Chapter 448

1979 REPLACEMENT PART

Swimming Facilities; Water Supplies

SWIMMING FACILITIES

448.005 Definitions for ORS 448.005 to 448.090
448.011 Authority of Health Division
448.020 Permit required to construct swimming facilities
448.030 Permit application; contents; issuance or denial; plan review and construction permit fees
448.035 License required to operate swimming facilities; fees; expiration date
448.040 Entry on premises for inspection purposes; reports
448.051 Inspection of facilities; suspension or revocation of permit or license; hearings on suspension or revocation
448.060 Closing facility
448.090 Disposition of moneys
448.095 Natural bathing places exempt
448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule

WATER SUPPLY SYSTEMS

(Generally)

448.205 Definitions for ORS 448.205 to 448.325
448.210 Purpose

(Administration)

448.215 Division jurisdiction over domestic water supply sources and community and public water supply systems
448.220 Compliance with rules required
448.222 Emergency exemption from provisions of or rules adopted under ORS 448.205 to 448.325
448.225 Plan approval required before construction of supply system; plan content; resubmission if construction delayed; fee
448.226 Approval of tentative and final plans for domestic water supply source construction; fee
448.228 When tentative plans considered approved; statement of approval
448.230 Samples of water to be submitted for laboratory analysis; reports; exception
448.235 Inspection of watersheds
448.240 Inspection of systems
448.245 Standards for water and water systems; inspection and testing
448.246 Regional usages and conditions to be considered
448.248 Design and construction variance for temporary water supply system
448.250 Remedy when water supply a health hazard
448.255 Notice of alleged violation; order; hearing; appeal
448.260 Order where supply inadequate; appeal
448.265 Prohibited actions; nuisance abatement
448.270 Rules of division
448.275 Contract with counties

(Civil Penalties)

448.280 Civil penalties; notice
448.285 Penalty schedule; factors to be considered in imposing penalty
448.290 When penalty due; notice; hearing; order as judgment

(Jurisdiction of Cities)

448.295 Jurisdiction of cities over property used for system or sources
448.300 City ordinance authority
448.305 Special ordinance authority of certain cities
448.310 Investigation of complaints
448.315 Special police to enforce ORS 448.295
448.320 Jurisdiction over violations of city ordinances
448.325 Injunction to enforce city ordinances

(Water Pipes and Fittings)

448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions

PENALTIES

448.990 Penalties

CROSS REFERENCES

Administrative procedures and rules of state agencies, 183.310 to 183.500
Deaths or injuries to be reported, Ch. 146
Discrimination in public places, 30.670
District boundary changes, 199.464
Lifesaving services on ocean shore, grants for cities and counties, 390.270 to 390.290
Swimming pools, joint construction and operation by local governments, Ch. 190

448.245

Health hazard annexations or district formation; facilities, services, boundaries, 222.850 to 222.915, 431 705 to 431.760

448.305
Health hazard annexation or district formation, facilities and services, boundaries, 431.705 to 431.760

448.315
Police standards and training, 181.610 to 181.690

SWIMMING FACILITIES

448.005 Definitions for ORS 448.005 to 448.090. As used in ORS 448.005 to 448.090, unless the context requires otherwise:

(1) "Bathhouse" means a structure which contains dressing rooms, showers and toilet facilities for use with an adjacent public swimming pool.

(2) "Division" means the Health Division of the Department of Human Resources.

(3) "Assistant director" means the Assistant Director for Health of the Department of Human Resources.

(4) "Person" includes, in addition to the definition in ORS 174.100, municipalities, recreation districts, counties and state agencies or instrumentalities.

(5) "Public swimming pool" means an artificial structure, and its appurtenances, which contains water more than two feet deep which is expressly designated or which is used with the knowledge and consent of the owner or operator for swimming or recreational bathing and which is for the use of any segment of the public. "Public swimming pool" includes, but is not limited to, swimming pools owned or operated by:

(a) Travelers' accommodations;

(b) Recreation parks;

(c) Colleges;

(d) Schools;

(e) Organizational camps as defined in ORS 446.310;

(f) Clubs;

(g) Associations;

(h) Business establishments for their patrons or employes;

(i) Private persons and that are open to the public;

(j) Recreation districts;

(k) Municipalities;

(L) Counties; or

(m) A state agency.

(6) "Public spa pool" means a public swimming pool or wading pool designed primarily to direct water or air-enriched water under pressure onto the bather's body with the intent of producing a relaxing or therapeutic effect.

(7) "Public wading pool" means an artificial structure, and its appurtenances, which contains water less than two feet deep which is expressly designated or which is used with the knowledge and consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

(8) "Recreation park" means those facilities as defined by ORS 446.310.

