

# Chapter 468

## 1973 REPLACEMENT PART

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 Health hazard annexation or district formation, facilities and services, boundaries, 431.705 to 431.760  
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**GENERAL ADMINISTRATION**

**468.005 Definitions.** As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and 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.

(4) "Order" has the same meaning as given in ORS 183.310.

(5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(6) "Rule" has the same meaning as given in ORS 183.310.

(7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

[Formerly 449.001]

**468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses.** (1) There is created an Environmental Quality Commission. The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.560 and 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) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495.

[Formerly 449.016]

**468.015 Functions of commission.** It is the function of the commission to establish the policies for the operation of the department in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. In addition, the commission shall perform any other duty vested in it by law.

[1973 c.835 §4]

**468.020 Rules and standards.** (1) In accordance with the applicable provisions of ORS chapter 183, the commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in subsection (2) of ORS 183.335, the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission.

[Formerly 449.173]

**468.030 Department of Environmental Quality.** There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality. The department shall consist of the director of the department and all personnel employed in the department.

[Formerly 449.032]

**468.035 Functions of department.** (1) Subject to policy direction by the commission, the department:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

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

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to control of air or

water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) 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 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

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

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

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

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) 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 as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) Nothing in this section shall affect the authority of the Health Division to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.205 to 448.325, subsections (2) to (6) of 448.990, 624.010 to 624.135 and 624.310 to 624.440; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110 and 448.215.

[Formerly 449.082]

**468.040 Director; salary.** The commission shall appoint a director who shall hold his office at the pleasure of the commission. The salary of the director shall be fixed by the commission unless otherwise provided by law.

[Formerly 449.026]

**468.045 Functions of director; delegation.** (1) Subject to policy direction by the commission, the director shall:

(a) Be administrative head of the department;

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

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

(d) 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.

(2) In addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employes, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any of the employes of the department the exercise or discharge in the director's name of any

power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of any such person so acting in the director's name and by his authority shall be considered to be an official act of the director.

[Formerly 449.028]

**468.050 Deputy director.** (1) With the approval of the commission, the director may appoint a deputy director in the unclassified service who shall serve at the pleasure of the director. The deputy director shall have full authority to act for the director, subject to directions of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(2) The deputy director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by him in the performance of his official duties.

[1973 c.291 §2]

**Note:** 468.050 was not added to and made a part of ORS chapter 468 by legislative action.

**468.055 Contracts with Health Division.** In addition to the authority granted under ORS 190.003 to 190.110, when authorized by the commission and the Health Division, the director and the Administrator of the Health Division may contract on behalf of their respective agencies 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 contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest.

[Formerly 449.062]

**468.060 Enforcement of rules by health agencies.** On its own motion after public hearing, the commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes.

[Formerly 449.064]

**468.065 Issuance of permits; content; fees; use.** Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to

454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of permit fees for permits issued pursuant to ORS 468.310, 468.315 and 468.535. The permit fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The permit fee shall accompany the application for permit.

(3) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(4) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(5) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be

accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fees shall be deposited and expended as are permit fees submitted to the department.

[Formerly 449.733]

**468.070 Denial, modification, suspension or revocation of permits.** (1) At any time, the department may deny any application or modify, suspend or revoke any permit issued pursuant to ORS 468.065 if it finds:

(a) A material misrepresentation or false statement in the application for the permit.

(b) Failure to comply with the conditions of the permit.

(c) Violation of any applicable provision of this chapter.

(d) Violation of any applicable rule, standard or order of the commission.

(2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that modification is necessary for the proper administration, implementation or enforcement of the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(3) The procedure for denial, modification, suspension or revocation shall be the procedure for a contested case as provided in ORS chapter 183.

[1973 c.835 §14]

**468.075 Revolving fund; uses.** (1) On written request of the director of the department or his authorized representative, the Executive Department shall draw warrants on amounts appropriated to the department for operating expenses for use by the department as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$5,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department to pay for travel expenses, or advances therefor, for employes of the department and for any consultants or advisers for whom payment of travel expenses

is authorized by law or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the department and by the Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the department and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund.

[Formerly 449.034]

## ENFORCEMENT

**468.090 Complaint procedure.** (1) In case any written substantiated complaint is filed with the department which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS chapter 183 for a contested case.

[Formerly 449.815]

**468.095 Investigatory authority; entry on premises; status of records.** (1) The department shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The commission shall also have access to any pertinent records relating to such property,

including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, confidential and such confidential record, report or information, or particular part thereof, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing.

[Formerly 449.169]

**468.100 Enforcement procedures; powers of regional authorities; status of procedures.** (1) Whenever the commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, the commission may institute proceedings at law or in equity to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468.505 may exercise the same functions as are vested in the commission by this section in so far as such functions relate to air pollution control and are applicable to the

conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. 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.

[1973 c.826 §2]

**468.105 Injunctive procedure.** (1) When the department has cause to believe that there is any violation of any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter or of any rule or standard adopted or of any order issued by the commission or of any permit issued by the department, the department 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 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) The department, 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 an action at law or suit in equity in the name of the State of Oregon to abate or restrain threatened or existing pollution of the water of the state or of the air of this state, whenever such pollution or threatened pollution requires 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. The department shall not be required to furnish any bond in such proceeding.

(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.

(5) Actions at law or suits in equity instituted pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter may be settled or compromised at the discretion of the department, with the approval of the Attorney General, as it considers advantageous to the state.

[See 449.820]

**468.110 Appeal; power of court to stay enforcement.** Any person adversely affected or aggrieved by any order of the commission may appeal from such order 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 order and the giving of bond or other undertaking 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 the commission's order, and may take testimony thereon.

[Formerly 449.090]

**468.115 Enforcement in cases of emergency.** (1) Whenever it appears to the department that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or

air contamination is located shall compel compliance with the order in the same manner as with an order of that court.

