

(7) “Discharge” means any emission other than natural seepage of oil, whether intentional or unintentional. “Discharge” includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

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

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

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

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

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

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

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

(12) “Hazardous material” has the meaning given that term in ORS 466.605.

(13) “Maritime association” means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil spill response plan- ning and spill related communications services within the state.

ODEQ ENFORCEABLE POLICIES

(14) “Maximum probable spill” means the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the same class operating on the west coast of the United States.

(15) “Navigable waters” means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tidewater.

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

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

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

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

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

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

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

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

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

(25) “Removal costs” means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from the incident. (26) “Responsible party” has the meaning given under section 1001 of the Oil Pollution Act of 1990 (P.L. 101-380). (27) “Ship” means any boat, ship, vessel, barge or other floating craft of any kind.

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

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

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

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

(a) A vessel carrying oil in drums, barrels or other packages; (b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(30) "Worst case spill" means:

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

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

468B.305 Entry of oil into waters of state prohibited; exceptions. (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the state.

(2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state under the following circumstances:

(a) The person discharging the oil was expressly authorized to do so by the Department of Environmental Quality, having obtained a permit therefor required by ORS 468B.050;

(b) Notwithstanding any other provision of ORS 466.640, 468B.025 or 468B.050 or this section, the person discharging the oil was expressly authorized to do so by a federal on-scene coordinator or the department in connection with activities related to the removal of or response to oil that entered the waters of the state; or

(c) The person having control over the oil can prove that the entry thereof into the waters of the state was caused by:

(A) An act of war or sabotage or an act of God.

(B) Negligence on the part of the United States Government, or the State of Oregon.

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

468B.310 Liability for violation of ORS 468B.305; exceptions. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

ODEQ ENFORCEABLE POLICIES

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section:

(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

468B.315 Liability for violation of ORS 468B.305; exceptions. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section. (3) Notwithstanding the provisions of subsections (1) and (2) of this section:

(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.

468B.320 Action by state; liability for state expense; order; appeal. (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, the Department of Environmental Quality is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state.

(2) The Director of the Department of Environmental Quality shall keep a record of all necessary expenses incurred in carrying out any action authorized under this section, including a reasonable charge for costs incurred by the state, including state's equipment and materials utilized.

ODEQ ENFORCEABLE POLICIES

(3) The authority granted under this section shall be limited to actions which are designed to protect the public interest or public property.

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section.

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the Environmental Quality Commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed pursuant to ORS chapter 183 but not as a contested case.

468B.337 Liquefied natural gas. The provisions of ORS 468B.300 to 468B.500 apply to liquefied natural gas while the gas is in transit through the navigable waters of the state or while the gas is at a facility that receives liquefied natural gas from a vessel.

468B.345 Oil spill contingency plan required to operate facility or covered vessel in state or state waters; exceptions. (1) Unless an oil spill prevention and emergency response plan has been approved by the Department of Environmental Quality and has been properly implemented, no person shall:

(a) Cause or permit the operation of an onshore facility in the state;

(b) Cause or permit the operation of an offshore facility in the state; or (c) Cause or permit the operation of a covered vessel within the navigable waters of the state.

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

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

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

468B.350 Standards for contingency plans; oil spill response zones; rules. (1) The Environmental Quality Commission shall adopt rules defining:

(a) Standards for the preparation of contingency plans for facilities and covered vessels; and

(b) Oil spill response zones within the navigable waters of the state and the amount of equipment identified in an oil spill contingency plan that is required to be regularly located in those zones.

(2) The rules adopted under subsection (1) of this section shall be coordinated with rules and regulations adopted by the State of Washington and the United States Coast Guard and shall require contingency plans that at a minimum meet the following standards. The plan shall:

(a) Include complete details concerning the response to oil spills of various sizes from any covered vessel or facility covered by the contingency plan.

ODEQ ENFORCEABLE POLICIES

(b) To the maximum extent practicable, be designed, in terms of personnel, materials and equipment, to:

(A) Remove oil and minimize any damage to the environment resulting from a maximum probable spill; and

(B) Remove oil and minimize any damage to the environment resulting from a worst case spill.

(c) Consider the nature and number of facilities and marine terminals in a geographic area and the resulting ability of a facility to finance a plan and pay for department review.