(9) "Travelers' accommodation" means those facilities as defined by ORS 446.003. [1961 c.566 §1; 1973 c.215 §1; 1979 c.453 §1]

448.010 [Repealed by 1961 c.566 §2 (448.011 enacted in lieu of 448.010)]

448.011 Authority of Health Division. The division shall make such rules pertaining to the submission of plans for construction, issuance of permits, design, construction, size, shape, purification equipment, piping, operation, sanitation and accident prevention for public swimming pools, public wading pools and bathhouses as it deems necessary. [1961 c.566 §3 (enacted in lieu of 448.010); 1971 c.650 §24; 1973 c.215 §2]

448.020 Permit required to construct swimming facilities. No person shall construct any public swimming pool, public spa pool or bathhouse without a permit to do so from the division. [Amended by 1961 c.566 §4; 1973 c.215 §3; 1979 c.453 §2]

448.030 Permit application; contents; issuance or denial; plan review and construction permit fees. (1) Any person desiring to construct any public swimming pool, public spa pool or bathhouse shall file application for a permit to do so with the division.

(2) The application shall be accompanied by a description of the sources of water supply, amount and quality of water available and intended to be used, method and manner of water purification, treatment, disinfection, heating, regulating and cleaning, lifesaving apparatus, and measures to insure safety of bathers, measures to insure personal cleanliness of bathers, methods and manner of washing, disinfecting, drying and storing bathing apparel and towels, and all other information and statistics that may be required by the division.

(3) After receipt of the application described in subsection (1) of this section, the division shall cause an investigation to be made of the proposed public swimming pool, public spa pool or bathhouse. If the division determines that the public swimming pool,

public spa pool or bathhouse is or may reasonably be expected to become unclean or insanitary or may constitute a menace to public health or safety, it shall deny the application for the permit. If the division determines that the public swimming pool, public spa pool or bathhouse is or may reasonably be expected to be conducted continuously in a clean and sanitary manner and will not constitute a menace to public health or safety, it shall grant the application for the permit under such restriction as it shall consider proper.

(4) An applicant for a permit to construct a public swimming pool, public spa pool or bathhouse to be owned, operated or maintained by a person for profit, or in conjunction with a travelers' accommodation or recreation park, shall pay a plan review fee of $60 and a construction permit fee of $25 to the division. [Amended by 1961 c.566 §5; 1973 c.215 §4; 1979 c.453 §3; 1979 c.696 §5a]

448.035 License required to operate swimming facilities; fees; expiration date. (1) No person shall operate or maintain a public swimming pool, public spa pool or bathhouse without a license to do so from the division.

(2) An annual fee of $60 shall be paid for a license to operate a public swimming pool, public spa pool or bathhouse.

(3) Subsection (2) of this section applies when a public swimming pool, public spa pool or bathhouse is operated:

(a) For profit;

(b) For the primary benefit of the patrons, members or employes of the person operating the public swimming pool, public spa pool or bathhouse; or

(c) In conjunction with a travelers' accommodation or recreation park.

(4) Licenses issued under this section expire at the end of each calendar year. [1961 c.566 §7; 1973 c.215 §5; 1977 c.284 §6; 1979 c 453 §4, 1979 c.696 §6a]

448.040 Entry on premises for inspection purposes; reports. For the purposes of ORS 448.005 to 448.090, the assistant director may at all reasonable times enter upon any part of the premises of public bathing and swimming places to make examination and investigation to determine the sanitary conditions of such places and whether ORS 448.005 to 448.090 or the rules of the division pertaining to public swimming pools, public spa pools or bathhouses are being violated. [Amended by 1961 c.566 §14; 1973 c.215 §6; 1979 c.453 §5]

448.050 [Repealed by 1961 c.566 §9 (448.051 enacted in lieu of 448.050)]

448.051 Inspection of facilities; suspension or revocation of permit or license; hearings on suspension or revocation. (1) The assistant director shall inspect all public swimming pools, public spa pools and bathhouses to determine the sanitary conditions of such places and whether ORS 448.005 to 448.090 and the rules of the division pertaining to public swimming pools, public spa pools and bathhouses are being violated.

(2) If the assistant director determines that a public swimming pool, public spa pool or bathhouse is being operated or maintained in violation of the rules of the division or is found to be insanitary, unclean or dangerous to public health or safety the assistant director may suspend, revoke or deny the permit or license issued under ORS 448.030 or 448.035 in accordance with ORS 183.310 to 183.500. [1961 c.566 §10; (enacted in lieu of 448.050); 1973 c.215 §7; 1979 c.453 §6]

448.060 Closing facility. (1) No public swimming pool, public spa pool or bathhouse shall remain open to the public after the permit or license to operate such facilities has been suspended, denied or revoked.

