

# Chapter 466

## 1987 REPLACEMENT PART

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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) "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste "Facility" may consist of one or more treatment, storage or disposal operational units

(6) "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

(7) "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 defoliants, 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 purposes 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

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

(9) "Hazardous waste storage site" means the geographical site upon which hazardous waste is stored

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

(11) "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

(12) "PCB" has the meaning given that term in ORS 466 505

(13) "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

(14) "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

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

(16) "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, amenable for recovery, amenable for storage, or reduced in volume [Formerly 459 410, 1987 c 540 §4]

**466.010 Purpose.** (1)(a) The Legislative Assembly finds that 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

(b) 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

(2) The Legislative Assembly further finds and declares that in the interest of public health and safety and to protect the environment, it is the policy of the State of Oregon to give priority in managing hazardous waste in Oregon to methods that reduce the quantity and toxicity of hazardous waste generated before using methods that reuse hazardous waste, recycle hazardous waste that cannot be reused, treat hazardous waste or dispose of hazardous waste by landfilling [1985 c 670 §3 1987 c 540 §4a]

#### (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, storage and disposal sites, and

(c) For the permitting of hazardous waste treatment, storage 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 waste those substances described in ORS 466 005 (7) 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, 1987 c 540 §5]

**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, storage 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 permits issued under ORS 466 005 to 466 385 and 466 890

(3) Adopt rules and issue orders thereon to classify as hazardous waste those residues defined in ORS 466 005 (7)(b)

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazardous waste concerning type, amount and disposition of such hazardous waste and waste minimization activities 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

(6) Adopt rules and issue orders relating to the production, marketing, distribution, transportation and burning of fuels containing or derived from hazardous waste

(7) Adopt rules and issue orders relating to corrective action, including corrective action within the facility or beyond the facility boundary if necessary to protect public health or the environment, for all releases of hazardous waste or constituents of hazardous waste occurring from locations within the facility or originating within the facility and releasing beyond the facility boundary, from any hazardous waste treatment, storage or disposal facility, regardless of the time the hazardous waste was placed in the facility

(8) Adopt rules and issue orders relating to the restriction or prohibition of nonhazardous liquid waste in a hazardous waste disposal site [Formerly 459 440 1987 c 540 §6]

**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 hazardous 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 permit.** 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 permit according to the provisions of ORS 466 260 to 466 285 or a hazardous waste disposal facility permit under ORS 466 005 to 466 385 and 466 890 [1985 c 670 §10, 1987 c 540 §16]

**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 or a hazardous waste storage 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 permit

(3) If the application is for a new permit to operate a new hazardous waste or PCB treatment or disposal facility or a new hazardous waste storage 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 issuing a permit for the treatment, storage 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 permit, 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 permit for a treatment, storage or disposal facility [1985 c 670 §11, 1987 c 540 §17]

#### **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 permit 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 a treatment or disposal facility currently permitted under ORS 466 005 to 466 385, or

(B) The type of technology employed at a treatment or disposal facility currently permitted under ORS 466 005 to 466 385

(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 1987 c 540 §18]

#### **466.060 Criteria to be met by owner and operator before issuance of permit**

Before issuing a permit for a facility designed to treat or dispose of hazardous waste or PCB, the permit 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 permittee by the commission [1985 c 670 §7, 1987 c 540 §19]

**466.065 Applicant for renewal to comply with ORS 466.055.** As a condition to the issuance of a renewal permit 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, 1987 c 540 §20]

### (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, the disposition of such waste and waste minimization activities,

(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,

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

(f) Comply with specific waste management standards, and

(g) Minimize the amount or toxicity of hazardous waste generated

(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 storage site permit. 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 permit for the treatment of hazardous waste on the premises of a generator. Such a special permit 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, 1987 c 540 §7]

**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 Commission 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 [Formerly 459 455, repealed by 1987 c 540 §53 (466 086 enacted in lieu of 466 085)]

**466.086 Gaining federal authorization.**

(1) 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 the Hazardous and Solid Waste Amendments of 1984, P L 98-616 as amended, and federal regulations and interpretive and guidance documents issued pursuant to the Federal Resource Conservation and Recovery Act

(2) 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 [1987 c 540 §54 (enacted in lieu of 466 085)]

**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 and the federal Agency for Toxic Substances and Disease Registry, 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 and the Agency for Toxic Substances and Disease Registry for the requested records, reports or information The federal agencies 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, 1987 c 540 §8]

**466.095 Hazardous waste to be stored, disposed of or treated at permitted 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 permitted hazardous waste treatment, storage or disposal site,

(b) Establish, construct or operate a hazardous waste storage site in this state without obtaining a hazardous waste storage site permit 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 permit issued under ORS 466 005 to 466 385 and 466 890

(2) The commission may exempt certain classes of hazardous waste storage or treatment sites from part or all of the permitting 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 storage 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 [Formerly 459 505, 1987 c 540 §9]

**466.100 Disposal of waste restricted; permit 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 permitted pursuant to ORS 466 110 to 466 170

(2) No person shall establish, construct or operate a disposal site without a permit 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 1987 c 540 §21]

**466.105 Duties of permittee.** Each hazardous waste storage or treatment site permittee shall be required to do the following as a condition to holding the permit

(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, their manner of disposition and waste minimization activities for any hazardous waste generated on the premises

(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 permittee 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 and take other actions 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, including corrective actions, and monitoring it or

providing for its security after closure and to secure performance of all permit requirements The financial assurance shall remain available for the duration of the permit and until the site is closed, except to the extent it is released or modified by the department

(10) Provide corrective action, including corrective action within the facility or beyond the facility boundary when determined by the department to be necessary to protect public health, welfare, safety or the environment, for all releases of hazardous wastes or constituents of hazardous waste, occurring from locations within the facility or originating within the facility and releasing beyond the facility boundary, regardless of the time the hazardous waste was placed at the facility The department shall provide to the permittee a written directive for the necessary corrective action [Formerly 459 517 1987 c 540 §10]

**466.107 Action under ORS 466.105 against guarantor.** (1) If a permittee is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required under ORS 466 105 (5) and (9) may be asserted directly against the guarantor providing the evidence of financial responsibility In an action under this section, the guarantor shall be entitled to all rights and defenses that would have been available to the permittee if the action had been brought against the permittee and that would have been available to the guarantor if the action had been brought against the guarantor by the permittee

(2) The total liability of any guarantor shall be limited to the aggregate amount the guarantor has provided as evidence of financial responsibility to the permittee under ORS 466 105 (5) or (9) Nothing in this section shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to a permittee including, but not limited to, the liability of a guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim

(3) As used in this section, "guarantor" means any person other than the permittee, who provides evidence of financial responsibility for a permittee under ORS 466 105 (5) or (9) [1987 c 540 §3]

**466.110 Application; form.** (1) The department shall furnish an application form to

anyone who wishes to operate a hazardous waste storage 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 storage 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 1987 c 540 §22]

**466.115 Required application information.** Permit 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 specifications for the construction and development of the site and the waste treatment and water supply facilities, if any, to be used at such site

(4) The exact location and place where the applicant proposes to operate and maintain the 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, 1987 c 540 §23]

**466.120 Required application information to operate site.** Applications for a permit

to operate a hazardous waste storage or treatment site shall include at a minimum

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

(2) Estimates with respect to compositions, quantities and concentrations of any hazardous waste 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, 1987 c 540 §24]

**466.125 Notice of hearings on applications.** (1) Prior to holding hearings on a hazardous waste disposal site permit 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 permit 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 1987 c 540 §25]

**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; effect.** Upon receipt of an application for a hazardous waste disposal site permit, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commission, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the permit application should be granted. If the Health Division recommends against granting the permit, the commission must refuse to issue the permit. Recommendation from other agencies shall be considered as evidence in determining whether to grant the permit. [Formerly 459 570, 1987 c 540 §26]

**466.140 Review of applications; issuance.** (1) The department shall examine and review all hazardous waste disposal site permit 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 permit.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the permit. 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, 1987 c 540 §27]

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

(2) After reviewing and investigating the application, the department shall decide whether or not to issue the permit. 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, 1987 c 540 §28]

**466.150 Permit requirements.** Each hazardous waste disposal site permittee under ORS 466 005 to 466 385 and 466 890 shall be required to do the following as a condition to holding the permit:

(1) 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:

(2) 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.

(3) 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.