[Formerly 449.980]

**468.120 Public hearings; subpoenas, oaths, depositions.** (1) The commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

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

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

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

[Formerly 449.048]

**468.125 Notice of violation.** (1) No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required, however, where the water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning or where the water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

[Formerly 449.967]

**468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties.** (1) The commission shall adopt by rule a schedule or schedules establishing the

amount of civil penalty that may be imposed for a particular violation. Except as provided in subsection (3) of ORS 468.140, no civil penalty shall exceed \$500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety. [Formerly 449.970]

**468.135 Procedures to collect civil penalties.** (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

**468.140 Civil penalties for specified violations.** (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(d) Any rule or standard or order of a regional authority adopted or issued under authority of subsection (1) of ORS 468.535.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3) (a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the waters of the state or violates any law, rule, order or standard

in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to water pollution shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation.

(4) Paragraphs (c) and (d) of subsection (1) of this section do not apply to violations of motor vehicle emission standards.  
[Formerly 449.993]

### POLLUTION CONTROL FACILITIES TAX CREDIT

**468.155 Definitions for ORS 468.155 to 468.190.** (1) As used in ORS 468.155 to 468.190, 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 redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700; or

(b) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275.

(2) "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.  
[Formerly 449.605]

**468.160 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.  
[Formerly 449.615]

**468.165 Application for certification of pollution control facilities.** (1) Any person may apply to the commission for certification under ORS 468.170 of a pollution control facility or facilities or portion thereof erected, constructed or installed by him in Oregon if:

(a) The facility was erected, constructed or installed on or after January 1, 1967; or

(b) (A) The substantial purpose of the facility is to utilize by burning, mechanical process or chemical process material which would otherwise be solid waste as defined in ORS 459.005;

(B) The end product of the utilization is a usable source of power or other item of real economic value;

(C) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

(D) The Oregon law regulating solid waste imposes standards more stringent than the federal law requires.

(2) The application shall be made in writing in a form prescribed by the department 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, for a facility qualifying under paragraph (a) of subsection (1) of this section, the portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution as set forth in subsection (2) of ORS 468.190.

(3) The director may require such further information as he considers necessary prior to issuance of a certificate.  
[Formerly 449.625]

Note: 449.625, renumbered as 468.165, was amended by two 1973 Acts; chapters 831 and 835. Chapter 831 contained the language contained in paragraphs (a) and (b) of subsection (1) and, in subsection (2) the phrase "for a facility qualifying under paragraph (a) of subsection (1) of this section." Chapter 835 did not contain that material. Legislative Counsel has compiled both chapters.

**468.170 Action on application; effect of rejection; appeal; issuance of certificate; effect of certification.** (1) The commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the commission shall include certification of the

actual cost of the facility and, for facilities qualifying under paragraph (a) of subsection (1) of ORS 468.165, the portion of the actual cost properly allocable to the prevention, control or reduction of air or water pollution as set forth in subsection (2) of ORS 468.190. Each certificate shall bear a separate serial number for each such facility.

(2) If the 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 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 commission to act constitutes rejection of the application.

(3) 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 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4) If the commission finds that a pollution control facility or portion thereof, for which an application has been made under ORS 468.165, was erected, constructed or installed under a certificate of approval issued pursuant to ORS 468.175 and in accordance with the requirements of subsection (1) of ORS 468.165, 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 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and rules thereunder, it shall certify such facility. Where one or more facilities constitute an operational unit, the 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 if erection, construction or installation of the facility was commenced prior to December 31, 1980. The commission shall attach to the front of each certificate a copy of the notice and election requirements imposed by subsection (5) of this section.

(5) 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 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.

(6) Certification under this section of a pollution control facility qualifying under paragraph (a) of subsection (1) of ORS 468.165 shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if the person elects ad valorem tax relief the provisions of ORS 307.405 shall apply.

(7) If a person receiving a certificate under this section for a facility qualifying under paragraph (b) of subsection (1) of ORS 468.165 and under construction on or after January 1, 1973, and certified on or before December 31, 1980, elects to take the tax credit relief under ORS 316.097 or 317.072, the certification shall be issued for a period of 10 consecutive years. The 10-year period shall begin with the tax year of the person in which the facility is certified under this section. However, such a facility certified after December 31, 1980, shall be certified pursuant to the procedures, costs properly allocable and all other matters as if it were a facility subject to certification under paragraph (a) of subsection (1) of ORS 468.165. [Formerly 449.635]

Note: 449.635, renumbered as 468.170 was amended by two 1973 Acts, chapters 831 and 835. Chapter 831 contained in subsection (1) the language "for facilities qualifying under paragraph (a) of subsection (1) of ORS 449.655" and in subsection (4) the language beginning "under a certificate" and ending "449.625" and the language beginning "if erection" and ending "December 31, 1980.". All of subsections (6) and (7) were contained in chapter 831. Chapter 835 did not contain that material. Legislative Counsel has compiled both Acts.

**468.175 Application for certification before construction; order granting or denying certification; bearing.** (1) Any person proposing to apply for certification of a pollution control facility pursuant to ORS 468.165, before the commencement of erection, construction or installation of the facility, shall file a notice of construction with the Department of Environmental Quality. The notice shall be in a form prescribed by the department.

(2) Within 30 days of the receipt of such notice, the department may require, as a condition precedent to issuance of a certificate of approval, the submission of plans and specifications. After examination thereof, the department may request corrections and revisions to the plans and specifications. The department may also require any other information necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745, this chapter and ORS chapter 459, and applicable rules and standards adopted pursuant thereto.

(3) If the department determines that the proposed erection, construction or installation is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745, this chapter and ORS chapter 459, and applicable rules or standards adopted pursuant thereto, it shall issue a certificate approving the erection, construction or installation. If the department determines that the erection, construction or installation does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745, this chapter and ORS chapter 459, and applicable rules or standards adopted pursuant thereto, the commission shall issue an order denying certification.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the department fails to issue a certificate of approval and the commission fails to issue an order denying certification, the certificate shall be considered to have been issued. The construction must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(5) Within 20 days from the date of mailing of the order, any person against whom an order is directed pursuant to subsection (3) of this section may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department. The hearing shall be conducted in accordance with the applicable provisions of ORS chapter 183.

