

Chapter 449

1963 REPLACEMENT PART

Pollution of Water and Air

SANITARY AUTHORITY

- 449.015 Sanitary Authority; creation; membership; expenses
- 449.020 Appointed members; term; qualifications; vacancies; compensation
- 449.025 State Sanitary Engineer
- 449.035 Cooperation with other agencies; financial aid; use of funds
- 449.048 Subpenas; oaths; depositions
- 449.055 Granting time extension for compliance with orders in special cases
- 449.060 Intervention in abatement suits
- 449.070 Construction

WATER POLLUTION

- 449.075 Definitions
- 449.077 Declaration of policy on water pollution
- 449.080 Powers and duties of Sanitary Authority in relation to water pollution
- 449.086 Standards of quality and purity of water
- 449.088 Final order by Sanitary Authority
- 449.090 Appeals from orders of Sanitary Authority
- 449.092 Intergovernmental cooperation to control water pollution
- 449.095 Water pollution as public nuisance
- 449.097 Proceedings against violators
- 449.100 Enjoining and abating water pollution
- 449.105 Offensive substances; placing in waters or leaving without proper burial near house or highway prohibited
- 449.107 Depositing trash or debris in receptacles when person is within 100 yards of water
- 449.110 Deposit of industrial wastes in waters prohibited
- 449.115 Deposit of decaying and polluting substances in waters prohibited
- 449.120 Wading or bathing in canals or ditches prohibited; exception
- 449.125 Distance of cemeteries from source of water supply
- 449.130 Discharge of waste above intake of water supply prohibited without purification; injunction
- 449.135 Sewer system for settlements on watershed
- 449.205 Definition for ORS 449.210 to 449.250
- 449.210 Protection of water for household purposes
- 449.215 Supervision of inland waters by State Board of Health; examination, inspection and promotion of purity
- 449.220 Plans for water supply system construction or extension to be submitted to State Board of Health
- 449.225 Periodical analyses of public water supplies; reports; immediate action when water unsafe for human consumption
- 449.230 Procedure when investigation reveals water dangerous to health of consumers; notice; corrective measures; hearing; decision; appeal

- 449.232 Enjoining operation of water supply contrary to order under ORS 449.230; warning to public; owner's responsibility for damages
- 449.235 Inspection of watersheds; reports
- 449.240 Procedure for correction of defective sewage facilities; compliance with instructions
- 449.245 Plans for sewer systems subject to approval of State Board of Health
- 449.250 Connection of water supply for human consumption with unsafe water supply prohibited; corrective measures; investigations

PROTECTION OF MUNICIPAL WATER SUPPLY

- 449.305 Jurisdiction of cities over water supply and its sources
- 449.310 Water supply ordinances
- 449.315 Special policemen
- 449.320 Pollution prohibited
- 449.325 Placing substances on watershed of municipal supply prohibited
- 449.327 City ordinances may restrict or prohibit access to watershed areas; exceptions
- 449.328 Violation of ordinances enacted pursuant to ORS 449.327; jurisdiction to prosecute
- 449.330 Abatement of nuisance and prosecution of violations
- 449.335 Enforcement by health officers
- 449.340 Injunction proceedings

CONSTRUCTION AND FINANCING OF MUNICIPAL SEWERAGE FACILITIES

- 449.390 Definitions for ORS 449.390 to 449.400
- 449.395 Plans and specifications of sewerage or waste systems to be approved by Sanitary Authority
- 449.400 Bond required for construction of domestic sewerage system; forfeiture and termination; suit upon bond
- 449.405 Definitions for ORS 449.405 to 449.440
- 449.410 Improvement of municipal sewerage facilities; contracts and financing; powers additional
- 449.415 Bond election
- 449.420 Bonds; method of payment; priorities; maturities; interest; signatures; sale
- 449.425 Bond covenants
- 449.430 Refunding bonds
- 449.435 Cooperation of governmental units in constructing and financing sewerage facilities
- 449.440 Contracts to supply sewerage facilities for industrial plants

CONTROL OF CONTAMINATION AND POLLUTION IN SPECIAL AREAS AND WATERS

- 449.505 Trespassing and grazing stock in Bull Run National Forest prohibited; notice
- 449.510 Sanitary water areas in Benton and Yamhill Counties

- 449.515 Prohibited conduct in sanitary water areas in Benton and Yamhill Counties**
- 449.520 Liability for civil damages for violating ORS 449.515**
- 449.525 Permits for owners of land in sanitary water area; revocation procedure**
- 449.530 Contamination of streams in Yamhill County prohibited; civil liability**
- 449.535 Contamination of, and fishing and camping near, Clear Lake prohibited**
- 449.540 Location of Clear Lake and description of its watershed**
- 449.545 Contamination of Deschutes River prohibited**
- 449.550 Deschutes River; pollution prohibited; abatable nuisance**
- 449.555 Deschutes River; reporting violations**
- 449.560 Deschutes River; abatement of nuisance**
- 449.565 Deschutes River; prosecution of violators**
- 449.567 Deschutes River; powers of Sanitary Authority**
- 449.570 Contamination of McKenzie River prohibited**
- 449.575 Contamination of North Umpqua River prohibited**
- 449.580 Oswego Lake and affluents; pollution prohibited; injunction and enforcement**

AIR POLLUTION

- 449.760 Definitions for ORS 449.760 to 449.830**
- 449.765 Declaration of policy on air pollution**
- 449.770 Purpose of ORS 449.760 to 449.830**
- 449.775 Exceptions from application of ORS 449.760 to 449.830**
- 449.780 Powers and duties of Sanitary Authority in relation to air pollution**
- 449.785 Standards of quality and purity of air**
- 449.790 Hearings on standards**
- 449.795 Means of meeting standards**
- 449.800 Rules and regulations; general enforcement of air pollution laws and regulations**
- 449.805 Judicial review of rules, regulations and orders**
- 449.810 Variances from rules, regulations or orders**
- 449.815 Procedure on complaint of violation**
- 449.820 Enjoining and abating air pollution**
- 449.825 Liability of violator limited**
- 449.830 City and county air pollution ordinances and contracts**

PENALTIES

- 449.990 Penalties**

CROSS REFERENCES

- Administrative procedures and rules of state agencies, Ch. 183**
- Carcasses of animals not to be left without burying, 601.140**
- Compliance with state water resources policy required, 536.300 to 536.400**
- Contamination of water in public institutions prohibited, 276.990**
- Deposit of matter injurious to shell fish prohibited, 509.460**
- Drainage work by domestic water supply corporation, 264.352**
- Fish habitats to be protected when removing materials from beds of waters in state, 274.355**
- Fish protection, 509.130, 509.460**
- Ground water pollution, 537.735, 537.775**
- Klamath River Basin Compact, 542.620**
- Ocean shore, easements and licenses, 274.075**
- Oil, gas or sulphur production on tide and submerged lands, water pollution in connection with, 274.820**
- Placing drift in stream or ditch, 164.820**
- Pollution of ditches, laterals and canals in drainage or flood control system prohibited, 549.400**
- Pollution of ditches used in connection with drainage system that are or were under control of district west of Cascade Mountains prohibited, 547.425, 547.760**
- Radiation sources, 453.605 to 453.745**
- Sanitarians, Ch. 700**
- Submerged and tide lands, easements, 274.760**
- Tide and overflow lands, easements and licenses, 274.040**

449.015

- Subsistence and mileage allowance for travel by state officers and employees, 292.210 to 292.298**

449.035

- Application for federal aid to be submitted to Department of Finance and Administration, 291.260**

449.077

- State land board to determine safety of aquatic life where dredging operations on state land, 274.355, 274.375**

449.080

- Certification to State Treasurer of sanitary districts needing sewerage systems, 450.255**

449.105

- Disposal of dead animals generally, Ch. 601**
- Dumping rubbish on private land or public way, 164.440**
- Removal of silt caused by dredging operation before water is discharged into stream, 517.631**
- Sanitary rules to be observed in swine feeding, 600.070**

CONSTRUCTION AND FINANCING OF MUNICIPAL SEWERAGE FACILITIES

- City sewers and sanitation generally, Ch. 224**
- Sanitary districts, 450.110 to 450.175, 450.250 to 450.300**
- Sewage charge on water users, 224.510**

449.415

- City improvements and works, Ch. 223**

449.420

- Borrowing and bonds of districts, 287.010, 287.012**

449.435

- Refunding of municipal bonds, Ch. 223**

SANITARY AUTHORITY

449.005 [Amended by 1959 c.357 §1; 1961 c.332 §1; renumbered 449.077]

449.010 [Amended by 1959 c.357 §2; 1961 c.332 §2; renumbered 449.095]

449.015 Sanitary Authority; creation; membership; expenses. (1) There is created within the State Board of Health a division to be known as the Sanitary Authority of the State of Oregon.

(2) The Sanitary Authority shall consist of the following seven members:

(a) The State Health Officer.

(b) The State Engineer.

(c) A member of the Fish Commission of the State of Oregon to be designated by the Governor.

(d) A member of the State Game Commission to be designated by the Governor.

(e) Three members appointed by the Governor, not more than one of whom shall be from any one congressional district of Oregon.

(3) All members shall be reimbursed for traveling and other necessary expenses incurred in the performance of their official duties.

[Amended by 1959 c.14 §1]

449.020 Appointed members; term; qualifications; vacancies; compensation. (1) The three members appointed by the Governor shall serve for a term of four years. Upon the expiration of the term of a member, the Governor shall appoint a successor.

(2) Appointments shall be made on the basis of the appointee's capacity to serve the general welfare of the people of this state.

(3) Vacancies shall be filled by the Governor for the unexpired term.

(4) The appointed members shall each be paid \$10 per day for each day of actual service in the performance of their duties. [Amended by 1959 c.357 §3]

449.025 State Sanitary Engineer. There shall be appointed and paid by the State Board of Health a State Sanitary Engineer, who shall be secretary of the Sanitary Authority and who shall:

(1) Be a graduate of a recognized institution of engineering.

(2) Possess a minimum of five years' experience as a practicing sanitary engineer.

449.030 [Amended by 1959 c.357 §4; 1961 c.332 §3; renumbered 449.080]

449.035 Cooperation with other agencies; financial aid; use of funds. The Sanitary Authority may cooperate with and receive moneys from the Federal Government, from the state or its agencies and departments, and from any industrial or other source. These funds may be used and disbursed for the study and control of municipal sewage, industrial waste or water or air pollution.