(d) Describe how the contingency plan relates to and is coordinated with the response plan developed by the Department of Environmental Quality under ORS 468B.495 and 468B.500 and any relevant contingency plan prepared by a cooperative, port, regional entity, the state or the federal government in the same area of the state covered by the plan.

(e) Provide procedures for early detection of an oil spill and timely notification of appropriate federal, state and local authorities about an oil spill in accordance with applicable state and federal law.

(f) Demonstrate ownership of or access to an emergency response communications network covering all locations of operation or transit by a covered vessel. The emergency response communications network also shall provide for immediate notification and continual emergency communications during cleanup response.

(g) State the number, training preparedness and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan.

(h) Incorporate periodic training and drill programs to evaluate whether the personnel and equipment provided under the plan are in a state of operational readiness at all times.

(i) State the means of protecting and mitigating the effects of a spill on the environment, including fish, marine mammals and other wildlife, and insuring that implementation of the plan does not pose unacceptable risks to the public or to the environment.

(j) Provide a detailed description of equipment, training and procedures to be used by the crew of a vessel, or the crew of a tugboat involved in the operation of a nonself-propelled tank vessel, to minimize vessel damage, stop or reduce spilling from the vessel and only when appropriate and the vessel's safety is assured, contain and clean up the spilled oil.

(k) Provide arrangements by contract or other approved means for pre-positioning oil spill containment equipment, cleanup equipment, dedicated response vessels and trained personnel at strategic locations from which the personnel and equipment can be deployed to the spill site to promptly and properly remove the spilled oil.

(l) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan.

(m) Provide for disposal of recovered oil in accordance with local, state and federal laws.

(n) State the measures that have been taken to reduce the likelihood a spill will occur, including but not limited to design and operation of a vessel or facility, training of personnel, number of personnel and backup systems designed to prevent a spill.

ODEQ ENFORCEABLE POLICIES

(o) State the amount and type of equipment and the dedicated response vessels available by contract or other approved means to respond to a spill, where the equipment and vessels are located and the extent to which other contingency plans rely on the same equipment and vessels.

(p) If the commission has adopted rules permitting the use of dispersants, describe the circumstances and the manner for the application of dispersants in conformance with the rules of the commission.

(3) As used in this section:

(a) "Contract or other approved means" means:

(A) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response zones;

(B) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response zones;

(C) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response zones; or

(D) A written document that:

(i) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response zones;

(ii) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(iii) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(iv) Is referenced in an oil spill contingency plan for the vessel or facility.

(b) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response related training, testing, exercises and research, or other oil spill removal and related activities.

468B.355 Contingency plans; participation in maritime association; lien; liability of maritime association; exemption from liability. (1) A contingency plan for a facility or covered vessel shall be submitted to the Department of Environmental Quality within 12 months after the Environmental Quality Commission adopts rules under ORS 468B.350. The department may adopt a schedule for submission of an oil contingency plan within the 12-month period. The schedule for the Columbia River shall be coordinated with the State of Washington. The department may adopt an alternative schedule for the Oregon coast and the Willamette River.

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

ODEQ ENFORCEABLE POLICIES

(3) The contingency plan for a tank vessel shall be submitted by:

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

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

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

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

(5) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(6) A person that has contracted with a facility or covered vessel to provide containment and cleanup services and that meets the standards established by the commission under ORS 468B.350 may submit the contingency plan for any facility or covered vessel for which the person is contractually obli- gated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(7) The requirements of submitting a contingency plan under this section may be satisfied by a covered vessel by submission of proof of assessment participation by the vessel in a maritime association. Subject to conditions imposed by the department, the association may submit a single plan for more than one facility or covered vessel or may submit a single plan providing contingencies to respond for different classes of covered vessels.

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

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

(10) A maritime association may submit a contingency plan for a cooperative group of covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the navigable waters of the state if, upon entering such waters, the vessel pays the established assessment for participation in the approved plan maintained by the association.

(11) A maritime association shall have a lien on the responsible vessel if the vessel owner or operator fails to remit any regular operating assessments and shall further have a lien for the recovery for any direct costs provided to or for the vessel by the maritime association for oil spill response or spill related communications services. The lien shall be enforced in accordance with applicable law.