[1973 c.831 §2]

**468.180 Conditions for issuance of certificate under ORS 468.170.** (1) No certification shall be issued by the commission pursuant to ORS 468.170 unless the pollution control facility, facilities or part thereof was erected, constructed or installed under a certificate of approval issued pursuant to ORS 468.175 and in accordance with the applicable provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745, this chapter and ORS chapter 459 and the applicable rules and standards adopted pursuant thereto.

(2) Nothing in this section or ORS 468.175 is intended to apply to erection, construction or installation of pollution control facilities begun before October 5, 1973.

[1973 c.831 §3]

**468.185 Procedure to revoke certification.** (1) Pursuant to the procedures for a contested case under ORS chapter 183, the commission may order the revocation of the certification issued under ORS 468.170 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) As soon as the order of 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 order.

(3) If the certification of a pollution control facility is ordered 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 shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the

certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.072.

(4) If the certification of a pollution control facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied 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 the order of revocation becomes final.

[Formerly 449.645]

**468.190 Allocation of costs to pollution control.** (1) In establishing the portion of costs properly allocable to the prevention, control or reduction of air or water pollution for facilities qualifying under paragraph (a) of subsection (1) of ORS 468.165, the commission shall consider the following factors:

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

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

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

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

(e) 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.

(2) The portion of actual costs properly allocable shall be:

(a) Eighty percent or more.

(b) Sixty percent or more but less than 80 percent.

(c) Forty percent or more but less than 60 percent.

(d) Twenty percent or more but less than 40 percent.

(e) Less than 20 percent.

[Formerly 449.655]

Note: 449.655, renumbered as 468.190, was amended by two 1973 Acts, chapters 831 and 835. Chapter 831 contained in subsection (1) the language "for facilities qualifying under paragraph (a) of subsection (1) of ORS 449.625". Chapter 835 did not contain that material. Legislative Counsel has compiled both Acts.

## POLLUTION CONTROL BONDS

### 468.195 Issuance of bonds authorized.

In order to provide funds for the purposes

specified in Article XI-H of the Constitution of Oregon, the commission, with the approval of the State Treasurer, is authorized to issue and sell such general obligation 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 commission, shall be necessary. The bonds shall be authorized by resolution duly adopted by a majority of the members of the commission at a regular or special meeting of the commission. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed \$160 million par value.

[Formerly 449.672]

**468.200 Form and content of bonds; re-funding bonds.** (1) At the request of the 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 468.195 to 468.260. The bonds shall be numbered and shall be payable at such times and in such amounts as shall be fixed by the 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 commission, with the approval of the State Treasurer, deems advisable.

(2) In the discretion of the 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 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 468.195 to 468.260. 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 commission with respect thereto, shall be governed by the other provisions of ORS 468.195 to 468.260 in so far as applicable. Refunding bonds may be issued to refund bonds originally issued or to refund bonds previously issued for refunding purposes.

[Formerly 449.675]

**468.205 Advertisement and sale of bonds.** With the approval of the State Treasurer, the commission shall provide such method as it considers necessary for the advertisement of each issue of the bonds mentioned in ORS 468.195 to 468.260 before they are sold. As approved by the State Treasurer, the commission shall require such deposit, with bids, as it considers advisable and generally shall conduct the sale and issuance of the bonds under such rules as the commission may adopt.

[Formerly 449.677]

**468.210 Execution of bonds; payment; deposit and destruction of paid bonds; where bonds payable; payment of costs of issuance.**

(1) All bonds issued under ORS 468.195 to 468.260, 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 department shall prepare and submit to the State Treasurer, for verification, a claim duly approved by the department for the amount necessary to meet the payment thereof. Upon such verification, the department 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 468.195 to 468.260, when due, shall be paid at the office of the State Treasurer; but, with the approval of the State Treasurer, the 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.

[Formerly 449.680]

**468.215 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 468.195 to 468.260. 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.

[Formerly 449.682]

**468.220 Department to administer funds; uses; limitations.** (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds 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 this subsection in an amount not to exceed 70 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are

authorized by its charter in an amount not to exceed 70 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste.

(f) To acquire, by purchase, or otherwise, general obligation bonds 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 (d) of this subsection in an amount not to exceed 70 percent of the total project costs.

(g) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(h) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(2) The facilities referred to in paragraphs (a), (b) and (c) of subsection (1) of this section shall be only such as appear to the department 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 facilities referred to in paragraphs (d) and (f) of subsection (1) of this section shall be only such as appear to the department 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.

(4) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

[Formerly 449.685]

**468.225 Investment yield on undistributed bond funds and revenues.** All undistributed bond funds and revenues received as payment upon agency bonds or other obligations, if invested, shall be invested to produce an adjusted yield not exceeding the limitations imposed by section 103, subsection (d) of the Internal Revenue Code of 1954, and amendments thereto in effect on March 1, 1971.

[Formerly 449.687]

**468.230 Pollution Control Sinking Fund; use; limitation.** (1) The 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 468.195 to 468.260. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the 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 468.195 to 468.260, 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 commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260.

(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 commission.

[Formerly 449.690]

**468.235 Levy of taxes to meet bond obligation authorized.** 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 468.195 to 468.260 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.

[Formerly 449.692]

**468.240 Remedy where default occurs on payment to state.** If any municipal corporation, city or county defaults on payments due to the state under ORS 468.195 to 468.260, the state may withhold any amounts otherwise due to the corporation, city or county to apply to the indebtedness.

[Formerly 449.694]

**468.245 Acceptance of federal funds.** The 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 468.195 to 468.260. Unless enjoined by the terms and conditions of any such gift or grant, the commission may convert the same or any of them into money through sale or other disposal thereof.

[Formerly 449.695]

**468.250 Participation in matching fund programs with Federal Government.** (1) The commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the Federal Government if the implementation of the program requires matching funds of the state or its participation in administering

the program. However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-supporting and self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon.