[Amended by 1959 c.357 §5]

449.038 [1957 c.192 §3; renumbered 449.390]

449.040 [Amended by 1957 c.192 §1; renumbered 449.395]

449.043 [1957 c.192 §4; renumbered 449.400]

449.045 [Amended by 1959 c.357 §6; 1961 c.332 §4; renumbered 449.092]

449.047 [1959 c.357 §7; 1961 c.332 §5; renumbered 449.097]

449.048 Subpenas; oaths; depositions. (1) A member of the Sanitary Authority or a hearings officer acting for the authority may:

(a) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the Sanitary Authority.

(b) Administer oaths.

(c) Take or cause to be taken depositions as provided by law.

(2) Subpenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in the circuit court.

[1959 c.357 §8]

449.049 [1959 c.357 §9; 1961 c.332 §6; renumbered 449.088]

449.050 [Amended by 1959 c.357 §10; 1961 c.332 §7; renumbered 449.100]

449.055 Granting time extension for compliance with orders in special cases. (1) If it appears that the immediate enforcement of an order of the Sanitary Authority, based upon findings of fact in any public hearing, research or investigation conducted by it, would substantially interfere with the sewage disposal system of any municipality or the normal industrial processes of any person, firm, association or corporation to the extent of stoppage of sewage disposal or industrial operation to the damage thereof, the Sanitary Authority, upon written stipulation with the parties at interest, by order or otherwise, shall grant sufficient

time, in its discretion, to permit the municipality, industry or other offender to comply with the order.

(2) If the order of the Sanitary Authority is not fully carried out within the time specified in the stipulation or order, and if the Sanitary Authority finds that the other party at interest is not proceeding in good faith to carry out the terms of the stipulation or order, it shall proceed to enforce the law and its order by proceedings to abate a nuisance.

449.060 Intervention in abatement suits.

If any person, firm, association or corporation, public or private, proceeds under the general laws of this state for the abatement of an alleged nuisance relating to the pollution of waters under the jurisdiction of this state or the air and if the enforcement of any restraining order or injunction obtained in such manner appears substantially to interfere with the sewage disposal system of any municipality or the normal industrial processes of any person, firm, association or corporation to the extent of the possible stoppage of such sewage disposal or industrial operation, thereby causing a menace to the public health or damage to such industrial operation, the Sanitary Authority may intervene in such suit or action, in the public interest, for the purpose of presenting the facts first obtained by it and upon such facts urging that the mandate of any injunctive relief that may be granted by the court shall not be made permanent until the defendant has been given sufficient time, in the court's discretion, in which to remedy and correct the conditions set forth in the complaint.

[Amended by 1959 c.357 §11]

449.065 [Amended by 1959 c.357 §12; 1961 c.332 §8; renumbered 449.090]

449.070 Construction. In so far as ORS 449.015 to 449.060, 449.080, 449.088, 449.090, 449.092, 449.095, 449.097, 449.100 and 449.390 to 449.400 are inconsistent with any other law, 449.015 to 449.060, 449.080, 449.088, 449.090, 449.092, 449.095, 449.097, 449.100 and 449.390 to 449.400 shall be controlling.

WATER POLLUTION

449.075 Definitions. (1) "Person" or "persons" means any individual, public or private corporation, political subdivision, governmental agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.

(2) "Water" or "waters of the state" shall be construed to 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.

(3) "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 as above defined of industrial wastes or other wastes as defined in subsections (4) and (5) of this section shall also be considered "sewage" within the meaning of this chapter.

(4) "Industrial waste" means any liquid, gaseous 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, which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards adopted as provided herein.

(5) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, cement, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals and all other discarded matter whether or not in sewage or industrial waste, caused or permitted by any person to reach the waters of the state which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards adopted as provided herein.

(6) "Standard" or "standards" means such measure of quality or purity for any waters in relation to their reasonable and necessary use as may be established by the Sanitary Authority pursuant to this chapter. [1961 c.332 §12]

449.077 Declaration of policy on water pollution. (1) In the interest of the public welfare, safety, peace and morals of the people, it is declared to be the public policy of the State of Oregon to:

(a) Maintain reasonable standards of

purity of the water of all rivers, streams, lakes, watersheds and the coastal areas of the state consistent with the protection and conservation of the public health, recreational enjoyment of the people, the economic and industrial development of the state, and for the protection of human life and property and conservation of plant, aquatic and animal life.

(b) Foster and encourage the cooperation of the people, industries, incorporated cities and towns and counties in preventing and controlling the pollution of those waters.

(2) This chapter shall be liberally construed for the accomplishment of these purposes.

[Formerly 449.005]

449.080 Powers and duties of Sanitary Authority in relation to water pollution. The Sanitary Authority:

(1) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of waters of this state in accordance with standards established by the Sanitary Authority, as set forth in this chapter.

(2) May formulate, in accordance with any applicable provisions of ORS chapter 183, and from time to time amend or cancel rules and regulations pertaining to minimum requirements for disposal of sewage and industrial wastes, minimum requirements for operation and maintenance of sewage and waste treatment and disposal facilities and matters relating to procedure of the authority with respect to hearings, filing of reports, issuance of permits, and all other matters pertaining to the prevention and control of pollution of waters of this state.

(3) May establish, modify or amend standards of quality and purity of the various waters of this state as provided in this chapter. Such standards shall be consistent with policies and programs for the use and control of water resources of the state adopted by the State Water Resources Board pursuant to the provisions of ORS 536.210 to 536.550.

(4) May conduct and prepare, independently and in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of waters of this state or to the treatment and disposal of sewage, industrial waste or other wastes which may be causes of pollution.

(5) May enforce compliance with the laws of Oregon and with final orders of the Sani-

tary Authority relating to pollution of waters of this state.

(6) May, when found necessary by the Sanitary Authority for the administration of this chapter, issue, modify or deny permits under such conditions as may be prescribed for the prevention, reduction or abatement of pollution, for the discharge of sewage, industrial waste or other wastes or for the installation or operation of disposal systems or parts thereof. Any permit issued by the Sanitary Authority shall specify its duration and the conditions for conformance with the standards of water quality and purity established pursuant to this chapter.

(7) Shall advise, consult and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government and with affected groups, in furtherance of the purposes set forth in ORS 449.077.

(8) May employ personnel, including specialists, consultants and hearings officers, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 449.077.

(9) May settle or compromise in its discretion with the approval of the Attorney General, any action, suit or cause of action or suit for the recovery of a penalty or abatement of a nuisance as it may deem advantageous to the state.

(10) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the authority prescribed in this chapter.

[Formerly 449.030]

449.086 Standards of quality and purity of water. (1) The Sanitary Authority is authorized and empowered to establish standards of quality and purity of the waters of this state in accordance with the public policy of the State of Oregon as set forth in ORS 449.077, and in establishing such standards, consideration shall be given the following factors:

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

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

(c) The extent to which organisms of the coliform group, and other bacteriological or-

ganisms 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 that shall be maintained;

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

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

(h) The value of stability and the public rights 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) The adoption, alteration, modification or repeal of the standards of quality and purity above prescribed shall be made by the authority only after public hearing on due notice, subject to the limitations thereon elsewhere set forth in this chapter.

(3) Notices of public hearing for the adoption, alteration, modification or repeal of standards of quality and purity thereof shall specify the time, date and place of hearing, and the waters concerning which standards are sought to be adopted. Copies of said notice shall be published at least twice in a newspaper regularly published or circulated in the county or counties bordering or through which the waters, for which standards are sought to be adopted, flow; the first of which publications shall be not more than 30 days nor less than 20 days before the date fixed for such hearing, and copies of said notice shall be mailed at least 20 days before such hearing to the chief executive officer of each municipal corporation bordering or through which said waters for which standards are sought to be adopted, flow, and to such other persons as the authority may find appropriate.

(4) Any person responsible for complying with the standards of water quality or purity established under this chapter shall determine, subject to the approval of the Sanitary Authority, the means, methods, processes, equipment and operation to meet said standards.

(5) The standards of quality and purity thereof shall, before becoming effective, be

filed with the Secretary of State, in accordance with ORS chapter 183.

[1961 c.332 §11]

449.088 Final order by Sanitary Authority. After the conclusion of a hearing conducted by a member of the Sanitary Authority or other hearings officer, the hearings officer shall transmit the record of the hearing together with his findings and conclusions to the Sanitary Authority, which shall review the record and enter its order thereon. If the Sanitary Authority as a whole has conducted the hearing, it shall enter its order within 60 days after the conclusion of said hearing. The order of the authority shall be final and conclusive on all parties unless an appeal is taken therefrom as provided in ORS chapter 183, or unless modified or revised by a court in other proceedings as provided in ORS chapter 183.

[Formerly 449.049]

449.090 Appeals from orders of Sanitary Authority. Any person who deems himself aggrieved by any order of the Sanitary Authority, may appeal from such order or may bring separate action of suit in accordance with the provisions of ORS chapter 183. When a review in accordance with ORS chapter 183 is not maintainable, because the person aggrieved was not a party to the original proceeding, the order or determination of the authority and the validity or reasonableness of any order or determination of the authority may be reviewed by the court in a civil action for declaratory or injunctive relief or other suitable proceeding.

[Formerly 449.065]

449.092 Intergovernmental cooperation to control water pollution. The Sanitary Authority shall:

(1) Cooperate with the appropriate agencies of the United States and of other states, or any interstate agencies, in respect to any proceedings and all matters pertaining to control of pollution of the waters of Oregon and those adjacent thereto or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(2) Make such determination of priority of water pollution control projects, as may be necessary under terms of statutes enacted by the Congress of the United States.

[Formerly 449.045]

449.095 Water pollution as public nuisance. The discharge into the waters set

forth in ORS 449.077 of any sewage or other waste which is or may become detrimental or injurious to human, plant, animal or aquatic life, or the recreational enjoyment of the people, by any person, firm, association or corporation, whether public, municipal or private, or by any state-owned institution or industry, is declared to be not a reasonable or natural use of such waters, contrary to the public policy of the State of Oregon, as set forth in ORS 449.077, and to be a public nuisance. In order to carry out this public policy, action shall be taken as provided in this chapter to prevent new pollution and abate existing pollution, and to that end to foster and encourage the cooperation of the people, industry, incorporated cities and towns and counties, in preventing, controlling and reducing pollution of the waters of the state, and to require the use of all available and reasonable methods, in so far as said methods are necessary to achieve the purposes of this chapter and conform to the standards of water quality and purity established thereunder.