(2) Any public swimming pool, public spa pool or bathhouse constructed, operated or maintained contrary to ORS 448.005 to 448.090, is a public nuisance, dangerous to health.

(3) Such nuisance may be abated or enjoined in an action brought by the assistant director or may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health. [Amended by 1961 c.566 §15; 1973 c.215 §8; 1979 c.453 §7]

448.070 [1961 c.566 §13; repealed by 1973 c.215 §10]

448.080 [1961 c.566 §12; repealed by 1973 c.215 §10]

448.090 Disposition of moneys. All moneys collected under ORS 448.005 to 448.090 shall be paid into the General Fund in the State Treasury for credit to the Health Division Account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 448.005 to 448.090. [1961 c.566 §8; 1973 c.427 §10]

448.095 Natural bathing places exempt. No provisions of ORS 448.005 to 448.100 apply to natural bathing places. [1979 c.453 §9]

448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule. (1) The Assistant Director for Health shall delegate to any county board of commissioners which requests any of the authority, responsibilities and functions of the Assistant Director for Health under ORS 448.005 to 448.060 and this section if the assistant director determines that the county is willing and able to carry out the rules of the division relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the division. Such standards shall be established by the division in consultation with the appropriate county officials and in accordance with ORS 431.345. The division shall review and monitor each county's performance under this subsection. In accordance with ORS 183.310 to 183.500, the assistant director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the division for carrying out the authority, responsibility and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 448.030 and 448.035. The county, quarterly, shall remit 15 percent of the collected fees to the division for monitoring county programs and for providing the necessary forms, licenses, and informational material necessary to maintain a uniform state program.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the division, the division shall be made a party to the action, suit or proceeding. [1973 c.215 §9; 1975 c.790 §2]

448.110 [Repealed by 1967 c.344 §10]

448.120 [Repealed by 1967 c.344 §10]

448.130 [Repealed by 1967 c.344 §10]

WATER SUPPLY SYSTEMS
(Generally)

448.205 Definitions for ORS 448.205 to 448.325. As used in ORS 448.205 to 448.325 and subsections (2) to (6) of 448.990, unless the context requires otherwise:

(1) "Adequate" means a domestic water supply source and distribution system, each sufficient in capability to supply all peak daily demands and instantaneous demands during periods of maximum use without reduction in pressure below 20 pounds per square inch at any service connection, except during an emergency.

(2) "Assistant director" means the Assistant Director for Health of the Department of Human Resources.

(3) "Community water supply system" means a domestic water supply source or distribution system which serves more than three single residences or other users for the purpose of supplying water for household uses, but is neither a municipal water supply system nor a public utility water supply system.

(4) "Construction" means installation or extension.

(5) "Distribution system" includes but is not limited to distribution main pipelines, pumping stations, pressure pumps, pressure tanks, valves and other ancillary equipment used to transmit water from a domestic water supply source to the prospective user's service line.

(6) "Division" means the Health Division.

(7) "Domestic water supply source" means any lake, pond, impounding reservoir, water storage facility, water treatment facility, spring, well, stream, creek, river, marsh, ditch, canal or other body of water from which water is derived for municipal, public utility, community or public water supply systems.

(8) "Emergency" means the result of any natural element or mechanical failure which is unpredictable and temporary or infrequent, and which causes a domestic water supply source or distribution system to be temporarily less than adequate.

(9) "Final plans" are limited to approved tentative plans, along with modifications, alterations or required revisions, as constructed.

(10) "Governmental unit" means the state or any county, municipality or other political subdivision, or any agency thereof.

(11) "Household uses" means common uses within and around a house.

(12) "Instantaneous demand" means the actual measured maximum rate that water is supplied through a distribution system at any time, measured in gallons per minute. Where actual measured rates are not available, actual measurements from similar systems shall be used to derive a reasonable estimate.

(13) "Local health administrator" means a city, county or local health officer.

(14) "Municipal water supply system" means domestic water supply sources and distribution systems owned and operated by a city or county; or owned and operated by a special district or other public corporation which has independent tax-levying powers to support the system and which supplies water to a total of 1,000 or more households.

(15) "Peak daily demand" means the actual measured maximum quantity of water to be supplied through a distribution system during any 24-hour period. Where the actual measured quantities are not available, actual measurements from similar systems shall be used to derive a reasonable estimate.

(16) "Person" means any individual, corporation, association, firm, partnership or joint stock company and includes any receiver, trustee, assignee or other similar representative thereof.