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

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

(6) 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, including corrective actions, and monitoring it or providing for its security after closure, to secure performance of permit requirements 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 permit and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(7) Report periodically on the volume of material received at the site, the fees collected therefor and waste minimization activities for any hazardous waste generated on the premises.

(8) Maintain other plans and exhibits and take other actions 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. [Formerly 459 590, 1987 c 284 §1, 1987 c 540 §11]

**Note.** Section 5, chapter 284, Oregon Laws 1987, and section 55, chapter 540, Oregon Laws 1987, both provide:

**Sec 5.** The requirements of ORS chapters 92 and 197 and other state and local laws for the sale or deeding of land do not apply to:

(1) Any portion of a hazardous waste disposal site deeded to the state as a condition of issuance of a hazardous waste disposal site license under ORS 466 150 (1) (1985 Replacement Part) that the state deeds back to the licensee.

(2) Any real property deeded to the state as a condition of issuance of a PCB disposal facility license under ORS 466 320 (1) (1985 Replacement Part) that the state deeds back to the licensee. [1987 c 284 §5, 1987 c 540 §55]

**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 permit fees; disposition; withdrawal by permittee** (1) The hazardous waste treatment, storage or disposal site permit 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 permit 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 permittee together with the earnings thereon equals the amount of the financial assurance required under ORS 466 150 (6), the permittee 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 1987 c 284 §3, 1987 c 540 §12]

**466.165 Annual fees; use.** An annual fee may be required of every generator, air or water transporter and permittee 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 1987 c 540 §29]

**466.170 Revocation of permits; judicial review.** The commission may revoke any permit issued under ORS 466 005 to 466 385 and 466 890 after public hearing upon a finding that the permittee 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

permit, subject to review under ORS 183 310 to 183 550 [Formerly 459 620 1987 c 540 §30]

**466.175 Disposition of site or facility after revocation; acquisition of site by department** (1) If the commission revokes a permit 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, storage 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, storage 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 1987 c 540 §31]

**466.180 Department authority to limit disposal or treatment.** (1) The department may limit, prohibit or otherwise restrict the storage, treatment or disposal of any hazardous waste if appropriate to protect public health, welfare or safety or the environment or to prolong the useful life of a 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.

(3) The department may restrict or prohibit the disposal of nonhazardous liquid waste in a hazardous waste disposal site [Formerly 459 640 1987 c 540 §13]

**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, storage 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 1987 c 540 §32]

**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, storage 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 permit.

(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 permit 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 1987 c 540 §33]

**466.195 Monitoring and surveillance program; inspection.** (1) The department shall establish and operate a monitoring, inspection and surveillance program over all hazardous waste generators, air or water transporters and disposal, storage and treatment sites or may contract with any qualified public or private agency to do so.

(2) Any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous waste, shall upon request of any officer, employee or representative of the department, furnish information relating to such waste and permit such person at all reasonable times to have access to and to copy all records relating to such waste.

(3) For the purposes of enforcing the provisions of ORS 466 005 to 466 385, any officer, employee or representative of the department may

(a) Enter at reasonable times any establishment or other place where hazardous waste is or has been generated, stored, treated, disposed of or transported from, and

(b) Inspect and obtain samples from any person of any such waste and samples of any containers or labeling for such waste [Formerly 459 670, 1987 c 540 §14]

**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, storage 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 permit if grounds for revocation exist [Formerly 459 680, 1987 c 540 §34]

**466.205 Liability for improper disposal of waste; costs, lien for department expenditures.** (1) Any person owning a facility which generates, treats, stores or disposes of and 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 jurisdiction to recover the amount specified in the final order of the director

(7) All expenditures covered by this section and all penalties and damages for which a person is liable to the state under this chapter shall constitute a lien upon any real and personal property owned by such person

(8) The department shall file a claim of 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 claim of 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 date of such filing. The lien claim shall contain

(a) A statement of the demand,

(b) The name of the person against whose property 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, compliance and corrective action and pay penalties and damages as required

(9) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens

(10) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under the provisions of this chapter [Formerly 459 685 1987 c 540 §15]

**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 permit, without prior administrative hearing, the department may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof [Formerly 459 690 1987 c 540 §35]

**466.215 Post-closure permit for disposal site, fee.** (1) At the time a hazardous waste disposal site is closed, the person permitted under ORS 466 110 to 466 170 to operate the site, must obtain a post-closure permit from the department

(2) A post-closure permit 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 permit the permittee 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 permit application fee [Formerly 479 695 1987 c 540 §36]

**466.225 Monitoring site; access** (1) If the department determines that the presence of hazardous waste at a facility or site at which hazardous waste is or has been stored, treated or disposed of, or that the release of hazardous waste from a hazardous waste storage, treatment or disposal facility or site may present a substantial hazard to human health or the environment, the department may order the owner or operator of the facility or site to conduct any monitoring, testing, analysis and reporting as the department considers necessary to determine the nature and extent of the hazard

(2) If a facility or site is not in operation at the time a determination is made under subsection (1) of this section and the department finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the department may order the most recent previous owner or operator of the facility or site, who could most reasonably be expected to have such actual knowledge, to carry out the actions required in subsection (1) of this section

(3) Within 30 days after the department issues an order under subsection (1) or (2) of this section, the person to whom the order is issued shall submit to the department a proposal for carrying out the required monitoring, testing, analysis and reporting. The department may require the person to carry out the monitoring, testing, analysis and reporting described in the proposal and in any modifications to the proposal that the department considers necessary to determine the nature and extent of the hazard

(4) If the department determines that an owner or operator is not able to conduct monitoring, testing, analysis or reporting required under subsection (1) or (2) of this section in a manner satisfactory to the department, or if the department considers any such action carried out by an owner or operator to be unsatisfactory, or if the owner or operator fails to comply with the order,

or if the department initially cannot determine that there is an owner or operator able to conduct such monitoring, testing, analysis or reporting, the department may

(a)(A) Conduct any monitoring, testing or analysis that the department considers reasonable to determine the nature and extent of the hazard associated with the facility or site, or

(B) Authorize another state agency, local authority or person to conduct the necessary monitoring, testing or analysis, and

(b) Require, by order, the owner or operator to reimburse the department, state agency, local authority or person for the costs of conducting the monitoring, testing or analysis

(5) The department may not require an owner or operator to reimburse the department for the costs of any action carried out by the department under subsection (4) of this section if the department's actions confirm the results of monitoring, testing, analyses or reporting conducted by an owner or operator under subsection (1) or (2) of this section

(6) Any order issued under this section shall be subject to the provisions set forth in ORS 466 190 and 466 200

(7) In order to carry out the provisions of this section, the owner or operator of the site or facility shall allow necessary access according to the requirements of ORS 466 195 to the department or any state agency, local authority or person conducting the monitoring, testing or analysis required under paragraph (a) of subsection (4) of this section [1987 c 540 §2]

#### (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; permit 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 operating under a permit 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 permit

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 1987 c 540 §37]

**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 permitting 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 1987 c 540 §38]

**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 permits issued under ORS 466 005 to 466 385 [1985 c 670 §16 1987 c 158 §88 1987 c 540 §39]

**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 Permit application for PCB disposal facility.** Permit applications submit-

ted 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, 1987 c 540 §40]

**466.280 Copies of application to be sent to affected state agencies.** Upon receipt of an application for a PCB disposal facility permit, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commission, 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 permit application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the permit [1985 c 670 §19 1987 c 540 §41]

**466.285 Notice of hearings on application** (1) Prior to holding hearings on a PCB disposal facility permit 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 permit 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, 1987 c 540 §42]

**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 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 permit 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 permit

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the permit. 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, 1987 c 540 §43]

**466.300 Restrictions on commission authority to issue permit.** The Environmental Quality Commission may not issue a permit 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 and permits required to operate a

hazardous waste incinerator [1985 c 670 §23, 1987 c 540 §44]

**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 permit 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 permit 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, 1987 c 540 §45]

**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 permittee 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, 1987 c 540 §46]

**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 permit if grounds for revocation exist [1985 c 670 §26, 1987 c 540 §47]

**466.320 Conditions for holding permit.** Each PCB disposal facility permittee 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 permit

(1) 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

(2) 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

(3) 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

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

(5) 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

(6) 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 permit 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 permit and until the end of the post-closure period, except as the assurance may be released or modified by the department

(7) 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

(8) Maintain other plans and exhibits pertaining to the facility and its operation as determined by the department to be reasonably necessary to protect the public health or safety or the environment

(9) 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

(10) Assure that all personnel who are employed by the permittee 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

