

Chapter 459

1977 REPLACEMENT PART

Solid Waste Control

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**SOLID WASTE MANAGEMENT
(General Provisions)**

459.005 Definitions for ORS 459.005 to 459.285. As used in ORS 459.005 to 459.285, unless the context requires otherwise:

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

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

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

(4) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, and composting plants; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

(5) "Land reclamation" means the restoration of land to a better or more useful state.

(6) "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468.500 to 468.530 and 468.540 to 468.575 or any other local government unit responsible for solid waste management.

(7) "Permit" includes, but is not limited to, a conditional permit.

(8) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(9) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the

heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(10) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business licensed under ORS 481.345.

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

(a) Hazardous wastes as defined in ORS 459.410.

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

(12) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

(13) "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not

limited to a large hopper, railroad gondola or barge.

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

[1971 c.648 §2; 1973 c.811 §1; 1973 c.835 §135; 1975 c.239 §1; 1977 c.867 §21]

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

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

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

(2) Promote research, surveys and demonstration projects to encourage resource recovery.

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

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

(5) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities for resource recovery.

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

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

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

(9) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(10) Promote application of resource recovery systems which preserve and enhance the quality of air, water and land resources.

[1971 c.648 §1; 1975 c.239 §2]

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

(State Administration)

459.025 Powers and duties of department. Subject to policy direction by the commission, the department:

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

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

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

[1971 c.648 §4; 1973 c.835 §136]

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

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

[1971 c.648 §3]

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

459.045 Rules. (1) The commission shall adopt reasonable and necessary solid waste management rules governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, transmission of diseases to man or animals, air pollution, pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

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

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

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

(2) The commission shall adopt rules on other subjects as necessary to carry out ORS 459.005 to 459.105 and 459.205 to 459.285.

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

(4) All rules adopted under this section shall be adopted after public hearing and in accordance with ORS chapter 183.

(5) Unless a rule adopted under this section is adopted pursuant to the authority granted by subsection (2) of ORS 183.335, the commission shall mail copies of the proposed rules to all persons who have requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by subsection (4) of this section.

[1971 c.648 §5; 1973 c.835 §137]

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

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

(Local Administration)

459.065 State preemption; intergovernmental agreements authorized. (1) The Legislative Assembly finds that solid waste disposal is a matter of state-wide concern. The Legislative Assembly finds that carrying out the provisions of ORS 459.005 to 459.105 and 459.205 to 459.285 by cities, counties and metropolitan service districts is a matter of state-wide concern. In carrying out the provisions of ORS 459.005 to 459.105 and 459.205 to 459.285, a county or a city, or a metropolitan service district for one of its authorized functions, may enter into any agreement which the county, city or metropolitan service district determines is desirable, for any period of time, with the department, any local government unit or other person:

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

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

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

(d) For cooperative establishment, maintenance, operation or use of regional disposal sites, including but not limited to resource recovery facilities.

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

(f) For promotion and development of markets for energy and materials from resource recovery.

(2) Authority granted by ORS 459.005 to 459.105 and 459.205 to 459.285 to local government units is specific and is in no way intended to restrict the general authority granted under ORS 190.010 to 190.030, 190.110 and ORS chapters 203 and 268.

[1971 c.648 §14; 1973 c.835 §138; 1975 c.239 §3; 1977 c.95 §6]

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

459.075 Acquisition of property for disposal sites and operations by cities and counties. Subject to the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285, a

county or a city may acquire real or personal property by lease, purchase, exercise of the power of eminent domain or otherwise for the purpose of operating and maintaining disposal sites. With the consent of the city involved, a county may acquire property for a site within the limits of a city. With the consent of the county having jurisdiction, a city may acquire property for a site outside the limits of the city.

[1971 c.648 §15]

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

459.085 County authority outside cities; effect of annexation; interagency agreements. (1) With respect to areas outside of cities, a board of county commissioners may, by ordinance or by regulation or order adopted pursuant thereto:

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

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

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

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

(e) Regulate solid waste management.