(2) Subject to conditions imposed on federally granted funds, a municipal corporation, city, county or agency of the State of Oregon, or combination thereof, who is eligible for federal funds for a project during its construction or becomes eligible for reimbursement for funds expended, if the project has been constructed and placed into operation, shall apply for and pay to the commission such funds so received, or otherwise made available to it, in such amounts as determined by the commission as just and necessary, from an agency of the Federal Government. These funds shall first be used to reimburse the State of Oregon for the portion of any grant that was advanced to the municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for construction of the project that exceeded the federal requirements for state matching funds and any remainder thereof shall be used to apply upon the retirement of any principal and interest indebtedness due and owing to the State of Oregon arising out of funds loaned for the project prior to federal funds becoming available.

(3) The refusal of a municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, to apply for federal funds in such amounts as determined by the commission as just and necessary for which it would otherwise be eligible, shall be sufficient grounds to terminate any further participation in construction of a facility by the commission.

(4) The municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, shall consent to and request that funds made available to it by an agency of the Federal Government shall be paid directly to the commission if required to do so under subsection (2) of this section.

[Formerly 449.697]

**468.255 Limit on grants and loans.** Any funds advanced by the commission by grant shall not exceed 30 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes,

and any obligation acquired by the commission by purchase, contract, loan, or otherwise, shall not exceed 70 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes. [Formerly 449.699]

**468.260 Return of unexpended funds to state required; use of returned funds.** Any proceeds unexpended after a project is constructed and inspected, and after records relating thereto are audited by the commission, shall be returned to the commission on behalf of the State of Oregon to apply upon the retirement of principal and interest indebtedness on obligations acquired by it from a municipal corporation, city, county or agency of the State of Oregon, or any combinations thereof. [Formerly 449.701]

### AIR POLLUTION CONTROL

**468.275 Definitions for air pollution control laws.** As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, unless the context requires otherwise:

(1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

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

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

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

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health

of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

(6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the commission. [Formerly 449.760]

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

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

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

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

(2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned. [Formerly 449.765]

**468.285 Purpose.** It is the purpose of the air pollution laws contained in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter to safeguard the air resources of the state by controlling, abating and preventing air pollution under a program which shall be consistent with the declaration of policy in this section and with ORS 468.280. [Formerly 449.770]

**468.290 Application of air pollution laws.** Except as provided in this section and in ORS 468.450, 476.380 and 478.960, the air pollution laws contained in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter do not apply to:

(1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except field burning which shall be subject to regulation under

this section, ORS 468.455 to 468.485, 476.380, 476.990, 478.960 and 478.990;

(2) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals, except field burning which shall be subject to regulation under this section, ORS 468.455 to 468.485, 476.380, 476.990, 478.960 and 478.990;

(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;

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

(7) 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.

[Formerly 449.775]

**468.295 Air purity standards; air quality standards.** (1) By rule the commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

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

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

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

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

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

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

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

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

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

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

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

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

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

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

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

[Formerly 449.785]

**468.300 When liability for violation not applicable.** The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution 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.

[Formerly 449.825]

**468.305 General comprehensive plan.** 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. The plan shall recognize varying requirements for different areas of the state.

[Formerly 449.782]

**468.310 Permits.** By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065.

[Formerly 449.727]

**468.315 Activities prohibited without permit; limit on activities with permit.** (1) Without first obtaining a permit pursuant to ORS 468.065, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468.310 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468.310.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468.310 in excess of the permissive discharges or emissions specified under an existing permit.

[Formerly 449.731]

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

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

[Formerly 449.707]

**468.325 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.**

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

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

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

(5) Any person against whom the order is directed may, within 20 days from the

date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 449.712]

**468.330 Duty to comply with laws, rules and standards.** Any person who complies with the provisions of ORS 468.325 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard. [Formerly 449.739]

**468.335 Furnishing copies of rules and standards to building permit issuing agencies.** Whenever under the provisions of ORS 468.320 to 468.340 rules or standards are adopted by either the commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards. [Formerly 449.722]

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

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

nants which are emitted as the result of operation of the source.

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

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702]

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

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

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

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

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

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

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

act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification.

[Formerly 449.810]

### MOTOR VEHICLE POLLUTION CONTROL

**468.360 Definitions for ORS 468.360 to 468.405.** As used in ORS 468.360 to 468.405:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under subsection (3) of ORS 468.375.

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to subsection (1) of ORS 468.375, whichever criteria are stricter.

(3) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads and highways.

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

[Formerly 449.949]

**468.365 Legislative findings.** For purposes of ORS 468.360 to 468.405, the Legislative Assembly finds:

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

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

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

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property. [Formerly 449.951]

**468.370 Motor vehicle emission standards; hearings; effective date; copy to Motor Vehicles Division.** (1) After public hearing and in accordance with the applicable provisions of ORS chapter 183, the commission may adopt motor vehicle emission standards.

(2) After public hearing in any county or counties which may be affected thereby, the commission by rule either may designate the county or counties in which motor vehicles registered therein must comply with the standards adopted pursuant to subsection (1) of this section or may designate the county or counties in which motor vehicles registered therein must be equipped with a certified system.

(3) The effective date of any rule adopted pursuant to subsection (2) of this section shall be not less than 180 days from the date of adoption of the rule. However, a rule requiring that motor vehicles be equipped with certified systems shall be applicable to such vehicles only at times of the registration, reregistration or renewal of registration subsequent to the effective date of the rule.

(4) The commission shall furnish a copy of rules adopted pursuant to this section, including effective dates, to the Motor Vehicles Division and shall publish notice of the rules in a manner reasonably calculated to notify affected members of the public.

[Formerly 449.957]

**468.375 Criteria for certification of motor vehicle pollution control systems.** The commission shall:

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

(a) The experience of any other state or the Federal Government;

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

(c) The durability of the system;

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

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

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification.

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

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

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

(6) Designate suitable methods and standards for testing systems designed to meet the criteria established by the commission.

(7) Contract for the use of or the performance of tests or other services within or without the state.

[Formerly 449.953]

**468.380 Notice to state agencies concerning certifications.** The department shall notify the Motor Vehicles Division and the Oregon State Police whenever certificates of approval for motor vehicle pollution control systems are approved, revoked, suspended or restricted by the commission.

