

Chapter 449

1970 REPLACEMENT PART

Water and Air Pollution Control

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DEFINITIONS

449.001 Definitions. As used in this chapter, unless the context requires otherwise:

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

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

(3) "Director" means the Director of the Department of Environmental Quality. [1969 c.593 §3]

Note: ORS 449.001 was not added to and made a part of ORS chapter 449 by legislative action.

ENVIRONMENTAL QUALITY COMMISSION

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449.015 [Amended by 1959 c.14 §1; repealed by 1967 c.424 §1 (449.016 enacted in lieu of 449.015)]

449.016 Environmental Quality Commission; confirmation; term; compensation and expenses. (1) The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.570.

(2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor. Before the expiration of the term of a member, the Governor shall appoint his successor to assume his duties on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) If an appointment is made in the interim between legislative sessions, the Senate shall act through the Committee on Executive Appointments under ORS 171.560.

(4) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495.

[1967 c.424 §2 (449.016 enacted in lieu of 449.015); 1969 c.314 §46; 1969 c.593 §4; 1969 c.695 §8]

449.020 [Amended by 1959 c.357 §3; repealed by 1967 c.424 §5]

449.025 [Amended by 1967 c.424 §3; repealed by 1969 c.593 §5 (449.026 enacted in lieu of 449.025)]

449.026 Director; appointment, qualification, bond, expenses; delegation of authority. (1) There shall be appointed by the

commission, a director who shall:

(a) Be a graduate of a recognized school of engineering;

(b) Possess a minimum of five years' experience as a practicing sanitary engineer; and

(c) Be eligible for registration in Oregon as a professional engineer.

(2) The director shall hold his office at the pleasure of the commission, and his salary shall be fixed by the commission unless otherwise provided by law. The director shall, before entering upon the duties of his office, execute a bond, payable to the State of Oregon in the penal sum to be fixed by the commission with one or more corporate sureties authorized to do business in this state for the faithful discharge of his duties and office, and the premium to be paid out of department funds. The bond, when so executed, shall be filed in the office of the Secretary of State.

(3) The director and any secretary, clerk, stenographer or other employe traveling upon the direction of the director, is entitled to receive from the state his actual necessary expenses while traveling on business of the department.

(4) The director may delegate such of his powers, duties and functions to other officers and employes of the department as he deems necessary. Such designation shall be filed with the Secretary of State.

[1969 c.593 §6 (enacted in lieu of 449.025)]

449.028 Duties of director. Subject to policy direction by the commission, the director shall:

(1) Be administrative head of the department;

(2) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign, and coordinate personnel of the department;

(3) Administer and enforce the laws of the state concerning environmental quality;

(4) Conduct research concerning environmental quality in the state;

(5) Seek the cooperation of all groups and individuals in carrying out his prescribed duties;

(6) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning environmental quality.

[1969 c.593 §7]

Note: ORS 449.028 was not added to and made a part of ORS chapter 449 by legislative action.

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

449.032 Department of Environmental Quality. There is hereby established in the executive-administrative branch of the government of the state a department to be known as the Department of Environmental Quality. The department shall consist of the Environmental Quality Commission, the director of the department, and all their employes and assistants.

[1969 c.593 §1]

Note: ORS 449.032 was not added to and made a part of ORS chapter 449 by legislative action.

449.035 Cooperation with other agencies; financial aid; use of funds. The department 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 sewage, industrial waste, and water and air pollution.

[Amended by 1959 c.357 §5; 1969 c.593 §8]

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) An officer acting for the commission may:

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

(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 subpena. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in the circuit court.

[1959 c.357 §8; 1969 c.593 §9]

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 commission, 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 commission, 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 commission is not fully carried out within the time specified in the stipulation or order, and if the commission finds that the other party in 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.

[Amended by 1969 c.593 §10]

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 Environmental Quality Commission 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]

449.062 Contracts with State Board of Health. When authorized by the Environmental Quality Commission, the Department of Environmental Quality and the State Board of Health may contract with each other for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employes by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each of said agencies is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest.

[1969 c.593 §50]

Note: ORS 449.062 and 449.064 were not added to and made a part of ORS chapter 449 by legislative action.

449.064 Rules of commission enforceable by other agencies when commission authorizes such enforcement. All rules promulgated by the Environmental Quality Commission relating to air pollution, pollution of surface and ground water or solid wastes, shall be deemed to be rules of the State Board of Health and shall be enforceable by the Department of Environmental Quality, the State Board of Health and by county, district and city boards of health. However, before the State Board of Health, or any county, district or city board of health, may enforce any rule related to air pollution or pollution of surface or ground waters not related to solid wastes, the Environmental Quality Commission must on its own motion after public hearing, grant specific authorization for such enforcement.

[1969 c.593 §51; 1969 c.608 §6]

Note: See note under ORS 449.062.

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

449.070 Construction. In so far as ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150 and 449.390 to 449.400 are inconsistent with any other law, ORS 449.016 to 449.026, 449.035 to 449.065, 449.070 to 449.150 and 449.390 to 449.400 shall be controlling.

[Amended by 1967 c.426 §1]

WATER POLLUTION

449.075 Definitions. As used in the laws relating to water pollution, unless the context requires otherwise:

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

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

(6) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(7) "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 commission pursuant to this chapter.

(8) "Pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by

itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

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

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

[1961 c.332 §12; 1967 c.426 §2; 1969 c.593 §11]

449.077 Policy on water pollution; construction. (1) Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives.

(2) ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 shall be liberally construed for the accomplishment of these purposes.

[Formerly 449.005; 1967 c.426 §7]

449.079 Water pollution prohibited; violation a public nuisance. (1) No person shall:

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

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

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 449.083.

(3) Violation of subsection (1) or (2) of this section is a public nuisance.

[1967 c.426 §4; 1969 c.593 §12]

449.080 [Formerly 449.030; 1967 c.426 §8; repealed by 1969 c.593 §13 (449.081 and 449.082 enacted in lieu of 449.080)]

449.081 Functions of Environmental Quality Commission in relation to water pollution. The commission:

(1) May formulate, in accordance with applicable provisions of ORS chapter 183, and from time to time amend or cancel rules and regulations pertaining to procedure of the department with respect to hearings, filing of reports and issuance of permits.

(2) May formulate, in accordance with applicable provisions of ORS chapter 183, and from time to time amend or cancel rules and regulations pertaining to minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of sewerage systems, treatment works, and disposal systems, and all other matters pertaining to standards of quality for the waters of the state.

(3) May establish, modify, or amend standards of quality and purity of the various waters of this state as provided in ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920. 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 enforce compliance with the laws of the state and with final orders of the department relating to pollution of water of the state.

(5) 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.

[1969 c.593 §15 (449.081 and 449.082 enacted in lieu of 449.080)]

449.082 Functions of department in relation to water pollution; confidentiality of information. The department:

(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 Environmental Quality Commission, as set forth in ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(2) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of waters of this state and to the treatment and disposal of wastes.

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

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

(5) 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 department prescribed in ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920. Any information relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 449.083 shall be kept confidential and shall not be made a part of a public record of any hearing.

[1969 c.593 §14 (449.081 and 449.082 enacted in lieu of 449.080)]

449.083 Waste discharge permit required; issuance, denial, revocation; temporary permit; reports. (1) Without first obtaining a permit from the department, no person shall on or after January 1, 1968:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity, any municipal sewerage system, disposal system or treatment works, or any domestic sewerage system as defined in ORS 449.390.

(b) Construct, install, modify or operate any municipal sewerage system, disposal system or treatment works, or any domestic sewerage system as defined in ORS 449.390, or part thereof or any extension or addition thereto.

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

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

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

(2) The department may issue, deny, suspend or modify, or revoke permits under such conditions as it may prescribe or according to such rules, regulations and standards as the commission may prescribe for the prevention, reduction or abatement of pollution.

(3) Applications for permit shall be made on forms prescribed by the department and any permit issued by the department shall specify its duration and the conditions for conformance with the provisions of ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150 and the rules and regulations promulgated pursuant thereto and for compliance with standards of water quality and purity if such standards have been established for the particular waters of the state wherein the wastes for which the permit is sought will be discharged. The department, under such conditions as it may prescribe, may require the submission of plans, specifications, and such other information as it deems necessary to carry out the provisions of ORS 449.016 to 449.026, 449.035 to 449.060,

449.070 to 449.150 and the rules, regulations and standards adopted pursuant to the provisions thereof.

