Chapter 468

1987 REPLACEMENT PART

Pollution Control

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GENERAL ADMINISTRATION

468.005 Definitions. As used in 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 this chapter, 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) "Order" has the same meaning as given in ORS 183 310

(5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof

(6) "Rule" has the same meaning as given in ORS 183 310

(7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to 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 this chapter [Formerly 449 001]

468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses. (1) There is created an Environmental Quality Commission The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171 562 and 171 565

(2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor Before the expiration of the term of a member, the Governor shall appoint a successor to assume the duties of the Governor on July 1 next following A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495 [Formerly 449 016]

468.015 Functions of commission. It is the function of the commission to establish the policies for the operation of the department in a manner consistent with the policies and purposes of 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 this chapter In addition, the commission shall perform any other duty vested in it by law [1973 c 835 §4]

468.020 Rules and standards. (1) In accordance with the applicable provisions of ORS 183 310 to 183 550, the commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission

(2) Except as provided in ORS 183 335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission [Formerly 449 173, 1977 c 38 §1]

468.030 Department of Environmental Quality. There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality The department shall consist of the director of the department and all personnel employed in the department [Formerly 449 032]

468.035 Functions of department. (1) Subject to policy direction by the commission, the department

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes

(c) Shall advise, consult, 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 control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements

(d) May employ personnel, including specialists, consultants and hearing officers, pur-

chase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in 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 this chapter

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies

(g) Shall develop and conduct demonstration programs in cooperation with units of local government

(h) Shall serve as the agency of the state for receipt of moneys from the Federal Government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States

(j) Shall seek enforcement of the air and water pollution laws of the state

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to 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 this chapter

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in 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 this chapter

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Governor's Watershed Enhancement Board under ORS 541 375 with activities of other cooperating state and federal agencies participating in the project

(2) Nothing in this section shall affect the authority of the Health Division to make and enforce rules

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448 115 to 448 325, 624 010 to 624 120 and 624 310 to 624.440, and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431 110 [Formerly 449 082, 1983 c 740 §181, 1987 c 734 §11]

468.040 Director; salary. The commission shall appoint a director who shall hold office at the pleasure of the commission The salary of the director shall be fixed by the commission unless otherwise provided by law [Formerly 449 026]

468.045 Functions of director; delegation. (1) Subject to policy direction by the commission, the director shall

(a) Be administrative head of the department,

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign, and coordinate personnel of the department,

(c) Administer and enforce the laws of the state concerning environmental quality, and

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning environmental quality

(2) In addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employes, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law

(3) The director may delegate to any of the employes of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director The official act of any such person so acting in the director's name and by the authority of the director shall be considered to be an official act of the director. [Formerly 449 028]

468.050 Deputy director. (1) With the approval of the commission, the director may appoint a deputy director in the unclassified

service who shall serve at the pleasure of the director The deputy director shall have full authority to act for the director, subject to directions of the director The appointment of the deputy director shall be by written order, filed with the Secretary of State

(2) The deputy director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by the deputy director in the performance of the official duties of the deputy director [1973 c 291 §2]

Note 468 050 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.055 Contracts with Health Division. In addition to the authority granted under ORS 190 003 to 190 110, when authorized by the commission and the Health Division, the director and the Assistant Director for Health may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employes by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest [Formerly 449 062]

468.060 Enforcement of rules by health agencies. On its own motion after public hearing, the commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes [Formerly 449 064]

468.065 Issuance of permits; content; fees; use. Subject to any specific requirements imposed by 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 this chapter

(1) Applications for all permits authorized or required by 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 this chapter shall be made in a form prescribed by the department Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to 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 this chapter

(2) By rule and after hearing, the commission may establish a schedule of permit fees for permits issued pursuant to ORS 459 205, 468 310, 468 315, 468 555 and 468 740 The permit fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit The permit fee shall accompany the application for the permit

(3) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit

(4) The department may require periodic reports from persons who hold permits under ORS 448 305, 454 010 to 454 040, 454 205 to 454 225, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745 and this chapter The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require

(5) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468 555, such fees shall be deposited and expended as are permit fees submitted to the department [Formerly 449 733, 1975 c 445 §7, 1983 c 144 §2 1983 c 740 §182]

468.070 Denial, modification, suspension or revocation of permits. (1) At any time, the department may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468 065 if it finds

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

(b) Failure to comply with the conditions of the permit.