[Formerly 449.010]

449.097 Proceedings against violators. Whenever the Sanitary Authority determines that a person may be violating any of its orders or any of the provisions of this chapter, or whenever the authority receives complaints, petitions or remonstrances from individual citizens, groups of citizens, organizations, associations or municipalities relating to any condition involving water pollution, or whenever water pollution is the subject of any report by the State Sanitary Engineer, the authority may:

(1) Investigate, hold hearings, make general or specific orders and take action, as provided in this chapter, as soon as possible.

(2) For the purpose of investigating conditions relating to water pollution, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.

(3) Conduct public hearings in accordance with the provisions of ORS chapter 183.

(4) Publish its findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of any of the laws of Oregon relating to water pollution.

(5) Give notice of any specific order relating to a particular violation of its rules, regulations or general orders, or relating to a particular violation of any condition of any

permit by mailing notice of such specific order to the person affected and by filing a duplicate original of said order in the same manner as a general order under the provisions of ORS chapter 183.

(6) Take appropriate action for the enforcement of its rules, regulations or orders promulgated as a result of any hearings; provided, however, that notwithstanding any other provisions of law to the contrary, no state or local governmental agency or officer or employe thereof, shall be criminally liable or responsible under the provisions of this chapter for any acts done by such governmental agency in the performance of its functions or by such officers or employes in the performance of their duties. No criminal action shall be maintained or prosecuted for such acts. Any violation of this chapter or of any order, rule or regulation of the Sanitary Authority by any governmental agency or by any officer or employe thereof may be enjoined in civil abatement proceedings brought in the name of the state. Any proceedings brought by the Sanitary Authority in the name of the state for enforcement of its rules, regulations or orders shall set forth the dates of notice and hearing and the specific order of the Sanitary Authority together with the facts of noncompliance, and the facts giving rise to the public nuisance.

[Formerly 449.047]

449.100 Enjoining and abating water pollution. (1) In lieu of penal enforcement proceedings and in all cases involving a state or local governmental agency or officer or employe thereof in the performance of their duties, proceedings to abate alleged public nuisances created by pollution of waters of this state may be instituted at law, or in equity, in the name of the State of Oregon, upon relation of the Sanitary Authority, the Attorney General, any district attorney of any county or the city attorney of any municipality affected.

(2) However, notwithstanding any other provisions of law to the contrary or the provisions of ORS 449.097, the Sanitary Authority, without the necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings if such proceedings have been commenced, may institute a suit at law or in equity in the name of the State of Oregon to abate or restrain threatened or existing pollution of the waters of this state,

whenever such pollution or threatened pollution creates an emergency which requires immediate action to protect the public health, safety or welfare; provided, that no temporary restraining order or temporary injunction or abatement order shall be granted unless the defendant is accorded an opportunity to be heard thereon at a time and place set by the court in an order directing the defendant to appear at such time and place, and to then and there show cause, if any he has, why a temporary restraining order or temporary injunction or abatement order should not be granted. The order to show cause, together with affidavits supporting the application for such temporary restraining order, temporary injunction or abatement order, shall be served on the defendant as a summons. The defendant may submit counteraffidavits at such time and place. The Sanitary Authority shall not be required to furnish any bond in such proceeding. Neither the Sanitary Authority nor its members or employes shall be liable for any damages defendant may sustain by reason of an injunction or restraining order or abatement order issued after such hearing.

(3) Cases filed under the provisions of this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

[Formerly 449.050; amended by 1963 c.171 §1]

449.105 Offensive substances; placing in waters or leaving without proper burial near house or highway prohibited. (1) No person shall put any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water which is or may be used for domestic purposes or to which cattle, horses or other kind of domestic stock have access.

(2) No person shall put any of the polluting substances listed in this section within one-fourth mile of any dwelling house or public highway and leave them without proper burial.

(3) No person, being in the possession or control of any land, shall knowingly permit or suffer any polluting substance listed in this section to remain without proper burial upon such premises, within one-fourth mile of any dwelling house or public highway whereby the substances become offensive to

the occupants of such dwelling or the traveling public.

(4) No person shall place or cause to be placed any polluting substance listed in this section into any road, street, alley, lane, lot, field, meadow or common and no owner thereof shall knowingly permit the listed substances to remain in any of the mentioned places to the injury of the health or to the annoyance of any citizen of this state. Every 24 hours after conviction for violation of this subsection during which the violator permits the polluting substances to remain is an additional offense against this subsection.

(5) Nothing in this section shall apply to the spreading of manure or like substance for agricultural or horticultural purposes, except that no sewage sludge shall be used for these purposes unless treated in a manner approved by the State Board of Health. [Amended by 1963 c.529 §1]

449.107 Depositing trash or debris in receptacles when person is within 100 yards of water. Persons on land within 100 yards of any stream, lake, reservoir or pond or channel thereof, and not having a present possessory interest in such land, shall not throw, discard or leave trash, rubbish or debris other than in receptacles provided for the purpose of holding such trash, rubbish or debris.

[1959 c.688 §2]

449.110 Deposit of industrial wastes in waters prohibited. No person, or proprietor, operator, agent, superintendent or employe of any railroad company, sawmill or other lumber or manufacturing concern, or any pulpmill, woodsaw, tannery, woolen mill, dye works, gravel crushing or washing operation, chemical works, slaughterhouse, or any manufacturing concern, or any steamboat or any other water craft shall cast or suffer or permit any sawdust, planer shavings, wood pulp, or other lumber waste or any element or chemical extracted therefrom, or any unclarified wash water from gravel crushing or washing operations, or other substances, which do or may render the waters of a stream or any other body of water destructive of fish or aquatic life, or any slashing of trees or brush, or any oil, coal tar, petroleum or extract therefrom, or any dye or chemical to be thrown, cast or discharged, in any manner, or to deposit the same where high water

will take or carry same, into the waters of this state.

[Amended by 1961 c.478 §1]

449.115 Deposit of decaying and polluting substances in waters prohibited. No person shall put or deposit in any of the rivers, streams, lakes or waters of Oregon, or any artificial canal or ditch in which the waters of such rivers, streams, lakes or waters run, any dead animal carcass, or part thereof, manure, sewage, putrid, decaying or deleterious substance, refuse, waste or polluting matter, or any matter which either by itself or in connection with any other substance injures fish or corrupts or impairs the quality of the waters of such rivers, streams or lakes for domestic or municipal purposes, or place any such substance in such position that it escapes or is carried into those waters by the action of the elements or otherwise.

449.120 Wading or bathing in canals or ditches prohibited; exception. No person shall wade or bathe in any irrigation canal, ditch or flume which supplies water for household purposes, except for wading done in connection with the operation, maintenance, construction, distribution or measurement of water.

449.125 Distance of cemeteries from source of water supply. No burying ground or cemetery shall be established on the watershed of any public water supply nearer than 500 yards of the source of supply.

449.130 Discharge of waste above intake of water supply prohibited without purification; injunction. (1) No person, firm, corporation or municipality shall flow or discharge sewage or waste water above the intake into any drain, brook, creek or river from which a public drinking water supply is taken, unless it has been passed through some well known system of sewage purification approved by the State Board of Health.

(2) Any continued flow and discharge of such sewage may be enjoined upon application of any person.

449.135 Sewer system for settlements on watershed. All schools, hamlets, villages, towns or industrial settlements which are located on the shed of any public water supply, not provided with a sewage system, shall provide and maintain a reasonable sys-

tem approved by the State Board of Health for collecting and disposing of all accumulations of human excrement within their respective jurisdiction or control.

449.140 to 449.200 [Reserved for expansion]

449.205 Definition for ORS 449.210 to 449.250. As used in ORS 449.210 to 449.250, unless the context requires otherwise, "water supply agency" means any person, firm, corporation, municipality, water district, town or agency thereof, furnishing or selling water to the public for domestic use.

449.210 Protection of water for household purposes. In the interest of the public health, every person, company or municipal corporation or agency thereof selling water to the public for drinking and household purposes shall take every reasonable precaution to protect from contamination and assure the healthfulness of such water. Any provisions in any charter granted prior to March 1, 1919, to such persons, companies or municipal corporations in conflict with this section and ORS 449.215 are repealed.

449.215 Supervision of inland waters by State Board of Health; examination, inspection and promotion of purity. (1) The State Board of Health shall have the general oversight and care of all inland waters, and shall:

(a) From time to time, as it may deem advisable, cause examinations of such waters and their sources and surroundings to be made for the purpose of ascertaining whether they are adapted for use as water supplies for drinking and other domestic purposes, or are in a condition likely to impair the interests of the public or of persons lawfully using them or to imperil the public health. For this purpose the board may employ such expert assistants as may be necessary.

(b) Make such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard the public health.

(c) From time to time consult with and advise the boards of all state institutions, the authorities of cities and towns, corporations or firms already having or intending to introduce systems of water supply, drainage or sewerage, as to the most appropriate source of supply, the best practical methods

of assuring the purity thereof, or of disposing of their drainage or sewage, having regard to the present and prospective needs and interests of other cities, towns, corporations or firms which may be affected thereby.

(2) As a check and guarantee of the faithful performance of the requirements laid down in ORS 276.248, 449.125 to 449.135, 449.205 to 449.240 and 772.315, the board shall make or have made by its authorized agents such inspections of watersheds and such chemical and bacteriological examinations of the public water supplies of the state as may be deemed necessary to insure their purity. Should such inspection or examination show conditions dangerous to the public health, the State Health Officer shall notify the mayor, the municipal health officer and the superintendent or manager of the waterworks at fault and demand the immediate correction of the dangerous conditions.