(4) In the event of failure of the department to act upon an application within 60 days after it has been filed, the applicant shall be deemed to have received a temporary permit, such permit to expire upon final action to grant or deny the original application by the department.

(5) The department shall give written notice of its intention to deny, suspend, modify or revoke any permit issued pursuant to this section. Such notice shall be sent by registered mail to the last-known address of the applicant. The person to whom the notice is addressed shall have 20 days from the date of the mailing of such notice in which to demand a hearing by the commission or its authorized representative and such hearing shall be conducted pursuant to the provisions of ORS chapter 183.

(6) Any person who holds a permit under paragraph (a) of subsection (1) of this section shall report periodically to the department. The department may authorize such reports to be made every 30 days. The report shall be on a form prescribed and supplied by the department and shall contain information as to the amount and nature or common description of the sewage or waste and such other information as the department may require.

[1967 c.426 §6; 1969 c.593 §16]

449.086 Standards of quality and purity of water. (1) The commission 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 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, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;

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

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

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

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

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

(h) The value of stability and the public 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 commission only after public hearing on due notice, subject to the limitations thereon elsewhere set forth in ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(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 or county bordering or through which said waters for which standards are sought to be adopted, flow, and to such other persons as the commission may find appropriate.

(4) Any person responsible for complying with the standards of water quality or purity established under ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 shall determine, subject to the approval of the department, 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; 1967 c.426 §9; 1969 c.593 §17]

449.088 Final order. After the conclusion of a hearing conducted by a hearing officer of the commission, the officer shall transmit the record of the hearing, together with his findings and conclusions, to the commission, which shall review the record and enter its order thereon within 60 days after the conclusion of the hearing. The order of the commission shall be final and conclusive on all parties unless an appeal is taken therefrom as provided in ORS 449.090 or in ORS chapter 183, or unless the order is modified or revised by a court in other proceedings as provided in ORS chapter 183.

[Formerly 449.049; amended by 1969 c.593 §18]

449.090 Appeal from final order. Any person who deems himself aggrieved by any order of the commission may appeal from such order or may bring separate action or suit in accordance with the provisions of ORS chapter 183. However, notwithstanding subsection (3) of ORS 183.480, relating to a stay of enforcement of an agency decision and the giving of bond or other taking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of such agency decision, and may take testimony thereon. 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 commission and the validity or reasonableness of any order or determination of the commission may be reviewed by the court in a civil action for declaratory or injunctive relief or other suitable proceeding.

[Formerly 449.065; amended by 1969 c.593 §19; 1969 c.608 §1]

449.092 Intergovernmental cooperation to control water pollution. The department 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; amended by 1969 c.593 §20]

449.095 Water pollution as improper use. Pollution of any of the waters of this state is declared to be not a reasonable or natural use of such waters and contrary to the public policy of the State of Oregon, as set forth in ORS 449.077. 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 ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 and conform to the standards of water quality and purity established thereunder.

[Formerly 449.010; 1967 c.426 §10]

449.097 Proceedings against violators. Whenever the commission determines that a person is violating any of its orders or any of the provisions of ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920, or whenever the commission receives complaints, petitions or remonstrances from individual citizens, groups of citizens, organizations, associations or municipalities relating to any condition involving water pollution, or on the commission's own motion, the commission may:

(1) Investigate, hold hearings, make general or specific orders and take action, as provided in ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920, as soon as possible.

(2) For the purpose of investigating conditions relating to water pollution, through 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 ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.235, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 or of any order, rule or regulation of the commission 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 commission 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 commission together with the facts of noncompliance, and the facts giving rise to the public nuisance.

[Formerly 449.047; amended by 1969 c.593 §21]

449.100 Enjoining and abating water pollution. (1) Proceedings to abate alleged public nuisances created by pollution of waters of the state may be instituted at law, or

in equity, in the name of the State of Oregon, upon relation of the commission, the Attorney General, any district attorney of any county or the city attorney of any municipality affected. The provisions of this section are in addition to and are not in lieu of any criminal prosecution or penalties resulting from pollution except that no criminal prosecution shall be brought against a state or local governmental agency or officer or employe thereof in the performance of his duties.

(2) However, notwithstanding any other provisions of law to the contrary or the provisions of ORS 449.097, the commission, 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 materially contributes to an emergency which requires immediate action to protect the public health, safety or welfare.

(3) At the time of instituting the suit, the commission must file one or more affidavits supporting the relief applied for, together with a show cause order directed to the defendant. On the day the suit is instituted or on the day following, the court shall issue the show cause order, requiring the defendant to appear at a time and place specified in the order to show cause, if any, why the relief applied for should not be granted. The complaint, together with the affidavit and the show cause order, shall be served on the defendant as a summons. The time for the appearance of the defendant shall not be more than three calendar days after issuance of the order unless both parties concur in an extension. At the trial the defendant may submit counter affidavits and both parties may submit such additional evidence as may be appropriate. At the beginning of the trial a temporary restraining order, temporary injunction or abatement order may be entered pending final determination of the matter by a trial of the merits. The hearing on the show cause order shall constitute a trial on the merits of the case. Any appeal shall be taken in the usual manner, but there shall be no stay of the order of the court on appeal.

(4) The commission shall not be required to furnish any bond in such proceeding.

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

(5) Cases filed under the provisions of this section or any appeal therefrom shall be given preference on the docket over all other cases except those given an equal preference by statute.

[Formerly 449.050; 1963 c.171 §1; 1967 c.426 §11; 1969 c.593 §22; 1969 c.608 §2]

449.103 Liability for injury to fish and wildlife and to their habitat. (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders, rules or regulations of the Environmental Quality Commission, the person responsible therefor shall be liable to the state in any amount reasonably necessary to restock or replace such fish or wildlife and to restore natural fish or wildlife production in the affected waters.

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the restocking or replenishing of such fish or wildlife or restoring natural fish or wildlife production in the affected waters within a period of 60 days from the date of written demand therefor.

(3) Any action or suit for the recovery of damages shall be brought in the name of the State of Oregon upon relation of the Environmental Quality Commission or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered.

[1967 c.426 §5]

449.105 Placing offensive substances in waters, on highways, or certain property prohibited. (1) No person, including a person in the possession or control of any land, shall discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner be-
foul, pollute or impair the quality of any

spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water.

(2) 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.

(3) Nothing in this section shall apply to the storage or 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; 1967 c.426 §12]

449.107 Deposit of trash in receptacles when within 100 yards of water; deposit of trash in water prohibited; license suspensions; litter patrol. (1) Persons on land within 100 yards of the ocean or any stream, lake, bay, reservoir or pond or channel thereof, shall not discard any glass, cans or other trash, rubbish, debris or litter, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.

(2) No person shall discard any glass, cans or other similar refuse in any waters of this state described in subsection (1) of this section.

(3) In addition to or in lieu of the penalties provided for violation of any provision of this section, the court in which any individual is convicted of a violation of this section may order suspension of certain permits or licenses for a period not to exceed 90 days if the court finds that the violation occurred during or in connection with the exercise of the privilege granted by the permit or license. The permits and licenses to which this section applies are liquor permits, motor vehicle operator's permits or licenses, hunting licenses, fishing licenses or boat registrations.

(4) (a) Any person sentenced to pay a fine for violation of this section shall be permitted, in default of the payment of the fine, to work at clearing rubbish, trash and debris

from the lands and waters described by subsections (1) and (2) of this section. Credit in compensation for such work shall be allowed at the rate of \$25 for each day of work. While performing such work, such person shall wear an arm band on which the letters "LP", meaning "Litter Patrol" appear.

(b) In any case, upon conviction, if punishment by imprisonment is awarded against the defendant, the form of the sentence shall include that the defendant shall be punished by confinement at labor clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section, for not less than one day nor more than five days.

[1959 c.688 §2; 1967 c.426 §19; 1969 c.511 §5]

449.109 Depositing motor vehicles into water prohibited. Subject to ORS 449.111, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 482.010 or of any vehicle as defined by ORS 482.030, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means.

[1969 c.251 §2]

449.110 [Amended by 1961 c.478 §1; repealed by 1967 c.426 §20]

449.111 Rules on beneficial use of motor vehicle parts. (1) The Environmental Quality Commission shall promulgate rules and regulations as to the beneficial use of motor vehicle chassis, bodies, and shells of motor vehicles in the waters of this state, including the means and methods of placing same in the waters of this state. In establishing such rules and regulations the Environmental Quality Commission shall consider, among other things, the possibility of pollution; the esthetics of such use; the utility of such use in reclamation projects; the degradation of the waters, stream beds or banks; and the nature of the waters such as tidewater, slough or running stream, and the effect thereon.