[Formerly 449.963]

**468.385 Prohibited acts relating to uncertified systems.** (1) It is unlawful to sell, display, advertise or represent as a certified system any motor vehicle pollution control system which is not certified under ORS 468.375.

(2) It is unlawful to install or sell for installation upon a motor vehicle any motor vehicle pollution control system for which a certificate of approval has not been issued under ORS 468.375.

[Formerly 483.815]

**468.390 Licensing of personnel and equipment.** (1) The commission by rule may:

(a) Establish criteria and examinations for the qualification of persons eligible to inspect motor vehicle pollution control systems and execute the certificates required by subsection (1) of ORS 481.190, and for the procedures to be followed in such inspections.

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

(2) Subject to rules of the commission, the department shall:

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

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

[1973 c.835 §72]

**468.395 Determination of compliance of motor vehicles.** (1) The commission shall establish and maintain procedures and programs for determining whether motor vehicles for which a certificate of compliance is required under ORS 481.190 meet the minimum requirements necessary to secure a certificate.

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

[Formerly 449.955]

**468.400 Bond; remedy against person licensed under ORS 468.390; cancellation of license.** (1) Any person licensed to issue certificates of compliance pursuant to ORS

468.390 shall file with the department a surety bond. The bond shall be executed to the State of Oregon in the sum of \$1,000. It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468.360 to 468.405, 481.190 and 483.800 to 483.820.

(2) In addition to any other remedy that he may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468.360 to 468.405, 481.190 and 483.800 to 483.820 by a person licensed pursuant to ORS 468.390, the injured person has the right of action against the business employing such licensed person and a right of action in his own name against the surety upon the bond.

(3) The license issued pursuant to ORS 468.390 of any person whose bond is canceled by legal notice shall be canceled immediately by the department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond shall be relieved from liability accruing subsequent to such cancellation by the department.  
[Formerly 449.959]

**468.405 Fees; collection; use.** (1) The department shall:

(a) Establish and collect fees for application, examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468.390.

(A) The fee for licensing shall not exceed \$5.

(B) The fee for renewal of licenses shall not exceed \$1.

(b) Establish and collect fees for the issuance of renewal of certificates of compliance. The fee for the issuance or renewal of certificates shall not exceed \$1.

(2) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsection (1) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously ap-

propriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468.390 and 481.190.

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

[Formerly 449.965]

**468.410 Authority to limit motor vehicle operation and traffic.** The commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons.

[Formerly 449.747]

**468.415 Administration and enforcement of rules adopted under ORS 468.410.** Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Highway Division, shall cooperate with the commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468.410.

[Formerly 449.751]

**468.420 Police enforcement.** The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468.410 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

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

(2) Issuing warnings or citations.

[Formerly 449.753]

**FIELD BURNING REGULATION**

**468.450 Regulation of field burning on marginal days.** (1) As used in this section:

(a) "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.

(b) "Marginal day" means a day on which marginal conditions exist.

(2) In exercising its functions under ORS 476.380 and 478.960, the 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 describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960. The schedule 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) In preparing the schedule required under subsection (2) of this section, the 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.

(4) None of the functions of the 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 468.505.

[Formerly 449.840]

**468.455 Purpose of burning regulation.** In a concerted effort by agricultural interests and the public to overcome problems of air pollution, it is the purpose of ORS 468.455 to 468.485, 476.380 and 478.960 to phase out open field burning in the counties listed in subsection (2) of ORS 468.460 when a fea-

sible alternative method of field sanitation becomes available, to fix a specified date for termination of open field burning and, further, to encourage stabilized acreage until feasible alternative methods of field sanitation become available.

[Formerly 449.930]

**468.460 Limitations on burning when alternative certified.** After an alternative method of field sanitation is certified under ORS 468.470, and becomes available as provided in subsection (2) of ORS 468.470:

(1) In such areas of the state and for such periods of time as it considers necessary to carry out the policy of ORS 468.280, the commission by rule may prohibit, restrict or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass seed crops, grain crops and other burning.

(2) In addition to but not in lieu of any other rule adopted under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a phased reduction by certain permit areas, depending on particular local air quality conditions, of the extent, type or amount of open field burning of perennial grass seed crops, annual grass seed crops and grain crops after an alternative method is certified under ORS 468.470.

(3) No regional air quality control authority shall have authority to regulate burning of perennial grass seed crops, annual grass seed crops and grain crops.

[Formerly 449.933]

**468.465 Counties where burning of cereal grain permitted; limitation.** Permits under ORS 476.380 and 478.960 for open field burning of cereal grain crops shall be issued in the counties listed in subsection (2) of ORS 468.460 only if the person seeking the permit submits to the issuing authority a signed statement under oath or affirmation that the acreage to be burned will be planted to fall legumes or perennial grasses. However, no open field burning of cereal crops shall be permitted in the counties listed in subsection (2) of ORS 468.460 after January 1, 1975.

[Formerly 449.935]

**468.470 Regulation of burning of grass seed crops; committee; duties; public hearing.** (1) Except as provided in ORS 468.475, open field burning of perennial grass seed

crops and annual grass seed crops shall be subject to regulation under ORS 468.450, 476.380 and 478.960 only until a committee described in subsection (3) of this section certifies the availability of a successful, feasible alternative to open field burning in sufficient quantity to sanitize grass fields.

(2) As such alternative methods become available in quantity sufficient to allow phased reduction in burning, the commission may begin to phase out in proportion to such availability the burning described in ORS 468.460.

(3) The committee shall consist of two members representing agriculture appointed by the Director of Agriculture from a list of five nominees submitted by the Oregon Seed Council, two members representing the public appointed by the director of the department and a fifth member appointed by the Governor. Members shall be persons knowledgeable concerning agricultural practices and air quality control practices which are the subject of ORS 468.455 to 468.485.

(4) In addition to its other duties under this section, the committee shall monitor the programs for development of feasible alternative methods of field sanitation, shall make recommendations for the research and development of such methods to the Joint Committee on Ways and Means during the legislative session or to the Emergency Board during interim periods and, after consultation with the department, shall establish standards under which certified alternatives are to operate as long as the committee is in existence.