449.220 Plans for water supply system construction or extension to be submitted to State Board of Health. (1) Any water supply agency desiring to provide a new water supply system for drinking or household purposes for more than 50 people or more than 10 families shall, before performing any work on the ground, other than making examination or surveys for the preparation or provision of such water supply, submit to the State Board of Health plans showing:

- (a) The source of the supply.
- (b) The transmission and distribution systems, with further information as to the amount proposed to be taken and transmitted.
- (c) The drainage areas from which the waters are to be derived.
- (d) The purity and wholesomeness of the supply.
- (e) The kind and character of the works for gathering, storing and transmitting the water.
- (f) The number of persons to be supplied.
- (g) Any additional data which the board may require as, in its judgment, proper to enable it to pass intelligently upon the effect of such water supply upon the public health.

(2) Any water supply agency desiring to:

- (a) Extend any existing water distribution system shall, if required by the State

Board of Health, first submit plans for the extension to the board.

(b) Provide any new or additional pumping, transmission, treatment or storage facilities, for an existing water supply system shall first submit plans for such improvements to the board.

(c) Provide any new source of water for an existing water supply system shall first submit plans for such improvement to the board.

(3) Where approval of plans is required under this section, no work shall be undertaken or proceeded with until the board has approved the plans, either as originally offered or as modified pursuant to its requirements.

[Amended by 1959 c.335 §1]

449.225 Periodical analyses of public water supplies; reports; immediate action when water unsafe for human consumption.

(1) Every water supply agency which sells or furnishes water to any number of persons exceeding 25 families or a total of 100 persons for drinking or household purposes, including its use in ice, shall with the assistance of or under the supervision of the local health officer collect samples of such water for bacteriological analysis at least once monthly or oftener if required by the State Board of Health.

(2) These samples shall be submitted to the state hygienic laboratory for examination or, with the approval of the local health officer, to a laboratory approved by the State Board of Health. The state hygienic laboratory shall report the results of its analysis to the local health officer if requested to do so and to the one responsible for the operation of the water supply. If a laboratory other than the state hygienic laboratory performs the examination, the results of the analysis shall, in addition, be submitted to the State Health Officer.

(3) When the water from such water supply has been determined by laboratory examination, inspection and report of the State Board of Health to be unsafe for human consumption, the owners or persons responsible for the operation of such water supply shall take immediate action to correct sanitary defects, improve operation, provide necessary water treatment, or make any other changes or additions necessary to provide assuredly safe water.

(4) This section, ORS 449.230 and

449.232 do not apply to any railroad company which is subject to the jurisdiction of the Interstate Commerce Commission.

[Amended by 1953 c.253 §2]

449.230 Procedure when investigation reveals water dangerous to health of consumers; notice; corrective measures; hearing; decision; appeal. (1) Whenever, in the opinion of the State Board of Health, investigations indicate that the water from a water supply mentioned in ORS 449.225 would endanger the health of the water consumers, the board shall give written notice to the owners or persons responsible for the operation of such public water supply, specifying the cause of the danger to the health of the water consumers. This notice shall require that sanitary defects are to be corrected or operation of the water supply is to be improved in order to make the water assuredly safe within a reasonable time specified or that the persons so notified appear before the State Board of Health at a time and place stated in the notice and answer charges. The notice shall be served on such person as summonses are served or by registered mail not less than 20 days before the time set for the hearing.

(2) The person complained against may appear personally or by counsel at the hearing and produce competent evidence in his behalf in answer to the alleged violation. On the basis of evidence produced at the hearing, the State Board of Health shall enter such order as, in its opinion, will best serve the interest of the water consumers and shall promptly give written notice, either by service as summonses are served or by registered mail, to the persons affected by such order. If the hearing is held before any officer designated by the State Board of Health, such officer shall transmit the record of the hearing together with his findings and conclusions to the State Board of Health, which thereupon shall review the record and enter its order on the basis thereof. The order of the State Board of Health shall become final and binding on all parties, unless appealed by the person aggrieved in the manner provided for appeals of orders of the Sanitary Authority in the applicable provisions of ORS 449.090.

[Amended by 1953 c.253 §2]

449.232 Enjoining operation of water supply contrary to order under ORS 449.230; warning to public; owner's responsibility for damages. (1) If the maintenance or oper-

ation of a water supply is continued beyond the time specified contrary to orders of the State Board of Health under ORS 449.230, the board may request the district attorney in the county where the unsafe water supply is located to institute a suit in equity for a mandatory injunction, compelling the persons responsible for the operation of the water supply to cease and desist operation or make such improvements and corrections as are necessary to assure a safe water supply.

(2) Whenever conditions are such as to require immediate action to protect the public health, the State Health Officer may issue such warning to the public as he sees fit.

(3) Compliance with the requirements of this section or ORS 449.230 shall in no way release the owners or persons responsible for the operation of a public water supply from any liability for damage to person or property caused by or resulting from the installation, operation or maintenance of a public water supply.

[1953 c.253 §3]

449.235 Inspection of watersheds; reports. (1) Every water supply agency selling or furnishing water to the public for drinking or household purposes shall, when such water supply is derived from surface sources, conduct such sanitary inspections of the watershed as may be considered necessary by the State Board of Health for the protection of public health.

(2) The inspection of the watershed shall include an examination of sewage and waste disposal facilities at houses, business establishments, industries and buildings on the watershed.

(3) The sewage and waste disposal facilities shall be constructed and operated in accordance with the regulations of the State Board of Health and the Sanitary Authority.

(4) Written reports of all inspections shall be made promptly to the State Health Officer.

(5) Sanitary inspectors may enter upon any premises and into any building upon their respective watersheds for the purpose of making the inspections required.

(6) As used in this section, "watershed" does not include that land within the boundaries of a municipal corporation or uninhabited wooded tracts or fields that are free from suspicion.

[Amended by 1959 c.335 §2]

449.240 Procedure for correction of defective sewage facilities; compliance with instructions. (1) Whenever the person conducting a sanitary inspection of a watershed determines that sewage disposal facilities are not constructed and operated in conformance with the regulations of the State Board of Health and the Sanitary Authority, notice thereof in writing shall be given to the person responsible for the premises. The notice shall outline defects in sewage or waste disposal facilities and shall demand correction within a reasonable length of time.

(2) A copy of all notices shall be furnished to the board.

(3) Every person residing on or owning property on the watershed of a lake, pond or stream from which a drinking supply is obtained shall carry out such reasonable instructions as may be furnished him directly by the municipal health officer or by the State Board of Health under this section.

[Amended by 1959 c.335 §3]

449.245 Plans for sewer systems subject to approval of State Board of Health.

(1) Any city or town proposing a sewer system or any individual or corporation proposing to install a system of sewerage or disposal of waste products for the use of more than five families or 50 persons shall, before undertaking any work on the ground, other than making surveys and preliminary plans, submit to the State Board of Health the full plans and specifications for the system, showing particularly the location of the outfall and the streams or other places of final disposal, and the method, if any, for the reduction, purification, or use of the sewage.

(2) No plan shall be proceeded with or work done thereon until the plans and specifications either as originally proposed or modified are approved by the board.

449.250 Connection of water supply for human consumption with unsafe water supply prohibited; corrective measures; investigations. (1) No person, firm, corporation, municipality, water district, city, town or agency thereof shall install or maintain any physical connection between the distribution system of a public water supply which is or may be intended for human consumption and that of any other water supply unless the other water supply is of safe bacteriological quality.

(2) If upon field investigation, the State

Board of Health finds that any public water supply which is or may be intended for human consumption has been interconnected with an unsafe water supply in violation of subsection (1) of this section, the board shall so notify the person, firm, corporation, municipality, water district, city, town, or agency thereof responsible for the installation or maintenance of the interconnection.

(3) If it is deemed necessary in the interest of the public to continue the interconnection, the board shall outline the manner in which the interconnection shall be maintained to protect the public health, and such person, firm, corporation, municipality, water district, city, town, or agency thereof shall comply with the recommendations of the board.

(4) The board may make such investigations as are necessary to enforce this section. No person shall interfere with or hinder the State Health Officer or his authorized deputies in the investigations under this section.

449.255 to 449.300 [Reserved for expansion]

PROTECTION OF MUNICIPAL WATER SUPPLY

449.305 Jurisdiction of cities over water supply and its sources. For the purpose of protecting the water furnished to their inhabitants from pollution, towns and cities are given jurisdiction over all property:

(1) Acquired, owned and occupied by the works, reservoirs, systems, springs, branches and pipes, by means of which, and all the lakes, rivers, springs, streams, creeks or tributaries acquired by such towns and cities constituting the sources of supply from which, they or the companies or individuals furnishing water to their inhabitants obtain their supply of water, or store or conduct the same.

(2) Acquired for any purposes under subsection (1) of this section or for the preservation and protection of the purity of the water supply.

(3) Acquired and owned by towns and cities within the areas draining into the lakes, rivers, springs, streams, creeks or tributaries constituting such sources of water supply whether they are within or without the corporate limits.

449.310 Water supply ordinances. Towns and cities may prescribe by ordinance what acts constitute offenses against the purity

of the water supply and the punishment or penalties therefor and may enforce those ordinances.

449.315 Special policemen. (1) The mayor or authorities having control of a town or city water system may appoint special policemen, with such compensation as the proper authorities may fix.

(2) The special policemen:

(a) Shall, after taking oath, have the powers of constables.

(b) May arrest with or without warrant any person committing, within the territory described in ORS 449.305, any offense against the purity of the water supply under state law or an ordinance of such town or city, or any violation of any rule or regulation of the State Board of Health, or the authorities having control of the city or town water system, for the protection of the purity of the water supply.

(c) May forthwith take any person arrested for any violation under this section before any court having jurisdiction thereof to be proceeded with according to law.

(d) Shall, when on duty, wear in plain view a badge or shield bearing the words "Special Police" and the name of the town or city for which he is appointed.

449.320 Pollution prohibited. No person shall establish or maintain any slaughter pen, stock-feeding yards or hogpens, or deposit or maintain any uncleanly or unwholesome substance, or conduct any business or occupation, or allow any condition upon or sufficiently near the sources from which the supply of water for the inhabitants of any city or town is obtained, or where water is stored, or the property or means through which it may be conveyed or conducted so that the water would be polluted or its purity destroyed or endangered.

449.325 Placing substances on watershed of municipal supply prohibited. No person shall place or cause to be placed within any watershed, from which any city or municipal corporation of this state or any adjoining state obtains its water supply, any substances which either by itself or in connection with other matter will corrupt, pollute or impair the quality of the water supply. No owner of any dead animal shall knowingly leave or cause to be left the carcass or any portion thereof within such

watershed in such condition as to in any way corrupt or pollute such water supply.