(c) Violation of any applicable provisions of this chapter or ORS 466 605 to 466 680, 466 880 (3) and (4) and 466 995 (3)

(d) Violation of any applicable rule, standard or order of the commission

(2) The department may modify any permit issued pursuant to ORS 468 065 if it finds that modification is necessary for the proper administration, implementation or enforcement of the provisions of 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, 466 605 to 466 690 and this chapter

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183 310 to 183 550 [1973 c 835 §14 1979 c 184 §1, 1985 c 733 §22]

468.075 Revolving fund; uses. (1) On written request of the director of the department or the authorized representative of the director, the Executive Department shall draw warrants on amounts appropriated to the department for operating expenses for use by the department as a revolving fund The revolving fund shall not exceed the aggregate sum of $10,000 including unreimbursed advances The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks

(2) The revolving fund may be used by the department to pay for travel expenses, or advances therefor, for employes of the department and for any consultants or advisers for whom payment of travel expenses is authorized by law or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the department and by the Executive Department When such claims have been approved, a warrant covering them shall be drawn in favor of the department and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund [Formerly 449 034, 1977 c 704 §7]

ENFORCEMENT

468.090 Complaint procedure. (1) In case any written substantiated complaint is filed with the department which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS 183 310 to 183 550 for a contested case [Formerly 449 815]

468.095 Investigatory authority; entry on premises; status of records. (1) The department shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to 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 this chapter The commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures

(2) Unless classified by the director as confidential, any records, reports or information obtained 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 this chapter 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, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing [Formerly 449 169, 1975 c 173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of

procedures. (1) Whenever the commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of 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 this chapter, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to 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 this chapter, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission

(3) A regional authority formed under ORS 468 505 may exercise the same functions as are vested in the commission by this section in so far as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission [1973 c 826 §2, 1979 c 284 §153]

468 105 [Repealed by 1974 s s c 36 §28]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the commission may appeal from such order in accordance with the provisions of ORS 183 310 to 183 550 However, notwithstanding ORS 183 480 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon [Formerly 449 090]

468.115 Enforcement in cases of emergency. (1) Whenever it appears to the department that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court [Formerly 449 980]

468.120 Public hearings; subpenas, oaths, depositions. (1) The commission, its members or a person designated by and acting for the commission may

(a) Conduct public hearings

(b) Issue subpenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission

(c) Administer oaths

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department pursuant to 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 this chapter

(2) Subpenas authorized by this section may be served by any person authorized by the person issuing the subpena Witnesses who are subpenaed shall receive the same fees and mileage as in civil actions in the circuit court [Formerly 449 048]

468.125 Notice of violation. (1) No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day

period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed

(2) No advance notice shall be required under subsection (1) of this section if

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466 005 to 466 385

(e) The penalty to be imposed is for a violation of ORS 468 893 (8) relating to the control of asbestos fiber releases into the environment [Formerly 449 967, 1977 c 317 §2, 1983 c 703 §17, 1985 c 735 §3 1987 c 741 §19]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation Except as provided in ORS 468 140 (3), no civil penalty shall exceed $500 per day Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal

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

(d) The gravity and magnitude of the violation

(e) Whether the violation was repeated or continuous

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act

(g) The violator's cooperativeness and efforts to correct the violation

(h) Any relevant rule of the commission

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties [Formerly 449 970, 1977 c 317 §3, 1987 c 266 §2]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468 125, any civil penalty imposed under ORS 468 140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of a regional air quality control authority, if the violation occurs within its territory The notice referred to in this section shall be sent by registered or certified mail and shall include

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved,

(b) A short and plain statement of the matters asserted or charged,

(c) A statement of the amount of the penalty or penalties imposed, and

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

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183 310 to 183 550

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18 320 to 18.370 Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record

(5) All penalties recovered under ORS 468 140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred [Formerly 449 973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468 130

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority

(b) Any provision of ORS 164 785, 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, ORS chapter 467 and this chapter

(c) Any rule or standard or order of the commission adopted or issued pursuant to 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, ORS chapter 467 and this chapter

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467 060

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468 535 (1)

(2) Each day of violation under subsection (1) of this section constitutes a separate offense

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of $20,000 for each violation

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in 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 this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of $10,000 for each day of violation

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions

(5) Notwithstanding the limits of ORS 468 130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468 450, 468 455 to 468 480, 476 380 and 478 960 shall be assessed by the department a civil penalty of at least $20 but not more than $40 for each acre so burned Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449 993, 1975 c 559 §14 1977 c 511 §5, 1979 c 353 §1, 1987 c 513 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468 155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468 155 to 468 190 [1975 c 559 §15]

Note 468 150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468 155 to 468 190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil, or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil

(b) Such prevention, control or reduction required by this subsection shall be accomplished by

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468 700,

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468 275,

(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission,

(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459 005, hazardous waste as defined in ORS 466 005, or used oil as defined in ORS 468.850, or

