

# Chapter 466

## 1985 REPLACEMENT PART

### Hazardous Waste and Hazardous Materials

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## STORAGE, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE AND PCB

### (General Provisions)

**466.005 Definitions for ORS 453.635 and 466.005 to 466.385.** As used in ORS 453 635 and 466 005 to 466 385 and 466 890, unless the context requires otherwise

(1) "Commission" means the Environmental Quality Commission

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

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

(4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that the hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468 700

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

(6) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466 015 (3)

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

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

poses of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may

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

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

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

(7) "Hazardous waste collection site" means the geographical site upon which hazardous waste is stored

(8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous waste is disposed

(9) "Hazardous waste treatment site" means the geographical site upon which or a facility in which hazardous waste is treated

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

(11) "PCB" has the meaning given that term in ORS 468 900

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

(13) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste

(14) "Transporter" means any person engaged in the transportation of hazardous waste by any means

(15) "Treat" or "treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amena-

ble for recovery, amenable for storage, or reduced in volume [Formerly 459 410]

**466.010 Purpose.** (1) The Legislative Assembly finds it is in the interest of public health and safety and environment to protect Oregon citizens from the potential harmful effects of the transportation and treatment or disposal of hazardous waste and PCB within Oregon

(2) Therefore, the Legislative Assembly declares that it is the purpose of ORS 466 005 to 466 385 and 466 890 to

(a) Protect the public health and safety and environment of Oregon to the maximum extent possible,

(b) Exercise the maximum amount of control over actions within Oregon relating to hazardous waste and PCB transportation and treatment or disposal,

(c) Limit to the extent possible the treatment or disposal of hazardous waste and PCB in Oregon to materials originating in the states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469 930, and

(d) Limit to the extent possible the size of any hazardous waste or PCB treatment or disposal facility in Oregon to a size that is appropriate to treat or dispose of waste or PCB originating in Oregon and, if capacity permits, to waste or PCB originating in those states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469 930 [1985 c 670 §3]

#### (Administration)

**466.015 Powers and duties of department.** The department shall

(1) Provide for the administration, enforcement and implementation of ORS 466 005 to 466 385 and 466 890 and may perform all functions necessary

(a) To insure the proper management of hazardous waste by generators,

(b) For the regulation of the operation and construction of hazardous waste treatment, collection and disposal sites, and

(c) For the licensing of hazardous waste treatment, collection and disposal sites in consultation with the appropriate county governing body or city council

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in

activities subject to the provisions of ORS 466 005 to 466 385 and 466 890

(3) After notice and public hearing pursuant to ORS 183 310 to 183 550, declassify as hazardous wastes those substances described in ORS 466 005 (6) which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly treated or decontaminated or contain a sufficiently low concentration of hazardous material so that such substances are no longer hazardous [Formerly 459 430]

**466.020 Rules and orders.** In accordance with applicable provisions of ORS 183 310 to 183 550, the commission shall

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

(2) Adopt rules and issue orders thereon relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 466 005 to 466 385 and 466 890

(3) Adopt rules and issue orders thereon to classify as hazardous wastes those residues defined in ORS 466 005 (6)(b)

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazardous wastes concerning type, amount and disposition of such hazardous waste Rules may be adopted exempting certain classes of generators from such requirements

(5) Adopt rules and issue orders relating to the transportation of hazardous waste by air or water [Formerly 459 440]

**466.025 Duties of commission.** In order to carry out the provisions of ORS 466 005 to 466 385 and 466 890, the commission shall

(1) Limit the number of facilities disposing of or treating hazardous waste or PCB,

(2) Establish classes of hazardous waste or PCB that may be disposed of or treated,

(3) Designate the location of a facility designed to dispose of or treat hazardous waste or PCB, and

(4) Limit to the extent otherwise allowed by law, the hazardous waste or PCB accepted for treatment or disposal at a facility first to haz-

ardous waste or PCB originating in Oregon, or if the capacity of the facility as established under ORS 466 055 allows, or it is necessary for the commission to receive and maintain state authorization of a hazardous waste regulatory program under P L 94-580 and P L 98-616, to states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469 930 [1985 c 670 §4]

**466.030 Designation of classes of facilities subject to certain provisions.** The Environmental Quality Commission may, by rule, designate classes of facilities designed to treat or dispose of hazardous waste or PCB that shall be subject to the provisions of ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 320 [1985 c 670 §8]

**466.035 Commission authority to impose standards for hazardous waste or PCB at Oregon facility.** The commission may impose specific standards for the range and type of hazardous waste or PCB treated or disposed of at a facility in order to protect the public health and safety and environment of Oregon [1985 c 670 §9]

**466.040 Application period for PCB or hazardous waste license.** Whenever the Environmental Quality Commission finds there is a need for an additional hazardous waste or PCB treatment or disposal facility according to the criteria established in ORS 466 055, the commission shall establish an application period during which persons may apply for a PCB disposal facility license according to the provisions of ORS 466 260 to 466 285 or a hazardous waste disposal facility license under ORS 466 005 to 466 385 and 466 890 [1985 c 670 §10]

**466.045 Application form; contents; fees; renewal application.** (1) Upon request, the department shall furnish an application form to any person interested in developing or constructing a hazardous waste or PCB treatment or disposal facility. Each such form shall contain

(a) The name and address of the applicant

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

(c) The experience of the applicant in construction, management, supervision or development of hazardous waste or PCB treatment or disposal facilities and in the handling of such substances

(2) The department shall also require the submission of such information relating to the construction, development or establishment of a

proposed hazardous waste or PCB treatment or disposal site and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license

(3) If the application is for a new license to operate a new hazardous waste or PCB treatment or disposal facility, the application shall be accompanied by a fee in an amount sufficient to cover the department's costs in investigating and processing the application, but which shall not exceed \$70,000, which shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of licensing the treatment or disposal facility. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant

(4) If the application is for the renewal of an existing license, the application shall be accompanied by a fee in an amount estimated by the department to be sufficient to cover the department's costs in investigating and processing the renewal application. If the department incurs expenses in excess of the estimated fee, the applicant shall pay the excess fees. Under no circumstances shall the renewal fee exceed a total of \$50,000. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant. Such fees shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of renewing the license for a treatment or disposal facility [1985 c 670 §11]

**466.050 Citizen advisory committees.**

(1) To aid and advise the director and the commission in the selection of a hazardous waste or PCB treatment or disposal facility or the site of such facility, the director shall establish citizen advisory committees as the director considers necessary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director or a designee shall be a nonvoting member of each committee

(2) The advisory committees appointed under subsection (1) of this section shall review applications during an application period established under ORS 466 040 and make recommendations on the applications to the commission [1985 c 670 §12]

**466.055 Criteria for new facility.**

Before issuing a license for a new facility designed to dispose of or treat hazardous waste or PCB, the commission must find, on the basis of

information submitted by the applicant, the department or any other interested party, that the proposed facility meets the following criteria