449.327 City ordinances may restrict or prohibit access to watershed areas; exceptions. (1) A city may by ordinance prohibit or restrict access for purposes of fishing, hunting, camping, hiking, picnicking, trapping of wild animals or birds, harvesting of timber and mining or removal of minerals or otherwise in its watershed area, or may by ordinance permit such activities in its watershed area upon conditions specified in the ordinance. No ordinance shall be passed under authority of this section and ORS 449.328 prohibiting the hunting or trapping of fur-bearing or predatory animals doing damage to public or private property, nor the hunting or trapping of any bird or animal for scientific purposes as that term is defined in subsection (5) of ORS 497.780.

(2) The provisions of subsection (1) of this section apply only to cities with respect to watershed areas which are the subject of an agreement between the city and the United States or any department or agency thereof, which agreement authorizes such action by the city.

(3) An ordinance passed by any city prohibiting or restricting access to its watershed area shall include a penalty clause providing for a penalty upon conviction of a fine of not to exceed \$100 or imprisonment for not to exceed 30 days, or both such fine and imprisonment.

(4) Any city which shall have passed an ordinance prohibiting or restricting access to its watershed area shall post the area with suitable signs which shall recite the prohibition of access or the conditions of limited access as contained in such ordinance. Failure to post the area as provided in this section shall be a defense in any prosecution under an ordinance adopted by any city under authority of this section and ORS 449.328.

[1957 c.690 §1]

449.328 Violation of ordinances enacted pursuant to ORS 449.327; jurisdiction to prosecute. The municipal or recorder's court of any city passing an ordinance under authority of ORS 449.327 and the justice of the peace court or district court of the county wherein such city is located or in which the watershed area is located shall have concurrent jurisdiction to try and determine

any prosecution brought under such ordinance. If prosecution is had in a justice of the peace court or a district court, the court shall remit to the city, after deducting court costs, the amount of any fine collected. If a jail term is imposed, the convicted person shall be confined in the city jail or in the county jail and if confined in the county jail the county shall be entitled to recover from the city the actual costs of such incarceration.

[1957 c.690 §2]

449.330 Abatement of nuisance and prosecution of violations. (1) Violation of ORS 449.320 is a nuisance and may be abated as other nuisances under the laws of this state.

(2) Any person tried for violation of ORS 449.305 to 449.320 and found guilty of creating or maintaining a nuisance thereunder, shall forthwith abate the nuisance. In the event of failure to comply within one day after conviction, unless further time is granted by the court, a warrant shall be issued by the convicting court, directed to the sheriff of the county in which the nuisance exists. The sheriff shall forthwith proceed to abate the nuisance and the cost thereof shall be taxed against the party convicted as a part of the costs of the case.

449.335 Enforcement by health officers. The officer in charge of the sanitary condition or water system or supply of any city or town shall see that ORS 449.305 to 449.320 and 449.330 to 449.340 are enforced and immediately investigate complaints made to him and if the complaint appears to be well founded, proceed and file a complaint against the person violating ORS 449.305 to 449.320 or 449.330 to 449.340 and cause his arrest and prosecution.

449.340 Injunction proceedings. Any city supplied with water from any source of supply as described in ORS 449.305, or any corporation owning waterworks for the purpose of supplying any city or its inhabitants with water may, in cases of violation of ORS 449.305 to 449.320, have the nuisance under ORS 449.330 enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual.

449.345 to 449.385 [Reserved for expansion]

CONSTRUCTION AND FINANCING OF MUNICIPAL SEWERAGE FACILITIES

449.390 Definitions for ORS 449.390 to 449.400. As used in ORS 449.390 to 449.400, the term:

(1) "Construction" includes a major modification or addition.

(2) "Domestic sewerage system" means a system of domestic sewerage or the disposal of domestic waste products for the use of more than 25 families or 100 individuals.

(3) "Person" means any person as defined in ORS 174.100 but does not include, unless the context specifies otherwise, any public officer acting in his official capacity or any political subdivision, as defined in ORS 237.410.

[Formerly 449.038]

449.395 Plans and specifications of sewerage or waste systems to be approved by Sanitary Authority. (1) All plans and specifications for the construction of municipal or industrial waste collection and disposal systems, sewage treatment plants or waste treatment or reduction plants, shall be submitted to the Sanitary Authority for approval.

(2) Any person proposing to construct a domestic sewerage system shall submit to the Sanitary Authority for approval full plans and specifications for the system including the location of the outfall and the pertinent facilities for the disposal, reduction, purification or use of the sewage. The requirements of this subsection are in addition to the requirements of ORS 449.245, if applicable.

(3) No construction of the type described in subsection (1) or (2) of this section shall be commenced until the plans and specifications submitted to the Sanitary Authority under subsection (1) or (2) of this section are approved by the Sanitary Authority. Any construction must be in accordance with the plans and specifications approved by the Sanitary Authority.

[Formerly 449.040]

449.400 Bond required for construction of domestic sewerage system; forfeiture and termination; suit upon bond. (1) Every person proposing to construct a domestic sewerage system shall file with the Sanitary Authority a surety bond of a sum required by the Sanitary Authority, not to exceed the sum of \$25,000. The bond shall be executed in favor of the State of Oregon and shall be approved as to form by the Attorney General.

(2) The Sanitary Authority may permit the substitution of other security for the bond, in such form and amount as the Sanitary Authority deems satisfactory, the form of which shall be approved by the Attorney General.

(3) The bond or other security shall be forfeited in whole or in part to the State of Oregon by a failure to follow the plans and specifications approved by the Sanitary Authority in the construction of the domestic sewerage system or by a failure to have the system maintained and operated in accordance with the rules, regulations and orders of the Sanitary Authority. The bond or other security shall be forfeited only to the extent necessary to secure compliance with the approved plans and specifications or the rules, regulations and orders of the Sanitary Authority. The Sanitary Authority may expend the amount forfeited to secure compliance with the approved plans and specifications or the rules, regulations and orders of the Sanitary Authority.

(4) When a failure as described in subsection (3) of this section occurs and part of the bond or other security remains unforfeited, any person, including a public person or body, who has suffered any loss or damage by reason of the failure shall have a right of action upon the bond or other security and may bring a suit or action in the name of the State of Oregon for his use and benefit. This remedy shall be in addition to any other remedies which the person who suffered loss or damage may have against the person who has failed to follow the approved plans and specifications or the rules, regulations and orders of the Sanitary Authority.

(5) When the ownership of the domestic sewerage system is acquired or its operation and maintenance assumed by a city, county, sanitary district, or other public body, the bond or other security shall be deemed terminated and void as security for the purposes of ORS 449.015 to 449.035, 449.080, 449.092, 449.095 and 449.390 to 449.400 and shall be returned to the person who filed the security. [Formerly 449.043]

449.405 Definitions for ORS 449.405 to 449.440. As used in ORS 449.405 to 449.440, unless the context requires otherwise:

(1) "Municipality" means a city or sanitary district.

(2) "Sewerage facilities" may include sewers, drains, treatment and disposal works and other facilities useful or necessary in the

collection, treatment or disposal of sewage, industrial wastes, garbage or other wastes.

449.410 Improvement of municipal sewerage facilities; contracts and financing; powers additional. (1) In order to facilitate the abatement, elimination or control of the pollution of waters and streams, any municipality may:

(a) Construct, reconstruct, improve, extend, better, repair, equip or acquire sewerage facilities, within or without the municipality.

(b) Accept grants or loans or other aid from the United States or any other source.

(c) Enter into all necessary agreements.

(d) Issue revenue bonds of the municipality without limitation as to amount.

(2) The powers conferred by ORS 449.405 to 449.440 are in addition to and supplemental to the powers conferred by any other law and not in substitution for any right, powers or privileges vested in a municipality.

449.415 Bond election. Before any bonds may be issued under ORS 449.410, their issuance must first be approved by a majority of the electors voting on the proposition at either a general election or at a special election, to be called, held and conducted in the same manner as special elections on the proposition of issuing general obligation bonds.

449.420 Bonds; method of payment; priorities; maturities; interest; signatures; sale. (1) The bonds issued under ORS 449.410 shall be payable from that portion of the earnings of the sewerage facilities of the municipality which is pledged to their payment, and they shall have a lien of such priority on the earnings as is specified in the proceedings providing for their issuance.

(2) The governing body may provide that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing, with respect to their payment of principal, interest and security, to such other bonds of the municipality as are designated.

(3) The bonds shall bear such date, may be issued in such amounts, may be in such denominations, may mature in such amounts and at such time, shall be payable at such place, may be redeemable, either with or without premium, or nonredeemable, may carry such registration privileges, and may be executed by such officers and in such

manner as is prescribed by the governing body.

(4) In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before delivery of the bonds, the signatures, whether manual or facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office until delivery.

(5) The bonds so issued shall bear interest at a rate to be fixed by the governing body, not to exceed six percent per annum, payable at times to be fixed by the governing body.

(6) The bonds shall be sold at public sale for not less than the principal amount thereof plus accrued interest. However, they may be sold at private sale to the United States or to the State of Oregon or any of their agencies or instrumentalities, for not less than the principal amount thereof plus accrued interest.

449.425 Bond covenants. Bonds issued under ORS 449.410 or the proceedings of the governing body authorizing their issuance may contain such covenants as the governing body deems advisable concerning:

(1) Rates or fees to be charged for services rendered by the sewerage facilities, the revenue of which is pledged to the payment of such bonds.

(2) Deposit and use of the revenue of such sewerage facilities.

(3) Issuance of additional bonds payable from the revenue of such sewerage facilities.

(4) Rights of the bondholders in case of default in the payment of the principal of or interest on the bonds, including the appointment of a receiver to operate such sewerage facilities.

449.430 Refunding bonds. (1) The governing body of every municipality by ordinance or resolution without prior approval of the electors may issue and exchange or sell refunding revenue bonds to refund, pay or discharge all or any part of its outstanding revenue bonds, including interest thereon, if any, in arrears or about to become due.

(2) All other relevant provisions in ORS 449.405 to 449.440 pertaining to revenue bonds shall be applicable to the refunding revenue bonds, including their terms and security, the rates and other aspects of the bonds.