(12) Obligations incurred by a maritime association and any other liabilities or claims against the association shall be enforced only against the assets of the association, and no liability for the debts or action of the association exists against either the State of Oregon or any other subdivision or instrumentality thereof, or against any member, officer, employee or agent of the association in an individual or representative capacity. (13) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the members of the association, its officers, agents or employees, nor the business entities by whom the members are

regularly employed, may be held individually responsible for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime. (14) Assessment participation in a maritime association does not constitute a defense to liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment participation shall not relieve a covered vessel from complying with those portions of the approved maritime association contingency plan that may require vessel specific oil spill response equipment, training or capabilities for that vessel. (15) A person providing a contingency plan for a cargo or passenger vessel under this section shall be exempt from liability as provided under ORS 468B.425 for any action taken or omitted in the course of providing contingency planning service.

468B.360 Review of contingency plan. In reviewing the contingency plan required by ORS 468B.345, the Department of Environmental Quality shall consider at least the following factors:

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

(2) The nature and amount of vessel traffic within the area covered by the plan;

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

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

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

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

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

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

(9) The number of covered vessels calling in and the facilities located in the geographic area and the resulting ability of local agencies and industry groups to develop, finance and maintain a contingency plan and spill response system for those vessels and facilities; and

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

468B.365 Plan approval; change affecting plan; certificate of approval. (1) The Department of Environmental Quality shall approve a contingency plan only if it determines that the plan meets the requirements of ORS 468B.345 to 468B.360 and:

(a) The covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; and

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

ODEQ ENFORCEABLE POLICIES

(2) An owner or operator of a covered vessel or facility shall notify the department in writing immediately of any significant change affecting the contingency plan, including changes in any factor set forth in this section or in rules adopted by the Environmental Quality Commission. The department may require the owner or operator to update a contingency plan as a result of these changes.

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

(4) The department may attach any reasonable term or condition to its approval or modification of a contingency plan that the department determines is necessary to insure that the applicant:

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

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

(c) Complies with the contingency plan.

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

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

(a) Periodic training;

(b) Response team exercises; and

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

(7) The department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk of oil discharges from the facility or tank vessel for which the plan is submitted or being modified.

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

(9) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the plan has been approved. The certificate shall include the name of the facility or tank vessel for which the certificate is issued, the effective date of the plan and the date by which the plan must be submitted for renewal.

ODEQ ENFORCEABLE POLICIES

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

468B.370 Determination of adequacy of plan; practice drills; rules. (1)(a) The Environmental Quality Commission by rule shall adopt procedures to determine the adequacy of a contingency plan approved or filed for approval under ORS 468B.365.

(b) The rules shall require random practice drills without prior notice to test the adequacy of the responding entities. The rules may provide for unannounced practice drills of an individual contingency plan.

(c) The rules may require the contingency plan holder to publish a report on the drills. This report shall include an assessment of response time and available equipment and personnel compared to those listed in the contingency plan relying on the responding entities and requirements, if any, for changes in the plans or their implementation. The Department of Environmental Quality shall review the report and assess the adequacy of the drill.

(d) The department may require additional drills and changes in arrangements for implementing the approved plan that are necessary to insure the effective implementation of the plan.

(2) The Environmental Quality Commission by rule may require any tank vessel carrying oil as cargo in the navigable waters of the state to:

(a) Place booms, in-water sensors or other detection equipment around tank vessels during transfers of oil; and

(b) Submit to the department evidence of a structural and mechanical integrity inspection of the tank vessel equipment and hull structures.

(3) A tank vessel that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of subsection (1) of this section if the tank vessel has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department.

468B.375 Inspection of facilities and vessels; coordination with State of Washington. (1) In addition to any other right of access or inspection conferred upon the Department of Environmental Quality by ORS 468B.370, the department may at reasonable times and in a safe manner enter and inspect facilities and tank vessels in order to insure compliance with the provisions of ORS 468B.345 to 468B.415.

(2) The department shall coordinate with the State of Washington in the review of the tank vessel structural integrity inspection programs conducted by the United States Coast Guard and other federal agencies to determine whether the programs as actually operated by the federal agencies adequately protect the navigable waters of the state. If the department determines that tank vessel inspection programs conducted by the federal agencies are not adequate to protect the navigable waters of the state, the department shall establish a state tank vessel inspection program.