(2) The Environmental Quality Commission may issue a permit to an applicant to place chassis, bodies or shells of motor vehicles in the waters of this state subject to

the rules and regulations promulgated under this section.

[1969 c.251 §3]

449.115 [Repealed by 1967 c.426 §20]

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 system 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 Definitions for ORS 449.150. For the purposes of ORS 449.150, the term:

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

(2) "Sewage" means human excreta as well as kitchen, bath and laundry wastes.

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

[1965 c.362 §2(1)(part)]

449.150 Discharge of untreated garbage or sewage prohibited. (1) After September 1, 1967, and notwithstanding any other law or regulation of this state or political subdivision thereof to the contrary, no garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the State of Oregon from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the State Board of Health and the commission. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewer system, septic tank system or other disposal system approved by the State Board of Health and the commission.

(2) The commission may extend the time of compliance as set forth in subsection (1) of this section for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available.

[1965 c.362 §2(1) (part), (2); 1967 c.426 §13; 1969 c.593 §23]

PROTECTION OF WATER SUPPLY GENERALLY

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 by ORS chapter 183.

[Amended by 1953 c.253 §2; 1969 c.593 §24]

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 operation 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 commission.

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

(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; 1969 c.593 §25]

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 Environmental Quality Commission, 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.

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.

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. (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 Environmental Quality Commission for approval.

(2) Any person proposing to construct a domestic sewerage system shall submit to the

Environmental Quality Commission 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 Environmental Quality Commission under subsection (1) or (2) of this section are approved by the Environmental Quality Commission. Any construction must be in accordance with the plans and specifications approved by the Environmental Quality Commission.

[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 Environmental Quality Commission a surety bond of a sum required by the Environmental Quality Commission, 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 Environmental Quality Commission may permit the substitution of other security for the bond, in such form and amount as the Environmental Quality Commission 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 Environmental Quality Commission 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 Environmental Quality Commission. 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 Environmental Quality Commission. The Environmental Quality Commission may expend the amount forfeited to secure compliance with the approved plans and specifications or the rules, regulations and orders of the Environmental Quality Commission.

(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 Environmental Quality Commission.

(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 449.016 to 449.026, 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.

STATE GRANTS FOR CONSTRUCTION OF MUNICIPAL SEWAGE TREATMENT WORKS

449.455 Definitions for ORS 449.455 to 449.485. As used in ORS 449.455 to 449.485, unless the context requires otherwise:

(1) "Sewage treatment works" means any facility for the purpose of treating, neutralizing or stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishings thereof and their appurtenances.

(2) "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement of extension of sewage treatment works, preliminary planning to determine the economic and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of sewage treatment works, and the inspection and supervision of the construction of sewage treatment works.

(3) "Eligible project" means a project for construction of sewage treatment works:

(a) For which approval of the Environmental Quality Commission is required under ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(b) Which is, in the judgment of the Environmental Quality Commission, eligible for federal pollution abatement assistance, whether or not federal funds are then available therefor;

(c) Which conforms with applicable rules and regulations of the Environmental Quality Commission; and

(d) Which is, in the judgment of the Environmental Quality Commission, necessary for the accomplishment of the state's policy of water purity as stated in ORS 449.077.

(4) "Municipality" means any county, city, special service district, or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, any Indian tribe or authorized Indian tribal organization, or any combination of two or more of the foregoing acting jointly, in connection with an eligible project.

(5) "Federal pollution abatement assistance" means funds available to a municipality, either directly or through allocation by the state, from the Federal Government as grants for construction of sewage treatment works pursuant to the Federal Water Pollution Control Act of 1956 (P.L. 84-660) as amended, or pursuant to any other federal act or program.

[1967 c.423 §1]

449.465 State grants for construction; approval by commission; priorities. (1) The State of Oregon is hereby authorized to make grants, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works.

(2) The Environmental Quality Commission shall be the agency for administration of funds granted by this state.

(3) In allocating state grants under ORS 449.455 to 449.485, the Environmental Quality Commission shall give consideration to the:

(a) Public benefits to be derived by the construction;

(b) Ultimate cost of constructing and maintaining the works;

(c) Public interest and public necessity for the works;

(d) Adequacy of the provisions made or proposed by the municipality for assuring proper and efficient operation and maintenance of the treatment works after the completion of construction thereof;

(e) The applicant's readiness to start construction, including financing and planning; and

(f) The applicant's financial need.

(4) The Environmental Quality Commission shall establish a list of priority projects based upon the criteria established in subsection (3) of this section and it shall be used as a method for allocation of funds granted under ORS 449.455 to 449.485. However, a project shall not be placed on the list of priority projects if the total cost to the Sewage Treatment Works Construction Account established by ORS 449.485 of all such projects on the list of priority projects would exceed the funds available in the Sewage Treatment Works Construction Account.

[1967 c.423 §§2, 3]

449.475 Amount of grants; contract between municipality and commission. (1) The Environmental Quality Commission may, in the name of the State of Oregon, enter into contracts with municipalities, and any such municipality may enter into a contract with the Environmental Quality Commission, concerning eligible projects. Any such contract may include such provisions as may be agreed upon by the parties thereto, and shall include, in substance, the following provisions:

(a) An estimate of the reasonable cost of the project as determined by the Environmental Quality Commission.

(b) An agreement by the municipality:

(A) To proceed expeditiously with, and complete, the project in accordance with plans approved pursuant to ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.455 to 449.485, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(B) To commence operation of the sewage treatment works on completion of the project, and not to discontinue operation or dispose of the sewage treatment works without the approval of the Environmental Quality Commission;

(C) To operate and maintain the sewage

treatment works in accordance with applicable provisions of ORS chapter 449, and rules and regulations of the Environmental Quality Commission;

(D) To secure approval of the Environmental Quality Commission before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Oregon; and

(E) To provide for the payment of the municipality's share of the cost of the project.

(2) The Environmental Quality Commission may adopt rules and regulations necessary for the making and enforcing of contracts hereunder and establishing procedures to be followed in applying for state grants herein authorized as shall be necessary for the effective administration of ORS 449.455 to 449.485.

(3) All contracts entered into pursuant to this section shall be subject to approval by the Attorney General as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant of the Secretary of State on vouchers approved by the Environmental Quality Commission.

[1967 c.423 §4; 1969 c.656 §4]

449.485 Sewage Treatment Works Construction Account. There is hereby established in the General Fund of the State Treasury an account to be known as the Sewage Treatment Works Construction Account. All moneys in the Sewage Treatment Works Construction Account hereby are appropriated continuously for and shall be used by the Environmental Quality Commission in carrying out the purposes of ORS 449.455 to 449.485.

[1967 c.423 §5]

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

(1) Cause pollution, as defined in subsection (8) of ORS 449.075, of the watershed supplying Clear Lake, Douglas County, by any means.

(2) Catch or attempt to catch any fish in the waters of Clear Lake, Douglas County.

(3) Camp on any lands adjacent to Clear Lake, Douglas County, which belong to the City of Reedsport.

(4) Establish within the watershed described in ORS 449.540 any public campground or camping place and conduct same in any manner which will cause pollution of Clear Lake, Douglas County.

[Amended by 1967 c.426 §14]

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 [Repealed by 1967 c.426 §20]

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 [1959 c.247 §1; repealed by 1967 c.426 §15 (449.568 enacted in lieu of 449.567)]

449.568 Application of ORS 449.016 to 449.150. Notwithstanding the provisions of ORS 449.505 to 449.580, the provisions of

ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150 shall apply and are in addition to any special provisions of ORS 449.505 to 449.580.

[1967 c.426 §16 (enacted in lieu of 449.567)]

449.570 [Repealed by 1967 c.426 §20]

449.575 [Repealed by 1967 c.426 §20]

449.580 Oswego Lake pollution prohibited; enforcement. (1) No person, residing on or owning property on the watershed of Oswego Lake, Clackamas County, 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 and the department.

(2) The continued flow and discharge of sewage or waste water may be enjoined by any judge of the circuit court, upon application of the State Board of Health, the department or any person.

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

[Amended by 1967 c.426 §17; 1969 c.593 §26]

TAX RELIEF ON POLLUTION CONTROL FACILITIES

449.605 Definitions for ORS 449.605 to 449.645. (1) As used in ORS 449.605 to 449.645, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if a substantial purpose of such use, erection, construction or installation is the prevention, control or reduction of air or water pollution by:

(a) The disposal or elimination of or re-design to eliminate "industrial waste" and the use of treatment works for industrial waste as defined in ORS 449.075, as amended from time to time; or

(b) The disposal or elimination of or re-design to eliminate "air contaminants" or "air pollution" or "air contamination sources" and the use of air cleaning devices as defined in ORS 449.760, as amended from time to time.

(2) However, "pollution control facility" or "facility" does not include air conditioners, septic tanks or other facilities for

human waste, nor any property installed, constructed or used for the moving of sewage to the collecting facilities of a public or quasi-public sewerage system.

[1967 c.592 §2; 1969 c.340 §4]

449.615 Policy. In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of air and water pollution in this state by providing tax relief with respect to Oregon facilities constructed to accomplish such prevention, control and reduction.

[1967 c.592 §1]

449.625 Application for certification of pollution control facility. Any person may apply to the Environmental Quality Commission for certification under ORS 449.635 of a pollution control facility or facilities or portion thereof erected, constructed or installed by him in Oregon on or after January 1, 1967, and on or before December 31, 1978. The application shall be made in writing on a form prescribed by the Environmental Quality Commission and shall contain information on the actual cost of the facility or facilities, a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of pollution prevention, control or reduction served or to be served by the facility or facilities and whether the portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution is 80 percent or more, 60 percent or more and less than 80 percent, 40 percent or more and less than 60 percent, 20 percent or more and less than 40 percent, or below 20 percent. The Environmental Quality Commission may require such further information as it considers necessary prior to issuance of a certificate.

[1967 c.592 §3; 1969 c.340 §5]

449.635 Certification of facility; conditions; election of tax relief. (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 449.625. The action of the Environmental Quality Commission shall include certification of the actual cost of the facility and whether the portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution is 80 percent or more, 60 percent or more and less

than 80 percent, 40 percent or more and less than 60 percent, 20 percent or more and less than 40 percent, or less than 20 percent. Each certificate shall bear a separate serial number for each such facility. If the Environmental Quality Commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution than was claimed in the application for certification, the Environmental Quality Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application. Failure of the Environmental Quality Commission to act constitutes rejection of the application. If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air or water pollution, the applicant may appeal from the rejection as provided in ORS 449.090. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 449.090 before the 30th day after notice was mailed by the Environmental Quality Commission.

(2) As a condition to issuance of the certification referred to in ORS 449.645 the Environmental Quality Commission may require any person, as defined by ORS 449.075, who has applied for such certification and who discharges from any industrial source any air contaminant into the air of the state to submit a periodic report if in the opinion of the Environmental Quality Commission such discharge results in pollution of the air of the state. The Environmental Quality Commission may adopt regulations designating those industrial sources on which reports are to be submitted. The Environmental Quality Commission may require such reports to be made every 30 days. The report shall be on a form prescribed and supplied by the Environmental Quality Commission and shall contain information as to the amount and nature or common description of the contaminant and such other information as the Environmental Quality Commission may require.

(3) If the Environmental Quality Commission finds that a pollution control facility or portion thereof, for which an application has been made under ORS 449.625, was erected, constructed or installed on or after January 1, 1967, and on or before December 31, 1978, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air or water pollution, and that the facility is necessary to satisfy the intents and purposes of ORS 449.016 to 449.026, 449.035 to 449.060, 449.070 to 449.150, 449.205 to 449.250, 449.305 to 449.340, 449.390 to 449.400, 449.410 to 449.440, 449.505 to 449.565, 449.580, 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 and regulations thereunder, it shall certify such facility. Where one or more facilities constitute an operational unit, the Environmental Quality Commission may certify such facilities under one certificate. A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and 317.072. The Environmental Quality Commission shall attach to the front of each certificate a copy of the notice and election requirements imposed by subsection (4) of this section.

(4) A person receiving a certificate under this section shall make an irrevocable election to take the tax credit relief under ORS 316.097 or 317.072 or the ad valorem tax relief under ORS 307.405 and shall notify the Environmental Quality Commission, within 60 days after the receipt of such certificate, of his election. This election shall apply to the facility or facilities certified and shall bind all subsequent transferees. Failure to make a timely notification shall make the certificate ineffective for any tax relief under ORS 307.405, 316.097 and 317.072.

[1967 c.592 §§4, 5(4) (c); 1969 c.340 §6]

Note: Section 10, chapter 340, Oregon Laws 1969 is temporary but is set forth for the convenience of the user.

Sec. 10. (1) As used in this section, "construction" includes land acquisition or improvement and, acquisition of building materials or equipment, and every other matter within the definition of pollution control facility.

(2) A person receiving certification under ORS 449.635 for a pollution control facility the construction of which is begun by April 30, 1969, and which is substantially completed by June 30, 1971, may apply the tax relief available under such certificate either under the provisions of this 1969 Act or as provided in ORS 449.605 to 449.645 (1967 Replacement Part).

(3) The election made under subsection (2) of this section shall apply to the facility certified and shall bind all subsequent transferees. The person

making the choice shall notify the Environmental Quality Commission in his application of his election under subsection (2) of this section.

449.645 Revocation of certificate; effect of revocation. (1) At any time the Environmental Quality Commission may revoke the certification issued under ORS 449.635 of any pollution control facility, if it finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air or water pollution as specified in such certificate.

(2) The Environmental Quality Commission shall give written notice of the revocation by registered or certified mail to the holder of the certificate. The holder of the certificate may appeal from a revocation under this section as provided in ORS 449.090. The revocation is final and conclusive unless an appeal is taken therefrom as provided in ORS 449.090 before the 30th day after notice was mailed by the commission. If upon appeal the revocation is affirmed, the date such revocation becomes final shall be the date of the notice to the certificate holder.

(3) As soon as a revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such revocation.

(4) (a) If the certification of a pollution control facility is revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate under any provision of ORS 307.405, 307.420, 307.430, 314.250, 314.255, 316.097, 317.072, 318.030 and 449.605 to 449.645 shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by said holder as a result of the tax relief provided to said holder under any provision of ORS 307.405, 316.097 and 317.072.

(b) If the certification of a pollution control facility is revoked pursuant to paragraph (b) of subsection (1) of this section, the holder of such certificate shall forfeit any further relief provided under ORS 307.405, 316.097 or 317.072 in connection with such facility, as the case may be, from and after the date that said revocation becomes final.

[1967 c.592 §5(1), (2), (3), (4) (a) and (b)]

449.655 Allocation of costs to pollution control. The Environmental Quality Commission shall consider the following factors in establishing the portion of the actual cost of the facility properly allocable to the prevention, control, or reduction of air or water pollution:

(1) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

(2) The estimated annual percent return on the investment in the facility.

(3) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

(4) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

(5) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air or water pollution.

[1969 c.340 §9]

449.665 Rules. In addition to the power granted in subsection (2) of ORS 449.635 the Environmental Quality Commission may formulate, amend or cancel, in accordance with any applicable provisions of ORS chapter 183, rules and regulations establishing procedures for processing and evaluating applications for certification, establishing procedures for the issuance and revocation of certificates and all other matters pertaining to the Environmental Quality Commission in administering tax relief on pollution control facilities.

[1969 c.340 §8]

POLLUTION CONTROL BONDS

Effective 1970 by Const. amendment
449.670 Definitions for ORS 449.670 to

449.695. As used in ORS 449.670 to 449.695, "Environmental Quality Commission" means the Environmental Quality Commission created under ORS 449.016.

[1969 c.503 §1]

Note: ORS 449.670 to 449.695 were not added to and made a part of ORS chapter 449 by legislative action.

449.672 Bond issue for pollution control purposes; limit on amount. In order to provide funds for the purposes specified in Article XI-H of the Constitution of Oregon, the Environmental Quality Commission, with the approval of the State Treasurer, is authorized to issue and sell such general obliga-

tion bonds of the State of Oregon, of the kind and character and within the limits prescribed by Article XI-H of the Constitution of Oregon as, in the judgment of the Environmental Quality Commission, shall be necessary. The bonds shall be authorized by resolution duly adopted by a majority of the members of the Environmental Quality Commission at a regular or special meeting of the Environmental Quality Commission. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed \$50 million par value.