(17) "Potable water" means water which is sufficiently free from biological, chemical, physical or radiological impurities so that users thereof will not be exposed to or threatened with exposure to disease or harmful physiological effects and which has such other physical properties as to be palatable to humans for drinking purposes.

(18) "Public health hazard" means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(19) "Public utility water supply system" means domestic water supply sources and distribution systems supplying water for household uses, owned and operated by a person subject to regulation by the Public Utility Commissioner of Oregon and supplying water to a total of 500 or more households.

(20) "Public water supply system" means a domestic water supply source and distribution system other than a municipal water supply system or public utility water supply system where water is provided for or is available through the single user for public consumption including, but not limited to, a school, a farm labor camp, an industrial establishment, a recreational facility, a restaurant, a motel or a group care home.

(21) "Tentative plans" include designs, specifications, materials and locations proposed for construction.

(22) "User service line" means the extension, from the distribution system to a user, that is regulated by the plumbing code. [1973 c.835 §§167, 168; 1975 c.254 §1]

448.210 Purpose. The purpose of ORS 448.205 to 448.325 and subsections (2) to (6) of 448.990 is to promote the public health and welfare by providing a regulatory program and services related thereto for:

(1) Domestic water supply sources that will assure the availability of potable water and prevent public health hazards and public nuisances; and

(2) Community and public water supply systems that will provide for adequate water. [1973 c.835 §169; 1975 c.254 §2]

(Administration)

448.215 Division jurisdiction over domestic water supply sources and community and public water supply systems. (1) The Health Division shall have jurisdiction over all domestic water supply sources and shall:

(a) Cause such sources and surroundings to be examined periodically to ascertain whether the sources are adapted for use as water supplies for drinking and other household uses, or are in a condition likely to cause a public health hazard.

(b) Consult with and advise cities, corporations or firms operating or intending to construct water supply systems, concerning the most appropriate domestic water supply sources, the best practical methods of assuring the purity thereof or of disposing of their drainage or sewage. In so doing, the division shall consider the present and prospective

needs and interests of other cities, corporations or firms which may be affected by the action.

(2) The Health Division shall have jurisdiction over all community and public water supply systems and shall:

(a) Cause the systems to be examined periodically to ascertain whether the systems deliver adequate water for household use.

(b) Consult with and advise entities operating or intending to construct community or public water supply systems concerning the best practical methods of delivering adequate water. [Formerly 449.215; 1975 c.254 §3]

448.220 Compliance with rules required. (1) It is unlawful for any person or governmental unit to operate a water supply system in violation of the rules of the division.

(2) Any community or public water supply system or any domestic water supply source, the tentative plans for which have been approved by the division according to the rules adopted under ORS 448.225 at the time of the approval, and which does not threaten to cause a public health hazard, shall not be subject to rules which may be adopted under ORS 448.245 after the date of approval. However, extensions, modifications, or alterations of these systems must comply with all rules adopted under ORS 448.245 and in effect at the time the extension, modification or alteration is approved pursuant to subsections (1) and (3) of ORS 448.225. [Formerly 449.223; 1975 c.254 §4]

448.222 Emergency exemption from provisions of or rules adopted under ORS 448.205 to 448.325. (1) Notwithstanding the provisions of or any rules adopted pursuant to ORS 448.205 to 448.325, during an emergency and for a reasonable time thereafter, the assistant director or his authorized representative shall provide for exemptions when:

(a) The person or governmental unit operating a community, public, public utility or municipal water supply system declares that the time required for compliance under ORS 448.220 causes or is likely to cause a system to supply water that is not adequate or that is a public health hazard.

(b) The assistant director or his authorized representative determines that the time required for compliance under ORS 448.220 causes or is likely to cause a system to supply water that is not adequate or that is a public health hazard.

(2) Within 30 days after remedy of an emergency, the person or governmental unit operating a community, public, public utility or municipal water supply system pursuant to subsection (1) of this section shall comply with all rules of the division adopted pursuant to subsection (2) of ORS 448.220. [1975 c.254 §17]

448.225 Plan approval required before construction of supply system; plan content; resubmission if construction delayed; fee. (1) Approval of tentative plans by the Health Division shall be required before any person, private entity or governmental unit begins ground work other than examinations or surveys in connection with:

(a) Construction of a new community or public water supply system;

(b) Extension of pumping, transmission, treatment or storage facilities of an existing community or public water supply system; or

(c) Construction of new pumping, transmission, treatment or storage facilities at an existing community or public water supply system.