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

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

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

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

(b) A city and county may, with permission of the city collector, provide by prior agreement that an area, or portion of an area, annexed by the city but previously franchised by the county shall continue to be served by the county franchisee or shall be transferred to the city collector with compensation from the city collector to the county franchisee.

(c) A city with permission of the city collector, or a city-regulated collector with permission of the city, may provide by prior agreement that an area, or portion of an area, annexed by the city but previously served by a collector located in an unfranchised area of the county shall continue to be served by the county collector or shall be transferred to the city collector with compensation from the city collector to the county collector.

(d) Where no agreement has been reached under paragraph (a), (b) or (c) of this subsection, upon annexation of territory to a city the county-franchised collector may continue to serve the annexed area until:

(A) The county collector is compensated by the city collector for the collection service in the annexed area, which compensation shall be the sum of the fair market value of the service at the time of the annexation and applicable severance damages; or

(B) The expiration of the longer of the county franchise term or the term of the current city license, contract or franchise regulating solid waste collection; provided that term does not include any renewals or extensions made after the effective date of the annexation and that the total term does not exceed 10 years from the effective date of the annexation.

(e) Nothing in this subsection shall restrict the right of a county to franchise, license or regulate solid waste management or any portion thereof as otherwise provided in subsections (1), (2) and (4) of this section.

(4) If a county under the authority of ORS 670.210 to 670.240 (1969 Replacement Part) enacted an ordinance providing for the licensing of garbage dumps prior to July 1, 1971,

the ordinance or that portion of the ordinance dealing specifically with garbage dumps shall be continued in full force and effect, and licenses issued pursuant thereto shall be in full force and effect until action is taken by the board of county commissioners under this section to amend or repeal the ordinance or to suspend or revoke the license.

[1971 c.648 §16; 1977 c.639 §1]

459.095 Restrictions on authority of local units of governments. (1) No ordinance, order, regulation or contract affecting solid or liquid waste disposal, resource recovery or solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with regulations adopted by the commission pursuant to ORS 459.045 or with a solid waste management plan or program adopted by a metropolitan service district and approved by the department or any ordinances or regulations adopted pursuant to such plan or program.

(2) Solid waste management regulations adopted by a sanitary district or sanitary authority shall be limited to regulations supplemental to the rules adopted by the commission pursuant to ORS 459.045 and necessary to meet special local conditions.

[1971 c.648 §17; 1973 c.835 §139; 1977 c.95 §7]

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

[1971 c.648 §18]

(County Nuisance Abatement)

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

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

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

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

[1969 c.509 §2; 1971 c.648 §29]

459.130 Hearing; notice; voter referral; exceptions to ORS 459.120. (1) An ordinance authorized by ORS 459.120 may be adopted only after a hearing conducted by the board, and shall take effect 30 days after the date of enactment unless a later effective date is specified in the ordinance. Notice of such a hearing shall be published by two insertions, the first not less than 15 days and not more than 25 days and the last not less than eight days and not more than 14 days before the hearing, in a newspaper considered by the board to be of general circulation within the county. The board may also cause the notice to be published by radio and television stations located within the county, or heard or viewed in the county.

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

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

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

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

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

459.140 Investigation to determine whether public nuisance exists; notice to abate; proceeding to prevent existence of nuisance. (1) To determine whether there is reasonable cause to believe that a public nuisance exists on private property outside the limits of any city, the board, or whomever it designates, may conduct an investigation for that purpose. In conducting such an investigation, the board, or whomever it designates, may administer oaths, subpoena and require the attendance of witnesses at public hearings, require the production of relevant documents, and take the testimony of any person.

(2) Whenever it appears that there is reasonable cause to believe that a public nuisance exists, the board may order that a notice be issued and served upon the owner, tenant, occupant or person in possession of the

premises where the nuisance is alleged or claimed to exist, requiring such person to appear before the board at the time and place stated in the notice to show cause why a nuisance should not be declared to be existing on the premises.