449.435 Cooperation of governmental units in constructing and financing sewerage facilities. (1) Any two, or more, municipalities, counties or other political subdivisions, notwithstanding any limitation or provision of municipal charter to the contrary, may, through their respective governing bodies, enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition and the financing of sewerage facilities and the maintenance and operation thereof.

(2) Municipalities, counties or other political subdivisions so contracting with each other may also provide in any contract or agreement for a board, commission or such other body as their governing bodies may deem proper for the supervision and general management of the sewerage facilities and for the operation thereof, and may prescribe its powers and duties and fix the compensation of the members thereof.

[Amended by 1963 c.171 §2]

449.440 Contracts to supply sewerage facilities for industrial plants. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality may enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, and of operating and maintaining the sewerage facilities serving such industrial establishment.

449.445 to 449.500 [Reserved for expansion]

CONTROL OF CONTAMINATION AND POLLUTION IN SPECIAL AREAS AND WATERS

449.505 Trespassing and grazing stock in Bull Run National Forest prohibited; notice. (1) Within the limits of Bull Run National Forest, which is part of Mount Hood National Forest and which has been set aside as a reserve for a municipal water supply by Act of Congress, no person shall:

(a) Without lawful business thereon, go or trespass on any lands or premises not his own.

(b) Fail to depart from any land or premises immediately and to remain away until permitted to return upon the verbal, printed or written notice of the owner or person in lawful control of the land or premises.

(c) Wilfully permit or allow stock in his possession to graze on the land or premises after notice.

(2) Printed or written notices having attached thereto by authority, the name of the owner or person in lawful occupation of the lands or premises, and requiring all persons to forbear trespassing thereon and to depart therefrom, posted in three conspicuous places on the lands and premises, are deemed to be sufficient prima facie evidence of notice under paragraph (b) of subsection (1) of this section.

449.510 Sanitary water areas in Benton and Yamhill Counties. The area lying within one mile on each side of the thread of any stream or watercourse in Benton and Yamhill Counties, which is the source of supply of domestic water for any municipal corporation in this state for a distance of four miles above the headgate, diversion dam or other means of diverting such water from the stream to the instrumentality where such water is conducted from such stream to the consumers thereof, is established as a restricted and protected district to be known as a sanitary water area.

449.515 Prohibited conduct in sanitary water areas in Benton and Yamhill Counties. Within the boundaries of a sanitary water area in Benton and Yamhill Counties, no person shall:

(1) Permit domestic livestock of any kind to run at large, except livestock in direct charge and under the control of a herder and provided, that the owner of land within the area may permit his own livestock to run on his land without a herder.

(2) Dump, deposit or place any sewage or refuse or matter of any kind which is subject to decay.

(3) Build any campfire, bonfire or burn any slashings or brush or start any fire of any kind, provided, that the owner of land within the area may build fires in stoves, fireplaces and other similar devices for domestic heating and cooking and may, with a permit from the State Board of Health, build

brush fires and burn slashings on his own land.

(4) Camp or maintain any camp or campground or any dance hall or other place of public entertainment, provided, that with a permit from the State Board of Health, the owner of land within the area may keep or maintain a camp or campground or dance hall or other place of public entertainment on his own land, but he shall at all times destroy by burning or by some other efficient means all sewage, refuse matter and things of every character which are subject to decay, and permit no act to be done on his land which will pollute the water of a stream within a distance of two miles above the intake or point of diversion to the municipal water supply.

449.520 Liability for civil damages for violating ORS 449.515. Any person who violates ORS 449.515 shall, in addition to the criminal penalty provided for in ORS 449.990, be liable for any damages resulting from doing any act prohibited in ORS 449.515.

449.525 Permits for owners of land in sanitary water area; revocation procedure.

(1) Any permit granted by the State Board of Health under ORS 449.515 shall be conditioned upon the permittee's fully complying with ORS 449.515.

(2) Any such permit may be revoked by the board for a violation of ORS 449.515. Before any permit is revoked, formal written charges shall be filed with the board and notice of a hearing thereon shall be given the permittee in writing 10 days before the hearing. Notice shall be served as a summons is served in a cause pending in the circuit court. The hearing shall be public and all interested parties are entitled to the benefit of witnesses and to representation by counsel.

449.530 Contamination of streams in Yamhill County prohibited; civil liability.

(1) No person, firm, corporation or municipal corporation shall dump, deliver or permit to be dumped or delivered untreated or raw sewage, offal, refuse or debris in any non-navigable stream of Yamhill County having a flow of less than three and three-tenths cubic feet of water per second at any time of the year, within the corporate limits of any city or within one mile of the boundaries thereof without treating or disposing of such sewage, offal, refuse or debris in a manner

prescribed by the rules and regulations of the State Board of Health.

(2) Any person, firm, corporation or municipal corporation violating this section is liable for all damages sustained or suffered by an individual, to be recovered in a civil action therefor, in addition to the criminal penalty provided for in ORS 449.990.

449.535 Contamination of, and fishing and camping near, Clear Lake prohibited. No person shall:

(1) Put any sewage, drainage, refuse or polluting matter, or any dead animal carcass, or part thereof, excrement, putrid, nauseous, decaying, deleterious or offensive substance which, either by itself or in connection with other matter, will corrupt or impair the quality of the water for domestic or municipal purposes, into the water of Clear Lake or the watershed supplying that lake.

(2) Allow any such substance to escape into, or place it in such position that it or the drainage therefrom escapes or is carried into such waters.

(3) In any other manner not named in this section befoul, pollute or impair the qualities of such waters for domestic or municipal purposes.

(4) Catch or attempt to catch any fish in the waters of Clear Lake.

(5) Camp on any lands adjacent to Clear Lake which belong to the City of Reedsport.

(6) Establish within the watershed described in ORS 449.540 any public campground or camping place and conduct same in any manner which will pollute, befoul or impair the quality of the water of Clear Lake for domestic or municipal purposes.

449.540 Location of Clear Lake and description of its watershed. For the purposes of ORS 449.535:

(1) Clear Lake is located in township 22 south, ranges 12 and 13 west of the Willamette Meridian in Douglas County.

(2) The watershed supplying Clear Lake is located within the following described boundaries: Beginning at the corner of sections 30 and 31, township 22 south, range 12 west, and sections 25 and 36, township 22 south, range 13 west of the Willamette Meridian in Douglas County, and running thence as follows: West one-half mile, north two miles, east one-fourth mile, north one-fourth mile, east one-fourth mile to the coast meridian, thence east one and one-fourth miles, south

one mile, west one-half mile, south one-half mile, west one-fourth mile, south three-fourths mile to the quarter section corner between sections 30 and 31; thence west one-half mile to the place of beginning and containing 1,920 acres, more or less.

449.545 Contamination of Deschutes River prohibited. No person shall put or deposit in the Deschutes River, its tributaries, or artificial canal or ditch in which the waters of the Deschutes River run, any sewage, refuse, waste or polluting water, or any dead animal carcass or part thereof, or any matter which either by itself, or in connection with any other substance, will corrupt or impair the quality of the water of the river for domestic or municipal purposes, or place any such substance in such position that it escapes or is carried into such waters by the action of the elements or otherwise.

449.550 Deschutes River; pollution prohibited; abatable nuisance. The establishment or maintenance of any slaughter pens, stock-feeding yards, hogpens, corrals or turkey yards, or the deposit or maintenance of any uncleanly or unwholesome substance, or the conducting of any business, or the allowance or maintenance of any condition, below the point of diversion upon or sufficiently near any irrigation canal or ditch diverting water from or which has as its source of supply the waters of the Deschutes River and its tributaries south of Crooked River, so that the water of such canal or ditch is polluted, or is likely to become polluted, or the purity thereof endangered thereby, is prohibited and declared to be a nuisance. The nuisance may be abated as other nuisances are abated under the laws of this state.

449.555 Deschutes River; reporting violations. Every employe of any irrigation district or water company diverting water from the Deschutes River and its tributaries south of Crooked River shall report any condition which comes to his attention and from which there appears to be a violation of ORS 449.550 to the secretary of the district or water company. The secretary shall forthwith report the condition in writing to the health officer of the county wherein it exists.

449.560 Deschutes River; abatement of nuisance. (1) Every county health officer to whom a report is made pursuant to ORS

449.555 shall investigate immediately such condition and report his findings, together with his opinion as to whether ORS 449.550 is being violated, to the board of directors of the irrigation district reporting the condition.

(2) If it appears from the findings and opinion of the officer that ORS 449.550 is being violated, the board of directors of the irrigation district or water company shall institute a suit in the circuit court of the county wherein the condition exists to abate the nuisance created thereby.

449.565 Deschutes River; prosecution of violators. If, in the opinion of the county health officer, after making an investigation pursuant to ORS 449.560, it appears that ORS 449.550 is being violated, he shall report immediately his findings and opinion to the district attorney of the county wherein the condition exists, and proceed and file a complaint against the violator and cause his arrest and prosecution.

449.567 Deschutes River; powers of Sanitary Authority. Notwithstanding the provisions of ORS 449.545 and 449.550, the powers and duties of the Sanitary Authority of the State of Oregon as set forth in ORS 449.080 shall apply to the Deschutes River and its tributaries.

[1959 c.247 §1]

449.570 Contamination of McKenzie River prohibited. No person shall:

(1) Put any sewage, drainage, refuse or polluting matter, any dead animal carcass or part thereof, excrement, putrid, nauseous, decaying, deleterious or offensive substance, which either by itself or in connection with other matter, will corrupt or impair the quality of the water for domestic or municipal purposes, into the water of the McKenzie River, or tributaries thereof, in Lane County.

(2) Allow any such substance to escape into, or place any such substance in such position that it escapes or is carried into those waters.

(3) In any other manner not named in this section, befoul, pollute or impair the qualities of those waters for domestic or municipal purposes.

449.575 Contamination of North Umpqua River prohibited. No person shall:

(1) Put any sewage, drainage, refuse, or polluting matter or any dead animal carcass, or part thereof, excrement, putrid, nauseous,

decaying, deleterious or offensive substance, which either by itself or in connection with other matter, will corrupt or impair the quality of the water for domestic or municipal purposes, into the water of the North Umpqua River, or tributaries thereof, above the Winchester power dam, in Douglas County. The dam is located between the point where the North Umpqua River is crossed by the Oregon and California railroad and the county bridge spanning the river 1,500 feet more or less east of the railroad crossing.