(5) In exercising its duties under subsections (1) and (4) of this section, the committee shall certify alternatives and establish standards only after public hearing at which interested persons are afforded an opportunity to be heard and for which notice is given in a manner reasonably calculated to notify interested persons of the time, place and subject of the hearing.

[Formerly 449.937]

**468.475 Termination dates for burning of grass seed crops in certain counties.** After January 1, 1975, no person shall open-burn or cause to be open-burned in the counties specified in subsection (2) of ORS 468.460, perennial grass seed crops used for grass seed production or annual grass seed crops used for grass seed production.

[Formerly 449.939]

**468.480 Acreage fees; exemption.** (1)

(a) Until an alternative method is certified under ORS 468.470, or until January 1, 1975, whichever occurs first, the county court, board of county commissioners or the fire chief or his designated representative shall collect a fee, except as provided in paragraph (b) of this subsection, prior to issuing any permit for the open burning of perennial or annual grass seed crops, or grain crops under ORS 476.380 or 478.960. The amount of the fee shall be determined by the committee established pursuant to ORS 468.470 and shall not exceed \$1 per acre of crop burned.

(b) The fee required by paragraph (a) of this subsection shall not be collected where efficient burning of stubble is accomplished with equipment using auxiliary fuel or a mobile field sanitizer which equipment or sanitizer has been approved by the committee and the department for field sanitizing purposes.

(2) The collecting officer shall retain such portion of the acreage fees received pursuant to subsection (1) of this section as is sufficient, in the judgment of the committee, in consultation with the collecting officers, to cover the cost of and to be used solely for the purpose of administering a program of registration of fields to be burned, collection of fees, issuance of permits, keeping of records and other matters directly related to agricultural open field burning. Ten cents of the acreage fee shall be deposited in a separate fund to be used for a smoke management program which shall be conducted by the Oregon Seed Council in cooperation with the department.

(3) The collecting officer shall cause the balance of acreage fees received pursuant to subsection (1) of this section to be credited to the account of the committee established under ORS 468.470 for use as provided in ORS 468.485.

(4) Nothing in this section relieves any person from the requirements of obtaining a burning permit in accordance with ORS 476.380 and 478.960.

[Formerly 449.941]

**468.485 Use of fees.** All moneys from acreage fees received by the committee established pursuant to ORS 468.470 shall be segregated from other funds and used solely for smoke management and development and demonstration of alternatives to agricultural open field burning. The committee may enter

into contracts with public and private agencies to carry out the purposes of this section. The committee shall give first priority to the development of and demonstration of the feasibility of a mobile field incinerator. [Formerly 449.943]

### REGIONAL AIR QUALITY CONTROL AUTHORITIES

**468.500 Definitions for ORS 468.500 to 468.580.** As used in ORS 468.280 and 468.500 to 468.580, unless the context requires otherwise:

(1) "Board of directors" means the board of directors of a regional air quality control authority.

(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, meeting the population requirements of ORS 468.505 or having had such requirements waived under ORS 468.510 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 468.505. [Formerly 449.850]

**468.505 Formation of regional air quality control authorities.** (1) Notwithstanding the provisions of any law or charter to the contrary, 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.

(2) A regional authority shall be formed in the following manner:

(a) The cities and counties proposing to form a regional authority shall adopt ordinances or resolutions specifying the name of the proposed regional authority and setting forth the participating cities and counties, the principal places of business and the boundaries of the proposed regional authority; and

(b) A certified copy of the ordinances or resolutions adopted by each city or county shall be filed with the Secretary of State and with the director; and

(c) The commission shall order the regional authority formed if it finds that the

participating governments plan adequate financing and the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control.

(3) From and after the date of issuance of the order of the commission, the regional authority shall exercise its functions.

[Formerly 449.855]

**468.510 Waiver of population requirements.** The commission may waive the population requirement of ORS 468.505 whenever it is satisfied that adequate financing is planned by the participating governments and that the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control.

[Formerly 449.857]

**468.515 Nature of authority.** A regional air quality control authority is a body corporate, having perpetual succession and may:

(1) Sue and be sued.

(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.

[Formerly 449.870]

**468.520 Board of directors; term.** (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.

(c) 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.

(d) 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.

(e) 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 (d) 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) to (d) 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 (e) 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) or (d) 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 (e) of subsection (1) of this section, when he is no longer a member of the governing body of a participating city or county. [Formerly 449.865]

**468.525 Board where population requirement waived.** ORS 468.520 applies to the designation of the members of the board of directors of a regional air quality control authority formed under a waiver authorized by ORS 468.510. However, there shall be no maximum number of members and, in lieu of the members designated as provided in paragraphs (b) to (d) of subsection (1) of ORS 468.520, members representing cities within the region shall be designated as follows:

(1) One member of the governing body of each participating city and of each non-participating city, having a population of 2,000 or more and located within a participating county, not to exceed five members. If the number of such cities exceeds five, the governing bodies of the cities described by this subsection shall jointly select five members from the governing bodies of such cities.

(2) One member of the governing body of a participating city of less than 2,000 population, to be designated jointly by the governing bodies of participating cities, each having a population of less than 2,000.

[Formerly 449.867]

**468.530 Advisory committee; duties; members; term; chairman; meetings.** (1) The board of directors of the regional authority shall appoint an advisory committee which shall advise the board in matters pertaining to the region and particularly on 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 interests 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 a 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 considers necessary. [Formerly 449.885]

**468.535 Function of authority.** (1) When authorized to do so by the commission, a regional authority formed under ORS 468.505 shall exercise the functions relating to air pollution control vested in the commission and the department by ORS 468.020, 468.035, 468.065, 468.070, 468.090, 468.105, 468.120, 468.295, 468.310, 468.320, 468.325, 468.335 and 468.340 in so far as such functions are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission and the department 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.