(11) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste [1985 c 670 §27, 1987 c 284 §2, 1987 c 540 §48]

**466 325 Annual fee.** An annual fee may be required of every PCB disposal facility permittee 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, 1987 c 540 §49]

**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.**

(1) If the commission revokes a PCB disposal facility permit 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, 1987 c 540 §50]

**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 permit fee.** (1) The PCB disposal facility permit 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 permit 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 permittee together with the earnings thereon

equals the amount of the financial assurance required under ORS 466 320, the permittee 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, 1987 c 284 §4, 1987 c 540 §51]

**466.350 Post-closure permit; fee.** (1) At the time a PCB disposal facility is closed, the person permitted 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 permit from the department

(2) A post-closure permit 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 permit the permittee 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 permit application fee [1985 c 670 §33, 1987 c 540 §52]

## 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,

(C) A disposal site containing radioactive waste as defined by ORS 469 300 (17), and

(D) A facility

(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 or an owner or operator of a facility of the rulemaking proceedings

(4) The department shall report to each Legislative Assembly on any site or facility 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

(6) As used in this section, "facility" has the meaning given in ORS 466 540 [1985 c 273 §3, 1987 c 735 §25]

**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]

## PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

**466.450 Pacific State Agreement on Radioactive Materials Transportation Management.** The Pacific States Agreement on Radioactive Materials Transportation Management is enacted into law and entered into by the State of Oregon and entered into with all other jurisdictions lawfully joining the agreement in a form as provided for as follows:

### ARTICLE I

#### Policy and Purpose

The party states recognize that protection of the health and safety of citizens and the environment, and the most economical transportation of radioactive materials, can be accomplished through cooperation and coordination among neighboring states. It is the purpose of this agreement to establish a committee comprised of representatives from each party state to further cooperation between the states on emergency response and to coordinate activities by the states to eliminate unnecessary duplication of rules and regulations regarding the transportation and handling of radioactive material.

The party states intend that this agreement facilitate both interstate commerce and protection of public health and the environment. To accomplish this goal, the party states direct the committee to develop model regulatory standards for party states to act upon and direct the committee to coordinate decisions by party states relating to the routing and inspection of shipments of radioactive material.

### ARTICLE II

#### Definitions

As used in this agreement:

(1) "Carrier" includes common, private, and contract carriers.

(2) "Hazardous material" means a substance or material which has been determined by the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

(3) "Radioactive material" has the meaning given that term in federal Department of Transportation regulations found in 49 C F R Sec 173, and includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, and spent nuclear fuel, as defined in section 2 of the Nuclear Waste Policy Act of 1983 (96 Stat 2202, 42 U S C A Sec 10101)

(4) "Transportation" means the transport by any means of radioactive material destined for or derived from any location, and any loading, unloading, or storage incident to such transport "Transportation" does not include permanent storage or disposal of the material

### ARTICLE III

#### Regulatory Practices

(1) The party states agree to develop model standards, not in conflict with federal law or regulations, for carriers of radioactive material to provide information regarding

(a) The amount and kind of material transported,

(b) The mode of transportation and, to the extent feasible, the route or routes and the time schedule,

(c) The carrier's compliance with local, state, and federal rules and regulations related to radioactive material transportation,

(d) The carrier's compliance with federal and state liability insurance requirements

(2) Consistent with federal law or regulations pertaining to transportation of radioactive material, the party states also agree to

(a) Develop model uniform procedures for issuing permits to carriers,

(b) Develop model uniform record keeping processes that allow access on demand by each state,

(c) Develop model uniform safety standards for carriers,

(d) Coordinate routing of shipments of radioactive materials,

(e) Develop a method for coordinating the party states' emergency response plans to provide for regional emergency response including

(A) Systems for sharing information essential to radiation control efforts,

(B) Systems for sharing emergency response personnel, and

(C) A method to allocate costs and clarify liability when a party state or its officers request or render emergency response,

(f) Recommend parking requirements for motor vehicles transporting radioactive materials,

(g) Coordinate state inspections of carriers, and

(h) Develop other cooperative arrangements and agreements to enhance safety

(3) The party states also agree to coordinate emergency response training and preparedness drills among the party states, Indian tribes, and affected political subdivisions of the party states, and, if possible, with federal agencies

(4) The party states recognize that the transportation management of hazardous materials is similar in many respects to that of radioactive materials. The party states, therefore, agree to confer as to transportation management and emergency response for those items where similarities in management exist

### ARTICLE IV

#### Pacific States Radioactive

#### Materials Transportation Committee

(1) Each party state shall designate one official of that state to confer with appropriate legislative committees and with other officials of that state responsible for managing transportation of radioactive material and with affected Indian tribes and be responsible for administration of this agreement. The officials so designated shall together comprise the Pacific States Radioactive Materials Transportation Committee. The committee shall meet as required to consider and, where necessary, coordinate matters addressed in this agreement. The parties shall inform the committee of existing regulations concerning radioactive materials transportation management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations

(2) The committee may also engage in long-term planning to assure safe and economical management of radioactive material transportation on a continuing basis

(3) To the extent practicable, the committee shall coordinate its activities with those of other organizations

### ARTICLE V

#### Eligible Parties and Effective Date

(1) The states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming are eligible to become a party to this agreement. As to

any eligible party, this agreement shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this agreement by enacting a statute repealing its approval.

(2) After the agreement has initially taken effect under subsection (1) of this article, any eligible party state may become a party to this agreement by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1988, whichever occurs first, unless the agreement has by then been enacted as a statute by that state.

## ARTICLE VI

### Severability

If any provision of this agreement, or its application to any person or circumstance, is held to be invalid, all other provisions of this agreement, and the application of all of its provisions to all other persons and circumstances, shall remain valid, and to this end the provisions of this agreement are severable [1987 c 86 §1]

**Note** 466 450 to 466 460 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 466 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**466.455 Governor to designate member.** The Governor shall designate an official to serve as a member of the Pacific States Radioactive Materials Transportation Committee created under Article IV of the agreement set forth in ORS 466 450 [1987 c 86 §2]

**Note** See note under 466 450

**466 460 Confederated Tribes of the Umatilla Indian Reservation to be consulted** (1) The State of Oregon recognizes

(a) The Confederated Tribes of the Umatilla Indian Reservation have been granted a special status as an affected tribe under the Nuclear Waste Policy Act, Public Law 97-425, and

(b) A large majority of radioactive material transported to and from the Hanford Nuclear Reservation in the State of Washington, passes through the center of the Umatilla Tribe's reservation.

(2) Therefore, the official designated by the Governor under ORS 466 455 to represent the State of Oregon on the Pacific States Radioactive Materials Transportation Committee shall consult regularly with officials of the Confederated

Tribes of the Umatilla Indian Reservation on transportation matters and shall consider, to the extent practicable, the suggestions of the Confederated Tribes of the Umatilla Indian Reservation related to the development of model standards and procedures [1987 c 86 §3]

**Note** See note under 466 450

## 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]

#### REMOVAL OR REMEDIAL ACTION TO ABATE HEALTH HAZARDS

**466.540 Definitions for ORS 466.540 to 466.590.** As used in ORS 466 540 to 466 590 and 466 900

(1) "Claim" means a demand in writing for a sum certain

(2) "Commission" means the Environmental Quality Commission

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

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

(5) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air

(6) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel

(7) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 466 590

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 466 540 to 466 590 and 466 900

(9) "Hazardous substance" means

(a) Hazardous waste as defined in ORS 466 005

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P L 96-510, as amended P L 96-510 and P L 99-499

(c) Oil

(d) Any substance designated by the commission under ORS 466 553

(10) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state

(11) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14 7 pounds per square inch absolute

(12) "Owner or operator" means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility

(13) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof

(14) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes

(a) Any release which results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person's employer under ORS chapter 656,

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine,

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection

established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 466 570 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and

(d) The normal application of fertilizer

(15) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of a hazardous substance so that they do not migrate to cause substantial danger to present or future public health, safety, welfare or the environment "Remedial action" includes, but is not limited to

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release

(16) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies

(17) "Removal" means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed

material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release or threat of release "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 466 570

(18) "Transport" means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance which has been accepted for transportation by a common or contract carrier, the term "transport" shall include any stoppage in transit which is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance

(19) "Underground storage tank" has the meaning given that term in ORS 466 705

(20) "Waters of the state" has the meaning given that term in ORS 468 700 [1987 c 539 §52, 1987 c 735 §1]