(2) Allow any such substance to escape into, or place any such substance in such position that it escapes or is carried into those waters.

(3) In any other manner not named in this section befoul, pollute, or impair the qualities of those waters for domestic or municipal purposes.

449.580 Oswego Lake and affluents; pollution prohibited; injunction and enforcement.

(1) No person shall put or deposit in Oswego Lake, Clackamas County, or in any drain or brook flowing into that lake, any sewage, refuse, waste or any other substance which by itself, or in connection with any other matter, will corrupt or impair the quality of water in the lake for domestic or recreational purposes or place such substances in a position that they will escape or be carried into those waters by the action of the elements or otherwise.

(2) No person, residing on or owning property on the watershed of Oswego Lake shall flow or discharge sewage or waste water thereon unless it is passed through a system of sewage purification approved by the State Board of Health.

(3) The continued flow and discharge of sewage may be enjoined by any judge of the circuit court, upon application of any person.

(4) All peace officers and health officers of Clackamas County are charged with the enforcement of this section.

449.585 to 449.700 [Reserved for expansion]

449.705 [Repealed by 1959 c.357 §15]

449.710 [Repealed by 1959 c.357 §15]

449.715 [Repealed by 1959 c.357 §15]

449.720 [Repealed by 1959 c.357 §15]

449.725 [Repealed by 1959 c.357 §15]

449.730 [Repealed by 1959 c.357 §15]

449.735 [Repealed by 1959 c.357 §15]

449.740 [Repealed by 1959 c.357 §15]

449.745 [Repealed by 1959 c.357 §15]

449.750 [Repealed by 1959 c.357 §15]

449.755 [Repealed by 1959 c.357 §15]

AIR POLLUTION

449.760 Definitions for ORS 449.760 to 449.830. Unless the context clearly indicates otherwise, as used in ORS 449.760 to 449.830:

(1) "Person" or "persons" means any individual, public or private corporation, political subdivision, agency, board, department or bureau of the state, municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(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 pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics and of a duration which are injurious to human, plant or animal life or to property or which unreasonably interfere with enjoyment of life and property throughout the state or throughout such area of the state as shall be affected thereby.

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

(5) "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.

(6) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants discharged into the atmosphere.

(7) "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 Sanitary Authority.

[1961 c.426 §3]

449.765 Declaration of policy on air pollution. 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 to maintain such a reasonable degree of purity

of the air resources of the state to the end that the least possible injury should be done to human, plant or animal life or to property and to maintain public enjoyment of the state's natural resources and consistent with the economic and industrial well-being of the state. The program for the control of air pollution under ORS 449.760 to 449.830 shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by a maximum of cooperation and conciliation among all the parties concerned.

[1961 c.426 §1]

449.770 Purpose of ORS 449.760 to 449.830. It is the purpose of ORS 449.760 to 449.830 to safeguard the air resources of the state by controlling or abating air pollution which exists on August 9, 1961; and preventing new air pollution, under a program which shall be consistent with the declaration of policy above stated and with ORS 449.760 to 449.830.

[1961 c.426 §2]

449.775 Exceptions from application of ORS 449.760 to 449.830. The provisions of ORS 449.760 to 449.830 do not apply to:

(1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals;

(2) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals;

(3) Barbecue equipment or outdoor fireplaces used in connection with any residence;

(4) Land clearing operations or land grading;

(5) Incinerators and heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families; or

(6) Fires set or permitted by any public officer, board, council or commission when such fire is set or permission given in the performance of such duty of the officer for the purpose of weed abatement, the prevention or elimination of a fire hazard, or the instruction of employes in the methods of fire fighting, which is in the opinion of such officer necessary, or from fires set pursuant to permit for the purpose of instruction of employes of private industrial concerns in methods of fire fighting, or for civil defense instruction.

[1961 c.426 §5]

449.780 Powers and duties of Sanitary Authority in relation to air pollution. It shall

be the duty and responsibility of the Sanitary Authority to:

(1) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution in any area of the state in which air pollution is found already existing or in danger of existing, recognizing varying requirements for different areas of the state.

(2) Encourage voluntary cooperation by all persons concerned in controlling air pollution and air contamination.

(3) Encourage the formulation and execution of plans in conjunction with air pollution control agencies or civil associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air pollution, for the prevention and abatement of pollution.

(4) Cooperate with the appropriate agencies of the United States or other cities or any interested agencies with respect to the control of air pollution and air contamination and for the formulation for submission to the Legislative Assembly of interstate air pollution control compacts or agreements.

(5) Conduct or cause to be conducted studies and research with respect to air pollution sources, control, abatement or prevention.

(6) Conduct and supervise programs of air pollution control education including the preparation and distribution of information regarding air pollution sources and control.

(7) Determine by means of field studies and sampling the degree of air pollution in the various areas of this state.

(8) Provide advisory technical consultation services to local communities.

(9) Develop and conduct demonstration programs in cooperation with local communities.

(10) Serve as the agency of the state for receipt of moneys from the Federal Government or other public or private agencies and to expend such moneys after appropriation thereof for the purposes of air pollution control, studies or research.

(11) Enforce statutes relating to air pollution.

[1961 c.426 §6]

449.785 Standards of quality and purity of air. The Sanitary Authority shall have power to:

(1) 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. In determining air purity standards, the authority shall take into account the following factors:

(a) The quantity 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) Economical 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 from 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 to maintain public enjoyment of the state's natural resources;

(o) Other factors which the Sanitary Authority may find applicable.

(2) Establish air quality standards for the entire state or an area of the state which 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. Such standards may be changed from time to time by the

Sanitary Authority following public hearings. Establishment of such standards shall be prerequisite to any specific order relating to air pollution in any area where research has proven that standards can be established.

[1961 c.426 §7]

449.790 Hearings on standards. (1) Public hearings shall be held by the Sanitary Authority or before any member or members of the authority or a hearing officer as the authority may designate, prior to the establishment of air quality standards in any area of the state and written notice of such hearing shall be sent to the mayor and recorder or auditor of the city or county clerk of the county in which any area of the state is located, and notice of such hearing shall also be published in a newspaper of general circulation in said area of the state at least 20 and not more than 30 days prior to such public hearing. The authority may recess and continue such hearings as it may deem appropriate.

(2) In addition to the right to be heard at said public hearing any person shall have the right to make written objection or suggestions. The Sanitary Authority may solicit the written views of other persons as it may deem appropriate. Within 90 days after the conclusion of such public hearing, such standards shall be established by the authority. Thereafter such standards may be canceled, altered or amended from time to time following notice and hearing prior to such change or cancellation.

(3) Such standards shall be deemed general regulations of the authority and ORS chapter 183 shall apply.

[1961 c.426 §8]

449.795 Means of meeting standards. The Sanitary Authority shall have authority to require, upon request, the submission of plans and specifications for any air-cleaning device, but any person responsible for complying with the standards of air purity established under ORS 449.760 to 449.830 shall determine, unless found by the Sanitary Authority to be inadequate, the means, methods, processes, equipment and operation to meet the established standards.

[1961 c.426 §9]

449.800 Rules and regulations; general enforcement of air pollution laws and regulations. The Sanitary Authority shall have power to:

(1) Formulate, adopt, promulgate, amend

and repeal general rules and regulations which control, reduce or prevent air pollution in such area of the state as shall or may be affected by air pollution, and to include general provisions applicable throughout the state or various areas of the state for controlling air contamination in accordance with the policy and purposes set forth in ORS 449.760 to 449.830.

(2) Hold public hearings, conduct investigations, subpoena witnesses who shall receive the same fees and mileage as in civil actions in the circuit court, administer oaths and affirmations, take depositions and receive such pertinent and relevant proof as it may deem necessary or proper in order that it may effectively discharge its duties and powers under ORS 449.760 to 449.830 and its responsibilities under ORS 449.760 to 449.830 to control and abate air pollution; and its members or persons it may designate may exercise such powers.

(3) Make findings of fact and determinations.

(4) Institute actions for such penalties as are hereinafter prescribed with respect to a violation of any provision of any rule or regulation or any order which it may issue under ORS 449.760 to 449.830; provided, however, that no penal action shall be instituted against the state or any agency, department or bureau thereof, or against any unit of local government, or an officer or employe of any of them, for acts or omissions or violations done in their official functions or in performance of their official duties.

(5) Institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rules, regulations or any order or condition of any order which it may promulgate under ORS 449.760 to 449.830.

(6) Settle or compromise in its discretion with the approval of the Attorney General as it may deem advantageous to the state, any action or suit for recovery of any penalty or for compelling compliance with ORS 449.760 to 449.830.

(7) By its members or any one of them or any designated officers or agents, enter and inspect during operating hours, and after four hours' notice when requested, any property, premises or place for the purpose of investigating either an actual or suspected source of air pollution or air contamination or to ascertain compliance or noncompliance with any rule, regulation or order which it

may promulgate under ORS 449.760 to 449.830. Any information relating to secret process, device or method of manufacturing or production obtained in the course of inspection or investigation shall be kept confidential and shall not be made a part of a public record of any hearing. If, on premise, samples of air or air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing such air pollution or air contamination.

(8) Gain access to and require the production of books and papers pertinent to any matter investigated.

(9) Employ persons including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts necessary to carry out the purposes of ORS 449.760 to 449.830.

(10) Do any and all other acts and things not inconsistent with any provision of ORS 449.760 to 449.830 which it may deem necessary or proper for the effective enforcement of ORS 449.760 to 449.830 and the rules, regulations and orders which have been promulgated thereunder.

[1961 c.426 §10; 1963 c.171 §3]

449.805 Judicial review of rules, regulations and orders. (1) Any specific order or determination or other final action by the Sanitary Authority and the validity or reasonableness of any rule, regulation or general order of the Sanitary Authority shall be subject to review and appeal as provided in ORS chapter 183.

(2) When review in accordance with ORS chapter 183 is not maintainable either because the person included was not a party to the original proceedings in which the order or determination or other action which is sought to be reviewed was taken, or for any other reason, the order or determination of the authority and the validity or reasonableness of any rule, regulation or order of the authority may nevertheless be reviewed as herein provided, by court proceedings for declaratory judgment, injunction or other suitable proceeding. Such proceeding may be brought by any one or more persons, jointly or severally, who may be aggrieved by any such rule, regulation or order or any such determination or act, whether or not the plaintiff is or was a party to the proceeding in which such rule, regulation or order was adopted by the authority or in which such determination or

order of action was made or taken by the authority.