(E) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466 005

(2) "Pollution control facility" or "facility" does not include

(a) Air conditioners,

(b) Septic tanks or other facilities for human waste,

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system,

(d) Any distinct portion of a solid waste, hazardous waste or used oil facility that makes an insignificant contribution to the purpose of utilization of solid waste, hazardous waste or used oil including the following specific items

(A) Office buildings and furnishings,

(B) Parking lots and road improvements,

(C) Landscaping,

(D) External lighting,

(E) Company signs,

(F) Artwork, and

(G) Automobiles,

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468 170, except

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility, or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility, or

(f) Property installed, constructed or used for clean up of emergency spills or unauthorized releases, as defined by the commission [Formerly 449 605, 1975 c 496 §1 1977 c 795 §1 1979 c 802 §1 1983 c 637 §1 1987 c 596 §4]

468.160 Policy. In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of air, water and noise pollution and solid waste, hazardous wastes and used oil in this state by providing tax relief with respect to Oregon facilities constructed to accomplish such prevention, control and reduction [Formerly 449 615, 1975 c 496 §2 1977 c 795 §2, 1979 c 802 §2]

468.165 Application for certification of pollution control facilities; fees. (1) Any person may apply to the commission for certification under ORS 468 170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977

(c) The solid waste facility was under construction on or after January 1, 1973, the hazardous waste or used oil facility was under construction on or after October 3, 1979, and if

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468 155 (1),

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459 005, hazardous waste as defined in ORS 466 005 or used oil as defined in ORS 468 850 by burning, mechanical process or chemical process or through the production, processing including presegregation or otherwise, or use of materials for their heat content or other forms of energy of or from the material, or the use of materials which have useful chemical or physical properties and which may be used for the same or other purposes, or materials which may be used in the

same kind of application as its prior use without change in identity,

(C) The end product of the utilization is a usable source of power or other item of real economic value,

(D) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state, and

(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984, and if

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468 155 (1), and

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466 005

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the actual cost of the facility, a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be served by the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil as set forth in ORS 468 190 (2)

(3) The director may require any further information the director considers necessary before a certificate is issued

(4) The application shall be accompanied by a fee established under subsection (5) of this section The fee may be refunded if the application for certification is rejected

(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the department may require of applicants for certificates issued under ORS 468 170 Before the adoption or revision of any such fees the commission shall estimate the total cost of the program to the department The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting the applications and shall be designed not to exceed the total cost estimated by the commission Any excess fees shall be held by the department and shall be used by the commission to reduce any future fee increases The fee may vary according to the size and complexity of the facility The fees shall not be considered by the commission as part of the cost of the facility to be certified

(6) The application shall be submitted within two years of substantial completion of construction of the facility Failure to file a timely application shall make the facility ineligible for tax credit certification An application shall not be considered filed until it is complete and ready for processing The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable If a facility is completed before January 1, 1984, the application shall be submitted within two years after January 1,1984 [Formerly 449 625, 1974 s s c 37 §2, 1975 c 496 §3, 1977 c 795 §3, 1979 c 802 §3, 1981 c 359 §1, 1983 c 637 §2]

468.170 Action on application; rejection; appeal; issuance of certificate; certification. (1) The commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468 165 The action of the commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil as set forth in ORS 468 190 (2) Each certificate shall bear a separate serial number for each such facility

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil, the applicant may appeal from the rejection

as provided in ORS 468 110 The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468 110 before the 30th day after notice was mailed by the commission

(4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468 165, if the commission finds that the facility

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468 165 (1) and 468 175,

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468 155 (1) and (2), and

(C) Is necessary to satisfy the intents and purposes of ORS 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745, ORS chapters 459 and 467 and this chapter and rules thereunder

(b) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate A certificate under this section is effective for purposes of tax relief in accordance with ORS 307 405, 316 097 and 317 072 if erection, construction or installation of the facility was completed before December 31, 1990

(5) A person receiving a certificate under this section may take tax relief only under ORS 316 097 or 317 116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307 405

(6) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316 097, based on that shareholder's pro rata share of the certified cost of the facility

(7) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316 097, based on that partner's pro rata share of the certified cost of the facility

(8) Certification under this section of a pollution control facility qualifying under ORS 468 165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 61 or 62 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years, or 10 years if construction is commenced after June 30, 1989, and completed before December 31, 1990, from the date of its first certification by the commission

(9) Portions of a facility qualifying under ORS 468 165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate The provisions of ORS 316 097 (8) or 317 116 (8), whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility [Formerly 449 635, 1974 s s c 37 §3 1975 c 496 §4 1977 c 795 §4, 1979 c 531 §6, 1979 c 802 §4, 1981 c 408 §3, 1983 c 637 §3 1987 c 596 §5]