ODEQ ENFORCEABLE POLICIES

468B.380 Tank vessel inspection program; rules. If the Department of Environmental Quality determines under ORS 468B.375 that a state tank vessel inspection program is necessary, the Environmental Quality Commission shall adopt rules necessary to enable the department to implement the state tank vessel inspection program.

468B.385 Modification of approval of contingency plan; revocation of approval; violation. (1) Upon request of a plan holder or on the initiative of the Department of Environmental Quality, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of the facility or tank vessel necessitating an amended or supplemental plan, or that the operator's discharge experience demonstrates a necessity for modification.

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

(a) Approval was obtained by fraud or misrepresentation;

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

(c) A term or condition of approval or modification has been violated; or (d) The plan holder is not in compliance with the plan and the deficiency materially affects the plan holder's response capability.

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

(4) If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under ORS 466.992 and 468.140. (5) In order to be considered in compliance with a contingency plan, the plan holder must:

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

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

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

(d) Comply with terms and conditions attached to the plan by the department under ORS 468B.345 to 468B.380; and (e) Successfully demonstrate the ability to carry out the plan when required by the department under ORS 468B.370.

468B.390 Compliance with federal Oil Pollution Act of 1990; proof of financial responsibility. (1) No person shall cause or permit the operation of a facility in the state unless the person has proof of compliance with Section 1016 of the federal Oil Pollution Act of 1990 (P.L. 101-380), if such compliance is required by federal law.

ODEQ ENFORCEABLE POLICIES

(2) No person may cause or permit the operation of an offshore exploration or production facility in the state unless the person has proof of compliance with Section 1016 of the federal Oil Pollution Act of 1990 (P.L. 101-380).

(3) Except for a barge that does not carry oil as cargo or fuel or a spill response vessel or barge, the owner of any vessel over 300 gross tons in the waters of this state shall have proof of financial responsibility for the following vessels:

(a) For tank vessels over 300 gross tons:

(A) $1,200 per gross ton or $2 million for vessels of 3,000 gross tons or less, whichever is greater; and

(B) $1,200 per gross ton or $10 million for vessels over 3,000 gross tons, whichever is greater; or

(b) For any other covered vessel over 300 gross tons carrying oil only for use as fuel, $600 per gross ton or $500,000, whichever is greater.

(4) The Department of Environmental Quality shall enter into an agreement with the United States Coast Guard to receive notification of noncompliance with the provisions of this section.

(5) The financial assurance requirement established under subsection (3) of this section shall meet the liability to the state for:

(a) Actual costs for removal of spilled oil;

(b) Civil penalties and fines imposed in connection with oil spills; and

(c) Natural resource damage.

468B.450 Willful or negligent discharge of oil; civil penalty; authority of director to mitigate. (1) Any person who willfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of ORS 468B.450 to 468B.460, and such other considerations as the director considers appropriate. The penalty provided for in this subsection shall be imposed and enforced in accordance with ORS 468.135.

(2) The director may, upon written application therefor received within 15 days after receipt of notice under ORS 468.135, and when considered in the best interest of this state in carrying out the purposes of ORS chapters 468, 468A and 468B, remit or mitigate any penalty provided for in subsection (1) of this section or discontinue any prosecution to recover the same upon such terms as the director in the director's discretion considers proper.

468B.460 Rules. The Environmental Quality Commission shall adopt rules necessary to carry out the provisions of ORS 468B.450 and 468B.455.

ODEQ ENFORCEABLE POLICIES

468B.475 Legislative finding; need for evidence of financial assurance for ships transporting oil. The Legislative Assembly finds that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state. Therefore, it is the intent of this section and ORS 468B.485 to establish financial assurance for ships that transport oil and other hazardous material in the waters of the state.

468B.485 Methods of establishing financial assurance. (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

(a) Evidence of insurance;

(b) Surety bond;

(c) Qualifications as a self-insurer; or

(d) Any other evidence of financial assurance approved by the commission.

(2) Any bond filed shall be issued by a bonding company authorized to do business in the United States. (3) Documentation of the financial assurance shall be kept on the ship or filed with the Department of Environmental Quality. The owner or operator of any other ship shall maintain on the ship a certificate issued by the United States Coast Guard evidencing compliance with the requirements of section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.