**466.547 Legislative findings.** (1) The Legislative Assembly finds that

(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment, and

(b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action

(2) Therefore, the Legislative Assembly declares that

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities

(b) It is the purpose of ORS 466 540 to 466 590 and 466 900 to

(A) Protect the public health, safety, welfare and the environment, and

(B) Provide sufficient and reliable funding for the department to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety welfare and the environment [1987 c 735 §2]

**466.550 Authority of department for removal or remedial action.** (1) In addition to any other authority granted by law, the department may

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 466 540 to 466 590 and 466 900, and

(b) Recover the state's remedial action costs

(2) The commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P L 96-510 and P L 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P L 96-482 and P L 98-616 Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency

(3) Nothing in ORS 466 540 to 466 590 and 466 900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P L 96-510 and P L 99-499 [1987 c 735 §3]

**466.553 Rules; designation of hazardous substance.** (1) In accordance with the applicable provisions of ORS 183 310 to 183 550, the commission may adopt rules necessary to carry out the provisions of ORS 466 540 to 466 590 and 466 900

(2)(a) Within one year after the effective date of this Act, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account

(A) The long-term uncertainties associated with land disposal,

(B) The goals, objectives and requirements of ORS 466 005 to 466 385,

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents,

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance,

(E) Long-term maintenance costs,

(F) The potential for future remedial action costs if the alternative remedial action in question were to fail,

(G) The potential threat to human health and the environment associated with excavation, transport and redispersion or containment, and

(H) The cost effectiveness

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur [1987 c 735 §4]

**466.555 Remedial Action Advisory Committee.** The director shall appoint a Remedial Action Advisory Committee in order to advise the department in the development of rules for the implementation of ORS 466 540 to 466 590 and 466 900. The committee shall be comprised of members representing at least the following interests

- (1) Citizens,
- (2) Local governments,
- (3) Environmental organizations, and
- (4) Industry [1987 c 735 §5]

**466.557 Inventory of facilities where release confirmed.** (1) For the purposes of providing public information, the director shall develop and maintain an inventory of all facilities where a release is confirmed by the department

(2) The director shall make the inventory available for the public at the department's offices

(3) The inventory shall include but need not be limited to the following items, if known

- (a) A general description of the facility,
- (b) Address or location,

(c) Time period during which a release occurred,

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance,

(e) Type and quantity of a hazardous substance released at the facility,

(f) Manner of release of the hazardous substance,

(g) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility,

(h) Status of removal or remedial actions at the facility, and

(i) Other items the director determines necessary

(4) Thirty days before a facility is added to the inventory the director shall notify by certified mail the owner of all or any part of the facility that is to be included in the inventory. The decision of the director to add a facility may be appealed in writing to the commission within 15 days after the owner receives notice. The appeal shall be conducted in accordance with provisions of ORS 183 310 to 183 550 governing contested cases

(5) The department shall, on or before January 15, 1989, and annually thereafter, submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission

(6) Nothing in this section, including listing of a facility in the inventory or commission review of the listing shall be construed to be a prerequisite to or otherwise affect the authority of the director to undertake, order or authorize a removal or remedial action under ORS 466 540 to 466 590 and 466 900 [1987 c 735 §6]

**466.560 Comprehensive state-wide identification program; notice.** (1) The department shall develop and implement a comprehensive state-wide program to identify any release or threat of release from a facility that may require remedial action

(2) The department shall notify all daily and weekly newspapers of general circulation in the state and all broadcast media of the program developed under subsection (1) of this section. The notice shall include information about how the public may provide information on a release or threat of release from a facility

(3) In developing the program under subsection (1) of this section, the department shall

examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under ORS 466 557

(5) [1987 c 735 §7]

**466.563 Preliminary assessment of potential facility.** (1) If the department receives information about a release or a threat of release from a potential facility, the department shall conduct a preliminary assessment of the potential facility. The preliminary assessment shall be conducted as expeditiously as possible within the budgetary constraints of the department

(2) A preliminary assessment conducted under subsection (1) of this section shall include a review of existing data, a good faith effort to discover additional data and a site inspection to determine whether there is a need for further investigation [1987 c 735 §8]

**466.565 Accessibility of information about hazardous substances.** (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the department or its authorized representative, disclose or make available for inspection and copying such information, documents or records

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to

(a) Sample, inspect, examine and investigate,

(b) Examine and copy records and other information, or

(c) Carry out removal or remedial action or any other action authorized by ORS 466 540 to 466 590 and 466 900

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled, or

(B) Would not provide adequate volume to perform the laboratory analysis

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466 090 [1987 c 735 §9]

**466.567 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions.** (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility

(2) Except as provided in paragraphs (b) to (e) of subsection (1) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator

(b) Any owner or operator if the facility was contaminated by the migration of a hazardous substance from real property not owned or operated by the person

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the release, if the release at the facility was caused solely by one or a combination of the following

(A) An act of God "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight

(B) An act of war

(C) Acts or omissions of a third party, other than an employe or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession

(3) Except as provided in paragraphs (c) to (e) of subsection (1) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment, or

(B) Through the exercise of eminent domain authority by purchase or condemnation

(b) A person who acquired a facility by inheritance or bequest

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person

(a) Obtained actual knowledge of the release and then failed to promptly notify the department and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances, or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 466 540 to 466 590 and 466 900

(c) Nothing in ORS 466 540 to 466 590 and 466 900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release

(6) To establish, for purposes of paragraph (b) of subsection (1) of this section or paragraph (a) of subsection (2) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 466 540 to 466 590 and 466 900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 466 553 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 466 540 to 466 590 and 466 900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, wilful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section [1987 c 735 §10]

**466.570 Removal or remedial action; reimbursement of costs.** (1) The director may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 466 540 to 466 590 and 466 900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 466 567 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal

or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary.

(a) To enforce an order issued under subsection (4) of this section, or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183 310 to 183 550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 466 567 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 466 567 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 466 567 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard [1987 c 735 §11]

**466.573 Standards for degree of cleanup required; exemption.** (1)(a) Any

removal or remedial action performed under the provisions of ORS 466 540 to 466 590 and 466 900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assure protection of present and future public health, safety, welfare and of the environment

(b) To the maximum extent practicable, the director shall select a remedial action that is protective of human health and the environment, that is cost effective, and that uses permanent solutions and alternative treatment technologies or resource recovery technologies

(2) Except as provided in subsection (3) of this section, the director may exempt the onsite portion of any removal or remedial action conducted under ORS 466 540 to 466 590 and 466 900 from any requirement of ORS 466 005 to 466 385 and ORS chapter 459 or 468

(3) Notwithstanding any provision of subsection (2) of this section, any onsite treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1) of this section [1987 c 735 §12]

**466.575 Notice of cleanup action; receipt and consideration of comment; notice of approval.** Except as provided in ORS 466 570 (3), before approval of any remedial action to be undertaken by the department or any other person, or adoption of a certification decision under ORS 466 577, the department shall

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action

(3) Consider any written or verbal comments before approving the removal or remedial action

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public [1987 c 735 §13]

**466.577 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree, effect on liability.** (1) The director, in the director's discretion, may enter into an agree-

ment with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 466 553. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183 310 to 183 550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the commission or subject to judicial review

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 466 540 to 466 590 and 466 900 or under other relevant authority

(b) Notwithstanding ORS 183 310 to 183 550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement

(3) If an agreement has been entered into under this section, the director may take any action under ORS 466 570 against any person who is not a party to the agreement, once the

period for submitting a proposal under paragraph (c) of subsection (5) of this section has expired. Nothing in this section shall be construed to affect either of the following

(a) The liability of any person under ORS 466 567 or 466 570 with respect to any costs or damages which are not included in the agreement

(b) The authority of the director to maintain an action under ORS 466 540 to 466 590 and 466 900 against any person who is not a party to the agreement

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 466 575. The director shall consider any written comments, views or allegations relating to the proposed agreement. The director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning

the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 466 567

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility

(C) A ranking by volume of the substances at the facility

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 466 565 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 466 570. The director may grant extensions for up to an additional 60 days

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 466 567. In resolving contribution claims, the court may allocate remedial action costs among liable parties using such equitable factors as the court determines are appropriate

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or

judicially approved settlement, the director may bring an action against any person who has not so resolved its liability

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 466 540 to 466 590 and 466 900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met

(A) The covenant not to sue is in the public interest

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 466 553 (2)

(C) The person is in full compliance with a consent decree under paragraph (a) of subsection (4) of this section for response to the release concerned