468.175 Application for certification before construction; order granting or denying certification; hearing. (1) Any person proposing to apply for certification of a pollution control facility pursuant to ORS 468 165, before the commencement of erection, construction or installation of the facility, shall file a request for preliminary certification with the Department of Environmental Quality The request shall be in a form prescribed by the department For facilities constructed on or after October 3, 1979, the commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such facility would otherwise qualify for tax credit certification pursuant to ORS 468 150 to 468 190

(2) Within 30 days of the receipt of such request, the department may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications After examination thereof, the department may request corrections and revisions to the plans and specifications The department may also require any other information necessary to determine whether the proposed

construction is in accordance with the provisions of ORS 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745, this chapter and ORS chapters 459 and 467 and applicable rules and standards adopted pursuant thereto

(3) If the department determines that the proposed erection, construction or installation is in accordance with the provisions of ORS 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745, this chapter and ORS chapters 459 and 467 and applicable rules or standards adopted pursuant thereto, it shall issue a preliminary certificate approving the erection, construction or installation If the department determines that the erection, construction or installation does not comply with the provisions of ORS 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745, this chapter and ORS chapters 459 and 467 and applicable rules or standards adopted pursuant thereto, the commission shall issue an order denying certification

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the department fails to issue a preliminary certificate of approval and the commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued The construction must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted

(5) Within 20 days from the date of mailing of the order, any person against whom an order is directed pursuant to subsection (3) of this section may demand a hearing The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department The hearing shall be conducted in accordance with the applicable provisions of ORS 183 310 to 183 550 [1973 c 831 §2 1975 c 496 §5 1977 c 795 §5 1979 c 802 §5]

468.180 Conditions for issuance of certificate under ORS 468.170. (1) No certification shall be issued by the commission pursuant to ORS 468 170 unless the facility, facilities or part thereof was erected, constructed or installed in accordance with the requirements of ORS 468 175 and in accordance with the applicable provisions of ORS 454 010 to 454 040, 454 205 to 454 255, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745, this chapter and ORS chapters 459 and 467 and the applicable rules or standards adopted pursuant thereto

(2) Nothing in this section or ORS 468 175 is intended to apply to erection, construction or installation of pollution control facilities begun before October 5, 1973 [1973 c 831 §3, 1975 c 496 §6 1977 c 795 §6, 1979 c 802 §6]

468.185 Procedure to revoke certification; reinstatement (1) Pursuant to the procedures for a contested case under ORS 183 310 to 183 550, the commission may order the revocation of the certification issued under ORS 468 170 of any pollution control or solid waste, hazardous wastes or used oil facility, if it finds that

(a) The certification was obtained hy fraud or misrepresentation, or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as specified in such certificate

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307 405, 316 097 and 317 116

(4) Except as provided in subsection (5) of this section, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 307 405, 316 097 or 317 116 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final

(5) The commission may reinstate a tax credit certification revoked under paragraph (b) of subsection (1) of this section if the commission finds the facility has been brought into compliance If the commission reinstates certification under this subsection, the commission shall notify the Department of Revenue or the county assessor of the county in which the facility is

located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation as determined by the commission [Formerly 449 645 1975 c 496 §7, 1977 c 795 §7 1979 c 802 §7 1987 c 596 §6]

468 187 [1981 c 710 §2 repealed by 1984 s s c 1 §18]

468.190 Allocation of costs to pollution control. (1) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468 170, the commission shall consider the following factors

(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity

(b) The estimated annual percent return on the investment in the facility

(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective

(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility

(e) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent If zero percent the commission shall issue an order denying certification

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil [Formerly 449 655 1974 s s c 37 §1 1977 c 795 §8 1983 c 637 §4]

STATE POLLUTION CONTROL BONDS

468.195 Issuance of bonds authorized; principal amount. In order to provide funds for the purposes specified in Article XI-H of the Oregon Constitution bonds may be issued in accordance with the provisions of ORS 286 031 to 286 061 The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed $260 million par value [Formerly 449 672 1981 c 312 §1 1981 c 660 §42]

468 200 [Formerly 449 675, repealed by 1981 c 660 §18]

468 205 [Formerly 449 677, repealed by 1981 c 660 §18]

468 210 [Formerly 449 680 1975 c 462 §14 repealed by 1981 c 660 §18]

468.215 Pollution Control Fund The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct from the General Fund, to be designated the Pollution Control Fund, which fund is hereby appropriated for the purpose of carrying out the provisions of ORS 468 195 to 468 260 It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293 701 to 293 776, 293 810 and 293 820, and the earnings from such investments inure to the Pollution Control Sinking Fund [Formerly 449 682]