(2) No regional authority is authorized to establish or alter areas or to adopt any rule or standard that is less strict than any rule or standard of the commission. The regional authority must submit to the commission for its approval all air quality standards adopted by the regional authority prior to enforcing any such standards. When rules or

standards are adopted by a regional authority, the public hearing required by ORS 468.020 must be held by the board of directors of the regional authority.

(3) Subject to ORS 468.540, 468.545 and 468.565, when a regional authority is exercising functions under subsection (1) of this section, the commission and the department shall not exercise the same functions in the same territory. The regional authority's jurisdiction shall be exclusive. The regional authority shall enforce rules and standards of the commission as required to do so by the commission.

(4) The commission and the regional authorities may regulate, limit, control or prohibit by rule all air contamination sources not otherwise exempt within their respective jurisdictions. However, field burning and forest land burning shall be regulated by the commission and fire permit agencies as provided in ORS 468.450, 468.460 to 468.485, 476.380, 477.505 to 477.550 and 478.960.  
[1973 c.835 §99]

**468.540 Assumption, retention and transfer of control over classes of air contamination sources.** (1) The 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.

(2) If the commission does assume or retain control over any class of air contamination source under subsection (1) of this section, a regional authority may petition for the restoration or transfer of such control. If the commission finds that the reason for its assumption or retention is no longer valid, it may restore or transfer control over the class of air contaminants to the regional authority.

[Formerly 449.910]

**468.545 Contract for commission to retain authority under ORS 468.535.** A regional authority may contract with the commission for the commission to retain all or part of the authority that would otherwise be granted to the regional authority under ORS 468.535, subject to terms of the contract.

[Formerly 449.863]

**468.550 Conduct of public hearings; entry of orders.** (1) All public hearings other than those held prior to adoption of rules or standards 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. Such hearings shall be conducted in the manner prescribed in ORS chapter 183.

(2) 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 are heard.

[Formerly 449.890]

**468.555 Permit programs may be authorized.** (1) The commission by rule may authorize regional authorities to issue permits for air contamination sources within their areas of jurisdiction.

(2) Permit programs established by regional authorities pursuant to subsection (1) of this section shall conform to the requirements of ORS 468.065 and shall be subject to review and approval by the commission.

[Formerly 449.883]

**468.560 Expansion or dissolution of authority.** (1) The territory of a regional authority may be expanded in the manner provided for forming regions 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 commission approves the expansion.

(2) Any regional authority 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, standards and orders of the regional authority shall continue in effect until superseded by action of the commission.

[Formerly 449.900]

**468.565 Compliance with state standards required; hearing; notice.** (1) The commission may require that necessary corrective measures be undertaken within a reasonable time if, after hearing, it finds that:

(a) A regional authority has failed to establish an adequate air quality control program within a reasonable time after its formation; or

(b) 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 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) Notice of the hearing required under subsection (1) of this section shall be sent to the regional authority not less than 30 days prior to the hearing.

(3) If the regional authority fails to take the necessary corrective measures within the time required, the 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 commission shall supersede all rules, standards and orders of the regional authority.

(4) If, in the judgment of the commission, a regional authority is able to requalify to exercise the functions authorized in ORS 468.535, the commission shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority.  
[Formerly 449.905]

**468.570 Payment of costs of services to authority by state.** Any consultation and services provided to regional authorities or local air quality control programs by the commission may be paid for either from funds appropriated to the commission or under agreements between the parties on a reimbursable basis.  
[Formerly 449.915]

**468.575 State aid.** (1) Subject to the availability of funds therefor:

(a) Any air quality control program conforming to the rules of the 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 operated by a regional authority 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 commission and funds shall be made available under subsection (1) of this section according to the determination of the commission. In making its determination, the commission shall consider:

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

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

(c) The 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 government or the regional authority must submit all applications for federal financial assistance to the commission before submitting them to the Federal Government.

(4) When certified by the commission, claims for state aid shall be presented for payment in the manner that other claims against the state are paid.  
[Formerly 449.920]

**468.580 Payment of certain court costs not required.** A regional authority shall not be required to pay any filing, service or other fees or furnish any bond or undertaking upon appeal or otherwise in any action or proceedings in any court in this state in which it is a party or interested.  
[Formerly 449.923]

## WATER POLLUTION CONTROL

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

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

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance

or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

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

(4) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(5) "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.

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

(7) "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.

(8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters),

which are wholly or partially within or bordering the state or within its jurisdiction.

[Formerly 449.075]

**468.705 Authority of commission over water pollution; construction.** (1) Except as otherwise provided in ORS 453.305 to 453.575, in so far as the authority of the commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468.710.

[Formerly 449.070]

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

(1) To conserve the waters of the state;

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

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

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

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives.

[Formerly 449.077]

**468.715 Prevention of pollution.** (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the

public policy of the State of Oregon, as set forth in ORS 468.710.

(2) In order to carry out the public policy set forth in ORS 468.710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

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

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710 and to conform to the standards of water quality and purity established under ORS 468.735.

[Formerly 449.095]

**468.720 Prohibited activities.** (1) Except as provided in ORS 468.740, no person shall:

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

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

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468.740.

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

[Formerly 449.079]

**468.725 Effluent limitations.** In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto.

[Formerly 449.081]

**468.730 Implementation of Federal Water Pollution Control Act.** The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may adopt, modify or repeal rules, pursuant to ORS chapter 183, for the administration and implementation of this section.

[1973 c.92 §3]

**468.735 Standards of quality and purity; factors to be considered; meeting standards.** (1) The commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710. In establishing such standards, the commission shall consider the following factors:

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

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

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

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

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

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

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

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

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the State

Water Resources Board pursuant to ORS 536.210 to 536.550.

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

**468.740 When permit required.** Without first obtaining a permit from the director, which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall:

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

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

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

(4) 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 the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(5) Construct or use any new outlet for the discharge of any wastes into the waters of the state.  
[Formerly 449.083]

**468.745 Liability for damage to fish or wildlife or habitat; agency to which damages payable.** (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders, rules or standards of the commission, the person responsible for the injury, death, contamination or destruction 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 jur-

isdiction 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 mailing by registered or certified mail of written demand therefor.