(3) Proceedings brought under the provisions of this section must be instituted within one year after the action of the authority which is sought to be reviewed shall become final and binding upon the plaintiff, his predecessor in interest or the class to which he belongs; provided, however, that the court may allow a later filing if the plaintiff was under some disability which the court deems sufficient to excuse a later filing.

[1961 c.426 §12]

449.810 Variances from rules, regulations or orders. (1) The Sanitary Authority may grant specific variances from the particular requirements of any rule, regulation or order to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with such rule, regulation or order is inappropriate because of conditions beyond the control of the persons granted such variance or because of special circumstances which would render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause, or because strict compliance would result in substantial curtailment or closing down of a business, plant or operation, or because no other alternative facility or method of handling is yet available. Such variances may be limited in time.

(2) The Sanitary Authority may delegate the power to grant such variances to legislative bodies of local units of government in any area of the state on such general conditions as it may find appropriate.

(3) In determining whether or not a variance shall be granted, in all cases the equities involved and the advantages and disadvantages to the residents and the occupation or activity, shall be weighed by the Sanitary Authority or the local governmental body.

(4) A variance granted 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.

[1961 c.426 §15]

449.815 Procedure on complaint of violation. (1) In case any written substantiated complaint shall be filed with the Sanitary Authority which has cause to believe, or in case the authority itself has cause to believe, that any person is violating any rule, regulation or order which was promulgated by the authority by causing or permitting air pollution or air contamination, the Sanitary Authority shall cause an investigation thereof to be made. If it shall find after such investigation that such a violation of any rule, regulation or order of the authority exists, it shall by conference, conciliation and persuasion endeavor to the fullest extent possible to eliminate the source or cause of the air pollution or air contamination which resulted in such violation.

(2) In case of failure by conference, conciliation and persuasion to correct or remedy any source or cause of any air pollution or air contamination which resulted in a violation of any rule, regulation or order of the Sanitary Authority, the authority shall have cause to have issued and served upon the person complained against, a written notice, together with a copy of the complaint made by it or a copy of the complaint made to it, which shall specify the provisions of the rule, regulation or order of which such person is said to be in violation and a statement of the manner in and extent to which such person is said to violate it, and shall require the person so complained against to answer the charges of such complaint at a public hearing before the authority at a time not less than 15 days after the date of notice.

(3) The respondent to such complaint may file written answer thereto and may appear at such hearing in person or by representative, with or without counsel, and may submit testimony in accordance with the procedure set forth in ORS chapter 183 concerning contested cases. The Sanitary Authority at the request of any respondent to the complaint made pursuant to ORS 449.760 to 449.830, shall subpoena and compel the attendance of such witnesses as the respondent may reasonably designate, and it shall require the production of any book or paper relating to the matter under investigation at any such hearing. The burden of proof shall be upon the Sanitary Authority.

(4) After due consideration of the written and oral statements, testimony and arguments submitted, or upon default in appearance of the respondent on the return date

specified in the notice given as provided above, the authority may issue and enter such specific order or make such specific determination as it shall deem appropriate under the circumstances, in accordance with the provisions of ORS chapter 183.

[1961 c.426 §11]

449.820 Enjoining and abating air pollution. (1) If measures to prevent or correct air pollution or air contamination which violate any rule, regulation or order promulgated by the Sanitary Authority, shall not be taken in accordance with the specific final order, the Sanitary Authority may institute or cause to be instituted in the name of the State of Oregon a suit for injunction to prevent any further or continued violation of such rule, regulation or specific final order and to compel compliance. The provisions of this section shall not prevent the maintenance of actions or suits relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the Sanitary Authority.

(2) However, notwithstanding the provisions of this section or any other provisions of law to the contrary, the Sanitary Authority, without necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings if such proceedings have been commenced, may institute a suit at law or in equity in the name of the State of Oregon to abate or restrain threatened or existing pollution of the air of this state, whenever such pollution or threatened pollution creates an emergency which requires immediate action to protect the public health, safety or welfare; provided, that no temporary restraining order or temporary injunction or abatement order shall be granted unless the defendant is accorded an opportunity to be heard thereon at a time and place set by the court in an order directing the defendant to appear at such time and place, and to then and there show cause, if any he has, why a temporary restraining order or temporary injunction or abatement order should not be granted. The order to show cause, together with affidavits supporting the application for such temporary restraining order, temporary injunction or abatement order, shall be served on the defendant as a summons. The defendant may submit counteraffidavits at such time and place. The Sanitary Authority shall not be required to furnish any bond in

such proceeding. Neither the Sanitary Authority nor its members or employes shall be liable for any damages defendant may sustain by reason of an injunction or restraining order or abatement order issued after such hearing.

(3) Cases filed under the provisions of this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

[1961 c.426 §13; 1963 c.171 §4]

449.825 Liability of violator limited. The several liabilities which may be imposed pursuant to ORS 449.760 to 449.830 upon persons violating the provisions of any rule, regulation or order of the Sanitary Authority, shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause.

[1961 c.426 §14]

449.830 City and county air pollution ordinances. (1) The powers and duties prescribed in ORS 449.760 to 449.830 are conferred upon the Sanitary Authority of Oregon. Any county or city notwithstanding any limitation or provision of charter to the contrary, may enact ordinances or resolutions with respect to air pollution which do not conflict with the provisions of ORS 449.760 to 449.830 or the rules and regulations promulgated pursuant to its provisions and through their governing bodies may enter into and perform with other cities or counties such contracts and agreements as they may deem proper for or concerning the establishing, planning, construction, maintenance, operation and financing of an air pollution program.

(2) Counties and cities so contracting with each other may also provide, notwithstanding any limitation or provision of charter to the contrary, for a board, commission or such other body as their governing bodies may deem proper for the supervision and general management and operation of an air pollution program and may prescribe its powers and duties and fix the compensation of the members thereof.

(3) ORS 449.760 to 449.830 shall not be construed to repeal ordinances, rules or regulations of said political subdivisions existing August 9, 1961, except as they may conflict with the provisions of ORS 449.760 to 449.830. If it shall be held that the provisions

of ORS 449.760 to 449.830 shall supersede any local ordinance or resolution, this shall not bar the prosecution of or punishment for violation of any ordinance or resolution, which violation was committed when such ordinance was in full force and effect.

[1961 c.426 §4; 1963 c.171 §5]

449.840 to 449.980 [Reserved for expansion]

PENALTIES

449.990 Penalties. (1) Violation of ORS 449.105, 449.125 to 449.135, 449.210 to 449.220, 449.235 to 449.245, 449.325, 449.395, 449.400, 449.545 or 449.575 is a misdemeanor and is punishable, upon conviction, as provided in ORS 431.990. Violation of ORS 449.235 or 449.240 by a person managing a public water supply is a misdemeanor; provided such person does not prove to the satisfaction of the court that, in spite of reasonable effort and diligence on his part, he was prevented, directly or indirectly, by his superiors from doing his duty in this respect, in which case the superior officer concerned is guilty of a misdemeanor.

(2) Violation of ORS 449.107 is punishable, upon conviction, by a fine of not more than \$50.

(3) Violation of ORS 449.110 or 449.115 is punishable, upon conviction, as provided in subsection (4) of ORS 496.990.

(4) Violation of ORS 449.120 is punishable, upon conviction, by a fine not exceeding \$50 or, in lieu of payment of such fine, by imprisonment in the county jail one day for each \$2 of fine.

(5) Violation of ORS 449.225, 449.230 or 449.232 or failure to comply with any order issued by the State Board of Health under such sections by any owner or private or public official or person responsible for the operation of a public water supply, is a misdemeanor.

(6) Violation of ORS 449.250 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail for not more than 30 days, or both. Justice courts hereby are given concurrent jurisdiction with circuit courts of all violations of ORS 449.250.

(7) Any person who violates ORS 449.320 is guilty of creating and maintaining a nuisance and is punishable, upon conviction, by a fine of not more than \$500.

(8) Violation of paragraph (a) or (b) of subsection (1) of ORS 449.505 is punishable, upon conviction, by a fine of not more than \$250 or by imprisonment in the county

jail for not more than six months, or both. Justice courts have jurisdiction over violations under this subsection.

(9) Violation of paragraph (c) of subsection (1) of ORS 449.505 is punishable, upon conviction, by a fine of not more than \$150 or by imprisonment for not more than three months, or both. Justice courts have jurisdiction over violations under this subsection.

(10) Violation of ORS 449.515 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$1,000, or by imprisonment in the county jail not less than five days nor more than one year, or by both.

(11) Violation of ORS 449.530 by any person, firm or corporation or the responsible officers of any municipal corporation is punishable, upon conviction, by a fine of not less than \$50 nor more than \$1,000, or by imprisonment in the county jail not less than five days nor more than one year, or by both.

(12) Violation of ORS 449.535 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county jail not less than five days nor more than 50 days, or by both.

(13) Any person who violates ORS 449.550 is guilty of creating and maintaining

a nuisance and is punishable, upon conviction, by a fine of not less than \$50 nor more than \$500.

(14) Violation of ORS 449.570 or 449.580 is punishable, upon conviction, by a fine of not more than \$100.

(15) Violation of subsection (2) of ORS 449.730 is a misdemeanor.

(16) Violation of the rules, regulations and general orders of the Sanitary Authority adopted and promulgated under the authority given the Sanitary Authority under ORS 449.080 is a misdemeanor.

(17) Violation of a specific final order after due notice and hearing by the Sanitary Authority or a condition of any permit granted by the Sanitary Authority under ORS 449.080 is a misdemeanor.

(18) Violation of any rule, regulation or final order of the Sanitary Authority issued pursuant to ORS 449.760 to 449.830 shall be a misdemeanor and each day of such violation shall be deemed a separate offense.

(19) Refusal to produce books, papers or information as required by ORS 449.760 to 449.830 shall be deemed a misdemeanor.

[Subsection (5) enacted as 1953 c.253 §4; 1957 c.192 §5; subsection (2) enacted as 1959 c.688 §3; 1961 c.332 §9; subsections (18) and (19) enacted as 1961 c.426 §16]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel