

CROSS REFERENCES

Master plans and service facilities for solid waste disposal authorized for certain counties, 451.010

459.025

Transfer of personnel of solid waste control section of State Board of Health to department, 1971 c.648 §21

459.810 to 459.890

Study of provisions and operations with reports, required, 1971 c.745 §11

SOLID WASTE MANAGEMENT

(General Provisions)

459.005 Definitions for ORS 459.005 to 459.285. As used in ORS 459.005 to 459.105, 459.120 to 459.150 and 459.205 to 459.285, unless the context requires otherwise:

(1) "Board of county commissioners" or "board" includes county court.

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

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

(4) "Disposal site" means land used for the disposal or handling of solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, salvage sites, incinerators for solid waste delivered by the public or by a solid waste collection service, and composting plants; but the term does not include a facility subject to the permit requirements of ORS 449.083 or a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service.

(5) "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 449.850 to 449.925 or any other local government unit responsible for solid waste management.

(6) "Permit" includes a conditional permit.

(7) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, asso-

ciation, firm, trust, estate or any other legal entity.

(8) "Salvage" means separating or collecting reusable solid or liquid wastes for resale or the business of separating or collecting and reclaiming reusable solid or liquid wastes, and the term includes but is not limited to secondhand dealers, junk dealers and salvage operators; however, the term does not include:

(a) The business of dismantling motor vehicles licensed pursuant to ORS 481.345.

(b) Activities of civic, community, benevolent or charitable organizations.

(c) Activities for which certificates are required by ORS 433.405 to 433.680.

(9) "Solid waste collection service" or "service" means the collection, transportation or disposal of solid wastes.

(10) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:

(a) Environmentally hazardous wastes as defined in ORS 459.410.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

(11) "Solid waste management" means management of the storage, collection, transportation, treatment, utilization, processing and final disposal or salvage, recycling or reuse of solid waste and facilities necessary or

convenient to such activities, including but not limited to transfer stations.

(12) "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

(13) "Waste" means useless or discarded materials.

[1971 c.648 §2]

459.010 [1967 c.428 §2; 1969 c.593 §42; repealed by 1971 c.648 §33]

459.015 Policy. In the interest of protection of the public health, safety and welfare, it is declared to be the policy of the State of Oregon to establish a comprehensive statewide program for solid waste management which will:

(1) Retain primary responsibility for adequate solid waste management with local government units, reserving to the state those functions necessary to assure effective solid waste management programs throughout the state.

(2) Promote research, surveys and demonstration projects to aid in developing more sanitary, efficient and economical methods of solid waste management.

(3) Provide advisory technical assistance and planning assistance to local government units and other affected persons in the planning, development and implementation of solid waste management programs.

(4) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to provide adequate disposal sites and disposal facilities together with facilities for salvage, recycling and reuse of solid wastes.

(5) Provide for the adoption and enforcement of minimum performance standards necessary for safe, economic and proper solid waste management.

(6) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service or salvage in the field of solid waste management.

(7) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of ORS 459.005 to 459.105 and 459.205 to 459.285.

[1971 c.648 §1]

459.020 [1967 c.248 §1; repealed by 1971 c.648 §33]

(State Administration)

459.025 Powers and duties of commission and department. The commission and the department:

(1) Shall promote and coordinate research, studies and demonstration projects on improved methods and techniques in all phases of solid waste management.

(2) May apply to and receive funds from the Federal Government and from public and private agencies to carry out studies, research and demonstration projects in the field of solid waste management.

(3) May enter into agreements with the Federal Government, state agencies, local government units and private persons to carry out ORS 459.005 to 459.105, 459.205 to 459.285, and subsections (1), (2) and (3) of ORS 459.992.

[1971 c.648 §4]

459.030 [1967 c.428 §3; 1969 c.593 §43; repealed by 1971 c.648 §33]

459.035 Assistance in development and implementation of solid waste management plans and practices. Consistent with subsection (1) of ORS 459.015, the department shall provide to state agencies, local government units and persons providing solid waste collection service, advisory technical and planning assistance in development and implementation of effective solid waste management plans and practices, and assistance in training of personnel in solid waste management. The department shall report to the Legislative Assembly from time to time on further assistance that will be needed to develop, implement and administer effective solid waste management programs. The department shall assist in surveys to locate potential disposal sites. The department may request the assistance of other state agencies.

[1971 c.648 §3]

459.040 [1967 c.428 §4; 1969 c.593 §44; repealed by 1971 c.648 §33]

459.045 Adoption of regulations. (1) The commission shall adopt reasonable and necessary solid waste management regulations governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, conditions for transmission of diseases to man or animals, air pollution, pollution of surface

or ground waters, and hazards to service or disposal workers or to the public.

(b) Location of disposal sites, giving consideration to the adaptability of each disposal site to the population served, topography and geology of the area and other characteristics as they affect protection of ground and surface waters and air pollution; minimum standards of design, management and operation of disposal sites; and open burning and salvage operations at disposal sites.

(c) Construction, loading and operation of vehicles used in performing solid waste collection service to prevent the contents thereof from dropping, sifting, leaking or escaping onto public highways.

(d) Definition of other "wastes" subject to regulation pursuant to ORS 459.005 to 459.105, 459.205 to 459.285 and subsections (1), (2) and (3) of ORS 459.992.

(2) The commission shall adopt regulations on other subjects as necessary to carry out ORS 459.005 to 459.105, 459.205 to 459.285 and subsections (1), (2) and (3) of ORS 459.992.

(3) The commission shall adopt regulations that have modified or limited application in different geographic areas of the state when special conditions prevail in specified geographic areas. Special conditions that shall be considered include, but are not limited to climatic conditions, zone classification of the area, population characteristics, methods and costs of solid waste management, solid waste management plans and other conditions in the area. Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105, 459.205 to 459.285 and subsections (1), (2) and (3) of ORS 459.992.

(4) All regulations adopted under this section shall be adopted in accordance with ORS chapter 183.

(5) Unless emergency adoption of a proposed regulation is necessary to prevent or abate an immediate and serious danger to persons or property, the commission shall, 30 days prior to any hearing thereon, mail regulations proposed under this section to persons who have requested such notice.

[1971 c.648 §5]

459.050 [1967 c.428 §5; 1969 c.593 §45; repealed by 1971 c.648 §33]

459.060 [1967 c.428 §6; 1969 c.593 §46; repealed by 1971 c.648 §33]

(Local Administration)

459.065 Local government agreements authorized. (1) In carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.285 and subsections (1), (2) and (3) of ORS 459.992, a county or a city may enter into any agreement which the county or city determines is desirable with any local government unit or other person:

(a) For joint or regional franchising of service or the franchising or licensing of disposal sites, salvage businesses or salvage sites.

(b) For joint preparation or implementation of a solid waste management plan.

(c) For establishment of a regional solid waste management system.

(d) For cooperative establishment, maintenance, operation or use of regional disposal or salvage sites.

(e) For the employment of persons to operate a site owned or leased by the county or city.

(2) Authority granted by ORS 459.005 to 459.105 and 459.205 to 459.285 to local government units is specific and is in no way intended to restrict the general authority granted under ORS 190.010 to 190.030 and 190.110.

[1971 c.648 §14]

459.070 [1967 c.428 §7; 1969 c.593 §47; repealed by 1971 c.648 §33]

459.075 Acquisition of property for disposal sites and operations by cities and counties. Subject to the requirements of ORS 459.005 to 459.105, and 459.205 to 459.285, a county or a city may acquire real or personal property by lease, purchase, exercise of the power of eminent domain or otherwise for the purpose of operating and maintaining disposal sites. With the consent of the city involved, a county may acquire property for a site within the limits of a city. With the consent of the county having jurisdiction, a city may acquire property for a site outside the limits of the city.

[1971 c.648 §15]

459.080 [1967 c.428 §8; repealed by 1971 c.648 §33]

459.085 Powers of counties over areas outside of cities; effect of annexations by cities; garbage dump ordinances. (1) With respect to areas outside of cities, a board of county commissioners may, by ordinance or by regulation or order adopted pursuant thereto:

(a) Prescribe the quality and character of and rates for solid waste collection service, and the minimum requirements to guarantee maintenance of service.

(b) Divide the unincorporated area into service areas, grant franchises to persons for solid waste collection service within service areas, and establish and collect fees from persons holding franchises.

(c) Prescribe a procedure for issuance, renewal or denial of a franchise to a person providing or proposing to provide solid waste collection service.

(d) Establish an agency to be responsible for investigation or inspection of solid waste collection service proposed or provided under a franchise or proposed franchise, such agency to have authority to order modifications, additions or extensions to the physical equipment, facilities, plan or service as shall be reasonable and necessary in the public interest.

(e) Regulate solid waste management.

(2) With respect to areas outside of cities, a board of county commissioners may adopt ordinances to provide for:

(a) The licensing of disposal sites as an alternative to franchising of service.

(b) The regulation, licensing or franchising of salvage businesses or the operation of salvage sites where such action is found necessary to implement any part of a solid waste management plan applicable in the county; however, such an ordinance shall grant the same authority and prescribe the same procedures as provided for other franchises or licenses under this section.

(3) Where a city annexes all or a portion of a service area previously franchised by a county, the city, county and affected persons or local government units providing solid waste collection service shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the city, to protect the quality of service within the city and to protect the rights of affected persons or local government units.

(4) If a county under the authority of ORS 670.210 to 670.240 (1969 Replacement Part) enacted an ordinance providing for the licensing of garbage dumps prior to July 1, 1971, the ordinance or that portion of the ordinance dealing specifically with garbage dumps shall be continued in full force and effect, and licenses issued pursuant thereto shall be in full force and effect until action is taken by the board of county commissioners

under this section to amend or repeal the ordinance or to suspend or revoke the license. [1971 c.648 §16]

459.095 Restrictions upon regulations adopted by local governments, sanitary districts and sanitary authorities. (1) No solid waste management regulation shall be adopted by a local government unit if such regulation conflicts with regulations adopted by the commission pursuant to ORS 459.045.

(2) Solid waste management regulations adopted by a sanitary district or sanitary authority shall be limited to regulations supplemental to those adopted by the commission pursuant to ORS 459.045 and necessary to meet special local conditions. [1971 c.648 §17]

459.105 Regulations on use of disposal sites. A local government unit may adopt regulations for patrons using each disposal site owned or operated by the local government unit, governing the volume or type of solid wastes that will be received at the site and the particular class or classes of persons that may use the site. [1971 c.648 §18]

(County Nuisance Abatement)

459.110 [1969 c.509 §1; repealed by 1971 c.648 §33]

459.120 County ordinances regulating waste on private property authorized. For the protection of the public health, welfare, safety and morals, the board of county commissioners of any county may enact ordinances regulating waste and solid waste on private property, outside the limits of cities, as a public nuisance. An ordinance may:

(1) Prohibit the deposit, accumulation, storage, collection, maintenance or display on private property of waste or solid waste that is hazardous to the health and safety of the public; or which creates offensive odors or a condition of unsightliness.

(2) Provide for abatement of such offensive, hazardous or unsightly conditions as a public nuisance.

[1969 c.509 §2; 1971 c.648 §29]

459.130 Hearing; notice; voter referral of ordinance; exceptions to ORS 459.120. (1) An ordinance authorized by ORS 459.120 may be adopted only after a hearing conducted by the board, and shall take effect 30 days after the date of enactment unless a later effective

date is specified in the ordinance. Notice of such a hearing shall be published by two insertions, the first not less than 15 days and not more than 25 days and the last not less than eight days and not more than 14 days before the hearing, in a newspaper considered by the board to be of general circulation within the county. The board may also cause the notice to be published by radio and television stations located within the county, or heard or viewed in the county.

(2) The board may refer an ordinance authorized by ORS 459.120 to the voters of the county for their approval or rejection. An ordinance adopted under ORS 459.120 is a local law within the meaning of, and subject to, ORS 254.310, relating to initiative and referendum.

(3) An ordinance authorized by ORS 459.120 does not apply to:

(a) Disposal sites operated in compliance with regulations promulgated by the commission or other ordinances or regulations of the county.

(b) Agricultural operations and growing or harvesting of crops and the raising of fowls or animals.

[1969 c.509 §3; 1971 c.330 §1; 1971 c.648 §30]

459.140 Notice to abate public nuisance; hearing; abatement suit in name of county.

(1) Whenever it appears that there is reasonable cause to believe that a public nuisance exists, the board may order that a notice be issued and served upon the owner, tenant, occupant or person in possession of the premises where the nuisance is alleged or claimed to exist, requiring such person to appear before the board at the time and place stated in the notice to show cause why a nuisance should not be declared to be existing on the premises.

(2) At the time and place described in said notice, the board shall conduct a public hearing on the question of the existence of the alleged nuisance, and if the board finds that a nuisance exists, it shall declare the existence of a nuisance by order entered in its journal, and shall order a suit to be brought in the name of the county for its abatement.

[1969 c.509 §4]

459.150 County may remove waste under writ; county liability; costs against person or as lien. Where a writ of abatement is issued pursuant to ORS 459.140, the county may remove from the subject premises the waste or solid waste found to be the cause

of such nuisance. Where such removal is performed by the county, the county shall not be liable for any trespass or conversion as to any real or personal property and the costs may be collected from the person served in accordance with ORS 459.140, or may be collected as a lien against such property.

[1969 c.509 §5]

459.160 [1969 c.509 §7; repealed by 1971 c.648 §33]

(Disposal Sites)

459.205 Permit required. Except as provided by ORS 459.215, after July 1, 1971, a disposal site shall not be established and after July 1, 1972, a disposal site shall not be operated, maintained or substantially altered, expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefrom from the department as provided in ORS 459.235.

[1971 c.648 §6]

459.210 [1969 c.90 §2; repealed by 1971 c.648 §33]

459.215 Exclusion of certain sites from permit requirement; classifying disposal sites. (1) The commission may by regulation prescribe criteria and conditions for excluding classes of disposal sites from the requirements of ORS 459.205. Disposal sites so excluded shall be limited to those which, because of the nature or volume of solid waste handled, are not likely to create a public nuisance, health hazard, air or water pollution, or other serious problem. Facilities operated under a permit issued under ORS 449.083 are not required to obtain a permit from the department pursuant to ORS 459.205. However, exclusion from the permit requirements of ORS 459.205 does not relieve any person from compliance with other requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 and the regulations adopted pursuant thereto.

(2) The commission may by regulation establish a date or dates, different from that prescribed by ORS 459.205, after which permits will be required for a class or classes of disposal sites. However, a date shall not be postponed later than July 1, 1975. In making its determination, the commission shall give due consideration to the nature, type and volume of solid waste handled at such sites, the threat of air or water pollution, the potential for creation of a public or private nuisance or

health hazard, and the cost and funding of the program for carrying out this section.

(3) The commission may by regulation establish classes of permits to carry out the provisions of this section.

[1971 c.648 §7]

459.220 [1969 c.90 §1; repealed by 1971 c.648 §33]

459.225 Variances or conditional permits authorized; compliance not violation. (1) If the commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 or the regulations adopted pursuant thereto, it may issue a variance from such requirement or it may issue a conditional permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both. In carrying out the provisions of this subsection:

(a) The commission may grant specific variances from particular requirements to an applicant or to classes of applicants or to a specific disposal site, and specify conditions it may consider necessary to protect the public health, if it finds that strict compliance with the regulation is inappropriate:

(A) Because of conditions beyond the control of the person granted the variance; or

(B) Because of special circumstances which render strict compliance unreasonable, burdensome or impractical; or

(C) Because strict compliance will result in substantial curtailment of use or closing of a disposal site and no alternative facility or method of solid waste management is available.

(b) A variance may be granted for a limited time.

(c) Upon its own motion, upon recommendation by the department or upon the request of any interested person, the commission may grant, deny, suspend, modify, revoke or refuse to renew any variance.

(2) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105 and 459.205 to 459.285 or any regulation adopted pursuant thereto.

[1971 c.648 §8]

459.230 [1969 c.90 §3; repealed by 1971 c.648 §33]

459.235 Applications for permits. Applications for permits shall be on forms prescribed by the department. An application

shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local or state health agency having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

[1971 c.648 §9]

459.240 [1969 c.90 §4; repealed by 1971 c.648 §33]

459.245 Issuance of permits; terms. (1)

If the disposal site meets the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 the department shall issue the permit. Every completed application shall be approved or disapproved within 60 days after its receipt by the department. If the department fails to act within the time allowed, the application shall be considered approved unless an extension of time is granted by the commission on a showing of good cause by the department.

(2) Disposal site permits shall be issued for a period, not to exceed five years, determined by the department and specified in the permit. The department may refuse to renew a permit unless the disposal site and the facilities thereon meet the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 and the regulations of the commission adopted pursuant thereto.

[1971 c.648 §10]

459.255 Suspension of permits; notice.

(1) A permit may be suspended at any time if the department determines that the site or the solid waste management facilities located on the site are being operated in violation of ORS 459.005 to 459.105 and 459.205 to 459.285 or regulations of the commission adopted pursuant thereto.

(2) The department shall give reasonable notice of its intention to deny, suspend, modify, revoke or refuse to renew a permit or variance issued under ORS 459.005 to 459.105 and 459.205 to 459.285.

[1971 c.648 §11]

459.265 Hearings; findings and determinations required. (1) Except as provided by ORS 459.275, the commission may on its own motion or upon the request of the department, and shall upon application of any person entitled to appeal, fix a time and place for

hearing on any action of the department or commission:

(a) Denying, suspending, modifying, revoking or refusing to renew any variance or any permit for a disposal site.

(b) Ordering action to be taken by a person subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.285 and subsections (1), (2) and (3) of ORS 459.992.

(c) Ordering, or approving action resulting in, the closure or curtailment of use of a disposal site.

(2) In making its determination upon appeal of action by a local government unit or the department, which action would result in the closure or curtailment of the use of a disposal site, the commission shall consider and make findings with respect to:

(a) The nature and magnitude of the problems created by the site or its operation.

(b) The applicable solid waste management plan.

(c) The existence or threat of air or water pollution.

(d) The need for the particular disposal site and alternative methods of disposal or alternative disposal sites.

(e) The costs, funds available to meet the costs and the minimum time required for a change in disposal method or disposal site.

(3) In making its determination under subsection (2) of this section with respect to a disposal site owned or operated by a local government unit, the commission shall, prior to ordering closure or curtailment of use of the site, further find whether there is an alternative method of disposal or alternative disposal site.

[1971 c.648 §12]

(Enforcement)

459.275 Enforcement powers; proceedings to restrain serious hazards or public nuisances from violations. (1) The commission may take whatever action is appropriate for the enforcement of its regulations or orders.

(2) Whenever a violation of ORS 459.005 to 459.105 and 459.205 to 459.285 or the regulations adopted pursuant thereto, creates an emergency which requires immediate action to protect public health, safety or welfare, the commission shall institute a proceeding, at law or in equity, in the name of the State of Oregon to restrain the threatened or existing pollution of the air or rivers or other waters of this state, the creation of a health or other

serious hazard, or the creation of a public nuisance, due to such violation. Notwithstanding any other provisions of law to the contrary, the commission may act under this subsection without the necessity of a prior administrative proceeding or hearing and entry of an order, or at any time during an administrative proceeding if a proceeding has been commenced.

(3) At the time of instituting a proceeding under subsection (2) of this section, 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 proceeding 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 and to show cause, if any, why the relief applied for should not be granted. The complaint, together with the affidavit and a 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 the issuance of the order unless both parties concur in an extension of the time. At the trial the defendant may submit counteraffidavits and both parties may submit such additional evidence as may be appropriate. Prior to the trial a temporary restraining order, temporary injunction or abatement order may be entered pending final determination of the matter after a trial on the merits. The hearing on the show cause order shall constitute a trial on the merits of the case. An appeal may be taken in the usual manner, but there shall be no stay of the order of the court on appeal. The commission shall not be required to furnish any bond in such a proceeding.

[1971 c.648 §13]

459.285 Entry upon private premises authorized. The department or county, district or city board of health personnel, authorized sanitarians or other authorized city or county personnel may enter upon the premises of any person regulated under ORS 459.005 to 459.105, 459.205 to 459.285 or subsections (1), (2) and (3) of ORS 459.992, or under regulations adopted pursuant to ORS 450.075, 450.810, 450.820 and 451.570, at reasonable times, to determine compliance with and to enforce ORS 450.075, 450.810, 450.820, 451.570, 459.005 to 459.105, 459.205 to 459.285, and subsections (1), (2) and (3) of ORS 459.992,

and any regulations adopted pursuant thereto or ordinances adopted pursuant to ORS 459.120 to 459.150.

[1971 c.648 §19]

ENVIRONMENTALLY HAZARDOUS WASTES

(General Provisions)

459.410 Definitions for ORS 459.430 to 459.690. As used in ORS 453.635, 459.410 to 459.690, 634.250 and 634.350, 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.

(4) "Dispose" or "disposal" means the discarding, treatment, recycling, or decontamination of environmentally hazardous wastes or their collection, maintenance or storage at a disposal site.

(5) "Disposal site" means a geographical site in or upon which environmentally hazardous wastes are stored or otherwise disposed of in accordance with the provisions of ORS 453.635, 459.410 to 459.690, subsection (4) of ORS 459.992, ORS 634.250 and 634.350.

(6) "Environmentally hazardous wastes" include:

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides as defined by ORS 634.211.

(b) Discarded, useless or unwanted radioactive material, including naturally occurring or accelerator produced isotopes and by-product material, source material or special nuclear material as defined by ORS 453.605, but excluding material produced by a nuclear installation.

(c) Residues resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, if such residues are classified as environmentally hazardous by order of the commission, after notice and public hearing.

(d) Discarded, useless or unwanted containers and receptacles used in the transpor-

tion, storage, use or application of the substances described in paragraphs (a), (b) and (c) of this subsection.

(7) "Nuclear installation" means any power reactor, nuclear fuel fabrication plant, nuclear fuel reprocessing plant, storage or waste disposal facility for radioactive waste produced from the operation of thermal power plants or nuclear installations, and any facility handling that quantity of fissionable materials sufficient to form a critical mass.

[1971 c.699 §1]

(Administration)

459.430 Powers and duties of department. The Department of Environmental Quality shall:

(1) Provide for the administration, enforcement and implementation of ORS 453.635, 459.410 to 459.690, subsection (4) of ORS 459.992, ORS 634.250 and 634.350 and may perform all functions necessary for the regulation of the operation and construction of disposal sites and, in consultation with the appropriate county planning commissions, the designation of such sites.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 453.635, 459.410 to 459.690, subsection (4) of ORS 459.992, ORS 634.250 and 634.350.

(3) Conduct a study of disposal site availability in this state, designating areas where sites should or should not be located; provided, however, that the department is not required to designate any disposal sites if it finds no suitable area therefor in this state.

(4) Make a finding relating to the necessity for disposing of any environmentally hazardous wastes at disposal sites in this state and may prohibit disposing of those types and amounts of such wastes for which no necessity is found.

(5) After study, designate types of environmentally hazardous wastes that may or may not be disposed of at particular disposal sites and prohibit disposal of particular types of wastes at particular sites if it finds their presence in this state is inconsistent with the public health and safety.

[1971 c.699 §3]

459.440 Adoption of rules and regulations. In accordance with applicable provisions of ORS chapter 183, the commission shall:

(1) Adopt rules and regulations and issue

orders thereon, including but not limited to establishing minimum requirements for the disposal of environmentally hazardous wastes, limits as to types and quantities of materials to be disposed, minimum requirements for operation, maintenance, monitoring and reporting and supervision of disposal sites and requirements and procedures for the selection of such sites.

(2) Adopt rules and regulations and issue orders thereon relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350.

(3) With due regard for the regulatory programs of the Federal Government and the radiation control regulations established by the State Board of Health pursuant to ORS 453.605 to 453.745, the commission shall make rules governing the disposal of radioactive wastes.

[1971 c.699 §3a.]

459.450 Adoption of rules for transportation of environmentally hazardous wastes. In adopting rules and regulations governing transportation of any environmentally hazardous wastes for which a permit is required by the Public Utility Commissioner or the State Department of Agriculture, the commissioner and the department must consult with and consider the recommendations of the Department of Environmental Quality prior to the adoption of any such rules and regulations.

[1971 c.699 §16a.]

459.460 Inspection and copying of records authorized; use of records as evidence limited. (1) Except as provided in subsection (2) of this section, any information filed or submitted pursuant to ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 shall be made available for public inspection and copying during regular office hours of the Department of Environmental Quality at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities by the department under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 shall be kept confidential and shall not be made a part of public record of any hearing.

[1971 c.699 §21]

(Disposal Sites)

459.510 Disposal of wastes restricted; disposal site permit required. (1) No person shall dispose of environmentally hazardous wastes upon any land in the state other than real property owned by the State of Oregon and designated as a disposal site pursuant to the provisions of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350.

(2) No person shall operate a disposal site without a license therefor issued pursuant to ORS 453.635, 459.410 to 459.690, 634.250 and 634.350.

[1971 c.699 §2]

459.520 Application of ORS 459.510 to existing disposal sites. ORS 459.510 does not apply to any person operating a disposal site on June 30, 1971, under a permit or license issued by any agency of this state until a license application therefor has been acted upon by the commission pursuant to ORS 453.635, 459.410 to 459.690, 634.250 and 634.350. If the operator of such a disposal site desires to continue to operate the disposal site, he must apply for a license under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 within 60 days after the commission has adopted rules and regulations governing the form and contents of applications. If the license is refused, the licensee must cease operations within a time set by the commission that allows reasonable opportunity for the licensee to take such steps for the security or disposition of stored material as the commission deems necessary. The commission shall not direct removal of stored material unless an alternate site has been designated as suitable for disposal of it.

[1971 c.699 §2a.]

459.530 License applications; fees. (1) The department shall furnish an application form to any person interested in developing or constructing a disposal site upon request. Each such form shall contain:

(a) The name and address of the applicant.

(b) A statement of financial condition of the applicant, including assets, liabilities and net worth.

(c) The experience of the applicant in construction, management, supervision or development of disposal sites for environmentally hazardous wastes and in the handling of such substances.

(2) The department shall also require the submission of such information relating to

the construction, development or establishment of proposed disposal sites and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license.

(3) The application shall be accompanied by a nonrefundable fee of \$5,000, which shall be continuously appropriated to the department for administrative expenses.

[1971 c.699 §4]

459.540 Application contents. License applications submitted to the department for managing, operating, constructing, developing or establishing a disposal site must contain the following:

(1) The management program for the operation of the disposal site, including the person to be responsible for the operation of the disposal site and a resume of his qualifications, the proposed method of disposal, the proposed method of pretreatment or decontamination upon the disposal site, if any, and the proposed emergency measures to be provided at such site.

(2) A description of the size and type of facilities to be constructed upon the disposal site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at such site.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the site and the waste treatment and water supply facilities, if any, to be used at such site.

(4) The exact location and place where the applicant proposes to operate and maintain the disposal site, including the legal description of the lands included within such site.

(5) A preliminary geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and his opinion relating to possible sources of contamination of such water resources.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect.

[1971 c.699 §5]

459.550 Notice of hearings on license applications required. (1) Prior to holding hearings on the license application, the commission shall cause notice to be given in the county or counties where the proposed disposal site is located in a manner reasonably calculated to notify interested and affected persons of the license application.

(2) The notice shall contain information regarding the approximate location of the site and the type and amount of materials intended for disposal at such site, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed site shall have opportunity to testify at the hearing.

[1971 c.699 §6]

459.560 Public hearings in areas of proposed disposal site required. The commission shall conduct a public hearing in the county or counties where the proposed site is located and may conduct hearings at such other places as the department considers suitable. At the hearing the applicant may present his application and the public may appear or be represented in support of or in opposition to the application.

[1971 c.699 §7]

459.570 Recommendations by state agencies on applications; license must be refused upon recommendation of State Board of Health. Upon receipt of an application, the department shall cause copies of the application to be sent to affected state agencies, including the State Board of Health, the Public Utility Commissioner, the Fish Commission of the State of Oregon, the State Game Commission and the State Engineer. Each agency shall respond by making a recommendation as to whether the license application should be granted. If the State Board of Health recommends against granting the license, the commission must refuse to issue the license. Recommendation from other agencies shall be considered as evidence in determining whether to grant the license.

[1971 c.699 §8]

459.580 Review of applications; investigations; decisions on issuance; notice; judicial review. (1) The department shall examine and review all applications submitted to it and make such investigation as it considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated by him in his application. The decision of the commission is subject to judicial review under ORS 183.480.

[1971 c.699 §9]

459.590 Conveyance of disposal site by licensee to state required; license requirements. (1) As a condition of issuance of the license, the licensee must deed the disposal site to the state, title to be taken in the name of the State of Oregon.

(2) Each license issued under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 shall require the licensee to do the following:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 and the rules and regulations adopted thereunder.

(b) Commence operation, management or supervision of the disposal site on completion of the project and not to discontinue such operation, management or supervision of the site without the approval of the department.

(c) Maintain sufficient liability insurance in force in such amounts as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of this state.

(d) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(e) Restore, to the extent reasonably practicable, the disposal site to its original condition when use of the area is terminated as a disposal site.

(f) Maintain a cash bond in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of license requirements. The bond shall remain on deposit for the duration of the license and until the site is closed, except as the bond may be released pursuant to this section.

(g) Report periodically on the volume of material received at the disposal site and the fees collected therefor.

[1971 c.699 §10]

459.600 License fees; disposition; withdrawal by licensee. (1) The license shall require a fee based either on the volume of material accepted at the disposal site or a percentage of the fee collected for disposal or both. Such fees shall be calculated in amounts estimated to produce over the use of the site for disposal a sum sufficient to provide for any monitoring or protection of the site after closure.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the cash bond required under this section, the licensee shall be allowed to withdraw the cash bond.

(3) If the site is closed prior to the fees reaching an amount equal to the bond, appropriate adjustment shall be made and the reduced portion of the cash bond may be withdrawn.

[1971 c.699 §11]

459.610 Annual license fees; use. An annual license fee shall be required of every licensee under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350. The fee shall be determined by the department to be adequate to maintain a monitoring and surveillance program for that disposal site. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 459.670.

[1971 c.699 §12]

459.620 Revocation of licenses; judicial review. The commission may revoke any license issued under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 after public hearing upon a finding that the licensee has violated any provision of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 or rules adopted under ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 or any material condition of the license, subject to review under ORS chapter 183.

[1971 c.699 §16]

(Enforcement)

459.650 Complaints on operation of disposal sites; investigation; hearings; orders; judicial review. (1) The department shall investigate any complaint made to it by any person that the disposal site or its operation is unsafe or that the operation of the site is in violation of the provisions of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 or the rules adopted thereunder.

(2) If, after making an investigation pursuant to subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at such hearing. A copy of the complaint shall be furnished by the department to the licensee. Both the complainant and the licensee are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at any such hearing.

(3) The commission, or a hearings examiner appointed by the commission, shall hear the matter and, after considering all evidence and testimony submitted, the commission shall, within 30 days after the date of the hearing, make such specific order as it considers necessary in the premises. Any order so issued by the commission shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking such judicial review.

[1971 c.699 §13a.]

459.660 Investigations by department; findings and orders; notice; judicial review.

(1) Whenever the department believes that any disposal site or its operation is unsafe, or in violation of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350, or not in compliance with rules and regulations or orders, it may, upon its own motion, investigate the operation of the disposal site.

(2) The department may, after it has made an investigation under subsection (1) of this section, without notice and hearing, make such findings and orders as it considers necessary from the results of its investigations.

(3) The findings and orders made by the department pursuant to subsection (2) of this section may:

(a) Require changes in operations conducted, practices utilized and operating procedures found to be in violation of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 or the rules and regulations adopted thereunder.

(b) Require compliance with the provisions of the license.

(4) The department shall cause a certified copy of all orders issued by it under subsection (2) of this section to be delivered to

the licensee or his duly authorized representative at the address furnished to the department in the license application. Any such order shall take effect 20 days after the date of its issuance, unless the licensee requests a hearing upon such issues before the commission. The request shall be submitted in writing and shall include the reasons for such hearing. At the conclusion of any such hearing, the commission may affirm, modify or reverse the original order.

(5) All hearings before the commission and judicial review of all final orders issued therein shall be in accordance with the applicable provisions of ORS chapter 183.

[1971 c.699 §14]

459.670 Monitoring and surveillance program; licensees' duties. The department shall establish and operate a monitoring and surveillance program over all disposal sites or may contract with any qualified public or private agency to do so. Licensees must allow necessary access to the disposal site and to its records, including those required by other public agencies for such program to operate.

[1971 c.699 §13]

459.680 Order to cease site operation in emergency; hearing in court required.

(1) Whenever, in the judgment of the department from the results of monitoring or surveillance of operation of any disposal site, there is reasonable cause to believe that a clear and immediate danger to the public health and safety exists from the continued operation of the site, without hearing or prior notice, the department shall order the operation of the site halted by service of the order on the site superintendent.

(2) Within 24 hours after such order is served, the department must appear in the appropriate circuit court to petition for such equitable relief as is required to protect the public health and safety and may commence proceedings for the revocation of the license of the disposal site if grounds therefor exist.

[1971 c.699 §15a.]

459.690 Proceedings authorized to enforce compliance or restrain violations. Whenever it appears to the department that any person is engaged or about to engage in any acts or practices which constitute a violation of ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 or the rules, regulations and orders adopted thereunder or of the terms of the license, without prior administrative hearing, the department may institute proceedings at law or in equity to enforce compliance

therewith or to restrain further violations thereof.

[1971 c.699 §15]

BEVERAGE CONTAINERS

Note: ORS 459.810 to 459.890 and subsections (5) and (6) of 459.992 become operative on October 1, 1972.

459.810 Definitions for ORS 459.810 to 459.890. As used in ORS 459.810 to 459.890 and subsections (5) and (6) of ORS 459.992, unless the context requires otherwise:

(1) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton containing a beverage.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Consumer" means every person who purchases a beverage in a beverage container for use or consumption.

(5) "Dealer" means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means a redemption center certified under ORS 459.880.

(6) "Distributor" means every person who engages in the sale of beverages in beverage containers to a dealer in this state including any manufacturer who engages in such sales.

(7) "In this state" means within the exterior limits of the State of Oregon and includes all territory within these limits owned by or ceded to the United States of America.

(8) "Manufacturer" means every person bottling, canning or otherwise filling beverage containers for sale to distributors or dealers.

(9) "Place of business of a dealer" means the location at which a dealer sells or offers for sale beverages in beverage containers to consumers.

(10) "Use or consumption" includes the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale or the keeping or retention of a beverage for the purposes of sale.

[1971 c.745 §1]

459.820 Refund value required. (1) Except as provided in subsection (2) of this section, every beverage container sold or offered

for sale in this state shall have a refund value of not less than five cents.

(2) Every beverage container certified as provided in ORS 459.860, sold or offered for sale in this state, shall have a refund value of not less than two cents.

[1971 c.745 §2]

459.830 Practices required of dealers and distributors. Except as provided in ORS 459.840:

(1) A dealer shall not refuse to accept from a consumer any empty beverage containers of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as established by ORS 459.820.

(2) A distributor shall not refuse to accept from a dealer any empty beverage containers of the kind, size and brand sold by the distributor, or refuse to pay the dealer the refund value of a beverage container as established by ORS 459.820.

[1971 c.745 §3]

459.840 When dealer or distributor authorized to refuse to accept or pay refund in certain cases. (1) A dealer may refuse to accept from a consumer, and a distributor may refuse to accept from a dealer any empty beverage container which does not state thereon a refund value as established by ORS 459.820.

(2) A dealer may refuse to accept and to pay the refund value of empty beverage containers if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the commission approving a redemption center under ORS 459.880.

[1971 c.745 §4]

459.850 Indication of refund value required; exception; certain metal containers prohibited. (1) Every beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, or by a label or other method securely affixed to the beverage container, the refund value of the container.

(2) Subsection (1) of this section shall not apply to glass beverage containers designed for beverages having a brand name permanently marked thereon which, on October 1, 1972, had a refund value of not less than five cents.

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part

of the container is detachable in opening the container without the aid of a can opener.

[1971 c.745 §5]

459.860 Certification of containers as reusable by more than one manufacturer. (1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the commission shall certify beverage containers which satisfy the requirements of this section.

(2) A beverage container shall be certified if:

(a) It is reusable as a beverage container by more than one manufacturer in the ordinary course of business; and

(b) More than one manufacturer will in the ordinary course of business accept the beverage container for reuse as a beverage container and pay the refund value of the container.

(3) A beverage container shall not be certified under this section if by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name.

[1971 c.745 §6]

459.870 Decision upon certification applications; review and withdrawal of certifications granted. (1) Unless an application for certification under ORS 459.860 is denied by the commission within 60 days after the filing of the application, the beverage container shall be deemed certified.

(2) The commission may review at any time certification of a beverage container. If after such review, with written notice and hearing afforded to the person who filed the application for certification under ORS 459.860, the commission determines the container is no longer qualified for certification, it shall withdraw certification.

(3) Withdrawal of certification shall be effective not less than 30 days after written notice to the person who filed the application for certification under ORS 459.860 and to the manufacturers referred to in subsection (2) of ORS 459.860.

[1971 c.745 §7]

459.880 Redemption centers. (1) To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the Oregon Liquor Control Commission, at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers.

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center and the names and addresses of the dealers to be served by the redemption center. The application shall include such additional information as the commission may require.

(3) The commission shall approve a redemption center if it finds the redemption center will provide a convenient service to consumers for the return of empty beverage containers. The order of the commission approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure the redemption center will provide a convenient service to the public as the commission may determine.

(4) The commission may review at any time approval of a redemption center. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with its order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

[1971 c.745 §8]

459.890 Certification and withdrawal procedures. The procedures for certification or withdrawal provided for in ORS 459.860 to 459.880 shall be in accordance with ORS chapter 183.

[1971 c.745 §9]

PENALTIES

459.990 [1967 c.428 §16; 1969 c.593 §48; subsection (2) enacted as 1969 c.509 §6; repealed by 1971 c.648 §33]

459.992 Penalties. (1) The following are 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 both:

(a) Violation of regulations or ordinances adopted under ORS 459.005 to 459.105 and 459.205 to 459.285.

(b) Violation of ORS 459.205.

(c) Violation of an ordinance enacted under ORS 459.120.

(2) Each day a violation referred to by subsection (1) of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

(3) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS 459.005 to 459.105, 459.120 to 459.150 or 459.205 to 459.285.

(4) Violation of ORS 459.510 or of any

rule, regulation or order entered or adopted pursuant to ORS 453.635, 459.410 to 459.690, 634.250 and 634.350 is punishable, upon conviction, by a fine of not more than \$3,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(5) Any person who violates ORS 459.820, 459.830 or 459.850 shall be punished, upon conviction, as for a misdemeanor.

(6) In addition to the penalty prescribed by subsection (5) of this section, the commission or the State Department of Agriculture may revoke or suspend the license of any person who wilfully violates ORS 459.820, 459.830 or 459.850, who is required by ORS chapter 471 or 635, respectively, to have a license.

[Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) enacted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10]

Note: Subsections (5) and (6) of ORS 459.992 become operative October 1, 1972.

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, 1971.

Robert W. Lundy
Legislative Counsel