(2) Tentative plans required by paragraph (a) of subsection (1) of this section shall include:

(a) The source of the supply and quantity of water available.

(b) The transmission and distribution systems, with further information as to the amount proposed to be taken and transmitted.

(c) The number of services to be supplied.

(d) Any additional data which the division may require to pass upon whether the proposed system will be in compliance with the rules of the division adopted under ORS 448.245.

(3) Tentative plans required by paragraph (a) or (b) of subsection (1) of this section shall include such data as the assistant director or his authorized representative determines necessary to determine whether the proposal will be in compliance with the rules of the division adopted under ORS 448.245.

(4) If construction of the system is not completed within one year from the completion date specified on the tentative plans approved by the division, resubmission of the tentative plans and specifications to the division for approval is required before any additional construction is undertaken. However, if the tentative plan calls for completion of the project in a series of successive phases over a

period of years, the approval under subsection (1) of this section applies to the entire project.

(5) A person, entity or governmental unit desiring division review of a tentative plan required by subsection (1) of this section shall pay a plan review fee. The tentative plan review fee shall be established by division rule and shall not exceed $250.

(6) Approval of final plans by the division shall be required before any person, private entity or governmental unit begins operation of any facility or portion of a facility for which a tentative plan is required by subsection (1) of this section.

(7) A person, entity or governmental unit desiring division review of a tentative plan required by subsection (1) of this section shall pay a final plan review fee. The final plan review fee shall be established by division rule and shall not exceed $150.

(8) Within 21 days after receipt of the final plans the division shall approve the final plans for the community or public water supply system as long as any modifications or alterations of the approved tentative plans meet the requirements pursuant to this section. Approval of the final plans by the division shall constitute approval of the community or public water supply system.

(9) The division may require by rule that all plans and specifications required under this section be prepared by persons qualified to perform such work. [Formerly 449.220; 1975 c.254 §5; 1979 c.696 §7]

448.226 Approval of tentative and final plans for domestic water supply source construction; fee. (1) Any person, entity or government unit desiring to construct a domestic water supply source shall submit tentative plans to the division for approval. Except as provided by subsection (3) of this section, no construction may begin until tentative plans are approved pursuant to the division's requirements for potable water. The tentative plans shall include:

(a) Domestic water supply source site location.

(b) Drainage areas, watersheds and topography.

(c) Approximate location of waters or ground waters from which the water is to be derived.

(d) Biological, chemical, radiological and physical quality of the water.

(e) The kind and character of the works for gathering, treating and storing the water.

(f) Any additional data which the division may require to determine that the water derived from the source will be in compliance with standards adopted under subsections (1) and (3) of ORS 448.245.

(2) A person, entity or governmental unit desiring division review of a tentative plan required by subsection (1) of this section shall pay a tentative plan review fee. The tentative plan review fee shall be established by division rule and shall not exceed $250.

(3) Notwithstanding the provisions of subsection (1) of this section, a domestic water well may be constructed or tested if tentative plans required by subsection (1) of this section are approved by the division as complying with the requirements of paragraphs (a), (b) and (c) of subsection (1) of this section. Before any additional construction of the works, all the remaining provisions of subsection (1) of this section shall be complied with.

(4) A domestic water supply source may not be operated until final plans are approved by the division. A person, entity or governmental unit desiring division review of a final plan required by this subsection shall pay a final plan review fee. The fee shall be established by division rule and shall not exceed $150.

(5) The division shall approve the domestic water supply source final plans provided that any modifications or alterations of the approved tentative plans meet the requirements pursuant to this section. Approval of the final plans by the division shall constitute approval of the domestic water supply.

(6) The division may require by rule that tentative and final plans required under this section be prepared by persons qualified to perform such work. [1975 c.254 §16; 1979 c.696 §8]

448.228 When tentative plans considered approved; statement of approval. (1) The division shall either approve submitted tentative plans for domestic water supply sources, community water supply systems and public water supply systems, as originally submitted, or shall propose modifications pursuant to the division's standards, within 21 days of submission.

(2) Tentative plans amended to include modifications pursuant to the division's standards and resubmitted shall be considered approved upon resubmission.

(3) Tentative plans otherwise modified and resubmitted to the division for approval shall be considered as submitted tentative plans under subsection (1) of this section.

(4) Submitted tentative plans neither approved nor modified by the division as provided in subsection (1), (2) or (3) of this section shall be considered approved by the division upon submission of a written statement to the division from the person submitting the tentative plans certifying that the tentative plans meet the division's standards.