(D) The removal or remedial action has been approved by the director

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 466 540 to 466 590 and 466 900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 466 567 with respect to such release at a future time, for the portion of the remedial action

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P L 96-482 and P L 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 466 553 that does not include such offsite disposition and has thereafter required offsite disposition, or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned

(B) The nature of the risks remaining at the facility

(C) The extent to which performance standards are included in the order or decree

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory per-

formance by such party of its obligations under the agreement concerned

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned, and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in subparagraph (A) of paragraph (f) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility

(C) The director may include any provisions allowing future enforcement action under ORS 466 570 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 466 567 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility

(A) The amount of the hazardous substance contributed by that person to the facility, and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 466 540 to 466 590 and 466 900

(9)(a) Notwithstanding ORS 183 310 to 183 550, except for those covenants required under subparagraphs (A) and (B) of paragraph (b) of subsection (7) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 466 570, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order

(b) Before submitting a final certification decision to the court that approved the consent

decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 466 575

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 466 540 to 466 590 and 466 900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain [1987 c 735 §14]

**466.580 State costs; payment; effect of failure to pay.** (1) The department shall keep a record of the state's remedial action costs

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 466 567 or 466 570 to pay the amount of the state's remedial action costs and, if applicable, punitive damages

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages 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 a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466 590 if the moneys received pertain to a removal or remedial action taken at any facility [1987 c 735 §15]

**466.583 Costs as lien; enforcement of lien.** (1) All of the state's remedial action costs,

penalties and punitive damages for which a person is liable to the state under ORS 466 567, 466 570 or 466 900 shall constitute a lien upon any real and personal property owned by the person

(2) At the department's discretion, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain

(a) A statement of the demand,

(b) The name of the person against whose property 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 conduct removal or remedial action and pay penalties and damages as required

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 466 567, 466 570 or 466 900 [1987 c 735 §16]

**466.585 Contractor liability.** (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 466 540 to 466 590 and 466 900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, wilful or wanton misconduct or that constitutes intentional misconduct

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an

employer who is a contractor to any employe of such employer under any provision of law, including any provision of any law relating to workers' compensation

(d) A state employe or an employe of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employe shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section

(2)(a) The exclusion provided by ORS 466 567 (2)(c)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor

(b) Except as provided in paragraph (d) of subsection (1) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 466 540 to 466 590 and 466 900 or under any other federal or state law of any person, other than a contractor

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 466 540 to 466 590 and 466 900

(3)(a) The director may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 466 540 to 466 590 and 466 900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, wilful or wanton misconduct, or which constituted intentional misconduct

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with

(A) The director,

(B) Any state agency, or

(C) Any potentially responsible party carrying out any agreement under ORS 466 570 or 466 577

(c) For purposes of ORS 466 540 to 466 590 and 466 900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into

(B) The contractor has made diligent efforts to obtain insurance coverage

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement

shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P L 96-482 and P L 98-616, may be indemnified under this subsection with respect to such facility

(e) For the purposes of ORS 466 567, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 466 567 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section

(6) As used in this section

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 466 540 to 466 590 and 466 900 at a facility, or any removal under ORS 466 540 to 466 590 and 466 900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in subparagraph (A) of paragraph (b) of this subsection with

(A) The director,

(B) Any state agency, or

(C) Any potentially responsible party carrying out an agreement under ORS 466 570 or 466 577

(b) "Contractor" means

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract, and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by

the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action [1987 c 735 §17]

#### **466.587 Monthly fee of operators.**

Beginning on July 1, 1987, 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 \$20 per ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility [1987 c 735 §18]

**466.590 Hazardous Substance Remedial Action Fund; sources; uses.** (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund.

(a) Fees received by the department under ORS 466 587.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs

(c) Any penalty, fine or punitive damages recovered under ORS 466 567, 466 570, 466 583 or 466 900

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes

(a) Payment of the state's remedial action costs,

(b) Funding any action or activity authorized by ORS 466 540 to 466 590 and 466 900, and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P L 96-510 and as amended by P L. 99-499 [1987 c 735 §19]

### SPILL RESPONSE AND CLEANUP OF HAZARDOUS MATERIALS

**466.605 Definitions for ORS 466.605 to 466.680.** As used in ORS 466 605 to 466 680 and 466 880 (3) and (4)

(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 466 680, 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 chapter 431 and ORS 433 010 to 433 045 and 433 106 to 433 990

(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) "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

(11) "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

(12) "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

(13) "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, 1987 c 735 §26]

**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 466 680, 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 466 680, 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 466 680, 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 466 680, 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 466 680, 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 under-

take 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 466 605 to 466 680 [1985 c 733 §9, 1987 c 158 §89]

**466 650** [1985 c 733 §10, repealed by 1987 c 735 §27]

**466.653 Grants to local governments.** Consistent with the oil and hazardous material emergency response master plan adopted under ORS 466 620, the department may make grants to rural fire protection districts, cities or counties for up to 90 percent of the actual costs to purchase equipment and supplies to respond to oil and hazardous material spills or releases [1987 c 539 §42]

**466.656** [1985 c 733 §11, repealed by 1987 c 735 §27]

**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 466 605 to 466 680, or enforcing the provisions of ORS 466 605 to 466 680, 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, 1987 c 158 §90]

**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 466 605 to 466 680, , 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, 1987 c 158 §91]

**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 \$25 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 466.680 including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680 [1985 c 733 §15, 1987 c 158 §92]

**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** [1985 c 733 §19, repealed by 1987 c 735 §27]

**466.690** [1985 c 733 §20, repealed by 1987 c 735 §27]

## UNDERGROUND STORAGE TANKS (General Provisions)

**466.705 Definitions for ORS 466.705 to 466.835 and 466.895.** As used in ORS 466.705 to 466.835 and 466.895

(1) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance "Corrective action" includes but is not limited to

(a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance, or

(b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site

(2) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground

(3) "Fee" means a fixed charge or service charge

(4) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466 815

(5) "Investigation" means monitoring, surveying, testing or other information gathering

(6) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state

(7) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14 7 pounds per square inch absolute

(8) "Owner" means the owner of an underground storage tank

(9) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466 760

(10) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the Federal Government or any agency of the Federal Government

(11) "Regulated substance" means

(a) Any substance listed by the United States Environmental Protection Agency in 40 CFR

Table 302 4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P L 96-510 and P L 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101,

(b) Oil, or

(c) Any other substance designated by the commission under ORS 466 630

(12) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law

(13) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground

(14) "Waters of the state" has the meaning given that term in ORS 468 700 [1987 c 539 §2 (enacted in lieu of 468 901)]

**466.710 Application of ORS 466.705 to 466.835** ORS 466 705 to 466 835 and 466 895 shall not apply to a

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes

(2) Tank used for storing heating oil for consumptive use on the premises where stored

(3) Septic tank

(4) Pipeline facility including gathering lines regulated

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U S C 1671),

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U S C 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection

(5) Surface impoundment, pit, pond or lagoon

(6) Storm water or waste water collection system

(7) Flow-through process tank

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468 911, 1987 c 539 §18]

**466.715 Legislative findings.** (1) The Legislative Assembly finds that

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state, and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466 705 to 466 835 and 466 895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c 539 §4 (enacted in lieu of 468 902)]

#### (Administration)

**466.720 State-wide underground storage tank program; federal authorization.** (1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466 705 to 466 835 and 466 895, the state-wide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) 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 state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P L 94-580 as amended

and P L 98-616, Section 205 of the federal Solid Waste Disposal Act, P L 96-482 as amended and federal regulations and interpretive and guidance documents issued pursuant to P L 94-580 as amended, P L 98-616 and P L 96-482. The commission may adopt, amend or repeal any rule necessary to implement ORS 466 705 to 466 835 and 466 895. [Subsection (1) enacted as 1987 c 539 §6 subsection (2) formerly 468 913]

**466.725 Limitation on local government regulation.** (1) Except as provided in ORS 466 730, a local unit of government may not enact or enforce any ordinance, rule or regulation relating to the matters encompassed by the state program established under ORS 466 720.