468.220 Department to administer funds; uses; legislative approval of grants; administrative assessment (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454 505 or sewerage systems as defined in ORS 468 700

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454 505, sewerage systems as defined by ORS 468 700 or

facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB

(L) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 468 975

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees

(4) The real property and facilities referred to in paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department The plan must include a waste reduction program

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section [Formerly 449 685, 1977 c 95 §8, 1977 c 704 §9, 1979 c 773 §9, 1981 c 312 §2 1985 c 670 §42 1987 c 695 §10]

468.225 Investment yield on undistributed bond funds and revenues. All undistributed bond funds and revenues received as payment upon agency bonds or other obligations, if invested, shall be invested to produce an adjusted yield not exceeding the limitations imposed by section 103, subsection (d) of the Internal Revenue Code of 1954, and amendments thereto in effect on March 1, 1971 [Formerly 449 687]

468.230 Pollution Control Sinking Fund; use; limitation. (1) The commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund The Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 468 195 to 468 260 and administrative expenses incurred in issuing the bonds Moneys of the sinking fund are hereby appropriated for such purpose With the approval of the commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293 701 to 293 776, 293 810 and 293 820, and earnings from such investment shall be credited to the Pollution Control Sinking Fund

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 468 195 to 468 260 and assessments collected under ORS 468 220 (8), all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468 195 to 468 260

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the commission [Formerly 449 690 1981 c 312 §3]

468.235 Levy of taxes to meet bond obligation authorized. Each year the Department of Revenue shall determine the amount of revenues and other funds that are available and the amount of taxes, if any, that should be levied in addition thereto to meet the requirements of ORS 468 195 to 468 260 for the ensuing fiscal year Such additional amount of tax is hereby levied and shall be apportioned, certified to, and collected by the several counties of the state in the manner required by law for the apportionment, certification and collection of other ad valorem property taxes for state purposes This tax shall be collected by the several county treasurers and remitted in full to the State Treasurer in the manner and the times prescribed by law, and shall be credited by the State Treasurer to the Pollution Control Sinking Fund [Formerly 449 692]

468.240 Remedy where default occurs on payment to state. If any municipal corporation, city or county defaults on payments due to the state under ORS 468 195 to 468 260, the state may withhold any amounts otherwise due to the corporation, city or county to apply to the indebtedness [Formerly 449 694]

468.245 Acceptance of federal funds. The commission may accept assistance, grants and gifts, in the form of money, land services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the Federal Government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by Article XI-H of the Constitution of Oregon and by ORS 468 195 to 468 260 Unless enjoined by the terms and conditions of any such gift or grant, the commission may convert the same or any of them into money through sale or other disposal thereof [Formerly 449 695]

468 250 Participation in matching fund programs with Federal Government. (1) The commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the Federal Government if the implementation of the program requires matching funds of the state or its participation in administering the program However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-supporting and self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon

(2) Subject to conditions imposed on federally granted funds, a municipal corporation, city, county or agency of the State of Oregon, or combination thereof, who is eligible for federal funds for a project during its construction or becomes eligible for reimbursement for funds expended, if the project has been constructed and placed into operation, shall apply for and pay to the commission such funds so received, or otherwise made available to it, in such amounts as determined by the commission as just and necessary, from an agency of the Federal Government These funds shall first be used to reimburse the State of Oregon for the portion of any grant that was advanced to the municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for construction of the project that exceeded the federal requirements for state matching funds and any remainder thereof shall be used to apply upon the retirement of any principal and interest indebtedness due and owing to the State of Oregon arising out of funds loaned for the project prior to federal funds becoming available

(3) The refusal of a municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, to apply for federal funds in such amounts as determined by the commission as just and necessary for which it would otherwise be eligible, shall be sufficient grounds to terminate any further participation in construction of a facility by the commission

(4) The municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, shall consent to and request that funds made available to it by an agency of the Federal Government shall be paid directly to the commission if required to do so under subsection (2) of this section [Formerly 449 697]

468.255 Limit on grants and loans Any funds advanced by the commission by grant shall not exceed 30 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes, and any obligation acquired by the commission by purchase, contract, loan, or otherwise, shall not exceed 100 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes Combinations of funds granted and loaned by whatever means shall not total more than 100 percent of the eligible project costs [Formerly 449 699, 1981 c 312 §4]

468.260 Return of unexpended funds to state required, use of returned funds. Any proceeds unexpended after a project is constructed and inspected, and after records relating thereto are audited by the commission, shall be returned to the commission on behalf of the State of Oregon to apply upon the retirement of principal and interest indebtedness on obligations acquired by it from a municipal corporation, city, county or agency of the State of Oregon, or any combinations thereof [Formerly 449 701]

COUNTY POLLUTION CONTROL FACILITIES

468 263 Definitions for ORS 468.263 to 468 272. As used in ORS 468 263 to 468 272, unless the context requires otherwise

(1) "Bonds" means revenue bonds or other types of obligations authorized by ORS 468 263 to 468 272

(2) "Pollution control facilities" or "facilities" means any land, building or other improvement, appurtenance, fixture, item of machinery or equipment, and all other real and personal property, whether or not in existence or under construction at the time the bonds are issued, which are to be used in furtherance of the purpose of abating, controlling or preventing, altering, disposing or storing of solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom

(3) "Governing body" means the county court or board of county commissioners [1974 s s c 34 §2]

Note 468 263 to 468 272 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.264 Policy. The Legislative Assembly finds

(1) That control of environmental damage and general health and welfare of the citizens of the State of Oregon is promoted by encouraging the installation of antipollution devices, equipment and facilities

(2) That the methods of financing provided in ORS 468 263 to 468 272 will encourage such installation [1974 s s c 34 §1]

Note See note under 468 263

468.265 Powers of county over pollution control facilities. (1) In addition to any other powers which it may now have, each county shall have the following powers, together with all powers incidental thereto or necessary for the performance of the following

(a) To acquire, whether by purchase, exchange, devise, gift or otherwise, establish, construct, improve, maintain, equip and furnish one or more pollution control facilities or any interest therein to be located, in whole or in part, within such municipality

(b) To enter into a lease, sublease, lease-purchase, instalment sale, sale, or agreement for any facility upon such terms and conditions as the governing body may deem advisable, provided the same shall at least fully cover all debt service requirements with respect to the facility and shall not conflict with the provisions of ORS 468 263 to 468 272

(c) To sell, exchange, donate and convey to others any or all facilities upon such terms as the governing body may deem advisable, including the power to receive for any such sale the note or notes of the purchaser of the facilities or property whenever the governing body finds any such action to be in furtherance of the purposes of ORS 468 263 to 468 272

(d) To issue revenue bonds for the purpose of carrying out any of its powers under ORS 468 263 to 468 272

(e) Whenever the governing body finds such loans to be in the furtherance of the purposes of ORS 468 263 to 468 272 and subject always to the limitations contained in ORS 468 266, to make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of a facility and to charge and collect interest on such loans and pledge the proceeds thereof as security for the payment of the principal and interest of any

bonds issued hereunder and any agreements made in connection therewith

(f) To mortgage and pledge any or all facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues, proceeds and receipts or any portion thereof from a facility as security for the payment of the principal of and interest on any bonds so issued

(g) To refund outstanding obligations incurred by an enterprise to finance the cost of a facility when the governing body finds that such refinancing is in the public interest

(h) To pay compensation for professional services and other services as the governing body shall deem necessary to carry out the purposes of ORS 468 263 to 468 272

(i) To acquire and hold obligations of any kind to carry out the purposes of ORS 468 263 to 468 272

(j) To invest and reinvest funds under its control as the governing body shall direct

(k) To enter into contracts and execute any agreements or instruments and to do any and all things necessary or appropriate to carry out the purposes of ORS 468 263 to 468 272

(2) The county shall not have the power to operate any facility as a business other than as lessor or seller, nor shall it permit any funds derived from the sale of bonds to be used by any lessee or purchaser of a facility as working capital [1974 s s c 34 §3]

Note See note under 468 263

468.266 Issuance of bonds. (1) All principal of and interest on bonds issued pursuant to ORS 468 263 to 468 272 shall be payable solely out of the revenues, proceeds and receipts from the lease or sale of the property, loan repayments, or out of the proceeds of revenue bonds issued pursuant to ORS 468 263 to 468 272 as shall be specified in the proceedings of the governing body hy which the issuance of bonds shall have been authorized The principal and interest shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such limitation shall be plainly stated upon the face of each bond

(2) The bonds

(a) May be executed and delivered at any time and from time to time,

(b) May be in such form, denomination, tenor and maturity,

(c) May be in registered or bearer form either as to principal or interest or both, and may provide for conversion between registered and coupon bonds of varying denominations,

(d) May be payable in such instalments and at such time or times not exceeding 40 years from the date thereof,

(e) May be payable at such place or places within or without this state,

(f) May bear interest at such rate or rates payable at such time or times and at such place or places,

(g) May be redeemable prior to maturity with or without premium,

(h) May be executed by such officers and in such manner,

(i) May contain such provisions not inconsistent with ORS 468 263 to 468 272,

as shall be specified in the proceedings of the governing body by which issuance of the bonds shall have been authorized