(5) Within three days after resubmission of the tentative plans pursuant to subsection (2) of this section or within three days after submission of written certification pursuant to subsection (4) of this section, the division shall issue an unconditional written statement of approval of the tentative plans. [1975 c.254 §17a]

448.230 Samples of water to be submitted for laboratory analysis; reports; exception. (1) In compliance with rules of the division, every person or governmental unit operating a community, public utility, municipal or public water supply system shall collect and submit samples of water from the system for bacteriological analysis. These samples shall be analyzed in a laboratory approved by the division.

(2) The results of the laboratory analysis shall be reported to the local health administrator and to the person or governmental unit responsible for the operation of the water supply system.

(3) This section and the enforcement provisions relating thereto do not apply to any railroad company which is subject to the jurisdiction of the Interstate Commerce Commission. [Formerly 449.225; 1975 c.254 §6]

448.235 Inspection of watersheds. (1) Whenever any domestic water supply source is derived from surface sources, every person or governmental unit operating from the source shall conduct such sanitary inspections of the watershed as may be considered necessary by the division for the protection of public health.

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

(3) The sewage and waste disposal facilities described in subsection (2) of this section shall be constructed and operated in accordance with the rules of the Environmental Quality Commission.

(4) Written reports of all inspections shall be made promptly to the assistant director and to the Director of the Department of Environmental Quality. [Formerly 449.235; 1975 c.254 §7]

448.240 Inspection of systems. The assistant director or his authorized representative may at reasonable times inspect community, public utility, municipal and public water supply systems to determine whether they or the water supplied therefrom conform to applicable law and to rules adopted pursuant thereto. [Formerly 449.227; 1975 c.254 §8]

448.245 Standards for water and water systems; inspection and testing. In compliance with ORS 183.310 to 183.500 and to carry out the purposes of ORS 448.210, the division shall:

(1) Prescribe minimum standards for the biological, chemical, radiological and physical quality of water supplied from water supply systems.

(2) Set forth guidelines and minimum requirements for the design, construction, maintenance, interconnection with other water sources and operation of community and public water supply systems to provide adequate and potable water. A guideline as used in this section shall not be a mandatory requirement but shall provide suggested alternatives for achieving minimum requirements.

(3) Provide criteria and procedures for inspection and testing of water supply systems and existing, new and undeveloped domestic water supply sources to determine that the water is potable.

(4) Determine types of materials not suitable for construction of water systems where use of such materials has been found to cause a public health hazard. Any rule designating such hazardous materials shall include the basis for the findings by the division. [Formerly 449.237; 1975 c.254 §9]

448.246 Regional usages and conditions to be considered. In prescribing minimum requirements for the design and construction of community water supply systems and public water supply systems, the division shall take into consideration varying usages and conditions, if any, in different areas or regions of the state. [1975 c.691 §2]

448.248 Design and construction variance for temporary water supply system. (1) In the case of a temporary community water supply system or a public water supply system that will serve users for a period not in excess of five years, the division may allow such variances from design and construction requirements as will not be contrary to the purposes as stated in ORS 448.210.

(2) Systems approved under such variances shall not be operated after the period of time stated in the approved plans and specifications. [1975 c.691 §3]

448.250 Remedy when water supply a health hazard. (1) Whenever a community, public utility, municipal or public water supply system or part thereof presents or threatens to present a public health hazard requiring immediate action to protect the public health, safety and welfare, the assistant director may request the district attorney of the county wherein the system is located to institute an action. The action may be commenced without the necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings, if such proceedings have been commenced. The action may petition for a mandatory injunction compelling the person or governmental unit responsible for the operation of the system to cease and desist operation or to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof.

(2) Cases filed under 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.

(3) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisance or for recovery of damages brought by private persons or by the state on relation of any person. [Formerly 449.247; 1975 c.254 §10; 1979 c.284 §145]

448.255 Notice of alleged violation; order; hearing; appeal. (1) Whenever the assistant director has reasonable grounds to believe that a community, public utility, municipal or public water supply system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448.270, he shall give written notice to the person or governmental unit responsible for the system or facility.

(2) The notice required under subsection (1) of this section shall include the following:

(a) Citation of the rule allegedly violated;

(b) The manner and extent of the alleged violation; and

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

(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the assistant director requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS 183.310 to 183.500 and shall be in accordance with rules adopted by the division.

(5) The assistant director may designate a hearings officer to act on his behalf in holding and conducting hearings.

(6) The order shall be affirmed or reversed by the assistant director after hearing. A copy of the assistant director's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon him. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §171; 1975 c.254 §11]

448.260 Order where supply inadequate; appeal. (1) Whenever the water supply in a community or public water supply system is not adequate, the assistant director may enter an order which:

(a) Restricts the water usage to essential needs;

(b) Prohibits the installation of additional service connections;

(c) Prohibits any extensions of the system; or

(d) Any combination of paragraph (a), (b) or (c) of this subsection.

(2) The order shall set forth the restriction or the prohibition, including but not limited to any time or duration restriction, any specific use restriction and the description of any prohibition.

(3) Any person or governmental unit aggrieved by any order of the assistant director issued under subsection (1) of this section may appeal from such order in accordance with the provisions of ORS 183.310 to 183.500 relating to a contested case. However, notwithstanding subsection (3) of ORS 183.480 relating to a stay of enforcement of an agency decision, any reviewing court before it may stay an order of the assistant director shall give due consideration to the public interest in the continued enforcement of such order and may take testimony thereon. [1973 c.835 §185; 1975 c.254 §18a]

448.265 Prohibited actions; nuisance abatement. (1) It shall be unlawful for any person to do any of the following if the result would be to pollute a domestic water supply source or to destroy or endanger a public, municipal, public utility or community water supply system:

(a) Establish or maintain any slaughter pen, stock-feeding yards or hogpens.

(b) Deposit or maintain any uncleanly or unwholesome substance.

(2) Violation of paragraph (a) or (b) of subsection (1) of this section is a public nuisance and may be abated as other nuisances under the laws of this state. [Formerly 449.320; 1975 c.254 §12]

448.270 Rules of division. In accordance with the applicable provisions of ORS 183.310 to 183.500, the division shall adopt such rules as it considers necessary and proper for the purpose of carrying out ORS 448.205 to 448.325 and subsections (2) to (6) of 448.990. [1973 c.835 §170]

448.275 Contract with counties. The assistant director may contract with district or county boards of health to perform the duties of the assistant director or the division under ORS 448.230 and 448.240. [1973 c.835 §173]

(Civil Penalties)

448.280 Civil penalties; notice. (1) In addition to any other penalty provided by law, any person who violates any rule of the division relating to the construction, operation or maintenance of a community, public utility, municipal or public water supply system or part thereof shall incur a civil penalty not to exceed $500 for each day of violation.

(2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the division 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. [1973 c.835 §174; 1975 c.254 §13]

448.285 Penalty schedule; factors to be considered in imposing penalty. (1) The assistant director of the division shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed $500 per day.

(2) The assistant director may impose the penalty without hearing but only after the notice required by subsection (2) of ORS 448.280. In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the assistant director 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 the public, municipal, public utility or community water supply system.

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

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the division considers proper and consistent with the public health and safety. [1973 c.835 §175; 1975 c.254 §14]

448.290 When penalty due; notice; hearing; order as judgment. (1) Any civil penalty imposed under ORS 448.285 shall become due and payable when the person incurring the penalty receives a notice in writing from the assistant director of the division. The notice shall be sent by registered or certified mail, shall conform to the requirements of ORS 183.415 and shall include a statement of the amount of the penalty.

(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 division.

(3) All hearings shall be conducted pursuant to the provisions of ORS 183.310 to 183.500 applicable to a contested case.

(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 amounts recovered under this section shall be paid into the State Treasury and credited to the General Fund. [1973 c.835 §176]

(Jurisdiction of Cities)

448.295 Jurisdiction of cities over property used for system or sources. Subject to the authority of the Health Division under ORS 448.215, for the purpose of protecting from pollution their domestic water supply sources, cities shall have jurisdiction over all property:

(1) Occupied by the distribution system or by the domestic water supply sources by and from which the city or any person or corporation provides water to the inhabitants of the city.

(2) Acquired, owned or occupied for the purpose of preserving or protecting the purity of the domestic water supply source.

(3) Acquired, owned or occupied by cities within the areas draining into the domestic water supply sources. [Formerly 449.305]

448.300 City ordinance authority. Cities may prescribe by ordinance what acts constitute offenses against the purity of the water supply and the punishment or penalties therefor and may enforce those ordinances within their corporate limits and on property described in ORS 448.295. [Formerly 449.310]

448.305 Special ordinance authority of certain cities. (1) Subject to subsection (2) of this section, by ordinance a city may prohibit or restrict access for purposes of fishing, hunting, camping, hiking, picnicking, trapping of wild animals or birds, harvesting of timber or mining or removal of minerals or carrying on any other activity in its watershed area, or by ordinance may permit any such activity in its watershed area upon conditions specified in the ordinance. However, no ordinance passed under authority of this section shall prohibit the hunting or trapping of furbearing or predatory mammals doing damage to public or private property or prohibit the hunting or trapping of any bird or mammal for scientific purposes, as defined in subsection (3) of ORS 497.298.

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

(3) An ordinance adopted by any city pursuant to this section shall include a penalty clause providing for a penalty upon conviction of a fine of not more than $100 or imprisonment for not more than 30 days, or both such fine and imprisonment.

(4) After adoption of an ordinance pursuant to subsection (1) of this section, a city shall post the area with suitable signs setting forth the prohibition of access or the conditions of limited access imposed by the ordinance. Failure to post the area as required in this subsection shall be a defense in any prosecution under an ordinance adopted by any city under authority of this section. [Formerly 449.327]

448.310 Investigation of complaints. The officer in charge of the domestic water supply source or the community water supply system serving the city shall investigate complaints made to him concerning purity of the source or system and if the complaint appears to be well founded, file a complaint against the person violating ordinances of the city and cause his arrest and prosecution. [Formerly 449.335]

448.315 Special police to enforce ORS 448.295. The mayor or authorities having control of the community water supply system supplying the city may appoint special policemen who:

(1) After taking oath, shall have the powers of constables.

(2) May arrest with or without warrant any person committing, within the territory described in ORS 448.295, for:

(a) Any offense against the purity of the domestic water supply source or the community water supply system under state law or an ordinance of such city; or

(b) Any violation of any rule of the division or the authorities having control of the city water system for the protection of the purity of the domestic water supply source or the community water supply system.

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

(4) When on duty, shall wear in plain view a badge or shield bearing the words "Special Police" and the name of the city for which he is appointed. [Formerly 449.315]

448.320 Jurisdiction over violations of city ordinances. The municipal or recorder's court of any city passing an ordinance under authority of ORS 448.300 or 448.305 and the justice of the peace court or district court of the county wherein such city is located or in which the watershed area is located shall have concurrent jurisdiction to try and determine any prosecution brought under such ordinance. If prosecution is had in a justice of the peace court or a district court, the court shall remit to the city, after deducting court costs, the amount of any fine collected, except as otherwise provided by subsection (2) of ORS 46.045. If a jail term is imposed, the convicted person shall be confined in the city jail or in the county jail and if confined in the county jail the county shall be entitled to recover from the city the actual costs of such incarceration. [Formerly 449.328]

448.325 Injunction to enforce city ordinances. In cases of violation of any ordinance adopted under ORS 448.300 or 448.305 any city or any corporation owning a domestic water supply source or the community water supply system for the purpose of supplying any city or its inhabitants with water may have the nuisance enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual. [Formerly 449.340]

(Water Pipes and Fittings)

448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions. (1) The Assistant Director for Health may prohibit the sale of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in this state and the installation or use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in any private or public potable water supply system or individual water user's lines until such time as the assistant director determines that adequate standards exist and are practiced in the manufacture of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings to insure that the pipe and solder do not present a present or potential threat to the public health in this state.

(2) The Assistant Director for Health shall adopt, by rule, product acceptability criteria for water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for water supply purposes which insure that the pipe and solder do not present a threat to the public health in this state. The Health Division shall be responsible for the monitoring of the sale and use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for compliance with the product acceptability criteria. The Department of Commerce shall cooperate with, and assist, the Health Division in its monitoring efforts.

(3) No water pipe used to carry potable water or solders, fillers or brazing material used in making up joints and fittings which does not conform to the product acceptability criteria adopted under subsection (2) of this section shall be sold in this state or installed in any part of any public or private potable water supply system or individual water user's lines.

(4) Notwithstanding subsection (1) or (3) of this section, the Assistant Director for Health may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the necessary use by a well driller in the installation of a well. The assistant director may require any person using water pipe used to carry potable water under this subsection to notify the Health Division of the date and location of that use. [1979 c.535 §1]

PENALTIES

448.990 Penalties. (1) Violation of ORS 448.005 to 448.090 by any person, firm or corporation, whether acting as principal or agent, employer or employe, is punishable, upon conviction, by a fine of not less than $25 nor more than $500 or by imprisonment in the county jail not exceeding six months, or by both. Each day that the violation continues is a separate offense.

(2) Violation of ORS 448.225 or 448.235 is a Class A misdemeanor.

(3) Violation of ORS 448.220, 448.230 or failure to comply with any order issued by the Assistant Director for Health pursuant to ORS 448.260 by any owner or public or private official or person responsible for the operation of a community or public water supply is a Class A misdemeanor.

(4) Violation of any rule of the Health Division adopted pursuant to ORS 448.205 to 448.325 is a Class A misdemeanor.

(5) Violation of ORS 448.265 is a Class B misdemeanor. [Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.835 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990]

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, 1979.

Thomas G. Clifford
Legislative Counsel