[1969 c.503 §2]

449.675 Form of bonds; maturity; interest; refunding bonds. (1) At the request of the Environmental Quality Commission, the Attorney General shall prepare a form of direct, general obligation, interest-bearing coupon bonds of the State of Oregon to be sold in order to provide funds for carrying out the purposes of Article XI-H of the Constitution of Oregon and ORS 449.670 to 449.695. The bonds shall be numbered and shall be payable at such times and in such amounts as shall be fixed by the Environmental Quality Commission. However, none of the bonds shall mature sooner than six months nor later than 30 years from issued date. The bonds shall bear interest, payable semiannually, at such rates as the Environmental Quality Commission, with the approval of the State Treasurer, deems advisable.

(2) In the discretion of the Environmental Quality Commission, the bonds may be issued as provided by ORS 286.040. The bonds may be refunded either prior to or at their maturity dates. In the event of redemption or refunding prior to maturity date, the Environmental Quality Commission is not required to redeem or refund bonds in the order in which they were originally issued. Refunding bonds may be sold in the same manner as other bonds are sold under ORS 449.670 to 449.695. The issuance of refunding bonds, their maturity dates and other details, the rights of their holders and the duties of the Governor, Secretary of State, State Treasurer and of the Environmental Quality Commission with respect thereto, shall be governed by the other provisions of ORS 449.670 to 449.695 in so far as applicable. Refunding bonds may be issued to refund bonds originally issued or to refund

bonds previously issued for refunding purposes.

[1969 c.503 §3]

449.677 Advertisement of bonds; sale.

With the approval of the State Treasurer, the Environmental Quality Commission shall provide such method as it deems necessary for the advertisement of each issue of the bonds mentioned in ORS 449.670 to 449.695 before they are sold. As approved by the State Treasurer, the Environmental Quality Commission shall require such deposit, with bids, as it deems advisable and generally shall conduct the sale and issuance of the bonds under such rules and regulations as the Environmental Quality Commission may adopt.

[1969 c.503 §5]

449.680 Payment and retirement of bonds; costs of issuance. (1) All bonds issued under ORS 449.670 to 449.695, including refunding bonds and the coupons appurtenant thereto, shall be direct, general obligations of the State of Oregon, in negotiable form, and shall embody an absolute promise to pay the amounts thereof in any coin or currency which, at the time of payment, is legal tender for the payment of public and private debts within the United States of America. The bonds shall be executed with a facsimile signature of the Governor and the Secretary of State and the manual signature of the State Treasurer. The bonds shall bear coupons evidencing interest to become due for each instalment thereof upon which shall be printed the facsimile signatures of all said officers.

(2) Not less than 20 days before the payment of the principal or interest falls due on any of the bonds, the Environmental Quality Commission shall prepare and submit to the State Treasurer, for verification, a claim duly approved by the Environmental Quality Commission for the amount necessary to meet the payment thereof. Upon such verification, the Environmental Quality Commission shall present the claim in like manner as other claims against the state are presented. The claim shall be paid out of moneys provided by law for its payment.

(3) All bonds and interest coupons that are paid by the State Treasurer shall be deposited by him in due course with the Secretary of State. After two years from the date upon which the paid bonds and interest coupons are so deposited, they may be destroyed. The Secretary of State shall prepare a list

of the bonds and coupons destroyed and shall file this list with the State Treasurer with certificate thereon, duly signed by him and stating that the bonds and coupons described therein were destroyed by him on the date of said certificate.

(4) The principal of and the interest upon all bonds issued under authority of ORS 449.670 to 449.695, when due, shall be paid at the office of the State Treasurer; but, with the approval of the State Treasurer, the Environmental Quality Commission may designate a fiscal agency of the State of Oregon in the City and State of New York or such other fiscal agency of the State of Oregon as may be designated by law, as the place of payment of the bonds and of the interest thereon.

(5) Interest and costs incurred in issuance of the bonds, including engineering, legal and accounting and other financial advisory services shall be paid upon approval by the State Treasurer from the funds derived from the sale of the bonds and the capitalization of interest in the incurrence of such costs is hereby authorized.

[1969 c.503 §4]

449.682 Pollution Control Fund. The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct from the General Fund, to be designated the Pollution Control Fund; which fund is hereby appropriated for the purpose of carrying out the provisions of ORS 449.670 to 449.695. It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.776, and the earnings from such investments inure to the Pollution Control Sinking Fund.

[1969 c.503 §6]

449.685 Authority of Environmental Quality Commission. (1) The Environmental Quality Commission shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The Environmental Quality Commission is hereby authorized to use the Pollution Control Fund for one or more of the following:

(a) To advance funds, by contract, grant, loan or otherwise, for eligible projects as defined in ORS 449.455;

(b) To acquire, by purchase, loan or otherwise, bonds, notes or other obligations of any municipal corporation, city, county, or

agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of subsection (1) of this section.

(2) The facilities referred to in subsection (1) of this section shall be only such as conservatively appear to the Environmental Quality Commission to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The Environmental Quality Commission may sell or pledge any bonds, notes or other obligations acquired by the Environmental Quality Commission under paragraph (b) of subsection (1) of this section.

[1969 c.503 §7]

449.690 Pollution Control Sinking Fund; sources; uses. (1) The Environmental Quality Commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 449.670 to 449.695. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the Environmental Quality Commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 449.670 to 449.695, all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the Environmental Quality Commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 449.670 to 449.695.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the

fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the Environmental Quality Commission.

[1969 c.503 §8]

449.692 Ad valorem tax levy for pollution control purposes. Each year the Department of Revenue shall determine the amount of revenues and other funds that are available and the amount of taxes, if any, that should be levied in addition thereto to meet the requirements of ORS 449.670 to 449.695 for the ensuing fiscal year. Such additional amount of tax is hereby levied and shall be apportioned, certified to, and collected by the several counties of the state in the manner required by law for the apportionment, certification and collection of other ad valorem property taxes for state purposes. This tax shall be collected by the several county treasurers and remitted in full to the State Treasurer in the manner and the times prescribed by law, and shall be credited by the State Treasurer to the Pollution Control Sinking Fund.

[1969 c.503 §9]

449.695 Federal aid; donations; acceptance and use. The Environmental Quality Commission may accept assistance, grants, and gifts, in the form of money, land, services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the Federal Government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by Article XI-H of the Constitution of Oregon and by ORS 449.670 to 449.695. Unless enjoined by the terms and conditions of any such gift or grant, the Environmental Quality Commission may convert the same or any of them into money through sale or other disposal thereof.

[1969 c.503 §10]

AIR POLLUTION

(Contamination Sources)

449.702 Measurement and testing of air contamination sources. (1) The Environmental Quality Commission shall establish a program for measurement and testing of contamination sources and may perform such

sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section.

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

(3) All sampling and testing shall be conducted in accordance with methods used by the Environmental Quality Commission or equivalent methods of measurement acceptable to the Environmental Quality Commission. The results of any sampling or testing under this section shall be considered inspection or investigation for purposes of the confidentiality requirement of subsection (7) of ORS 449.800.

(4) In accordance with ORS chapter 183, the Environmental Quality Commission shall promulgate rules and regulations governing responsibility for providing samples required under this section and all matters considered by the Environmental Quality Commission to be necessary and reasonable to meet established air quality standards.

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

[1969 c.331 §2]

449.705 [Repealed by 1959 c.357 §15]

449.707 Classification of sources; registration and reporting; status of information reported. (1) The Environmental Quality Commission by rule and regulation may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Environmental Quality Commission and make reports containing such information as the Environmental Quality Commission may require concerning location, size

and height of air contaminant outlets, processes employed, fuels used and the amounts and nature and duration of the air contaminant emission and such other information as is relevant to air pollution.

(3) Any information gained in the course of registration or reporting shall be considered information gained in inspection or investigation for purposes of the confidentiality requirement of subsection (7) of ORS 449.800.

[1969 c.331 §3]

449.710 [Repealed by 1959 c.357 §15]

449.712 Procedure for gaining approval of construction of new sources. (1) The Environmental Quality Commission may require notice from sources specified by class or classes in its rules, standards, regulations or orders relating to air pollution of the construction, installation or establishment of new air contamination sources.

(2) Within 30 days of receipt of such notice, the Environmental Quality Commission may require, as a condition precedent to the construction, installation or establishment of the air contamination source or sources covered thereby, the submission of plans and specifications and may request corrections and revisions to the plans and specifications and any other information as is relevant to air contaminant emissions to determine whether the proposed construction, installation or establishment is in accordance with the provisions of ORS 449.702 to 449.717 and 449.760 to 449.830 or applicable rules, standards and regulations or orders promulgated pursuant thereto. The Environmental Quality Commission shall, upon determining that the proposed construction is in accordance with the provisions of ORS 449.702 to 449.717 and 449.760 to 449.830, promptly notify the person who gave notice that construction can proceed.