(2) Any ordinance, rule or regulation enacted by a local unit of government of this state that encompasses the same matters as the state program shall be unenforceable, except for an ordinance, rule or regulation

(a) That requires an owner or permittee to report a release to the local unit of government, or

(b) Adopted by a local unit of government operating an underground storage tank program pursuant to a contract entered into according to the provisions of ORS 466 730. [1987 c 539 §8 (enacted in lieu of 468 904)]

**Note** Section 46 chapter 539, Oregon Laws 1987, provides

**Sec 46** Section 8 of this Act [ORS 466 725] does not become operative until nine months after the Environmental Quality Commission adopts a state-wide underground storage tank program under section 6 of this Act [ORS 466 720] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183 310 to 183 550. [1987 c 539 §46]

**466.730 Delegation of program administration to state agency or local government by agreement.** (1) The commission may authorize the department to enter into a contract or agreement with an agency of this state or a local unit of government to administer all or part of the underground storage tank program.

(2) Any agency of this state or any local unit of government that seeks to administer an underground storage tank program under this section shall submit to the department a description of the program the agency or local unit of government proposes to administer in lieu of all or part of the state program. The program description shall include at least the following

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program.

(b) A description, including organization charts, of the organization and structure of the

contracting state agency or local unit of government that will have responsibility for administering the program, including

(A) The number of employes, occupation and general duties of each employe who will carry out the activities of the contract

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in subparagraph (A) of this paragraph and administrative and technical support

(C) An itemization of the source and amount of funding available to the contracting state agency or local unit of government to meet the costs listed in subparagraph (B) of this paragraph, including any restrictions or limitations upon this funding

(D) A description of applicable procedures, including permit procedures

(E) Copies of the permit form, application form and reporting form the state agency or local unit of government intends to use in the program

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program

(G) A description of the procedures to be used to coordinate information with the department, including the frequency of reporting and report content

(H) A description of the procedures the state agency or local unit of government will use to comply with trade secret laws under ORS 192 500 and 468 910

(3) Any program approved by the department under this section shall at all times be conducted in accordance with the requirements of ORS 466 705 to 466 835 and 466 895

(4) An agency or local unit of government shall exercise the functions relating to underground storage tanks authorized under a contract or agreement entered into under this section according to the authority vested in the commission and the department under ORS 466 705 to 466 835 and 466 895 insofar as such authority is applicable to the performance under the contract or agreement. The agency or local unit of government shall carry out these functions in the manner provided for the commission and the department to carry out the same functions [1987 c 539 §9]

**466.735 Cooperation with Building Codes Agency and State Fire Marshal.** Nothing in ORS 466 705 to 466 835 and 466 895 is intended to interfere with, limit or abridge the

authority of the Building Codes Agency or the State Fire Marshal, or any other state agency or local unit of government relating to combustion and explosion hazards, hazard communications or land use. The complementary relationship between the protection of the public safety from combustion and explosion hazards, and protection of the public health, safety, welfare and the environment from releases of regulated substances from underground storage tanks is recognized. Therefore, the department shall work cooperatively with the Building Codes Agency, the State Fire Marshal and local units of government in developing the rules and procedures necessary to carry out the provisions of ORS 466 705 to 466 835 and 466 895 [1987 c 539 §10]

**466.740 Noncomplying installation prohibited.** No person shall install an underground storage tank for the purpose of storing regulated substances unless the tank complies with the standards adopted under ORS 466 745 and any other rule adopted under ORS 466 705 to 466 835 and 466 895 [1987 c 539 §11]

Note Section 47, chapter 539, Oregon Laws 1987, provides

Sec 47 Section 11 of this Act [ORS 466 740] does not become operative until the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 766 745] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183 310 to 183 550 [1987 c 539 §47]

**466.745 Commission rules, considerations.** (1) The commission may establish by rule

(a) Performance standards for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment,

(b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank,

(c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility,

(d) Requirements for the temporary or permanent decommissioning of an underground storage tank,

(e) Requirements for reporting a release from an underground storage tank,

(f) Requirements for a permit issued under ORS 466 760,

(g) Procedures that distributors of regulated substances and sellers of underground storage tanks must follow to satisfy the requirements of ORS 466 760,

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466 815,

(i) Procedures for the disbursement of monies collected under ORS 466 795,

(j) Requirements for reporting corrective action taken in response to a release,

(k) Requirements for taking corrective action in response to a release, and

(L) Any other rule necessary to carry out the provisions of ORS 466 705 to 466 835 and 466 895

(2) The commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following

(a) More stringent rules or standards are necessary

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity, or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment

(b) Less stringent rules or standards are

(A) Warranted by physical conditions or economic hardship,

(B) Consistent with the protection of the public health, safety, welfare or the environment, and

(C) Not less stringent than minimum federal requirements

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors

(a) Location of the tanks,

(b) Soil and climate conditions.

(c) Uses of the tanks,

(d) History of maintenance,

(e) Age of the tanks,

(f) Current industry recommended practices,

(g) National consensus codes,

(h) Hydrogeology,

(i) Water table,

(j) Size of the tanks,

(k) Quantity of regulated substances periodically deposited in or dispensed from the tank,

(L) The technical ability of the owner or permittee, and

(m) The compatibility of the regulated substance and the materials of which the tank is fabricated

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation [1987 c 539 §13 (enacted in lieu of 468 908)]

#### (Licenses; Permits)

**466.750 License procedure for persons servicing underground tanks.** (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures and to assure the highest degree of leak prevention from underground storage tanks, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing and inspection services

(2) The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks. This demonstration of ability may consist of written or field examinations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to

(a) Installation, removal, retrofit and inspection of underground storage tanks,

(b) Tank integrity testing, and

(c) Installation of leak detection systems

(3) The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183 310 to 183 550, to revoke a license of any person offering underground tank services who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank services

(4) The program adopted under subsection (1) of this section shall

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program

(5) The following persons shall apply for an underground storage tank permit from the department

(a) An owner of an underground storage tank currently in operation,

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section, and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance [1987 c 539 §§14, 15]

**Note** Section 48 chapter 539 Oregon Laws 1987 provides

**Sec 48** Section 15 of this Act [ORS 466 750 (5)] does not become operative until 90 days after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466 745] and has filed a copy of such rules with the Secretary of State as prescribed in ORS 183 310 to 183 550 [1987 c 539 §48]

**466.760 When permit required; who required to sign application.** (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466 750 (5)

(a) The owner of an underground storage tank storing a regulated substance,

(b) The owner of the real property in which an underground storage tank is located, and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property [1987 c 539 §16]

**Note** Section 49, chapter 539 Oregon Laws 1987 provides

**Sec 49** Section 16 of this Act [ORS 466 760] does not become operative until one year after the Environmental Quality Commission has adopted rules under section 13 of this Act [ORS 466 745] and has filed a copy of such rules with the Secretary of State, as prescribed in ORS 183 310 to 183 550 [1987 c 539 §49]

**Note** Section 17, chapter 539 Oregon Laws 1987 provides

**Sec 17** If the department is unable to issue a final permit before the operative date of section 16 of this 1987 Act [ORS 466 760] the department may issue a temporary or conditional permit. A temporary or conditional permit shall expire when the department grants or denies the final permit. A temporary or conditional permit does not authorize any activity, operation or discharge that violates any law or rule of the State of Oregon or the Department of Environmental Quality [1987 c 539 §17]

**466.765 Duty of owner or permittee of underground storage tank.** In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466 705 to 466 835 and 466 895, the owner or the permittee of an underground storage tank shall

(1) Prevent releases,

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466 705 to 466 835 and 466 895,

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks,

(4) Promptly report releases,

(5) Conduct monitoring and testing as required by rules adopted under ORS 466 745 and permits issued under ORS 466 760,

(6) Permit department employes or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks,

(7) Pay all costs of investigating, preventing, reporting and stopping a release,

(8) Decommission tanks, as required by rules adopted under ORS 466 745 and permits issued under ORS 466 760,

(9) Pay all fees,

(10) Conduct any corrective action required under ORS 466 810, and

(11) Perform any other requirement adopted under ORS 466 540, 466 705 to 466 835, 466 895 and 478 308 [1987 c 539 §20 (enacted in lieu of 468 905)]

**466.770 Corrective action required on contaminated site.** (1) If any owner or permittee of a contaminated site fails without sufficient cause to conduct corrective action under ORS 466 765, the department may undertake any investigation or corrective action with respect to the contamination on the site

(2) The department shall keep a record of all expenses incurred in carrying out any corrective action authorized under subsection (1) of this section, including charges for services performed and the state's equipment and materials utilized

(3) Any owner or permittee of a contaminated site who fails without sufficient cause to conduct corrective action as required by an order of the department under ORS 466 810 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department in carrying out the necessary corrective action

