

# Chapter 448

## 1983 REPLACEMENT PART

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## 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 446 310.

(10) "Variance" means written permission from the division for a public swimming pool, public spa pool or public wading pool to be operated when it does not comply with all the applicable rules for public swimming pools, public spa pools or public wading pools [1961 c 566 §1, 1973 c 215 §1, 1979 c 453 §1, 1983 c 707 §22, 1983 c 781 §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]

**448.015 Applicability of ORS 448.005 to 448.090.** ORS 448.005 to 448 090 shall not apply to those facilities described in ORS 446.435 [1983 c 781 §6]

**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. The division shall either approve or reject the application based

upon the plans submitted and either issue or deny the construction permit

(3) After a construction permit is issued and upon request, 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 complies with the rules of the division, it shall issue a final approval which shall authorize the issuance of a license

(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 the division a plan review fee of \$100 and a construction permit fee of \$200, which entitles the holder to two inspections toward final approval. The division shall not impose any new standards after a second or any subsequent inspection. For any subsequent construction inspection necessary, the permit holder shall pay \$100 for each inspection. [Amended by 1961 c 566 §5, 1973 c 215 §4, 1979 c 453 §3, 1979 c 696 §5a, 1981 c 749 §24, 1983 c 781 §2]

**448.035 Annual license required to operate; 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 \$100 shall be paid for a license to operate a public swimming pool, public spa pool or bathhouse. The annual fee for a license for a second or additional pool, spa pool or bathhouse, or any combination thereof, on the same site shall be an amount equal to 60 percent of the fee for the first license.

(3) Licenses issued under this section expire annually on a date set by rule. [1961 c 566 §7, 1973 c 215 §5, 1977 c 284 §6, 1979 c 453 §4, 1979 c 696 §6a, 1983 c 781 §3]

**Note:** Section 7, chapter 781, Oregon Laws 1983, provides

**Sec 7.** In carrying out ORS 448 035 as amended by section 3 of this Act, the Health Division may prorate fees for less than a year or more than a year to establish a new schedule for issuance and renewal of licenses

**448.037 Variance; application; fee.** (1) A person applying for a variance shall submit a variance application accompanied by a fee of \$150 to the division. If the division approves the application, a variance shall be granted, stating the terms and conditions thereof.

(2) The division may waive the fee for variance requests precipitated by change in the division's rules.

(3) The division may not delegate the responsibility under subsection (1) of this section under the provision of ORS 448.100. [1983 c 781 §5]

**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 183 550 [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 448 011, 448.020 to 448 035, 448.040 to 448.060 and this section if the assistant director determines that the county is 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 183 550, 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 state licensing fee or 15 percent of the county fee, whichever is less, to the division for consultation service and maintenance of the state-wide 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, 1983 c 370 §2]

448.110 [Repealed by 1967 c 344 §10]

## WATER SYSTEMS (Generally)

**448.115 Definitions for ORS 448.115 to 448.285.** As used in ORS 448 115 to 448 285, 454 235, 454 255 and 757 005 unless the context requires otherwise

(1) "Connection" means the connection between a water system and a customer which enables the customer to receive potable water from the system

(2) "Construction standards" means criteria for constructing or installing water system facilities

(3) "Emergency" means a condition resulting from an unusual calamity such as a flood, an earthquake or an accidental spill of hazardous material which can endanger the quality of the water produced by a water system

(4) "Operational requirements" means requirements which prescribe the manner in which water systems must be operated

(5) "Permit" means a document issued to a water system which authorizes it to commence or continue to operate in the State of Oregon and lists the conditions the system must meet to continue operating.

(6) "Safe drinking water" means water which is sufficiently free from biological, chemical, radiological or physical impurities such that individuals will not be exposed to disease or harmful physiological effects

(7) "Sanitary survey" means an onsite review of the source, facilities, equipment, operation and maintenance of a water system, including related land uses, for the purpose of evaluating the capability of that water system to produce and distribute safe drinking water.