(3) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the Environmental Quality Commission determines that the proposed construction, installation or establishment is not in accordance with the provisions of ORS 449.702 to 449.717 and 449.760 to 449.830 or the applicable rules, standards, regulations or orders promulgated pursuant thereto, it shall issue an order prohibiting the construction, installation or establishment of the air contamination source

or sources. Failure of such order to issue within the time prescribed herein shall be considered a determination that the construction, installation or establishment may proceed, provided that it is in accordance with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted. Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the secretary of the Environmental Quality Commission. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(4) For the purposes of this section, addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affect the emission of air contaminants, shall be considered as construction or installation or establishment of a new air contamination source.

(5) Information obtained under this section shall be considered information gained in inspection or investigation for purposes of the confidentiality requirements of subsection (7) of ORS 449.800.
[1969 c.331 §4]

449.715 [Repealed by 1959 c.357 §15]

449.717 Enforcement of ORS 449.702 to 449.722. Whenever it appears to the Environmental Quality Commission that any person is engaged or about to engage in any acts or practices which would constitute a violation of ORS 449.702 to 449.722, 449.925 and 449.990, the commission may institute proceedings at law or in equity to enforce compliance thereto or to restrain further violations.
[1969 c.331 §5]

449.720 [Repealed by 1959 c.357 §15]

449.722 Furnishing copies of rules to building permit issuing agencies. Whenever rules or regulations are issued by either the Environmental Quality Commission or a regional air quality authority under the provisions of ORS 449.702 to 449.722, 449.925 and 449.990, such commission or authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and regulations.
[1969 c.331 §8]

Note: ORS 449.722 was not added to ORS chapter 449 by legislative action.

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]

(Generally)

449.760 Definitions for air pollution laws. Unless the context clearly indicates otherwise, as used in ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920:

(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, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or 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 Environmental Quality Commission.

[1961 c.426 §3; 1969 c.216 §1]

449.765 Policy on air pollution. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon:

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

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

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

(2) The program for the control of air pollution under ORS 449.702 to 449.717 and 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 cooperation and conciliation among all the parties concerned.

[1961 c.426 §1; 1967 c.425 §3; 1969 c.216 §2]

449.770 Purpose of air pollution laws. It is the purpose of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

[1961 c.426 §2]

449.775 Exceptions from application of air pollution laws. Except as provided in this section and in ORS 449.840, 476.380 and 478.960, the provisions of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 used in connection with any residence;

(4) Agricultural land clearing operations or land grading;

(5) 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; 1969 c.613 §4]

449.780 [1961 c.426 §6; repealed by 1969 c.593 §27 (449.781 and 449.782 enacted in lieu of 449.780)]

449.781 Functions of Environmental Quality Department in relation to air pollution. The department shall:

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

(2) Encourage the formulation and execution of plans in conjunction with air pollution control agencies or 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.

(3) Cooperate with the appropriate agencies of the United States or other states 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.

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

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

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

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

(8) Develop and conduct demonstration

programs in cooperation with local communities.

(9) 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.

[1969 c.593 §29 (449.781 and 449.782 enacted in lieu of 449.780)]

449.782 Comprehensive plan for control or abatement of existing air pollution. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of 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.

[1969 c.593 §28 (449.781 and 449.782 enacted in lieu of 449.780)]

449.785 Standards of quality and purity. The commission shall enforce statutes relating to air pollution and 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 commission 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 commission may find applicable.

(2) Establish air quality standards including emission 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 commission following public hearings.

[1961 c.426 §7; 1969 c.593 §30]

449.790 Hearings on standards. (1) Public hearings shall be held by the commission or before any member or members of the commission or a hearing officer as the commission 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 commission 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 commission 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 commission. 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 commission and ORS chapter 183 shall apply.

[1961 c.426 §8; 1969 c.593 §31]

449.795 [1961 c.426 §9; repealed by 1969 c.331 §10]

449.800 Rules and regulations; general enforcement of air pollution laws and regulations. The Environmental Quality Commission 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 and its responsibilities under ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920; 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920

(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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920. 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

(10) Do any and all other acts and things not inconsistent with any provision of ORS 449.702 to 449.717, 449.760 to 449.830 which it may deem necessary or proper for the effective enforcement of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 commission and the validity or reasonableness of any rule, regulation or general order

of the commission shall be subject to review and appeal as provided in ORS chapter 183. However, notwithstanding subsection (3) of ORS 183.480, relating to a stay of enforcement of an agency decision and the giving of bond or other taking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of such agency decision, and may take testimony thereon.

(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 commission and the validity or reasonableness of any rule, regulation or order of the commission 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 commission or in which such determination or order of action was made or taken by the commission.

(3) Proceedings brought under the provisions of this section must be instituted within one year after the action of the commission 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; 1969 c.608 §3]

449.810 Variances from rules, regulations or orders. (1) The Environmental Quality Commission 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 Environmental Quality Commission 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 Environmental Quality Commission 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 Environmental Quality Commission which it has cause to believe, or in case the commission itself has cause to believe, that any person is violating any rule, regulation or order which was promulgated by the commission by causing or permitting air pollution or air contamination, the Environmental Quality Commission 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 commission 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 Environmental Quality Commission, the commission 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 commission 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 Environmental Quality Commission at the request of any respondent to the complaint made pursuant to ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920, 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 Environmental Quality Commission.

(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 commission 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 commission, shall not be taken in accordance with the specific final order, the commission 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 commission.

(2) However, notwithstanding the provisions of this section or any other provisions of law to the contrary, the commission, 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 materially contributes to an emergency which requires immediate action to protect the public health, safety or welfare.

(3) 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 or copies of the findings 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 counter-affidavits at such time and place. The commission shall not be required to furnish any bond in such proceeding. Neither the commission 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.

(4) Cases filed under the provisions of this section or any appeal therefrom 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; 1969 c.608 §4]

449.825 Liability of violator limited. The several liabilities which may be imposed pursuant to ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 upon persons violating the provisions of any rule, regulation or order of the Environmental

Quality Commission, 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 and contracts. (1) The powers and duties prescribed in ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 are conferred upon the Environmental Quality Commission. 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920. If it shall be held that the provisions of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 "Marginal conditions" defined and classified for purposes of issuing burning permits. (1) As used in this section and

in ORS 476.380 and 478.960, "marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(2) In exercising its functions under paragraph (b) of subsection (4) of ORS 476.380 and paragraph (b) of subsection (8) of ORS 478.960, the Environmental Quality Commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions. A schedule descriptive of the marginal conditions shall be prepared and circulated to all public agencies responsible for providing information and the issuance of permits under ORS 476.380 and 478.960. In the schedule describing the extent and types of burning for each type of marginal day, the Environmental Quality Commission shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other burning and shall prescribe duration of periods of time during the day when burning is authorized.

(3) The Environmental Quality Commission shall weigh the economic consequences of scheduled burnings and the feasibility of alternative actions, and shall consider weather conditions and other factors necessary to protect the public health and welfare in preparing the schedule required under subsection (2) of this section.

(4) None of the functions of the Environmental Quality Commission under this section or under ORS 476.380 or 478.960, as it relates to agricultural burning, shall be performed by any regional air quality control authority established under ORS 449.855.

[1969 c.613 §1]

Note: ORS 449.840 and 449.845 were not added to and made a part of ORS chapter 449 by legislative action.

449.845 Disconnection of factory-installed motor vehicle air pollution control device prohibited. No person shall disconnect or permit to be disconnected a factory-installed motor vehicle air pollution control device, nor shall any person knowingly and

wilfully permit such device to become or remain inoperative.
[1969 c.504 §1]

Note: See note under ORS 449.840.

REGIONAL AIR QUALITY CONTROL AUTHORITY

449.850 Definitions for ORS 449.850 to 449.920. As used in ORS 449.765 and 449.850 to 449.920, unless the context requires otherwise:

(1) "Board of directors" means the board of a regional air quality control authority functioning under ORS 449.702 to 449.717 and 449.760 to 449.830.

(2) "Governing body" means the county court or city legislative body.

(3) "Participating city" or "participating county" means a city or county or part of a county, or combination thereof, described in ORS 449.855 that has joined with other eligible cities or counties or parts of counties to form a regional air quality control authority.