(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 actions 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 corrective action costs incurred by the department 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

(6) Subsection (5) of this section shall not apply if the department and the responsible person are negotiating or have entered into a settlement agreement, except that if the responsible person fails to pay the corrective action costs as provided in the negotiated settlement the direc-

tor may request the Attorney General to take action as set forth in subsection (5) of this section

(7) All moneys received by the department under this section shall be paid into the fund established in ORS 466 790

(8) As used in this section

(a) "Contamination" means any abandoning, spilling, releasing, leaking, disposing, discharging, depositing, emitting, pumping, pouring, emptying, injecting, escaping, leaching, placing or dumping of a regulated substance from an underground storage tank into the air or on any lands or waters of the state, so that such regulated substance may enter the environment, be emitted into the air or discharged into any waters. Such contamination authorized by and in compliance with a permit issued under ORS chapter 454, 459, 468, 469, ORS 466 005 to 466 385 or federal law shall not be considered as contamination under ORS 466 540, 466 705 to 466 835, 466 895 and 478 308

(b) "Site" means any area or land [1987 c 539 §24]

**466.775 Grounds for refusal, modification, suspension or revocation of permit.** (1) The department may refuse to issue, modify, suspend, revoke or refuse to renew a permit if the department finds

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

(b) Failure to comply with the conditions of the permit, or

(c) Violation of any applicable provision of ORS 466 705 to 466 835 and 466 895, any applicable rule or standard adopted under ORS 466 705 to 466 835 and 466 895 or an order issued under ORS 466 705 to 466 835 and 466 895

(2) The department may modify a permit issued under ORS 466 760 if the department finds, after notice and opportunity for hearing, that modification is necessary to protect the public health, safety, welfare or the environment

(3) The department shall modify, suspend, revoke or refuse to issue or renew a permit according to the provisions of ORS 183 310 to 183 550 for a contested case proceeding [1987 c 539 §21]

**466.780 Variance upon petition.** (1) Upon petition by the owner and the permittee of an underground storage tank, the commission may grant a variance from the requirements of any rule or standard adopted under ORS 466 745 if the commission finds.

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment, equal to or greater than the rule or standard, and

(b) The alternative proposal is at least as stringent as any applicable federal requirements

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because

(a) Conditions exist that are beyond the control of the petitioner, or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable

(3) The commission may delegate the authority to grant a variance to the department

(4) Within 15 days after the department denies a petition for a variance the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission [1987 c 539 §22]

#### (Finance)

**466.785 Fees.** (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466 730. Such fees shall not exceed \$25 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466 705 to 466 835 and 466 895 [1987 c 539 §23]

**Note** The amendments to section 23, chapter 539, Oregon Laws 1987 [compiled as ORS 466 785] by section 50, chapter 539, Oregon Laws 1987, become effective July 1 1989. See section 51 chapter 539, Oregon Laws 1987.

**466 785** (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the

duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466 730. Such fees shall not exceed \$20 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466 705 to 466 835 and 466 895.

**466.790 Leaking Underground Storage Tank Cleanup Fund; sources; uses.** (1) The Leaking Underground Storage Tank Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Cleanup Fund.

(a) Moneys recovered or otherwise received from responsible parties for corrective action, and

(b) Any penalty, fine or damages recovered under ORS 466 770.

(3) The State Treasurer may invest and reinvest moneys in the Leaking Underground Storage Tank Cleanup Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Cleanup Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Cleanup Fund may be used by the department for the following purposes:

(a) Payment of corrective action costs incurred by the department in responding to a release from underground storage tanks,

(b) Funding of all actions and activities authorized by ORS 466 770, and

(c) Payment of the state cost share for corrective action, as required by section 9003(h)(7)(B) of the federal Solid Waste Disposal Act, P L 96-482 [1987 c 539 §26]

**466.795 Underground Storage Tank Insurance Fund.** (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466 815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks

(a) Compensation to the department or any other person, for taking corrective actions, and

(b) Compensation to a third party for bodily injury and property damage caused by a release

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466 815 and any applicable federal law

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P L 98-616 and P L 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466 815. In formulating the plan of action, the department shall consult with the Director of the Department of Insurance and Finance, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation [1987 c 539 §28]

**466.800 Records as public records; exceptions.** (1) Except as provided in subsection (2) of this section, any records, reports or information obtained from any persons under ORS 466 765 and 466 805 shall be made available for public inspection and copying during the 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 466 705 to 466 835 and 466 895 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, processes or information

entitled to protection as trade secrets under ORS 192 501 to 192 505, 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 any other officer, medical or public safety employee or authorized representative of the state concerned with carrying out ORS 466 705 to 466 835 and 466 895 or when relevant in any proceeding under ORS 466 705 to 466 835 and 466 895

(3) Any record, report or information obtained or used by the department or the commission in administering the state-wide underground storage tank program under ORS 466 705 to 466 835 and 466 895 shall be available to the United States Environmental Protection Agency upon request. If the record, report 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 record, report or information. The federal agency shall treat the record, report or information subject to the confidentiality claim as confidential in accordance with applicable federal law [Formerly 468 910]

#### (Enforcement)

**466 805 Site inspection; subpoena or warrant.** (1) In order to determine compliance with the provisions of ORS 466 705 to 466 835 and 466 895 and rules adopted under ORS 466 705 to 466 835 and 466 895 and to enforce the provisions of ORS 466 705 to 466 835 and 466 895, any employee of or an authorized and identified representative of the department may

(a) Enter at reasonable times any establishment or site where an underground storage tank is located,

(b) Inspect and obtain samples of a regulated substance contained in an underground storage tank, and

(c) Conduct an investigation of an underground storage tank, associated equipment, contents or the soil, air or waters of the state surrounding an underground storage tank

(2) If any person refuses to comply with subsection (1) of this section, the department or a duly authorized and identified representative of the department may obtain a warrant or subpoena to allow such entry, inspection, sampling or copying [1987 c 539 §30 (enacted in lieu of 468 907)]

**466.810 Investigation on non-compliance; findings and orders; decommissioning tank; hearings; other remedies.** (1) Whenever the department has reasonable

cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466 705 to 466 835 and 466 895 or fails to comply with a rule, order or permit issued under ORS 466 705 to 466 835 and 466 895, the department may investigate the underground storage tank

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment

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

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466 705 to 466 835 and 466 895 or the rules adopted under ORS 466 705 to 466 835 and 466 895,

(b) Require the owner or operator to comply with the provisions of a permit,

(c) Require compliance with a schedule established in the order, and

(d) Require any other actions considered necessary by the department

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183 310 to 183 550 for contested cases

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466 705 to 466 835 and 466 895 or the rules and orders adopted under ORS 466 705 to 466 835 and 466 895 or of the terms of any permit issued under ORS 466 705 to 466 835 and

466 895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof [1987 c 539 §32]

**466.815 Financial responsibility of owner or permittee.** (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for

(a) Taking corrective action,

(b) Compensating a third party for bodily injury and property damage caused by a release, and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section

107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or other applicable law

(5) Corrective action and compensation programs financed by a fee paid by owners and permittees and administered by the department may be used to satisfy all or part of the financial responsibility requirements of this section

(6) No rule requiring an owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives [1987 c 539 §27]

**466.820 Reimbursement to department; procedure for collection; treble damages.** (1) The owner and the permittee of an underground storage tank found to be in violation of any provision of ORS 466 705 to 466 835 and 466 895, shall reimburse the department for all costs reasonably incurred by the department, excluding administrative costs, in the investigation of a leak from an underground storage tank. Department costs may include investigation, design engineering, inspection and legal costs necessary to correct the leak

(2) Payment of costs to the department under subsection (1) of this section shall be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order

(3) If such costs are not paid by the owner or the permittee of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the department

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of ORS 466 540, 466 705 to 466 835, 466 895 and 478 308, the commission or the court may award damages in the amount equal to three times the amount of all expenses incurred by the department in investigating the violation

(5) Moneys reimbursed shall be deposited to the State Treasury to the credit of an account of the department and are continuously appropriated to the department for the purposes of administering ORS 466 540, 466.705 to 466 835,

466 895 and 478 308 [1987 c 539 §34 (enacted in lieu of 468 914)]

**466.825 Strict liability of owner or permittee.** The owner and permittee of an underground storage tank found to be the source of a release shall be strictly liable to any owner or permittee of a nonleaking underground storage tank in the vicinity, for all costs reasonably incurred by such nonleaking underground storage tank owner or permittee in determining which tank was the source of the release [1987 c 539 §35]