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the State of Oregon upon relation of the department or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered.  
[Formerly 449.103]

**468.750 When motor vehicle parts may be placed in waters of state.** (1) The commission shall adopt rules as to the beneficial use of chassis, bodies, and shells of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

(a) The possibility of pollution;

(b) The esthetics of such use;

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

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

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

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies or shells of motor vehicles in the waters of this state subject to the rules adopted under this section.  
[Formerly 449.111]

**468.755 Prohibited activities for certain municipalities.** (1) No municipality shall:

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

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

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

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

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

(2) As used in this section:

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

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

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

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

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

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

[Formerly 449.113]

**468.760 Regulation of synthetic cleansing agent.** (1) No synthetic cleansing agent shall be sold for use in this state unless the agent will normally decompose when acted upon by biological means or will degrade in a secondary sewage treatment plant.

(2) All synthetic cleansing agents that are sold in this state must be labeled with the percent of phosphorous by weight, including equivalency in grams of phosphorous per recommended use level.

(3) The commission shall adopt rules governing the labeling requirements imposed by subsection (2) of this section.

[Formerly 449.137]

**468.765 Definitions for ORS 468.770.** For the purposes of ORS 468.770, 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.

[Formerly 449.140]

**468.770 Prohibitions relating to garbage or sewage dumping into waters of state.**

(1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the department. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

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

[Formerly 449.150]

**468.775 Depositing motor vehicles into water prohibited.** Subject to ORS 468.750, 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.

[Formerly 449.109]

**OIL SPILLAGE REGULATION**

**468.780 Definitions for ORS 468.780 to 468.815.** As used in ORS 468.020, 468.095, subsection (3) of ORS 468.140 and ORS 468.780 to 468.815, unless the context requires otherwise:

(1) "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(2) "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(3) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.  
[Formerly 449.155]

**468.785 Entry of oil into waters of state prohibited; exception.** (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the state.

(2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state under the following circumstances:

(a) The person discharging the oil was expressly authorized to do so by the department, having obtained a permit therefor required by ORS 468.740; or

(b) The person having control over the oil can prove that the entry thereof into the waters of the state was caused by:

(A) An act of war or sabotage or an act of God.

(B) Negligence on the part of the United States Government, or the State of Oregon.

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.  
[Formerly 449.157]

**468.790 Liability for violation of ORS 468.785.** (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468.785 shall be strictly liable, without regard to fault, for the damages to persons or property, public

or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if he can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in subsection (2) of ORS 468.785.

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section.  
[Formerly 449.159]

**468.795 Duty to collect and remove oil; dispersal of oil.** (1) In addition to any other liability or penalty imposed by law, it shall be the obligation of any person owning or having control over oil which enters the waters of the state in violation of ORS 468.785 to collect and remove the oil immediately.

(2) If it is not feasible to collect and remove the oil, the person shall take all practicable actions to contain, treat and disperse the oil.

(3) The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to him that use thereof would be detrimental to the public interest.  
[Formerly 449.161]

**468.800 Action by state; liability for state expense; order; appeal.** (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468.795, the department is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state.

(2) The director shall keep a record of all necessary expenses incurred in carrying out any action authorized under this section, including a reasonable charge for costs incurred by the state, including state's equipment and materials utilized.

(3) The authority granted under this section shall be limited to actions which are designed to protect the public interest or public property.

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468.795, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section.

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed pursuant to ORS chapter 183 but not as a contested case.

[Formerly 449.163]

**468.805 Action to collect costs.** (1) If the amount of state-incurred expenses under ORS 468.800 is not paid by the responsible person to the commission at the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the commission.

(2) Payment must be made within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court renders its decision if the decision affirms the order.

[Formerly 449.165]

**468.810 Oil Spillage Control Fund** (1) All penalties recovered under subsection (3) of ORS 468.140 shall be paid into the Oil Spillage Control Fund, which account is hereby established within the General Fund. The fund shall be administered by the department solely for the advancement of costs incurred in carrying out actions authorized by subsection (1) of ORS 468.800 and in carrying out the rehabilitation authorized by ORS 468.745.

(2) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.776 and earnings from such investment shall be credited to the fund.

[Formerly 449.167]

**468.815 Effect of federal regulations of oil spillage.** Nothing in ORS 468.020, 468.095, subsection (3) of ORS 468.140 and

ORS 468.780 to 468.815 or the rules adopted thereunder shall require or prohibit any act if such requirement or prohibition is in conflict with any applicable federal law or regulation.

[Formerly 449.175]

### PENALTIES

**468.990 Penalties.** (1) Wilful or negligent violation of ORS 468.720 or 468.740 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Violation of ORS 468.775 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(3) Violation of subsection (1) or (2) of ORS 468.760 is a Class A misdemeanor.

(4) Violation of ORS 454.415 or 454.425 is a Class A misdemeanor.

[1973 c.835 §28]

**468.992 Penalties for water pollution offenses.** (1) Wilful or negligent violation of any rule, standard or order of the commission relating to water pollution is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Refusal to produce books, papers or information subpoenaed by the commission or the regional air quality control authority or any report required by law or by the department or a regional authority pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter is a Class A misdemeanor.

(3) Violation of the terms of any permit issued pursuant to ORS 468.065 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

[1973 c.835 §26]

**468.995 Penalties for air pollution offenses.** (1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor.

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense.

(3) Violation of ORS 483.825 is a Class A misdemeanor, but each day of violation does not constitute a separate offense.

(4) Violation of ORS 468.475 or of any rule adopted pursuant to ORS 468.460 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(5) Violation of ORS 483.815 or 483.820 is a Class A misdemeanor but each day of violation does not constitute a separate offense.

[1973 c.835 §27]

**468.997 Joinder of certain offenses.**

Where any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255,

454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter provides that each day of violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.315 to 454.355, 454.405 to 454.425, 454.505 to 454.535, 454.605 to 454.745 or a section of this chapter constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or complaint, or information, in several counts.

[Formerly 449.992]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 November 1, 1973.

Thomas G. Clifford  
Legislative Counsel

**CHAPTERS 469 and 470**

[Reserved for expansion]