(4) "Regional authority" means a regional air quality control authority established under the provisions of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920.

[1967 c.425 §2]

449.855 Regional air quality control authorities; formation; powers. (1) Notwithstanding the provisions of any law or charter to the contrary, and in addition to the means of cooperation authorized by ORS 449.830, a regional air quality control authority may be formed of contiguous territory having a population of at least 130,000 and consisting of two or more counties or parts of counties, two or more cities, or any combination thereof, or any county and a city or cities within the county if the Environmental Quality Commission finds that:

(a) Adequate financing is planned by the participating governments; and

(b) The boundaries of the proposed region include territory reasonably included within a regional authority for purposes of air quality control.

(2) When authorized to do so by the Environmental Quality Commission, a regional air quality control authority formed under this section shall exercise the functions vested in the Environmental Quality Commission by ORS 449.781, 449.785 and 449.800, except to establish or alter areas, in so far as such functions are applicable to

the conditions and situations of the territory within the regional authority and shall carry out these functions in the same manner provided for the Environmental Quality Commission to carry out the same functions. Such functions may be exercised over both incorporated and unincorporated areas within the territory of the regional authority, regardless of whether the governing body of a city within the territory of the region is participating in the regional authority. However, no regional authority is authorized to adopt any rule or standard that is less strict than any rule, regulation or standard of the Environmental Quality Commission. In addition, the regional authority must submit to the Environmental Quality Commission for its approval, all quality and purity of air standards adopted by the regional authority prior to enforcing any such standards.

(3) When a regional air quality control authority is exercising functions under subsection (2) of this section, the Environmental Quality Commission shall not exercise the same functions in the same territory and the regional authority's jurisdiction shall be exclusive, except as provided in ORS 449.905 or 449.910. The regional authority shall enforce rules, regulations and orders of the Environmental Quality Commission in so far as it is required to do so by the Environmental Quality Commission.

[1967 c.425 §4]

449.860 Ordinance or resolution of formation; filing; approval. (1) Ordinances and resolutions adopted by cities and counties in forming a regional authority shall specify the name of the regional authority and shall set forth the participating cities and counties, the principal places of business, and the boundaries of the regional authority.

(2) A certified copy of the ordinance or resolution of each city or county calling for the formation of a regional authority shall be filed with the Secretary of State and with the director.

(3) From and after the date of notice from the department that the regional authority meets the requirements of subsection (1) of ORS 449.855, the regional authority shall exercise its functions.

[1967 c.425 §5; 1969 c.593 §32]

449.865 Board of directors of regional authority; terms. (1) The board of directors of a regional air quality control authority shall consist of not fewer than five nor

more than nine members, designated as follows:

(a) One member of the governing body of each participating county, to be designated by the governing body of the county.

(b) One member of the governing body of each participating city and of each non-participating city of 25,000 or more population located within a participating county, and where regional air pollution authorities cover only one county one additional member for each 35,000 population over 25,000 in a participating city, not to exceed three members from the city, to be designated by the governing body of the city.

(c) One member of the governing body of a participating city of less than 25,000 population, to be designated jointly by the governing bodies of participating cities, each with less than 25,000 population, located in a participating county, but the combined population of such cities must be at least 5,500.

(d) One or more additional members, if the board would otherwise consist of an even number of members, or less than the minimum number required by subsection (1) of this section, to be selected by members designated under paragraphs (a) to (c) of this subsection, such member or members also to be a member of the governing body of a participating city or county.

(2) A member designated under paragraphs (a), (b) and (c) of subsection (1) of this section shall hold office at the pleasure of the governing body by which he was designated. The member or members designated under paragraph (d) of subsection (1) of this section, if any, shall serve for a term of two years. The term of any member shall terminate at any time when he is no longer a member of the governing body of the city or county by which he was designated or, if appointed under paragraph (c) of subsection (1) of this section, when he is no longer a member of the governing body of a participating city or if designated under paragraph (d) of subsection (1) of this section, when he is no longer a member of the governing body of a participating city or county.

[1967 c.425 §6; 1969 c.113 §1]

449.870 Legal status of regional authority. The regional air quality control authority is a body corporate, having perpetual succession and may:

(1) Sue and be sued except that it shall not be sued in a tort action unless otherwise provided by law.

(2) Adopt a seal.

(3) Acquire and hold real and other property necessary or incident to the exercise of its functions and sell or otherwise dispose of such property.

[1967 c.425 §7]

449.875 Powers of board of regional authority. In carrying out its functions under subsection (2) of ORS 449.855, the board of directors of a regional air quality control authority may:

(1) Apply to and receive funds from the state, from the Federal Government and from public and private agencies and expend such funds for the purposes of air pollution control, studies and research and enter into agreements with this state or the Federal Government for carrying out the purposes of ORS 449.850 to 449.920.

(2) When necessary for the administration of ORS 449.850 to 449.920, require registration of each person who is responsible for the emission of air contaminants under such rules as the board may adopt.

(3) Adopt rules necessary to carry out its functions under ORS 449.855.

[1967 c.425 §8]

449.880 Variance powers of regional authority. (1) A regional air quality control authority shall be considered the legislative body of a local unit of government for purposes of subsection (2) of ORS 449.810. The Environmental Quality Commission shall delegate authority to grant variances to a regional authority and the Environmental Quality Commission shall not grant similar authority to any city or county within the territory of the regional authority.

(2) In granting variances the regional authority is subject to ORS 449.810.

(3) A copy of each variance granted by a regional authority shall be filed with the Environmental Quality Commission within 15 days after it is granted. The Environmental Quality Commission shall review the variance and the reasons therefor within 120 days of receipt of the copy. If the Environmental Quality Commission determines that a variance should not be renewed, it shall direct the regional authority to deny any application for renewal. If the variance was granted for a period of more than one year, the Environmental Quality Commission may order the regional authority to reduce the period for which the variance was granted, but in no case shall such reduction cause the variance to be valid for less than one year.

[1967 c.425 §10]

449.885 Advisory committee. (1) The board of directors of the regional authority shall appoint an advisory committee to advise the board in matters pertaining to the region and particularly as to methods and procedures for the protection of public health and welfare and of property from the adverse effects of air pollution.

(2) The advisory committee shall consist of at least seven members appointed for a term of one year with at least one representative from each of the following groups within the region:

- (a) Public health agencies;
- (b) Agriculture;
- (c) Industry;
- (d) Community planning; and
- (e) The general public.

(3) The advisory committee shall select a chairman and vice chairman and such other officers as it considers necessary. Members shall serve without compensation, but may be allowed actual and necessary expenses incurred in the discharge of their duties. The committee shall meet as frequently as it or the board of directors consider necessary.

[1967 c.425 §9]

449.890 Hearing on rules; notice. (1) In adopting rules and standards, the regional authority shall first hold a public hearing at which interested persons shall be allowed to appear or to present written statements concerning proposed rules and standards. Notice shall be given as provided in ORS 449.790.

(2) After due notice and a hearing, orders may be entered against parties found in violation of a rule of the regional authority.

(3) All hearings pertaining to the adopting of rules and standards by the regional authority shall be conducted by the board of directors. All other public hearings shall be held by the board of directors or before any member or members of the board of directors or a hearing officer, as the board of directors may designate, and an official record of the hearing shall be stenographically or mechanically recorded. In the event the hearing is conducted by less than a majority of the board of directors or by a hearing officer, a summary of the evidence with findings of fact and conclusions of law and recommendations for decision shall be prepared by the person or persons conducting the hearing and reviewed by the board of directors prior to making its order. A copy of the findings of fact and conclusions of law

and the proposed decision shall be served upon each party adversely affected by the proposed decision. Within 5 days after such service, a party adversely affected may submit written exceptions. The board may provide an opportunity for oral argument. The board shall consider the findings of fact, conclusions of law, proposed decision, written exceptions, and oral argument if any, before making its decision.

(4) If a majority of the board of directors has conducted the hearing, it shall enter its order within 60 days after the conclusion of the hearing. If the hearing is conducted by a hearing officer, or by a member or members constituting less than a majority of the board, the final decision shall be made and entered by the board within 60 days after conclusion of the hearing if no exceptions are filed, or within 60 days after final arguments on written exceptions to a proposed decision.

[1967 c.425 §16; 1969 c.567 §1]

449.895 Final orders; enforcement; injunction; appeals. (1) After hearing, the board of directors of a regional authority may enter an order against a party to enforce any rule.

(2) Any person aggrieved by the final order of the board of directors may appeal that decision in the manner provided in ORS 449.805.

(3) If measures taken to prevent or correct air pollution or air contamination that violates the rule of the regional authority are not taken in accordance with the order of the commission, the regional authority may institute or cause to be instituted in the name of the regional authority a suit for injunction to prevent any further or continued violation of the rule or order.

(4) Notwithstanding the provisions of this section or any other provisions of law to the contrary, a regional authority, without necessity of prior administrative procedures or hearing and the entry of an order or at any time during such administrative proceedings if such proceedings have been commenced, may institute a suit for injunction in its own name to abate or restrain threatened or existing pollution of the air of this state whenever such pollution or threatened pollution materially contributes to an emergency which requires immediate action to protect the public health, safety or welfare.

(5) Appeals 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.
[1967 c.425 §17; 1969 c.608 §5]

449.900 Expansion or dissolution of regional authority. (1) The territory of a regional authority may be expanded in the manner provided for forming regions under ORS 449.855 and 449.860, by inclusion of an additional contiguous county or city if:

(a) All of the governing bodies of the participating counties and cities adopt ordinances or resolutions authorizing the inclusion of the additional territory; and

(b) The governing body of the proposed county or city adopts such ordinance or resolution as would be required to form a regional authority; and

(c) The Environmental Quality Commission approves the expansion.

(2) Any regional authority formed under the provisions of ORS 449.850 to 449.920 may be dissolved by written consent of the governing bodies of all participating counties and cities. Upon dissolution, any assets remaining after payment of all debts shall be divided among the participating counties and cities in direct proportion to the total amount contributed by each. However, all rules, regulations, standards and orders of the regional authority shall continue in effect until superseded by action of the Environmental Quality Commission.

[1967 c.425 §§13, 14]

449.905 Procedure if regional program inadequate; requalification. (1) If a regional air quality control authority fails to establish, within a reasonable time after formation of the regional authority, an air quality control program that, in the judgment of the Environmental Quality Commission, is adequate, or if the Environmental Quality Commission has reason to believe that an air quality control program in force in the territory of a regional authority is being administered in a manner inconsistent with the requirements of ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 or is being administered in a manner lacking uniformity throughout the territory of the regional authority, the Environmental Quality Commission shall conduct a hearing on the matter, after not less than 30 days' notice to the regional authority.

(2) If, after such hearing, the Environmental Quality Commission determines that

the regional authority has failed to establish an adequate program or that the program in force is being administered improperly, it may require that necessary corrective measures be undertaken within a reasonable period of time.

(3) If the regional authority fails to take the necessary corrective measures within the time required, the Environmental Quality Commission shall undertake a program of administration and enforcement of the air quality control program in the territory of the regional authority. The program instituted by the Environmental Quality Commission shall supersede all rules, regulations, standards and orders of the regional authority.

(4) If, in the judgment of the Environmental Quality Commission, a regional authority is able to requalify to exercise the functions authorized in ORS 449.855, the Environmental Quality Commission shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority.

[1967 c.425 §11]

449.910 Commission may assume or retain certain powers. The Environmental Quality Commission may assume and retain control over any class of air contamination source if it finds that such control is beyond the reasonable capabilities of the regional authorities because of the complexity or magnitude of the source.

[1967 c.425 §12]

449.915 Technical consultation by commission. The Environmental Quality Commission shall provide to regional authorities and to local air control programs operated by units of local government, either singly or jointly, technical consultation and services in order to facilitate the administration of ORS 449.850 to 449.920 and to avoid the duplication of facilities and personnel. The consultation and services may be provided either from funds appropriated to the Environmental Quality Commission or under agreements between the parties on a reimbursable basis.

[1967 c.425 §18]

449.920 State aid to local air quality control programs; application; qualifications. (1) Subject to the availability of funds therefor:

(a) Any local air quality control program meeting the rules and regulations of

the Environmental Quality Commission and operated by not more than one unit of local government shall be eligible for state aid in an amount not to exceed 30 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(b) Any air quality control program exercising functions authorized by ORS 449.855 or under ORS 449.830 and operated by more than one unit of local government shall be eligible for state aid in an amount not to exceed 50 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(2) Applications for state funds shall be made to the Environmental Quality Commission and funds shall be made available under subsections (1) and (2) of this section according to the determination of the Environmental Quality Commission as to:

(a) Adequacy and effectiveness of the air quality control program.

(b) Geographic and demographic factors in the territory under the program.

(c) Particular problems of the territory under the program.

(3) In order to qualify for any state aid and subject to the availability of funds therefor, the local unit of government operating a program under subsection (1) of this section and any regional authority exercising functions under ORS 449.855 or combined units of local government cooperating under ORS 449.830 must submit all applications for federal financial assistance to the Environmental Quality Commission before submitting them to the Federal Government.

(4) When certified by the Environmental Quality Commission, claims for state aid shall be presented to the Secretary of State for payment in the manner that other claims against the state are paid.

[1967 c.425 §19]

449.925 Regional authority testing program. Subject to ORS 449.910, any regional air quality control authority shall have the same powers as are granted the Environmental Quality Commission under ORS 449.702 to 449.717.

[1969 c.331 §7]

ENFORCEMENT

449.975 Enforcement. (1) Whenever it appears to the Environmental Quality Commission that any person is engaged or about

to engage in any acts or practices which constitute a violation of ORS 449.083, 449.150, 449.395 and 449.400, the Environmental Quality Commission may institute proceedings at law or in equity to enforce compliance there-to or to restrain further violations of such statutes.

(2) The provisions of this subsection are in addition to and not in substitution of any other enforcement provisions contained in any statute administered by the Environmental Quality Commission.

[1969 c.195 §§2, 3]

PENALTIES

449.990 Penalties. (1) Violation of ORS 449.105, 449.125 to 449.135, 449.150, 449.210 to 449.220, 449.235 to 449.245, 449.325, 449.395 or 449.400 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 \$500 or by imprisonment in the county jail for not more than 30 days, or both.

(3) Violation of subsection (1) or (2) of ORS 449.079 or violation of subsection (1) of ORS 449.083 is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Each day of such violation shall be deemed to be a separate offense.

(4) Violation of ORS 449.109 is a misdemeanor and is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Each day of violation shall be deemed to be a separate offense.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) Violation of ORS 449.515 is punishable, upon conviction, by a fine of not more than \$1,000, or by imprisonment in the county jail not more than one year, or by both.

(12) 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 more than \$1,000, or by imprisonment in the county jail not more than one year, or by both.

(13) Violation of subsection (1) or (4) of ORS 449.535 is punishable, upon conviction, by a fine of not more than \$1,000 or imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Violation of subsection (2) or (3) of ORS 449.535 is punishable by a fine of not more than \$100 or by imprisonment in the county jail for not more than 60 days, or by both such fine and imprisonment.

(14) 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 more than \$1,000.

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

(16) Violation of the rules, regulations

and general orders of the Environmental Quality Commission adopted and promulgated under the authority given the Environmental Quality Commission under ORS 449.080 is a misdemeanor.

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

(18) Violation of any rule, regulation or final order of the Environmental Quality Commission issued pursuant to ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 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 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 shall be deemed a misdemeanor.

(20) Violation of any rule adopted pursuant to ORS 449.875 or any final order of a regional air quality control authority entered under ORS 449.895 is a misdemeanor and is punishable upon conviction by a fine of not more than \$1,000, or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(21) Violation of ORS 449.702 to 449.722 and 449.925 or any rules and regulations adopted pursuant thereto is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the county jail not more than one year or both. Each day of violation constitutes a separate offense.

(22) Violation of ORS 449.845 is a misdemeanor.

[Subsection (6) 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; 1965 c.362 §4; 1967 c.426 §18; subsection (20) enacted as 1967 c.425 §15; 1969 c.511 §6; subsection (4) enacted as 1969 c.251 §4; subsection (21) enacted as 1969 c.331 §9; subsection (22) enacted as 1969 c.504 §2]

449.992 Joinder of offenses. Where a subsection of ORS 449.990 provides that each day of any violation constitutes a separate offense, violations under that subsection constituting separate offenses may be joined in one indictment, or complaint, or information, in several counts.

[1969 c.250 §1]

Note: ORS 449.992 was not added to and made a part of ORS chapter 449 by legislative action.

WATER AND AIR POLLUTION CONTROL

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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, 1970.

Robert W. Lundy
Legislative Counsel