**466.830 Halting tank operation upon clear and immediate danger.** (1) Whenever, in the judgment of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, safety or the environment exists from the continued operation of an underground storage tank, the department may, without hearing or prior notice, order the operation of the underground storage tank or site halted by service of an order on the owner or permittee of the underground storage tank or site

(2) Within 24 hours after the order is served under subsection (1) of this section, the department shall appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, safety, welfare or the environment [1987 c 539 §36]

**466.835 Compliance and correction costs as lien; enforcement.** (1) All compliance and corrective action costs, penalties and damages for which a person is liable to the state under ORS 466 705 to 466 835 and 466 895 shall constitute a lien upon any real and personal property owned by the person

(2) The department shall file a claim of lien on real property to be charged with a lien under subsection (1) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (1) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of the filing. The lien claim shall contain

- (a) A statement of the demand,
- (b) The name of the person against whose property 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 conduct compliance and corrective actions as required

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466 705 to 466 835 and 466 895 [1987 c 539 §37]

## OREGON HANFORD WASTE BOARD

**Note** Sections 1 to 16 chapter 514 Oregon Laws 1987 provide

**Sec 1** (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste or

(b) Insure adequate opportunity for public participation in the assessment process

(2) Therefore the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the Federal Government, to insure a maximum of public participation in the assessment process [1987 c 514 §1]

**Sec 2** Nothing in sections 1 to 16 of this Act shall be interpreted by the Federal Government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford Washington, as the site for the long-term disposal of high-level radioactive waste [1987 c 514 §2]

**Sec 3** As used in sections 1 to 16 of this Act

(1) "Board" means the Oregon Hanford Waste Board

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste [1987 c 514 §3]

**Sec 4** There is created an Oregon Hanford Waste Board which shall consist of the following members

(1) The Director of the Oregon Department of Energy or designee,

(2) The Water Resources Director or designee

(3) The Director of the Department of Environmental Quality or designee,

(4) The Assistant Director for Health or designee,

(5) The State Geologist or designee

(6) A representative of the Public Utility Commission who has expertise in motor carriers,

(7) A representative of the Governor,

(8) One member representing the Confederated Tribes of the Umatilla Indian Reservation

(9) One member of the public appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171 562 and 171 565, who shall serve as chairperson,

(10) Two members of the public advisory committee created under section 9 of this Act selected by the public advisory committee, and

(11) Three members of the Senate, appointed by the President of the Senate and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote [1987 c 514 §4]

**Sec 5** (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292 495. Each legislative member shall receive compensation and expenses as provided in ORS 171 072

(3) The board shall be under the supervision of the chairperson [1987 c 514 §5]

**Sec 6** The Oregon Hanford Waste Board

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production [1987 c 514 §6]

**Sec 7** In carrying out its purpose as set forth in section 6 of this Act, the Oregon Hanford Waste Board shall

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of

this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste. If the board finds that the application is not consistent with the state's policy related to such waste or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the Federal Government related to the long-term disposal of high-level radioactive waste.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste [1987 c 514 §7]

**Sec 8** The chairperson of the Oregon Hanford Waste Board shall

(1) Supervise the day-to-day functions of the board,

(2) Hire, assign, reassign and coordinate the administrative personnel of the board, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law, and

(3) Request technical assistance from any other state agency [1987 c 514 §8]

**Sec 9** (1) There is created a public advisory committee which shall consist of not less than 15 members to advise the Oregon Hanford Waste Board on the development and administration of the policies and practices of the board. Members shall be appointed by the Governor and shall serve a term of two years.

(2) Advisory committee members shall be selected from all areas of the state and shall include a broad range of citizens, representatives of local governments and representatives of other interests as the Governor determines will best further the purposes of this Act.

(3) Members of the advisory committee shall receive no compensation for their services. Members of the advisory committee other than members employed in full-time public service shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Such reimbursements shall be subject to the provisions of ORS 292.210 to 292.288. Members of the advisory committee who are employed in full-time public service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties by their employing agency.

(4) The advisory committee shall meet at least once every three months [1987 c 514 §9]

**Sec 10** (1) If the United States Department of Energy selects Hanford, Washington, as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Waste Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall

(a) Include a full scientific review of the adequacy of the selected site and of the site plan,

(b) Use recognized experts,

(c) Conduct one or more public hearings on the site plan,

(d) Make available to the public arguments and evidence for and against the site plan, and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site [1987 c 514 §10]

**Sec 11.** (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Waste Board.

(3) The Oregon Hanford Waste Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section [1987 c 514 §11]

**Sec 12** The Oregon Hanford Waste Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under section 11 of this Act. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups [1987 c 514 §12]

**Sec 13** The Oregon Hanford Waste Board may accept moneys from the United States Department of Energy other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of this Act. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of sections 1 to 16 of this Act, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under section 6 of this Act [1987 c 514 §13]

**Sec 14** In addition to the public advisory committee established under section 9 of this Act, the Oregon Hanford Waste Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495 [1987 c 514 §14]

**Sec 15** All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Waste Board in carrying out any of its activities under sections 1 to 16 of this Act and, at the request of the chairperson, provide technical assistance to the board [1987 c 514 §15]

**Sec 16** In accordance with the applicable provisions of ORS 183.310 to 183.550, the Oregon Hanford Waste Board shall adopt rules and standards to carry out the requirements of sections 1 to 16 of this Act [1987 c 514 §16]

## FEDERAL SITE SELECTION

**Note** Sections 1 and 2, chapter 13 Oregon Laws 1987 provide

**Sec 1.** The Legislative Assembly and the people of the State of Oregon find that

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste

(2) The process of selecting three sites as final candidates including the Hanford reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress

(3) The United States Department of Energy has prematurely deferred consideration of numerous potential sites and disposal media that its own research indicates are more appropriate, safer and less expensive

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment [1987 c 13 §1]

**Sec 2** In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly other state-wide officials and state agencies shall use all legal means necessary to

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act,

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste,

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal,

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act,

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste and

(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located [1987 c 13 §2]

## CIVIL PENALTIES

**466.880 Civil penalties generally.** (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 466.680, or any rule or order

entered or adopted under ORS 466 605 to 466 680, 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 468 130, 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, 1987 c 266 §1]

**466.890 Civil 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]

**466.895 Civil penalties for violations of underground storage tank regulations.**

(1) Any person who violates any provision of ORS 466 705 to 466 835 and 466 895, a rule adopted under ORS 466 705 to 466 835 and 466 895 or the terms or conditions of any order or permit issued by the department under ORS 466.705 to 466 835 and 466 895 shall be subject to a civil penalty not to exceed \$10,000 per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department may levy a civil penalty up to \$100 for each day a fee due and owing under ORS 466 785 and 466 795 is unpaid. A penalty collected under this subsection shall be placed in the State Treasury to the credit of an account of the department.

(4) The civil penalties authorized under 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 and 468 135 except that a penalty collected under this section shall be deposited to the fund established in ORS 466 790 [1987 c 539 §39]

**466.900 Civil penalties for violation of removal or remedial actions.** (1) In addition to any other penalty provided by law, any person who violates a provision of ORS 466 540 to 466 590, or any rule or order entered or adopted under ORS 466 540 to 466 590, shall incur a civil penalty not to exceed \$10,000 a day for each day that such violation occurs or that failure to comply continues.

(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, collected and appealed under ORS 468 090 to 468 125, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 466 590, if the penalty pertains to a release at any facility [1987 c 735 §23]

## 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 466 605 to 466 680 or of any rule or order entered or adopted under ORS 466 605 to 466 680 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

(4) Any person who knowingly or intentionally violates any provision of ORS 466 705 to

466 835 and 466 895 or the rules adopted under ORS 466 705 to 466 835 and 466 895 shall be subject to a criminal penalty not to exceed \$10,000 or imprisonment for not more than one year or both Each day of violation shall be deemed a separate offense

(5)(a) Any person who knowingly or wilfully violates any provision of ORS 466 540 to 466 590 or any rule or order adopted or issued under ORS 466 540 to 466 590 shall, upon conviction, be subject to a criminal penalty not to exceed \$10,000 or imprisonment for not more than one year, or both

(b) Each day of violation shall be deemed a separate offense [Formerly 459 992, (3) enacted by 1985 c 733 §18, 1987 c 158 §93, subsection (4) enacted as 1987 c 539 §38, subsection (5) enacted as 1987 c 735 §24]

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