(3) Bonds may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous

(4) Issuance by the county of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same purpose or any other purpose, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds

(5) Any bonds of the county at any time outstanding may be refunded if permitted by the conditions of issuance, at any time and from time to time by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be

payable at the same date or different dates or shall be due serially or otherwise

(6) All bonds issued under ORS 468 263 to 468 272 and interest coupons attached thereto shall be construed to be negotiable instruments [1974 s s c 34 §4]

Note See note under 468 263

468.267 Security for bonds The principal of and interest on any bonds shall be secured by a pledge of the revenues, proceeds and receipts or any portion thereof out of which the principal and interest are made payable, and may be secured by a mortgage covering all or any part of the facilities from which the revenues, proceeds or receipts so pledged may be derived, including any enlargements thereof and additions thereto, by a pledge or assignment of the lease to such facility or by such other security as may be deemed to be prescribed in the proceedings of the governing body and authorizing the issuance of bonds The proceedings under which the bonds are authorized to be issued and any mortgage securing such bonds may contain any agreements and provisions respecting the maintenance of the facilities and properties covered thereby, the fixing and collection of rents for any portions thereof leased by the municipality to others, the fixing and collection of proceeds from the sale of any facilities and properties by the municipality to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, and such other provisions not inconsistent with ORS 468 263 to 468 272, all as the governing body shall deem advisable and not in conflict with the provisions of ORS 468 263 to 468 272 Each pledge, lease, sublease, agreement and mortgage made for the benefit or security of any of the bonds shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid [1974 s s c 34 §5]

Note See note under 468 263

468.268 Enforcement of bond obligation. (1) The proceedings authorizing any bonds and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by suit, mandamus or by the appointment of a receiver with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage by foreclosure of any mortgage or by any one or more remedies specified in the proceedings

(2) Such proceedings or mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor [1974 s s c 34 §6]

Note See note under 468 263

468.269 Trustees; powers. The proceedings authorizing the issuance of bonds may provide for the appointment of one or more trustees for the protection of the holders of the bonds, whether or not a mortgage is entered into as security for such bonds A bank with trust powers or a trust company within or without the State of Oregon may be appointed as trustee and shall be located in the United States, and shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank, including the trustee, which are continuously secured by such obligations of or guaranteed by the United States Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued under ORS 468 263 to 468 272 to the same extent as if it were not such trustee The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, or of any insurance policy or of any condemnation award shall be deposited with the trustee and applied as provided in the proceedings [1974 s s c 34 §7]

Note See note under 468 263

468.270 Tax status of leasehold interest in facilities. Nothing in ORS 468 263 to 468 272 is intended to exempt from taxation or assessment the leasehold interest of any lessee in any facility nor are ORS 468 263 to 468 272 intended to affect any exemption or credit from taxation which might otherwise be available to any lessee under the laws of the State of Oregon Such leasehold interest is classified for purposes of taxation as having the same value as the fee interest in that property [1974 s s c 34 §8]

Note See note under 468 263

468.271 Effect on procedure of awarding contracts; construction. (1) The construction, reconstruction or improvement of any facilities shall be completed in the manner determined by the governing body and shall be free from any requirement of competitive bidding or any other restriction imposed on the procedure for award of contracts with public bodies.

(2) Nothing in ORS 468 263 to 468 272 is intended as a restriction or limitation upon any other powers which a county might otherwise have under the laws of this state, but shall be construed as cumulative

(3) If any provision of ORS 468 263 to 468 272 or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of ORS 468 263 to 468 272 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 468 263 to 468 272 are declared to be severable [1974 s s c 34 §9]

Note See note under 468 263

468 272 Application of other laws relating to bonds. Any restrictions, limitations, conditions or procedures provided by other statutes relating to the issuance and sale of bonds or other obligations including, but not limited to, any restrictions, limitations, conditions or procedures set forth in ORS 288 320, do not apply to the issuance and sale of bonds authorized by ORS 468 263 to 468 272 [1974 s s c 34 §10]

Note See note under 468 263

AIR POLLUTION CONTROL

468.275 Definitions for air pollution control laws. As used in this chapter, unless the context requires otherwise

(1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere

(2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof

(3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution

(4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby

(6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the commission

(7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in the low firing cycle The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable [Formerly 449 760, 1983 c 333 §1]

468.280 Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon

(a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state

(b) To provide for a coordinated state-wide program of air quality control and to allocate between the state and the units of local government responsibility for such control

(c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs

(2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned [Formerly 449 765]