(3) At the time and place described in said notice, the board shall conduct a public hearing on the question of the existence of the alleged nuisance, and if the board finds that a nuisance exists, it shall declare the existence of a nuisance by order entered in its journal, and may order a suit to be brought in the name of the county to institute injunction, abatement or any other proceeding provided by law to prevent temporarily or permanently the existence of the nuisance.

[1969 c.509 §4; 1975 c.239 §5]

459.150 When board may abate nuisance; liability; costs. In lieu of and not in addition to the remedies provided in ORS 459.140, the board may provide by ordinance that where a hearing is held in accordance with ORS 459.140 and where the board finds that a nuisance exists and declares the existence of a nuisance by order entered in its journal, if the owner or occupant of the property fails to abate the nuisance within 30 days after the entry of the order, the board may cause the nuisance to be abated. Where such removal is performed by the county, or its agent, neither the county nor its agent shall be liable for any trespass or conversion as to any real or personal property and the costs may be collected from the person served in accordance with ORS 459.140, or may be collected as a lien against such property. The remedies provided in ORS 459.120 to 459.155 are in addition to and not in lieu of any other remedies otherwise provided by law.

[1969 c.509 §5; 1975 c.239 §6]

459.155 Judicial review. Review of any action of the board taken pursuant to ORS 459.140 to 459.155, or any ordinance adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to 34.100.

[1975 c.239 §8]

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

(Disposal Sites)

459.205 Permit required. Except as provided by ORS 459.215, after July 1, 1971, a disposal site shall not be established and after July 1, 1972, a disposal site shall not be operated, maintained or substantially altered,

expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the department as provided in ORS 459.235.

[1971 c.648 §6]

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

459.215 Exclusion of certain sites from permit requirement. (1) By rule and after public hearing, the commission may prescribe criteria and conditions for excluding classes of disposal sites from the permit requirements of ORS 459.205. Disposal sites so excluded shall be limited to those which, because of the nature or volume of solid waste handled, are not likely to create a public nuisance, health hazard, air or water pollution, or other serious problem. Facilities operated under a permit issued under ORS 468.740 are not required to obtain a permit from the department pursuant to ORS 459.205. However, exclusion from the permit requirements of ORS 459.205 does not relieve any person from compliance with other requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 and the rules and regulations adopted pursuant thereto.

(2) By rule and after public hearing, the commission may delay the date after that prescribed by ORS 459.205 on which permits shall be required for a class or classes of disposal sites. However, a date after which a permit shall be required shall not be delayed later than July 1, 1975. In making its determination, the commission shall consider the nature, type and volume of solid waste handled at such sites, the threat of air or water pollution, the potential for creation of a public or private nuisance or health hazard, and the cost and funding of the program for carrying out this section.

(3) By rule and after public hearing the commission may establish classes of disposal sites that qualify for exclusion or for time extensions under this section.

[1971 c.648 §7; 1973 c.835 §140]

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

459.225 Variances or conditional permits authorized. (1) If the commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a conditional permit containing a schedule of

compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.

(2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a conditional permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.

(3) The commission shall grant a variance or conditional permit only if:

(a) Conditions exist that are beyond the control of the applicant.

(b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical.

(c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

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

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

[1971 c.648 §8; 1973 c.835 §141]

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

459.235 Applications for permits.

Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon

and the operation will comply with applicable requirements.

[1971 c.648 §9; 1977 c.37 §1]

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

459.245 Issuance of permits; terms.

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

(2) Disposal site permits shall be issued for a period not to exceed 10 years, to be determined by the department and specified in the permit.

(3) Subject to the provisions of ORS chapter 183, the department may refuse to renew a permit unless the disposal site and the facilities thereon meet the requirements of ORS 459.005 to 459.105 and 459.205 to 459.285 and the rules of the commission adopted pursuant thereto.

[1971 c.648 §10; 1973 c.835 §142]

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

(2) The procedures for denial, suspension, modification of a condition or variance, revocation or refusal to renew a permit shall be those specified for a contested case in ORS chapter 183.

[1971 c.648 §11; 1973 c.835 §143]

459.265 Hearings; appeal. (1) Except as provided by ORS 459.276, the commission may on its own motion or upon the request of the department, and shall upon application of any person entitled to appeal, fix a time and place for a public hearing on any action of the department or commission:

(a) Ordering action to be taken by a person subject to regulation under ORS 459.005 to 459.105 and 459.205 to 459.285.

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

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

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

(b) The applicable solid waste management plan.

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

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

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

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

[1971 c.648 §12; 1973 c.835 §144]

(Enforcement)

459.275 [1971 c.648 §13; repealed by 1973 c.826 §3 (459.276 enacted in lieu of 459.275); 1973 c.835 §145; see 459.277]

459.276 Action to enforce regulations or orders. (1) The commission may take whatever action is appropriate for the enforcement of its regulations or orders.

(2) The commission may institute proceedings to enforce compliance with or restrain violations of this chapter, or any rule, standard, permit or order adopted, entered or issued pursuant to this chapter, in the same manner provided for enforcement proceedings under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

[1973 c.826 §4 (enacted in lieu of 459.275)]

459.277 [Formerly 459.275; repealed by 1974 s.s. c.36 §28]

459.285 Entry upon private premises authorized. The department or county, district or city board of health personnel, authorized sanitarians or other authorized city or county personnel may enter upon the premises of any person regulated under ORS 459.005 to 459.105 or 459.205 to 459.285, or

under regulations adopted pursuant to ORS 450.075, 450.810, 450.820 and 451.570, at reasonable times, to determine compliance with and to enforce ORS 450.075, 450.810, 450.820, 451.570, 459.005 to 459.105 or 459.205 to 459.285 and any rules and regulations adopted pursuant thereto or ordinances adopted pursuant to ORS 459.120 to 459.155.

[1971 c.648 §19; 1973 c.835 §146]

HAZARDOUS WASTES

(General Provisions)

459.410 Definitions for ORS 459.410 to 459.690. As used in ORS 453.635 and 459.410 to 459.690, unless the context requires otherwise:

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

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

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

(4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700.

(5) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(6) "Hazardous wastes" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application thereof. Hazardous wastes does include all of the following which are not declassified by the commission pursuant to subsection (3) of ORS 459.430:

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

(b) Residues resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of such classification, the commission must find that such residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

(7) "Hazardous waste collection site" means the geographical site upon which hazardous wastes are stored in accordance with a license issued pursuant to this chapter.

(8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous wastes are disposed in accordance with a license issued pursuant to ORS 459.510 to 459.620.

(9) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(10) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(11) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(12) "Treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for

transport, amenable for recovery, amenable for storage, or reduced in volume.

[1971 c.699 §1; 1973 c.778 §1; 1977 c.867 §1]

(Administration)

459.430 Powers and duties of department. The department shall:

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

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 459.410 to 459.690.

(3) After notice and public hearing pursuant to ORS chapter 183, declassify as hazardous wastes those substances described in subsection (6) of ORS 459.410 which the commission finds, after deliberate consideration, taking into account the public health and safety, have been properly treated or decontaminated or contain a sufficiently low concentration of hazardous material so that such substances are no longer hazardous.

[1971 c.699 §3; 1973 c.778 §2; 1973 c.835 §147; 1977 c.867 §2]

459.440 Rules and orders. In accordance with applicable provisions of ORS chapter 183, the commission shall:

(1) Adopt rules and issue orders thereon, including but not limited to establishing minimum requirements for the treatment, storage and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, collection or disposal sites, and requirements and procedures for selection of such sites.

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

(3) Adopt rules and issue orders thereon to classify as hazardous wastes those residues defined in paragraph (b) of subsection (6) of ORS 459.410.

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazard-

ous wastes concerning type, amount and disposition of such hazardous waste. Rules may be adopted exempting certain classes of generators from such requirements.

[1971 c.699 §3a; 1973 c.835 §148; 1977 c.867 §3]

459.445 Rules for generators of hazardous wastes. (1) The commission may, by rule, require generators of hazardous wastes to:

(a) Identify themselves to the department, list the location and general characteristics of their activity and name the hazardous wastes generated;

(b) Keep records that accurately identify the quantities of such hazardous wastes, the constituents thereof, and the disposition of such wastes;

(c) Furnish information on the chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes;

(d) Use a department approved manifest system to assure that all such hazardous wastes generated are destined for treatment, storage or disposal in treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) which are operating pursuant to provisions of this chapter; and

(e) Submit reports to the department setting out quantities of hazardous waste generated during a given time period and the disposition of all such wastes.

(2) The generator of a hazardous waste shall be allowed to store a hazardous waste produced by that generator on the premises of that generator without obtaining a hazardous waste collection site license. This shall not relieve any generator from complying with any other rule or standard regarding storage of hazardous wastes.

(3) The commission by rule may exempt certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the commission. Such an exemption can only be made if the commission finds that, because of the quantity, concentration, methods of handling or use of a hazardous waste, such a class or type of generator is not likely either:

(a) To cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(b) To pose a substantial present or potential threat to human health or the environment.

[1977 c.867 §6]

459.450 Rules for transportation of hazardous wastes. In adopting rules governing transportation of any hazardous wastes for which a permit is required, the Public Utility Commissioner or the State Department of Agriculture must consult with and consider the recommendations of the department prior to the adoption of any such rules. Transporters shall be required to deliver hazardous wastes to a site named in the manifest provided for in this chapter or an alternative site approved by the department.

[1971 c.699 §16a; 1973 c.835 §150; 1977 c.867 §4]

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

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 459.410 to 459.690 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 methods or processes entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, confidential. However, such record, report or information may be disclosed to other officers, employees or authorized representatives of the state concerned with carrying out ORS 459.410 to 459.690 or when relevant in any proceeding under ORS 459.410 to 459.690.

[1971 c.699 §21; 1973 c.835 §149]

(Disposal Sites)

459.505 Hazardous waste to be stored at licensed site; exception. (1) Except as provided in subsection (3) of this section, no person shall store a hazardous waste anywhere in this state except at a licensed hazardous waste collection or disposal site.

(2) Except as provided in subsection (3) of this section, no person shall operate a hazardous waste collection site in this state without obtaining a hazardous waste collection site license issued pursuant to this chapter.

(3) The generator of a hazardous waste shall not be required to obtain a hazardous

waste storage site license for wastes produced by that generator and stored on the premises of that generator. This shall not exempt any generator from complying with other rules or standards for storage of hazardous wastes.

(4) If the director finds an emergency condition to exist, the director may authorize the short-term storage of a hazardous waste anywhere in the state as long as such temporary storage shall not constitute a hazard to public health, welfare and safety.

(5) Hazardous waste collection sites operating on June 30, 1977, shall be required to obtain a hazardous waste collection site license not later than January 1, 1978.

[1977 c.867 §12]

459.510 Disposal of wastes restricted; license required. (1) Except as provided in subsection (3) of this section, no person shall dispose of any hazardous waste anywhere in this state except at a hazardous waste disposal site licensed pursuant to ORS 459.530 to 459.620.

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

(3) The department may authorize disposal of specified hazardous wastes at specified solid waste disposal sites operating under department permit issued pursuant to ORS 459.205 to 459.265. Such authorization may be granted only under procedures approved by the commission, which shall include a determination by the department that such disposal will not pose a threat to public health and safety.

[1971 c.699 §2; 1973 c.778 §3; 1973 c.835 §151; 1977 c.867 §7]

459.517 Duties of licensee. Each hazardous waste collection site licensee shall be required to do the following as a condition to holding the license:

(1) Maintain records of any hazardous waste identified pursuant to provisions of this chapter which is stored at the site and the manner in which such waste was stored, transported and disposed of.

(2) Report periodically to the department on types and volumes of wastes received and their manner of disposition.

(3) Participate in the manifest system designed by the department.

(4) Maintain current contingency plans to minimize damage from spillage, leakage, explosion, fire or other accidental or intentional event.

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

(6) Assure that all personnel who are employed by the licensee are trained in proper procedures for handling, transfer, transport and storage of hazardous waste including, but not limited to, familiarization with all contingency plans.

[1977 c.867 §13]

459.520 [1971 c.699 §2a; 1973 c.835 §152; repealed by 1977 c.867 §8]

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

- (a) The name and address of the applicant.
- (b) A statement of financial condition of the applicant, including assets, liabilities and net worth.
- (c) The experience of the applicant in construction, management, supervision or development of hazardous waste disposal sites and in the handling of such substances.

(2) The department shall also require the submission of such information relating to the construction, development or establishment of proposed hazardous waste disposal sites and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license.

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

[1971 c.699 §4; 1977 c.867 §9]

459.535 Application form; additional information required. (1) The department shall furnish an application form to anyone who wishes to operate a hazardous waste collection site.

(2) In addition to information requested on the application form, the department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste collection site and facilities to be operated in conjunction therewith and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license.

[1977 c.867 §14]

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

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

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

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

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

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

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

[1971 c.699 §5]

459.545 Minimum application contents. Applications for a license to operate a hazardous waste collection site shall include at a minimum:

(1) The name and address of the applicant and the exact location of the proposed collection site.

(2) Estimates with respect to compositions, quantities and concentrations of any hazardous wastes identified under this chapter, and the time, frequency or rate at which such

hazardous waste may be received, stored, transported or disposed.

(3) A description of the operational plan for the site, including handling methods, storage methods, hours and days of operation and a preliminary engineering sketch showing layout of the site, location of water supply and drainage facilities and traffic flow.

(4) A description of security measures at the site including, but not limited to, type, height and location of fencing, manner for controlling access to the site, alarm systems and warning signs.

(5) The name of any person who will be responsible for managing the operation of the site and a statement of the qualifications of such persons.

(6) The name of the liability insurance carrier who will provide coverage required in ORS 459.517.

[1977 c.867 §15]

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

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

[1971 c.699 §6]

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

[1971 c.699 §7]

459.570 Recommendations by state agencies on applications; license must be refused upon recommendation of Health Division. Upon receipt of an application, the department shall cause copies of the application to be sent to affected state agencies,

including the Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the license application should be granted. If the Health Division recommends against granting the license, the commission must refuse to issue the license. Recommendation from other agencies shall be considered as evidence in determining whether to grant the license.

[1971 c.699 §8; 1973 c.835 §152a]

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

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

[1971 c.699 §9]

459.590 Conveyance of disposal site by licensee to state required; license requirements. (1) As a condition of issuance of the license, the licensee must deed to the state all that portion of the hazardous waste disposal site in or upon which hazardous wastes shall be disposed of. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an amount determined by the department to be sufficient to make such real property self-supporting and self-liquidating.

(2) Each licensee under ORS 459.410 to 459.690 shall be required to do the following as a condition to holding the license:

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

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

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

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

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

(f) Maintain a cash bond in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of license requirements. The bond shall remain on deposit for the duration of the license and until the site is closed, except as the bond may be released pursuant to ORS 459.600.

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

[1971 c.699 §10; 1973 c.778 §4; 1973 c.835 §153; 1977 c.867 §10]

459.595 Acquisition of sites by condemnation. The commission may acquire real property for the disposal of hazardous wastes by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35.

[1973 c.778 §7; 1977 c.867 §11]

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

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

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

[1971 c.699 §11]

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

[1971 c.699 §12; 1973 c.835 §154]

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

[1971 c.699 §16; 1973 c.835 §155]

459.625 [1975 c.483 §3; 1977 c.796 §3; renumbered 469.375]

459.630 [1975 c.483 §2; 1977 c.796 §4; renumbered 469.525]

459.635 Chemical waste disposal site; regulation; modification or waiver of requirements. The legislature finds that there is an urgent need for an Oregon site for the disposal of hazardous chemical wastes and that such a site should be regulated but not operated by the Department of Environmental Quality. In order to secure such a site, the commission may modify or waive any of the requirements of this chapter, but not ORS 469.375 or 469.525, if it finds that such waiver or modification:

(1) Is necessary to make operation of the site economically feasible; and

(2) Will not endanger the public health and safety.

[1975 c.483 §4]

(Enforcement)

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

(2) If, after making an investigation pursuant to subsection (1) of this section, the department is satisfied that sufficient grounds

exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at such hearing. A copy of the complaint shall be furnished by the department to the licensee. Both the complainant and the licensee are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at any such hearing.

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

[1971 c.699 §13a; 1977 c.867 §16]

459.660 Investigations by department; findings and orders; notice; judicial review. (1) Whenever the department believes that any hazardous waste disposal or collection site or its operation is unsafe, or in violation of ORS 459.410 to 459.690 or not in compliance with rules or orders, it may, upon its own motion, investigate the operation of the site.

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

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

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

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

(4) The department shall cause a certified copy of all orders issued by it under subsection (2) of this section to be delivered to the licensee or his duly authorized representative at the address furnished to the department in the license application. Any such order shall take effect 20 days after the date of its issuance, unless the licensee requests a hearing on the order before the commission before the

20-day period has expired. The request shall be submitted in writing and shall include the reasons for such hearing. At the conclusion of any such hearing, the commission may affirm, modify or reverse the original order.

(5) All hearings before the commission shall be in compliance with applicable provisions of ORS chapter 183. Judicial review of all orders entered after hearing or where no hearing is requested shall be in accordance with the applicable provisions of ORS chapter 183 for judicial review of contested cases.

[1971 c.699 §14; 1973 c.835 §156; 1977 c.867 §17]

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

[1971 c.699 §13; 1977 c.867 §18]

459.680 Procedure for emergencies.

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

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

[1971 c.699 §15a; 1977 c.867 §19]

459.685 Liability for improper disposal of wastes; duty; action by department; costs; action to recover. (1) Any person having the care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted, who causes or permits any disposal of such waste or substance in violation of law or otherwise than as reasonably intended for normal use or handling of such waste or substance, including but not limited to accidental spills thereof, shall be liable for the damages to person or

property, public or private, caused by such disposition.

(2) It shall be the obligation of such person to collect, remove or treat such waste or substance immediately, subject to such direction as the department may give.

(3) If such person fails to collect, remove or treat such waste or substance when under an obligation to do so as provided by subsection (2) of this section, the department is authorized to take such actions as are necessary to collect, remove or treat such waste or substance.

(4) The director shall keep a record of all necessary expenses incurred in carrying out any clean-up projects or activities authorized under subsection (3) of this section, including reasonable charges for services performed and equipment and materials utilized.

(5) Any person who fails to collect, remove or treat such waste or substance immediately, when under an obligation to do so as provided in subsection (2) of this section, shall be responsible for the necessary expenses incurred by the state in carrying out a clean-up project or activity authorized under subsections (3) and (4) of this section.

(6) If the amount of state-incurred expenses under subsections (3) and (4) of this section are not paid to the department within 15 days after receipt of notice that such expenses are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in any court of competent jurisdiction to recover the amount specified in the final order of the director.

[1973 c.778 §§8, 9, 10, 11, 12, 13; 1977 c.867 §20]

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

[1971 c.699 §15; 1973 c.835 §157]

BEVERAGE CONTAINERS

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

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

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

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

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

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

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

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

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

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

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

[1971 c.745 §1]

459.820 Refund value required. (1) Except as provided in subsection (2) of this section, every beverage container sold or offered for sale in this state shall have a refund value of not less than five cents.

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

[1971 c.745 §2]

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

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

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

[1971 c.745 §3; 1973 c.758 §1]

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

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

[1971 c.745 §4; 1973 c.758 §2]

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

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

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container without the aid of a can opener.

(4) On or after March 1, 1979, no person shall sell or offer for sale at retail in this state, in addition to beverages as defined in subsection (1) of ORS 459.810, any beverage

in liquid form intended for human consumption in any metal beverage container so designed and constructed that a metal part of the container is detachable in opening the container without the aid of a can opener. However, nothing in this subsection shall prohibit the sale of a container the only detachable part of which is a piece of pressure sensitive tape.

(5) No person shall sell or offer for sale at retail in this state metal beverage containers connected to each other by a separate holding device constructed of plastic rings or other material which will not decompose by photobiodegradation, chemical degradation, or biodegradation within 120 days of disposal. [1971 c.745 §5; 1977 c.151 §1; 1977 c.157 §1]

Note: The amendments to 459.850 by section 1, chapter 157, Oregon Laws 1977, take effect September 1, 1978. Until then, 459.850, as amended by section 1, chapter 151, Oregon Laws 1977, set forth below, is in effect:

Sec. 1. (1) Every beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, or by a label or other method securely affixed to the beverage container, the refund value of the container.

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

(3) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container without the aid of a can opener.

(4) On or after March 1, 1979, no person shall sell or offer for sale at retail in this state, in addition to beverages as defined in subsection (1) of ORS 459.810 any beverage in liquid form intended for human consumption in any metal beverage container so designed and constructed that a metal part of the container is detachable in opening the container without the aid of a can opener. However, nothing in this subsection shall prohibit the sale of a container the only detachable part of which is a piece of pressure sensitive tape.

459.860 Certification of containers as reusable by more than one manufacturer.

(1) To promote the use in this state of reusable beverage containers of uniform design, and to facilitate the return of containers to manufacturers for reuse as a beverage container, the commission may certify beverage containers which satisfy the requirements of this section.

(2) A beverage container may be certified if:

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

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

(3) The commission may by rule establish appropriate liquid capacities and shapes for beverage containers to be certified or decertified in accordance with the purposes set forth in subsection (1) of this section.

(4) A beverage container shall not be certified under this section if by reason of its shape or design, or by reason of words or symbols permanently inscribed thereon, whether by engraving, embossing, painting or other permanent method, it is reusable as a beverage container in the ordinary course of business only by a manufacturer of a beverage sold under a specific brand name. [1971 c.745 §6; 1973 c.693 §1]

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

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

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

[1971 c.745 §7]

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

(2) Application for approval of a redemption center shall be filed with the commission. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the

beverage containers which will be accepted at the redemption center and the names and addresses of the dealers to be served by the redemption center. The application shall include such additional information as the commission may require.

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

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

[1971 c.745 §8; 1973 c.758 §3]

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

[1971 c.745 §9]

PENALTIES

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

459.992 Criminal penalties. (1) The following are Class A misdemeanors:

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

(b) Violation of ORS 459.205.

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

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

(3) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS 459.005 to 459.105, 459.120 to 459.155 or 459.205 to 459.285.

(4) Violation of ORS 459.505, 459.510 or of any rule or order entered or adopted pursuant to ORS 459.410 to 459.690 is punishable, upon conviction, by a fine of not more than \$3,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(5) Violation of ORS 459.820, 459.830 or 459.850 is a Class A misdemeanor.

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

[Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) enacted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10; 1973 c.835 §158; 1977 c.867 §22]

459.995 Civil penalties. (1) In addition to any other penalty provided by law, any person who violates ORS 459.205, 459.510, 459.630 or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection or storage of solid wastes, as defined by ORS 459.005, shall incur a civil penalty not to exceed \$500 a day for each day of violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed and collected in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

[1973 c.835 §130; 1977 c.317 §1]

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,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