(1) The proposed facility location:

(a) Is suitable for the type and amount of hazardous waste or PCB intended for treatment or disposal at the facility,

(b) Provides the maximum protection possible to the public health and safety and environment of Oregon from release of the hazardous waste or PCB stored, treated or disposed of at the facility, and

(c) Is situated sufficient distance from urban growth boundaries, as defined in ORS 197 295, to protect the public health and safety, accessible by transportation routes that minimize the threat to the public health and safety and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas

(2) Subject to any applicable standards adopted under ORS 466 035, the design of the proposed facility

(a) Allows for treatment or disposal of the range of hazardous waste or PCB as required by the commission; and

(b) Significantly adds to

(A) The range of hazardous waste or PCB handled at an already licensed treatment or disposal facility, or

(B) The type of technology employed at already licensed treatment or disposal facilities

(3) The proposed facility uses the best available technology for treating or disposing of hazardous waste or PCB as determined by the department or the United States Environmental Protection Agency

(4) The need for the facility is demonstrated by.

(a) Lack of adequate current treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies;

(b) A finding that operation of the proposed facility would result in a higher level of protection of the public health and safety or environment, or

(c) Significantly lower treatment or disposal costs to Oregon companies

(5) The proposed hazardous waste or PCB treatment or disposal facility has no major adverse effect on either

(a) Public health and safety, or

(b) Environment of adjacent lands [1985 c 670 §5]

**466.060 Criteria to be met by owner and operator before issuance of license.**

Before issuing a license for a facility designed to treat or dispose of hazardous waste or PCB, the license applicant must demonstrate, and the commission must find, that the owner and operator meet the following criteria

(1) The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility, and

(2) The compliance history of the owner including any parent company of the owner and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466 005 to 466 385 and 466 890 or any condition imposed on the licensee by the commission [1985 c 670 §7]

**466.065 Applicant for renewal to comply with ORS 466.055.** As a condition to the issuance of a renewal license under ORS 466.005 to 466 385 and 466.890, the commission may require the applicant to comply with all or some of the criteria set forth in ORS 466 055 [1985 c 670 §6]

### (Hazardous Waste)

**466.070 Standards for rules.** (1) In adopting rules under ORS 466 020 regulating the disposal of hazardous wastes, including, but not limited to, rules for the operation and maintenance of hazardous waste disposal sites, the commission shall provide for the highest and best practicable disposal of the hazardous wastes in a manner that will minimize

(a) The possibility of a dangerous uncontrolled reaction, the release of leachate, noxious gases or odors, fire, explosion or the discharge of the hazardous wastes, and

(b) The amount of land used for burial of the hazardous wastes

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under ORS 466 020 and subsection (1) of this section and shall report its findings and recommendations to the commission. [Formerly 459 442]

**466.075 Rules for generators of hazardous waste.** (1) The commission may, by rule, require generators of hazardous waste to

(a) Identify themselves to the department, list the location and general characteristics of

their activity and name the hazardous waste generated,

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

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

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

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

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

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

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

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

(4) The commission by rule may provide for a special license for the treatment of hazardous waste on the premises of a generator. Such a special license may be established only if such treatment has no major adverse impact on

(a) Public health and safety, or

(b) The environment of adjacent lands [Formerly 459 445]

**466.080 Rules for transportation of hazardous waste.** In adopting rules governing transportation of any hazardous wastes for which a permit is required, the Public Utility Commis-

sioner or the State Department of Agriculture must consult with and consider the recommendations of the department prior to the adoption of any such rules. Transporters shall be required to deliver hazardous wastes to a site named in the manifest provided for in ORS 466.005 to 466 385, 466.880 (1) and (2), 466 890 and 466.995 (1) and (2) or an alternative site approved by the department [Formerly 459 450]

**466.085 Authority of commission and department to obtain authorization for state hazardous waste regulatory program.**

The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a hazardous waste regulatory program under the provisions of the Federal Resource Conservation and Recovery Act, P.L. 94-580 and P.L. 98-616, and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 and P.L. 98-616. The commission may adopt, amend or repeal any rule or license and the commission or department may enter into any agreement necessary to implement this section [Formerly 459 455]

**Note.** Section 4, chapter 735, Oregon Laws 1985, provides

**Sec 4** (1) ORS 459 455 [renumbered 466 085] is repealed

(2) The repeal of ORS 459 455 by this section does not become operative until July 1, 1987

**466.090 Inspection and copying of records authorized; exceptions.** (1) Except as provided in subsection (2) of this section, any information filed or submitted pursuant to ORS 466.005 to 466 385 and 466 890 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.005 to 466 385 and 466 890 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to other officers, employees or authorized representatives of the state concerned with carrying out ORS 466 005 to 466 385 and 466.890 or when relevant in any proceeding under ORS 466 005 to 466 385 and 466 890

(3) Records, reports and information obtained or used by the department or the commission in administering the state hazardous waste program under ORS 466 005 to 466 385 and 466 890 shall be available to the United States Environmental Protection Agency upon request. If the records, reports or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law [Formerly 459 460]

**466.095 Hazardous waste to be collected, disposed of or treated at licensed site; exemptions.** (1) Except as provided in ORS 466.075 (2), no person shall

(a) Store a hazardous waste anywhere in this state except at a licensed hazardous waste treatment, collection or disposal site,

(b) Establish, construct or operate a hazardous waste collection site in this state without obtaining a hazardous waste collection site license issued pursuant to ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2), or

(c) Establish, construct or operate a hazardous waste treatment site in this state without obtaining a hazardous waste treatment site license issued under ORS 466.005 to 466 385 and 466.890

(2) The commission may exempt certain classes of hazardous waste collection or treatment sites from part or all of the licensing requirements for these sites. Such an exemption can only be made if the commission finds that, because of the quantity, concentration or type of waste or duration of storage, such a class of collection or treatment site is not likely to endanger the public health, welfare or safety or the environment.

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

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

(5) Hazardous waste treatment sites operating on October 3, 1979, shall be required to obtain

a hazardous waste treatment site license not later than July 1, 1980 [Formerly 459 505]

**466.100 Disposal of waste restricted; license required.** (1) Except as provided in subsection (3) of this section, no person shall dispose of any hazardous waste anywhere in this state except at a hazardous waste disposal site licensed pursuant to ORS 466 110 to 466 170.

(2) No person shall establish, construct or operate a disposal site without a license therefor issued pursuant to ORS 466 005 to 466 385 and 466 890.

(3) The department may authorize disposal of specified hazardous wastes at specified solid waste disposal sites operating under department permit issued pursuant to ORS 459 205 to 459 245, 459 255 and 459 265. Such authorization may be granted only under procedures approved by the commission, which shall include a determination by the department that such disposal will not pose a threat to public health, welfare or safety or to the environment [Formerly 459 510]

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

(1) Maintain records of any hazardous waste identified pursuant to provisions of ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2) which is stored or treated at the site and the manner in which such waste was stored or treated, transported and disposed of.

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

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

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

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

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

(7) Maintain other plans and exhibits pertaining to the site and its operation as determined

by the department to be reasonably necessary to protect the public health, welfare or safety or the environment

(8) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated

(9) Maintain a cash bond or other equivalent financial assurance in the name of the state in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of all license requirements. The financial assurance shall remain available for the duration of the license and until the site is closed, except to the extent it is released or modified by the department [Formerly 459 517]

**466.110 Application; form.** (1) The department shall furnish an application form to anyone who wishes to operate a hazardous waste collection or treatment site

(2) In addition to information requested on the application form, the department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste collection or treatment site and facilities to be operated in conjunction therewith and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license [Formerly 459 535]

**466.115 Required application information.** License applications submitted to the department for managing, operating, constructing, developing or establishing a hazardous waste disposal site must contain the following

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

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

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifica-

tions for the construction and development of the site and the waste treatment and water supply facilities, if any, to be used at such site.

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

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

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect [Formerly 459 540]

**466.120 Required application information to operate site.** Applications for a license to operate a hazardous waste collection or treatment site shall include at a minimum

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

(2) Estimates with respect to compositions, quantities and concentrations of any hazardous wastes identified under ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2), and the time, frequency or rate at which such hazardous waste may be received, stored, treated, transported or disposed

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

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

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

(6) The name of the liability insurance carrier who will provide coverage required in ORS 466 105 [Formerly 459 545]

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

(2) The notice shall contain information regarding the approximate location of the site and the type and amount of materials intended for disposal at such site, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed site shall have opportunity to testify at the hearing. [Formerly 459 550]

**466.130 Public hearing in areas of proposed site required.** The commission shall conduct a public hearing in the county or counties where a proposed hazardous waste disposal site is located and may conduct hearings at such other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [Formerly 459 560]

**466.135 Recommendations by state agencies on applications for license; effect.**

Upon receipt of an application for a hazardous waste disposal site license, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the license application should be granted. If the Health Division recommends against granting the license, the commission must refuse to issue the license. Recommendation from other agencies shall be considered as evidence in determining whether to grant the license. [Formerly 459 570]

**466.140 Review of disposal applications; issuance.** (1) The department shall examine and review all hazardous waste disposal site license applications submitted to it and make such investigations as it considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183 480. [Formerly 459 580]

**466.145 Review of treatment applications; issuance.** (1) The department shall review and cause to be investigated all hazardous waste treatment site license applications submitted to it.

(2) After reviewing and investigating the application, the department shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the department is subject to review by the commission under the provisions of ORS 183 310 to 183 550 governing contested cases. [Formerly 459 585]

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

(2) Each hazardous waste disposal site licensee under ORS 466.005 to 466 385 and 466 890 shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 466 005 to 466 385 and 466 890 and the rules adopted thereunder.

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

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

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

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

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure, to secure performance of license require-

ments and to provide for any remedial action by the state necessary to protect the public health, welfare and safety and the environment following site closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

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

(h) Maintain other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(i) In addition to the requirement of subsection (l) of this section, grant to the Environmental Quality Commission the first opportunity to purchase the hazardous waste disposal facility or site if the licensee offers the site for sale. [Formerly 459 590]

#### **466.155 Acquisition by condemnation.**

The commission may acquire real property for the disposal of hazardous wastes by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35. [Formerly 459 595]

**466.160 Site license fees; disposition; withdrawal by licensee.** (1) The hazardous waste collection, treatment or disposal site license shall require a fee based either on the volume of material accepted at the site or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the site use period a sum sufficient to

(a) Secure performance of license requirements,

(b) Close the site,

(c) Provide for any monitoring or security of the site after closure, and

(d) Provide for any remedial action by the state necessary after closure to protect the public health, welfare and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the financial assurance required under ORS 466 150 (2)(f), the licensee shall be allowed to withdraw the financial assurance.

(3) If the site is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced

portion of the financial assurance may be withdrawn. [Formerly 459 600]

**466.165 Annual fees; use.** An annual fee may be required of every generator, air or water transporter and licensee under ORS 466 005 to 466 385 and 466 890. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 466 195 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466 195. [Formerly 459 610]

**466.170 Revocation of licenses; judicial review.** The commission may revoke any license issued under ORS 466 005 to 466 385 and 466 890 after public hearing upon a finding that the licensee has violated any provision of ORS 466 005 to 466 385 and 466 890 or rules adopted pursuant thereto or any material condition of the license, subject to review under ORS 183 310 to 183 550. [Formerly 459 620]

**466.175 Disposition of site or facility after revocation of license; acquisition of site by department.** (1) If the commission revokes a license under ORS 466 170, the commission may

(a) Close an existing hazardous waste disposal site or facility, or

(b) Direct the department to acquire an existing facility or site for the disposal or treatment of hazardous waste according to the provisions of subsection (2) of this section.

(2) The department may, upon direction of the commission and upon payment of just compensation, acquire and own an existing facility or site for use in the disposal or treatment of hazardous waste. In order to secure such a site, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2), but not ORS 469 375 or 469 525, if it finds that such waiver or modification

(a) Is necessary to make operation of the facility or site economically feasible, and

(b) Will not endanger the public health and safety or the environment. [Formerly 459 635]

**466.180 Department authority to limit disposal or treatment.** (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of certain hazardous waste at a hazardous waste treatment or disposal site if appropriate to protect public health, welfare or

safety or the environment or to prolong the useful life of the hazardous waste disposal site

(2) The department shall monitor the origin and volume of hazardous waste received at a hazardous waste treatment or disposal site and may curtail or reduce the volume of the wastes that may be accepted for disposal as necessary to prolong the useful life of the site [Formerly 459 640]

**466.185 Investigation upon complaint; hearings; orders.** (1) The department shall investigate any complaint made to it by any person that the operation of any generator, air or water transporter or hazardous waste disposal, collection or treatment site is unsafe or that the operation is in violation of the provisions of ORS 466 005 to 466 385 and 466 890 or the rules adopted under ORS 466 005 to 466 385 and 466 890

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

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183 480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review [Formerly 459 650]

**466.190 Investigation upon motion of department; findings and orders.** (1) Whenever the department believes that the operation of any hazardous waste generator, air or water transporter or disposal, collection or treatment site is unsafe, or in violation of ORS 466 005 to 466 385 and 466 890 or not in compliance with rules or orders, the department may, upon its own motion, investigate the operation of the site

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

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

(a) Require changes in operations conducted, practices utilized and operating procedures found to be in violation of ORS 466 005 to 466 385 and 466 890 or the rules adopted thereunder

(b) Require compliance with the provisions of the license

(4) The department shall deliver a certified copy of all orders issued by it under subsection (2) of this section to the respondent or the respondent's duly authorized representative at the address furnished to the department in the license application. The order shall take effect 20 days after the date of its issuance, unless the respondent requests a hearing on the order before the commission before the 20-day period has expired. The request for a hearing shall be submitted in writing and shall include the reasons for requesting the hearing. At the conclusion of the hearing, the commission may affirm, modify or reverse the original order

(5) All hearings before the commission shall be in compliance with applicable provisions of ORS 183 310 to 183 550. Judicial review of all orders entered after hearing or where no hearing is requested shall be in accordance with the applicable provisions of ORS 183 310 to 183 550 for judicial review of contested cases [Formerly 459 660]

**466.195 Monitoring, inspection and surveillance program; licensees' duties.**

The department shall establish and operate a monitoring, inspection and surveillance program over all hazardous waste generators, air or water transporters and disposal, collection and treatment sites or may contract with any qualified public or private agency to do so. Owners and operators of these facilities must allow necessary access to the air or water transportation facility, the site of hazardous waste generation, disposal, storage or treatment and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate [Formerly 459 670]

**466.200 Procedure for emergencies.**

(1) Whenever, in the judgment of the department from the results of monitoring or surveillance of operation of any generator, air or water transporter or hazardous waste disposal, collection or treatment site, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare or safety or to the environment exists from the continued operation of the site, without hearing or prior notice, the

department shall order the operation of the site halted by service of the order on the site superintendent

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, welfare or safety or the environment and may begin proceedings to revoke the license if grounds for revocation exist [Formerly 459 680]

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

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

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

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

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

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

dition to recover the amount specified in the final order of the director

(7) The expenditures covered by this section shall constitute a general lien upon the real and personal property of the person under an obligation to collect, remove or treat the hazardous waste or substance described in subsection (1) of this section

(8) Within seven days after the department begins any cleanup activities under subsections (3) and (4) of this section, the department shall file a notice of potential lien on real property to be charged with a lien under subsection (7) of this section with the recording officer of each county in which the real property is located and shall file a notice of potential lien on personal property to be charged with a lien under subsection (7) of this section with the Secretary of State. The lien shall attach and become enforceable on the day on which the state begins the clean-up projects or activities authorized by subsection (3) of this section if within 120 days after such date, the state files a notice of claim of lien on real property with the recording officer of each county in which the real property charged with the lien is located and files a notice of claim of lien on personal property with the Secretary of State. The notice of lien claim shall contain

(a) A true statement of the demand,

(b) The name of the parties against whom the lien attaches,

(c) A description of the property charged with the lien sufficient for identification, and

(d) A statement of the failure of the person to perform the cleanup or disposal as required

(9) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property [Formerly 459 685]

**466.210 Actions or proceedings to enforce compliance.** Whenever it appears to the department that any person is engaged or about to engage in any acts or practices which constitute a violation of ORS 466 005 to 466 385 and 466 890 or the rules and orders adopted thereunder or of the terms of the license, without prior administrative hearing, the department may institute actions or proceedings for legal or equitable remedies to enforce compliance thereof or to restrain further violations thereof [Formerly 459 690]

**459.215 Post-closure license for disposal site; fee.** (1) At the time a hazardous waste disposal site is closed, the person licensed

under ORS 466 110 to 466 170 to operate the site, must obtain a post-closure license from the department

(2) A post-closure license issued under this section must be maintained until the end of the post-closure period established by the commission by rule

(3) In order to obtain a post-closure license the licensee must provide post-closure care which shall include at least the following

(a) Monitoring and security of the hazardous waste disposal site, and

(b) Any remedial action necessary to protect the environment and the public health, welfare and safety

(4) The commission may by rule establish a post-closure license application fee [Formerly 459 695]

#### (PCB Disposal Facilities)

**466.250 Definition of "PCB disposal facility".** As used in ORS 466 250, 466 255 (2) and (3) and 466 260 to 466 350, "PCB disposal facility" includes a facility for the treatment or disposal of PCB [1985 c 670 §13]

**466.255 Disposal of PCB restricted; license required for PCB disposal facility.**

(1) No new PCB disposal facility shall be constructed on or after January 1, 1985, without first complying with ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350

(2) No person shall treat or dispose of any PCB anywhere in this state except at a PCB disposal facility licensed pursuant to ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350

(3) No person shall establish, construct or operate a PCB disposal facility without a license therefor issued under ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350 [1985 c 670 §§14, 43]

**466.260 Duties of department.** The department shall

(1) Provide for the administration, enforcement and implementation of ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350 and may perform all functions necessary

(a) To regulate the operation and construction of a PCB disposal facility, and

(b) For the licensing of a PCB disposal facility in consultation with the appropriate county governing body or city council

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350 [1985 c 670 §15]

**466.265 Rules for regulation of PCB disposal.** In accordance with applicable provisions of ORS 183 310 to 183 550, the commission shall

(1) Adopt rules and issue orders, including but not limited to establishing minimum requirements for the disposal of PCB, minimum requirements for operation, maintenance, monitoring, reporting and supervision of disposal facilities, and requirements and procedures for selection of such facilities

(2) Adopt rules and issue orders relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 466 505 to 466 530 [1985 c 670 §16]

**466.270 Criteria for rules; study of disposal methods.** (1) In adopting rules under ORS 466 265 regulating the disposal of PCB including, but not limited to, rules for the operation and maintenance of a PCB disposal facility, the commission shall provide for the best practicable disposal of the PCB in a manner that will minimize the possibility of adverse effects on the public health and safety or environment

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under subsection (1) of this section and ORS 466 265 and shall report its findings and recommendations to the commission [1985 c 670 §17]

**466.275 License application for PCB disposal facility.** License applications submitted to the department for managing, operating, constructing, developing or establishing a PCB disposal facility must contain the following

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

(2) A description of the size and type of facility to be constructed, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of

drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at the facility

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

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

(5) A geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the geologist's opinion relating to the potential of contamination of water resources including but not limited to possible sources of such contamination

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect [1985 c 670 §18]

**466.280 Copies of license to be sent to affected state agencies.** Upon receipt of an application for a PCB disposal facility license, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond within the period specified by the department by making a written recommendation as to whether the license application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the license [1985 c 670 §19]

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

(2) The notice shall contain information regarding the approximate location of the facility and the type and amount of PCB intended for disposal at the facility, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed PCB disposal facility shall have opportunity to testify at the hearing [1985 c 670 §20]

**466.290 Public hearing in area of proposed facility required.** The commission shall conduct a public hearing in the county or counties where a proposed PCB disposal facility is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application [1985 c 670 §21]

**466.295 Examination of license applications; recommendation to commission; decision as to issuance; notice to applicant.** (1) At the close of the application period under ORS 466 040, the department shall examine and review all PCB disposal facility license applications submitted to the commission and make such investigations as the department considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183 480 [1985 c 670 §22]

**466.300 Restrictions on commission authority to issue license.** The Environmental Quality Commission may not issue a license under ORS 466 295 for any facility designed to dispose of PCB by incineration unless

(1) The facility is also equipped to incinerate hazardous waste, and

(2) The applicant has received all federal and state licenses required to operate a hazardous waste incinerator [1985 c 670 §23]

**466.305 Investigation of complaints; hearing; order.** (1) The department shall investigate any complaint made to it by any person that the operation of any PCB disposal facility is unsafe or that the operation is in violation of a condition of the operator's license or any provisions of ORS 466.025 to 466 065, 466 250, 466.255 (2) and (3) and 466.260 to 466.340 or the rules adopted under ORS 466 025 to 466 065, 466 250, 466.255 (2) and (3) and 466 260 to 466 350. Upon receiving a complaint, the department shall furnish a copy of the complaint to the person holding the license to operate the PCB disposal facility

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

hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review. [1985 c 670 §24]

**466.310 Monitoring, inspection and surveillance program; access to facility and records.** The department shall establish and operate a monitoring, inspection and surveillance program over all PCB disposal facilities or may contract with any qualified public or private agency other than the owner or licensee to do so. Owners and operators of a PCB disposal facility must allow necessary access to the PCB disposal facility and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1985 c 670 §25]

**466.315 Procedure for emergency.** (1) Whenever, in the judgment of the department, there is reasonable cause to believe that a clear and immediate danger to the public health or safety or to the environment exists from the continued operation of the facility, without hearing or prior notice, the department shall order the operation of the facility halted by service of the order on the facility operator or an agent of the operator.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health or safety or the environment and may begin proceedings to revoke the license if grounds for revocation exist. [1985 c 670 §26]

**466.320 Conveyance to state of real property used as landfill for PCB; conditions for holding license.** (1) As a condition of issuance of a PCB disposal facility license, if PCB waste disposal is to be by landfilling, the licensee must deed to the state the real property in or

upon which the PCB waste will be permanently landfilled. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an amount determined by the department to be sufficient to make the real property self-supporting and self-liquidating.

(2) In addition to the requirement under subsection (1) of this section, each PCB disposal facility licensee under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved and the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

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

(c) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to compensate for damage to the public health and safety and environment.

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

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

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the facility and monitoring it or providing for its security after closure, to secure performance of license requirements and to provide for any remedial action by the state necessary to protect the public health and safety and the environment following facility closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(g) Report periodically to the department on the volume and types of PCB received at the facility, their manner of disposition and the fees collected therefor.

(h) Maintain other plans and exhibits pertaining to the facility and its operation as deter-

mined by the department to be reasonably necessary to protect the public health or safety or the environment

(i) Grant the commission the first opportunity to purchase the PCB disposal facility if the licensee offers the facility for sale

(j) Maintain records of any PCB identified under provisions of ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350 which is stored, treated or disposed of at the facility and the manner in which the PCB was stored, treated, transported or disposed of. The records shall be retained for the period of time determined by the commission

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

(L) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste [1985 c 670 §27]

**466.325 Annual fee.** An annual fee may be required of every PCB disposal facility licensee under ORS 466 025 to 466 065, 466 250, 466 255 (2) and (3) and 466 260 to 466 350. The fee shall be in an amount determined by the commission to be adequate to carry on the monitoring, inspection and surveillance program established under ORS 466 310 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466 310 [1985 c 670 §28]

**466.330 Acquisition by state of real property for disposal of PCB.** The commission may acquire real property for the disposal of PCB by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35 [1985 c 670 §29]

**466.335 Consequences of revocation of license.** (1) If the commission revokes a PCB disposal facility license under ORS 466.170, the commission may

(a) Close the existing PCB disposal site or facility, or

(b) Direct the department to acquire an existing facility or site for the disposal or treatment of PCB according to the provisions of subsection (2) of this section

(2) The department may, upon direction from the commission and after payment of just compensation, acquire and own an existing facility for use in the disposal of PCB. In order to

secure such a facility, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2), but not ORS 469 375 or 469.525, if the commission finds that waiver or modification

(a) Is necessary to make operation of the facility economically feasible, and

(b) Will not endanger the public health and safety or the environment. [1985 c 670 §30]

**466.340 Restrictions on treatment or disposal of PCB at facility.** (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of PCB at a disposal facility if appropriate to protect public health and safety or the environment

(2) The department shall monitor the origin and volume of PCB received at a disposal facility acquired and regulated under ORS 466 335, and may curtail or reduce the volume of the PCB that may be accepted for disposal as necessary to

(a) Protect public health and safety or the environment; or

(b) Assure that the operation of the facility is economically feasible

(3) The department shall not accept any PCB at a disposal facility owned by the state from a state that is not a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469 930 [1985 c 670 §31]

**466.345 PCB facility license fee.** (1) The PCB disposal facility license shall require a fee based either on the volume of PCB accepted at the facility or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the facility use period a sum sufficient to

(a) Secure performance of license requirements,

(b) Close the facility,

(c) Provide for any monitoring or security of the facility after closure, and

(d) Provide for any remedial action by the state necessary after closure to protect the public health and safety and the environment

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the financial assurance required under ORS 466 320 (2), the licensee shall be allowed to withdraw the financial assurance.

(3) If the facility is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn [1985 c 670 §32]

**466.350 Post-closure license; fee.** (1) At the time a PCB disposal facility is closed, the person licensed under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 to operate the facility must obtain a post-closure license from the department

(2) A post-closure license issued under this section must be maintained until the end of the post-closure period established by the commission by rule

(3) In order to obtain a post-closure license the licensee must provide post-closure care which shall include at least the following

(a) Monitoring and security of the PCB disposal facility, and

(b) Any remedial action necessary to protect the public health and safety and environment

(4) The commission may by rule establish a post-closure license application fee [1985 c 670 §33]

### NOTICE OF ENVIRONMENTAL HAZARDS

**466.360 Policy.** (1) The Legislative Assembly finds that

(a) Disposal sites exist on certain lots or parcels of real property within Oregon that may restrict future land development or constitute a potential hazard to the health, safety and welfare of Oregon's citizens, particularly if present or future owners use or modify the parcels without taking into consideration the use restrictions or environmental hazards posed by the former disposal activity

(b) Permits, licenses and approvals that have been or may be granted by the Environmental Quality Commission, the Department of Environmental Quality or the Energy Facility Siting Council authorizing disposal of waste upon real property protect the health, safety and welfare of Oregon citizens only if adequate notice of post-closure use restrictions is given to future purchasers of the real property

(c) Disposal sites created prior to regulation may be potentially hazardous if use restrictions are not imposed

(d) Proper precautions and maintenance cannot be taken and continued unless the location of the disposal site, the nature and extent of its potential hazard and use restrictions are known

to cities and counties and those who own and occupy the property

(2) It is hereby declared to be the public policy of this state to give notice to local governments of potential hazardous disposal sites and to impose use restrictions on those sites [1985 c 273 §2]

**466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly.** (1) The commission may establish by rule adopted under ORS 183.310 to 183.550.

(a) A list of sites for which environmental hazard notices must be given and use restrictions must be imposed. The list shall be consistent with the policy set forth in ORS 466.360 and may include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens

(A) A land disposal site as defined by ORS 459.005,

(B) A hazardous waste disposal site as defined by ORS 466.005, and

(C) A disposal site containing radioactive waste as defined by ORS 469.300 (17)

(b) The form and content of use restrictions to be imposed on the sites, which shall require at least that post-closure use of the site not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the facility's monitoring systems, unless the department finds that the disturbance

(A) Will not increase the potential hazard to human health or the environment, or

(B) Is necessary to reduce a threat to human health or the environment

(c) The form and content of the environmental hazard notices to be filed with cities and counties

(d) The circumstances allowing and procedures for removal or amendment of environmental hazard notices and use restrictions provided by the department

(e) Any other provisions the commission considers necessary for the department to accomplish the purpose of ORS 466.360 to 466.385.

(2) Spills and releases cleaned up pursuant to ORS 466.205 and 468.795 shall not be listed as sites to be regulated under subsection (1) of this section

(3) Before hearings on and adoption of rules under subsection (1) of this section, the department shall notify each person who owns a disposal site of the rulemaking proceedings

(4) The department shall report to each Legislative Assembly on any sites for which environmental hazard notices and use restrictions have been amended or removed as provided by rule adopted under paragraph (d) of subsection (1) of this section

(5) The commission shall not list a site, spill or release under subsection (1) of this section, if the commission finds that within 90 days of receipt of notice under subsection (3) of this section, the owner cleaned up the site, spill or release so it is no longer a potential hazard to the health, safety and welfare of Oregon's citizens [1985 c 273 §3]

**466.370 Notice to owner; hearing; filing of notice if no objection.** (1) The department shall notify by certified mail any person who owns a lot or parcel upon which a disposal site listed under ORS 466 365 exists. The notice shall

(a) Describe the disposal site and potentially hazardous environmental conditions,

(b) Describe the use restrictions that will be imposed,

(c) Explain that an environmental hazard notice will be sent to the appropriate city or county under ORS 466 375, and

(d) Advise the person of the procedure for requesting a hearing under subsection (2) of this section

(2) If any person receiving notice under subsection (1) of this section objects to the use restrictions, the person may request a hearing before the commission. The request shall be in writing and must be submitted to the department within 20 days after the person receives the notice under subsection (1) of this section. The hearing shall be conducted according to the provisions for a contested case hearing in ORS 183 413 to 183 497

(3) If no hearing is requested within 20 days after receipt of the notice, the department shall file the environmental hazard notice with the appropriate city or county. [1985 c 273 §4]

**466.375 Filing of notice; content of notice.** The department shall file an environmental hazard notice with the city or county in which a site listed under ORS 466 365 (1) is located. The notice shall contain the following information.

(1) A description of the lot or parcel upon which the disposal site is located,

(2) The restrictions that apply to post-closure use of the property; and

(3) Information regarding the potential environment hazards posed by the disposal site to assist the city or county in complying with ORS 466 385 [1985 c 273 §5]

**466.380 Interagency agreement for notices for radioactive waste disposal sites.**

The Department of Environmental Quality and the Department of Energy shall enter into an interagency agreement providing for the implementation of the provisions of ORS 466 360 to 466 385 relating to radioactive waste disposal sites [1985 c 273 §6]

**466.385 Amendment of comprehensive plan and land use regulations; model language; appeal of land use decision related to site requiring notice.** (1) By the first periodic review under ORS 197 640 after development of model language under subsection (2) of this section, the governing body of a city or county shall amend its comprehensive plan and land use regulations as provided in ORS 197 610 to 197 640 to establish and implement policies regarding potentially hazardous environmental conditions on sites listed under ORS 466 365. The land use regulations shall provide that

(a) The city or county shall not approve any proposed use of a disposal site for which the city or county has received notice under ORS 466 370 until the Department of Environmental Quality has been notified and provided the city or county with comments on the proposed use, and

(b) Within 120 days of receipt of an environmental hazard notice from the Department of Environmental Quality, the city or county shall amend its zoning maps to identify the disposal site

(2) The Department of Environmental Quality and the Department of Land Conservation and Development shall

(a) Develop model language for comprehensive plans and land use regulations for use by cities and counties in complying with this section, and

(b) Provide technical assistance to cities and counties in complying with ORS 466 360 to 466 385

(3) The Department of Environmental Quality may appeal to the Land Use Board of Appeals any final land use decision made by a city or county regarding any proposed use of a disposal site that has been identified under its comprehensive plan and land use regulations pursuant to this section [1985 c 273 §7]

### USE OF PCB

**466.505 Definitions for ORS 466.505 to 466.530.** As used in ORS 466 505 to 466.530

(1) "PCB" means the class of chlorinated biphenyl, terphenyl, higher polyphenyl, or mixtures of these compounds, produced by replacing two or more hydrogen atoms on the biphenyl, terphenyl, or higher polyphenyl molecule with chlorine atoms "PCB" does not include chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds, that have functional groups attached other than chlorine unless that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures thereof of these compounds, is determined to be dangerous to the public health under ORS 466 525

(2) "Ppm" means parts per million [Formerly 468 900]

**466.510 Sale of items containing concentrations of PCB prohibited; exceptions.**

(1) Except as provided in ORS 466 515, beginning January 1, 1980, a person shall not sell, manufacture for sale, or use in this state an item, product or material if the item, product or material contains a concentration of PCB equal to or greater than 100 ppm

(2) The commission by rule may prescribe a lower maximum concentration of PCB for specific items, products or materials if it finds the 100 ppm concentration specified in subsection (1) of this section to be inadequate to protect the public health from the toxic dangers of the PCB contained in that item, product or material. However, an item, product or material for which a lower maximum concentration of PCB is prescribed by federal law, rule or regulation shall not be allowed a concentration of PCB higher than that federal maximum [Formerly 468 903]

**466.515 Electric transformers or capacitors exempted.** Notwithstanding ORS 466 510

(1) PCB or an item, product or material containing PCB may be sold for use or used in this state if it is used in a closed system as a dielectric fluid for an electric transformer or capacitor pursuant to rules of the commission to insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or

used in this state pursuant to an exemption certificate issued by the department under ORS 466 520 [Formerly 468 906]

**466.520 Exemption certificates; applications; conditions.** (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466 515

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having

(a) Exposed the item, product or material to concentrations of PCB

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought [Formerly 468 909]

**466.525 Additional PCB compounds may be prohibited.** The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health [Formerly 468 912]

**466.530 Prohibited disposal of waste containing PCB.** After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of

PCB except in conformity with rules of the commission adopted pursuant to ORS 466 005 to 466 385 and 466 890 [Formerly 468 921]

### **SPILL RESPONSE AND CLEANUP OF HAZARDOUS MATERIALS**

**466.605 Definitions for ORS 466.605 to 466.690.** As used in ORS 466 605 to 466 690, 466 880 (3) and (4) and 466 995 (3)

(1) "Barrel" means 42 U S gallons at 60 degrees Fahrenheit

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material, site restoration, and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the department

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 466 205, 466 605 to 466 690, 466 880 (3) and (4) and 466 995 (3) or 468 800

(4) "Commission" means the Environmental Quality Commission

(5) "Department" means the Department of Environmental Quality

(6) "Director" means the Director of the Department of Environmental Quality

(7) "Hazardous material" means one of the following

(a) A material designated by the commission under ORS 466.630

(b) Hazardous waste as defined in ORS 466 005

(c) Radioactive waste and material as defined in ORS 469 300 and 469 530 and radioactive substances as defined in ORS 453 005

(d) Communicable disease agents as regulated by the Health Division under ORS chapters 431 and 433

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P L 92-500, as amended

(8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any

agency or commission thereof and the Federal Government and any agency thereof

(10) "Remedial action" means a permanent action taken to prevent or minimize the future spill or release of oil or hazardous material to prevent the oil or hazardous material from migrating and causing substantial danger to present or future public health, safety, welfare or the environment "Remedial action" includes but is not limited to

(a) Actions taken at the location of the spill or release such as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of spilled or released oil or hazardous materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure protection of the public health, safety, welfare or the environment

(b) Offsite transport of oil or hazardous material

(c) The storage, treatment, destruction or secure disposal offsite of oil or hazardous material under ORS 466 655

(11) "Reportable quantity" means one of the following

(a) A quantity designated by the commission under ORS 466.625

(b) The lesser of

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P L 92-500, as amended,

(B) The quantity designated for hazardous waste under ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2),

(C) Any quantity of radioactive material, radioactive substance or radioactive waste,

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines, or

(E) If spilled on land, any quantity of oil over one barrel

(c) Ten pounds unless otherwise designated by the commission under ORS 466 625

(12) "Respond" or "response" means

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material,

(b) First aid, rescue or medical services, and fire suppression, or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken

(13) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468 700, except as authorized by a permit issued under ORS chapter 454, 459, 468 or 469, ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2) or federal law or while being stored or used for its intended purpose

(14) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state [1985 c 733 §1]

**466.610 Department authority relating to cleanup of oil or hazardous material.**

Subject to policy direction by the commission, the department may

(1) Conduct and prepare independently or in cooperation with others, studies, investigations, research and programs pertaining to the containment, collection, removal or cleanup of oil and hazardous material

(2) Advise, consult, participate and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to responses, remedial actions or cleanup of oil and hazardous material and financing of cleanup costs, including radioactive waste, materials and substances otherwise subject to ORS chapters 453 and 469

(3) Employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts with public and private parties necessary to carry out the provisions of ORS 466 605 to 466 690, 466 880 (3) and (4) and 466 995 (3)

(4) Conduct and supervise educational programs about oil and hazardous material, including the preparation and distribution of information regarding the containment, collection, removal or cleanup of oil and hazardous material

(5) Provide advisory technical consultation and services to units of local government and to state agencies

(6) Develop and conduct demonstration programs in cooperation with units of local government

(7) Perform all other acts necessary to carry out the duties, powers and responsibilities of the department under ORS 466 605 to 466 690, 466 880 (3) and (4) and 466 995 (3) [1985 c 733 §2]

**466.615 Limit on commission and department authority over radioactive substances.** Nothing in ORS 466 605 to 466.690, 466 880 (3) and (4) and 466 995 (3) is intended to grant the Environmental Quality Commission or the Department of Environmental Quality authority over any radioactive substance regulated by the Health Division under ORS chapter 453, or any radioactive material or waste regulated by the Department of Energy or Energy Facility Siting Council under ORS chapter 469 [1985 c 733 §3]

**466.620 Emergency response plan; training programs.** (1) In accordance with the applicable provisions of ORS 183 310 to 183 550, the Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan consistent with the plan adopted by the Interagency Hazard Communications Council pursuant to the provisions of ORS 453 317 (1) to (6), 453 510, 453 825 and 453 835, and after consultation with the Interagency Hazard Communications Council, the Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization

(2) The master plan adopted under subsection (1) of this section shall include but need not be limited to provisions for ongoing training programs for local government and state agency employees involved in response to spills or releases of oil and hazardous material. The department may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach the maximum number of employees, avoid unnecessary duplication and conserve limited training funds [1985 c 733 §4]

**466.625 Rulemaking.** In accordance with applicable provisions of ORS 183 310 to 183 550, the commission may adopt rules including but not limited to

(1) Provisions to establish that quantity of oil or hazardous material spilled or released which

shall be reported under ORS 466 635 The commission may determine that one single quantity shall be the reportable quantity for any oil or hazardous material, regardless of the medium into which the oil or hazardous material is spilled or released

(2) Establishing procedures for the issuance, modification and termination of permits, orders, collection of recoverable costs and filing of notifications

(3) Any other provision consistent with the provisions of ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070 that the commission considers necessary to carry out ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070 [1985 c 733 §5]

**466.630 Commission designation of substance as hazardous material.** (1) By rule, the commission may designate as a hazardous material any element, compound, mixture, solution or substance which when spilled or released into the air or into or on any land or waters of the state may present a substantial danger to the public health, safety, welfare or the environment

(2) Before designating a substance as hazardous material, the commission must find that the hazardous material, because of its quantity, concentration or physical or chemical characteristics may pose a present or future hazard to human health, safety, welfare or the environment when spilled or released [1985 c 733 §6]

**466.635 Report of spill or release of reportable quantity of hazardous material.**

Any person owning or having control over any oil or hazardous material who has knowledge of a spill or release shall immediately notify the Emergency Management Division as soon as that person knows the spill or release is a reportable quantity [1985 c 733 §7]

**466.640 Strict liability for spill or release; exceptions.** Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by

(1) An act of war or sabotage or an act of God

(2) Negligence on the part of the United States Government or the State of Oregon

(3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent [1985 c 733 §8]

**466.645 Cleanup; failure to complete cleanup.** (1) Any person liable for a spill or release or threatened spill or release under ORS 466 640 shall immediately clean up the spill or release under the direction of the department The department may require the responsible person to undertake such investigations, monitoring, surveys, testing and other information gathering as the department considers necessary or appropriate to

(a) Identify the existence and extent of the spill or release,

(b) Identify the source and nature of oil or hazardous material involved, and

(c) Evaluate the extent of danger to the public health, safety, welfare or the environment

(2) If any person liable under ORS 466 640 does not immediately commence and promptly and adequately complete the cleanup, the department may clean up, or contract for the cleanup of the spill or release or the threatened spill or release

(3) Whenever the department is authorized to act under subsection (2) of this section, the department directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the spill or release, the source and nature of oil or hazardous material involved and the extent of danger to the public health, safety, welfare or the environment In addition, the department directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations it may deem appropriate to plan and direct clean up actions, to recover the costs thereof and legal costs and to enforce the provisions of ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070 [1985 c 733 §9]

**466.650 Variance for remedial actions.**

(1) If the commission finds that a proposed remedial action cannot meet any of the requirements of ORS chapter 459 or 468, ORS 466 005 to 466 385, 466 880 (1) and (2), 466 890 and 466 995 (1) and (2) or any rule adopted under ORS chapter 459 or 468 or ORS 466 005 to 466 385, 466 880 (1) and (2), 466.890 and 466 995 (1) and (2) or the commission may issue a variance

(2) The commission may issue a variance under subsection (1) of this section if

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

(b) Strict compliance would result in substantial delay or preventing a remedial action from being undertaken, or

(c) The public health, safety, welfare and the environment would be protected [1985 c 733 §10]

**466.655 Alternative, treatment of off-site oil or hazardous material in lieu of other remedial action.** The director may allow a person to store, treat, destroy or dispose of offsite oil or hazardous material in lieu of other remedial action if the director determines that

(1) Such actions are more cost effective than other remedial actions, or

(2) Are necessary to protect the public health, safety, welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of oil or hazardous material [1985 c 733 §11]

**466.660 Required information relating to oil or hazardous material; departmental access to records; inspection.** (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070, or enforcing the provisions of ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the department

(a) Furnish information relating to the oil or hazardous material, and

(b) Permit the department at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material

(2) In order to carry out subsection (1) of this section, the department may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present [1985 c 733 §12]

**466.665 Local access to records and information; inspection.** (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of any

authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency [1985 c 733 §13]

**466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund.** (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed \$2 5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466 675 [1985 c 733 §14]

**466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund.** Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes

(1) Training local government employes involved in response to spills or releases of oil and hazardous material

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material

(3) Funding actions and activities authorized by ORS 466 645, 466 205, 468 800 and 468 805

(4) Providing for the general administration of ORS 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 401 025, 466 605 to 466 690, 466 880 (3) and (4), 466 995 (3) and 468 070 [1985 c 733 §15]

**466.680 Responsibility for expenses of cleanup; record; damages; order; appeal.**

(1) If a person required to clean up oil or hazardous material under ORS 466 645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466 645

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466 645, including charges for services performed and the state's equipment and materials utilized

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466 645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183 310 to 183 550

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director [1985 c 733 §16]

**466.685 Monthly fee; suspension of fees; notice of suspension or resumption of fees.** (1) Except as provided by subsection (2) of this section, beginning on January 1, 1986, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under

ORS 466 005 to 466 385 and 466 890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of \$10 per dry-weight ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. Fees under this section shall be calculated in the same manner as provided in section 231 of the federal Comprehensive Environmental Response, Compensation and Liability Act, P L 96-510, as amended

(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund established in ORS 466 690 reaches \$500,000 minus any moneys approved for obligation under ORS 466 690 (3), payment of fees under subsection (1) of this section shall be suspended. Payment of fees shall resume upon approval of funds by the Legislative Assembly or the Emergency Board to the department sufficient to decrease the balance in the fund to \$150,000 or lower

(3) If payment of fees is to be suspended or resumed under subsection (2) of this section, the department shall give reasonable notice of the suspension or resumption to every person obligated to pay a fee under subsection (1) of this section [1985 c 733 §19]

**466.690 Comprehensive Environmental Response, Compensation and Liability Act Matching Fund.** (1) The Comprehensive Environmental Response, Compensation and Liability Act Matching Fund is established separate and distinct from the General Fund in the State Treasury. All fees received by the Department of Environmental Quality under ORS 466 685 shall be paid into the State Treasury and credited to the fund

(2) The State Treasurer may invest and reinvest moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund in the manner provided by law

(3) The moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund are appropriated continuously to the department to be used as provided in subsection (4) of this section and for providing the required state match for planned remedial actions financed by the federal Comprehensive Environmental Response, Compensation and Liability Act, P L 96-510, as amended, subject to site by site approval by the Legislative Assembly or the Emergency Board

(4) Up to 15 percent of the moneys appropriated under subsection (3) of this section may be used for investigating and monitoring potential

and existing sites which are or could be subject to remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, P L 96-510, as amended [1985 c 733 §20]

### CIVIL PENALTIES

**466.880 Civil penalties.** (1) In addition to any other penalty provided by law, any person who violates ORS 466 005 to 466 385 and 466 890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466 005, shall incur a civil penalty not to exceed \$10,000 for each day of the violation

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448 305, 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745 and ORS chapter 468

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466 605 to 466 690, or any rule or order entered or adopted under ORS 466 605 to 466 690, may incur a civil penalty not to exceed \$10,000 Each day of violation shall be considered a separate offense

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468 090 to 468 125, except that a penalty collected under this section shall be deposited to the fund established in ORS 466 670 [Formerly 459 995, (3) and (4) enacted by 1985 c 733 §17]

**466.890 Penalties for damage to wildlife resulting from contamination of food or water supply.** (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state

(2) The penalties referred to in subsection (1) of this section shall be as follows

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400

(b) Each mountain sheep or mountain goat, \$3,500

(c) Each elk, \$750

(d) Each silver gray squirrel, \$10

(e) Each game bird other than wild turkey, \$10

(f) Each wild turkey, \$50

(g) Each game fish other than salmon or steelhead trout, \$5

(h) Each salmon or steelhead trout, \$125

(i) Each fur-bearing mammal other than bobcat or fisher, \$50

(j) Each bobcat or fisher, \$350

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$25

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law [1985 c 685 §2]

### CRIMINAL PENALTIES

**466.995 Criminal penalties.** (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS 459 005 to 459 105, 459 205 to 459 245, 459 255 to 459 285, 466 005 to 466 385 or 466 890

(2) Violation of ORS 466 005 to 466 385 or 466 890 or of any rule or order entered or adopted under those sections is punishable, upon conviction, by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than one year, or by both Each day of violation shall be deemed a separate offense

(3) Violation of a provision of ORS 401 025, 466 605 to 466 690 and 468 070 or of any rule or order entered or adopted under ORS 401 025, 466 605 to 466 690 and 468 070 is punishable, upon conviction, by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than one year or both Each day of violation shall be considered a separate offense [Formerly 459 992, (3) enacted by 1985 c 733 §18]