(8) "Special master" means the person appointed by the court to administer the water system

(9) "Variance" means permission from the agency for a water system to provide water which does not meet water quality standards

(10) "Water supplier" means any person, group of persons, municipality, district, corporation or entity which operates a water system.

(11) "Water system" means a system for the provision of piped water for human consumption.

(12) "Waterborne disease" means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability which is transported to human beings by water which has been ingested or through contact as in bathing or other domestic uses. [1981 c 749 §2, 1983 c 271 §3]

**448.119 Application of ORS 448.119 to 448.285 to water systems.** Before a water system is subject to regulation under ORS 448 119 to 448 285, 454 235, 454.255 and 757 005, the system must have at least four service connections, or it must serve water to public or commercial premises which are patronized by an average of at least 10 individuals daily at least 60 days each year. In a housing subdivision of four or more living units where the water service connections of individual units are only two or three per water system, at the discretion of the assistant director, the division may regulate the water systems within the subdivision under ORS 448 119 to 448.285, 454.235, 454.255 and 757 005. [1981 c 749 §3]

**448 120** [Repealed by 1967 c 344 §10]

**448.123 Purpose.** It is the purpose of ORS 448 119 to 448 285, 454 235, 454.255 and 757 005 to.

(1) Assure all Oregonians safe drinking water.

(2) Provide a simple and effective regulatory program for drinking water systems

(3) Provide a means to improve inadequate drinking water systems [1981 c 749 §4]

**448.127 Short title.** ORS 448.119 to 448 285, 454 235, 454.255 and 757 005 may be referred to as the Oregon Drinking Water Quality Act. [1981 c 749 §5]

**448.130** [Repealed by 1967 c 344 §10]

### (Administration)

**448.131 Water quality, construction and installation standards; effect on existing facilities.** (1) The Health Division shall adopt water quality standards that are necessary to protect the public health through insuring safe drinking water within a water system

(2) In order to insure safe drinking water, the division shall prescribe:

(a) Construction standards governing the performance of a water system in so far as they relate to the safety of drinking water.

(b) Standards for the operation of water systems in so far as they relate to the delivery of safe drinking water.

(c) Other standards and requirements considered necessary by the division to insure safe drinking water.

(3) The division shall require that construction and installation plans be submitted and approved before construction begins on new systems or substantial improvements are made to old systems. The division may adopt rules exempting certain water systems from the plan review process.

(4) The division may impose and collect a fee from a water supplier for reviewing construction and installation plans.

(5) Nothing in this section authorizes the division to require alterations of existing facilities unless alterations are necessary to insure safe drinking water. [1981 c 749 §6]

**448.135 Variances; notice to customers; compliance schedules; notice; hearing.** The division may grant variances from standards if:

(1) There is no unreasonable risk to health;

(2) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques are unable to treat the water in question so that it meets maximum contaminant levels,

(3) The water supplier agrees to notify the customers of the water supplier at appropriate intervals, as determined by the division, why the water system is, or remains, out of compliance with standards;

(4) The water supplier agrees to adhere to a compliance schedule, if the division prescribes one, which outlines how the water supplier intends to achieve compliance with standards. If a schedule is prescribed, it must be reviewed and evaluated every three years; and

(5) The division has announced its intention to grant a variance and has either

(a) Held a public hearing in the affected area prior to granting the variance; or

(b) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper

in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the division may grant the variance.

[1981 c 749 §7, 1983 c 271 §5]

**448.140 Operation on permit.** A water system that does not comply with the rules and standards of the division shall be operated only after the water supplier has received a permit for the system from the division if:

(1) The division has not granted a variance from standards as provided under ORS 448.135 to the water supplier; and

(2) The water system is providing water that does not meet maximum contaminant standards as determined by an investigation conducted by the division under ORS 448.150. [1981 c 749 §8]

**448.145 When permit may be issued; compliance schedule; hearing; notice.** (1) A permit shall be issued by the division when there are economic or other compelling factors such that the water supplier is unable to install the water treatment facilities or to meet the maximum contaminant levels.

(2) The division shall prescribe a compliance schedule, including interim measures to eliminate the risk to health, which sets a specific time limit for the water supplier operating on a permit to install the water treatment facilities or to meet the maximum contaminant levels.

(3) For so long as the water supplier operates on a permit, it must notify its customers at least once every three months why the water system is, or remains, out of compliance.

(4) When the division announces its intention to grant a permit, it shall:

(a) Hold a public hearing in the affected area prior to granting the permit; or

(b) Serve notice of intent to issue the permit either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the division may finalize the permit.

(5) The document evidencing the permit shall contain a statement of the conditions under which the water system may operate. [1981 c 749 §9, 1983 c 271 §6]

**448.150 Duties of division.** The division shall:

(1) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to insure the system is not creating an unreasonable risk to health.

The division shall provide written reports of such examinations to the local health administrator and to the water supplier.

(2) Require regular water sampling by water suppliers. These samples shall be analyzed in a laboratory approved by the division. The results of the laboratory analysis shall be reported to the division, the local health department and to the water supplier.

(3) Investigate any water system that fails to meet the water quality standards established by the division.

(4) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the division for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the division and to the local health department.

(5) Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 446.337, 448.030, 448.115 to 448.285, 454.235, 454.255 and 757.005 to protect the public health and safety. [1981 c 749 §10]

**448.155 Personnel training; public information.** The division:

(1) May provide technical assistance and organize, coordinate and conduct training for water system personnel.

(2) Shall conduct a program designed to stimulate public participation in matters relating to water systems through public presentations, dissemination of informational materials and other similar efforts. [1981 c 749 §11]

**448.160 Emergency plans.** (1) The division shall maintain a plan outlining actions to be taken by the division during emergencies relating to water systems.

(2) The division may require that a water supplier compile an emergency plan if it appears necessary to the assistant director. [1981 c 749 §12]

**448.165 Local government water service plans.** (1) Counties may develop water service plans. These plans should encourage small water systems to combine management functions and to consolidate where possible. Water service plans must be in keeping with county land use plans.

(2) Cities or counties, whichever have authority to issue building permits, must certify that the division has approved the construction and installation plans of a proposed water sys-

tem development and the development plan does not violate city or county water service plans before issuing a building permit.

(3) Counties or boundary commissions are authorized to approve the formation, consolidation and expansion of water systems not owned by cities in keeping with county and city plans. In doing so, counties or boundary commissions should consider whether water service is extended in a logical fashion and water systems have a financial base sufficient for operation and maintenance. [1981 c 749 §13]

**448.170 Division agreement to authorize local government to exercise duties.** (1) The division may enter into an agreement with a local governmental unit for the local governmental unit to perform the duties of the division under the Oregon Drinking Water Quality Act. The duration of the agreement, the duties to be performed and the remuneration to be paid by the division are subject to agreement by the division and the local governmental unit.

(2) In any action, suit or proceeding arising out of county administration of functions pursuant to ORS 446.310, 446.337, 448.030, 448.115 to 448.285, 454.235, 454.255 and 757.005 and involving the validity of a rule adopted by the division, the division shall be made a party to the action, suit or proceeding. [1981 c 749 §14]

**448.175 Division authority to order compliance.** Subject to ORS 183.310 to 183.550, the division:

(1) Shall require that the water suppliers give public notice of violations in the water system.

(2) May refuse to allow expansion of or additional connections to a water system until the water system meets water quality standards and requirements.

(3) May enter an order requiring a water supplier to acquire or construct a water system that provides water meeting division standards. When the order requires a city to acquire a water system, the system must have the majority of its facilities within the city's adopted urban growth boundary. When the order is entered upon a city, the procedure described in ORS 454.235 to 454.255 shall be followed.

(4) May enter an order requiring a water supplier that fails to comply with the schedule prescribed under ORS 448.140 to cease operation of the water system. [1981 c 749 §17]

**448.180 Waiver of construction standards.** The division may grant waivers on construction standards if the division is satisfied

there will be no unreasonable risk to health. [1983 c.271 §2]

**448.205** [1973 c 835 §§167, 168, 1975 c 254 §1, repealed by 1981 c 749 §28]

**448.210** [1973 c 835 §169, 1975 c 254 §2, repealed by 1981 c 749 §28]

**448.215** [Formerly 449 215, 1975 c 254 §3, repealed by 1981 c 749 §28]

**448.220** [Formerly 449 223, 1975 c 254 §4, repealed by 1981 c 749 §28]

**448.222** [1975 c 254 §17, repealed by 1981 c 749 §28]

**448.225** [Formerly 449 220, 1975 c 254 §5, 1979 c 696 §7, repealed by 1981 c 749 §28]

**448.226** [1975 c 254 §16, 1979 c 696 §8, repealed by 1981 c 749 §28]

**448.228** [1975 c 254 §17a, repealed by 1981 c 749 §28]

**448.230** [Formerly 449 225, 1975 c 254 §6, repealed by 1981 c 749 §28]

**448.235** [Formerly 449 235, 1975 c 254 §7, repealed by 1981 c 749 §28]

**448.240** [Formerly 449 227, 1975 c 254 §8, repealed by 1981 c 749 §28]

**448.245** [Formerly 449 237, 1975 c 254 §9, repealed by 1981 c 749 §28]

**448.246** [1975 c 691 §2, repealed by 1981 c 749 §28]

**448.248** [1975 c 691 §3, repealed by 1981 c 749 §28]

**448.250 Remedy when system a health hazard; special master; sale of system.** (1) Whenever a water 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 water supplier 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)(a) If the water supplier refuses to comply with the order of the court, in addition to other remedies, the court may appoint a special master to operate the water system. Costs of operation and improvement during operation by the special master are to be charged to the water supplier and may be collected by impounding revenue due to the water supplier from customers of the

supplier; or, if those funds are insufficient, from other revenues due to the water supplier.

(b) The court may require sale of a water system under a special master to a responsible party if the water supplier refuses to comply with the standards and requirements of the division.

(3) 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

(4) 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, 1981 c 749 §15]

**448.255 Notice of violation; content; hearing; order; appeal.** (1) Whenever the assistant director has reasonable grounds to believe that a water system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448 115 to 448 285, 454.235, 454.255 and 757 005, the assistant director shall give written notice to the water supplier responsible for the system.

(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 183.550 and shall be in accordance with rules adopted by the division.

(5) The assistant director may designate a hearings officer to act on behalf of the assistant director 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 the petitioner. 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, 1981 c 749 §16]

**448.260** [1973 c 835 §185, 1975 c 254 §18a, repealed by 1981 c 749 §28]

**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 source of a water system or to destroy or endanger a water 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, 1981 c 749 §18]

**448.270** [1973 c 835 §170, repealed by 1981 c 749 §28]

**448.275** [1973 c 835 §173, repealed by 1981 c 749 §28]

### (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 water 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, 1981 c 749 §19]

**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 ORS 448.280 (2). 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 water 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, 1981 c 749 §20]

**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 183.550 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, 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, 1983 c 740 §170]

**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 fur-bearing 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 ORS 497.298 (3).

(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 ORS 46.045 (2). 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 any of the following is punishable as a Class A misdemeanor:

(a) Any rule of the Health Division adopted pursuant to ORS 448.115 to 448.330.

(b) Any order issued by the Health Division pursuant to ORS 448.175.

(c) ORS 448.265 or 448.315 (2)(a) [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, 1983 c 271 §4]