468.285 Purpose. It is the purpose of the air pollution laws contained in 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 this chapter to safeguard the air resources of the state by controlling, abating and preventing air pollution under a program which shall be consistent with the declaration of policy in this section and with ORS 468 280 [Formerly 449 770]

468.290 Application of air pollution laws. Except as provided in this section and in ORS 468 450, 476 380 and 478 960, the air pollution laws contained in this chapter do not apply to

(1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468 140, 468 150, 468 455 to 468 480 and this section,

(2) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468 140, 468 150, 468 455 to 468 480 and this section,

(3) Barbecue equipment used in connection with any residence,

(4) Agricultural land clearing operations or land grading,

(5) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves which shall be subject to regulation under this section and ORS 468 630 to 468 655,

(6) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employes in the methods of fire fighting, which in the opinion of the agency is necessary;

(7) Fires set pursuant to permit for the purpose of instruction of employes of private industrial concerns in methods of fire fighting, or for civil defense instruction, or

(8) The propagation and raising of nursery stock, except boilers used in connection with the propagation and raising of nursery stock. [Formerly 449 775 1975 c 559 §3, 1983 c 333 §2, 1983 c 730 §3]

468.295 Air purity standards; air quality standards. (1) By rule the commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas

(2) In determining air purity standards, the commission shall consider the following factors

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state,

(b) Existing physical conditions and topography,

(c) Prevailing wind directions and velocities,

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions,

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight,

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics,

(g) Availability of air-cleaning devices,

(h) Economic feasibility of air-cleaning devices,

(i) Effect on normal human health of particular air contaminants,

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices,

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants,

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants,

(m) The volume of air contaminants emitted from a particular class of air contamination source,

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources, and

(o) Other factors which the commission may find applicable

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof [Formerly 449 785]

468.300 When liability for violation not applicable. The several liabilities which may be imposed pursuant to 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 this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause [Formerly 449 825]

468.305 General comprehensive plan. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of

the state in which air pollution is found already existing or in danger of existing The plan shall recognize varying requirements for different areas of the state [Formerly 449 782]

468.310 Permits. By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state The permits shall be issued as provided in ORS 468 065 [Formerly 449 727]

468.315 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468 065, no person shall

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468 310 into the outdoor atmosphere from any air contamination source

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468 310

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468 310 in excess of the permissive discharges or emission specified under an existing permit [Formerly 449 731]

468 320 Classification of air contamination sources; registration and reporting of sources. (1) By rule the commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the department and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution [Formerly 449 707]

468.325 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal. (1) The commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications After examination thereof, the commission may request corrections and revisions to the plans and specifications The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of 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 this chapter and applicable rules or standards adopted pursuant thereto

(3) If the commission determines that the proposed construction is in accordance with the provisions of 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 this chapter and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction If the commission determines that the construction does not comply with the provisions of 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 this chapter and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department The hearing shall be conducted pursuant to the applicable provisions of ORS 183 310 to 183 550

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source [Formerly 449 712, 1985 c 275 §1]

468.330 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468 325 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard [Formerly 449 739]

468.335 Furnishing copies of rules and standards to building permit issuing agencies. Whenever under the provisions of ORS 468 320 to 468 340 rules or standards are adopted by either the commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards [Formerly 449 722]

468.340 Measurement and testing of contamination sources. (1) Pursuant to rules adopted by the commission, the department shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section Whenever samples for air or air contaminants are taken by the department of analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law [Formerly 449 702]

468.345 Variances from air contamination rules and standards, delegation to local governments; notices. (1) The commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because

(a) Conditions exist that are beyond the control of the persons granted such variance, or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause, or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation, or

(d) No other alternative facility or method of handling is yet available

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held

upon not less than 10 days' notice Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification [Formerly 449 810]

468.350 Air and water pollution control permit for geothermal well drilling and operation; enforcement authority of director (1) Upon issuance of a permit pursuant to ORS 522 115, the director shall accept applications for such appropriate permits under air and water pollution control laws as are necessary for the drilling of a geothermal well for which the permit has been issued and shall, within 30 days, act upon such application

(2) The director sball continue to exercise enforcement authority over a permit issued pursuant to this section, and shall have primary responsibility in carrying out the policy set forth in ORS 468 280, 468 710 and rules adopted pursuant to ORS 468 725, for air and water pollution control at geothermal wells which have been unlawfully abandoned, unlawfully suspended, or completed [1975 c 552 §34]

468.355 Open burning of vegetative debris; local government authority. (1) The Environmental Quality Commission shall establish by rule periods during which open burning of vegetative debris from residential yard cleanup shall be allowed or disallowed based on daily air quality and meteorological conditions as determined by the department

(2) After June 30, 1982, the commission may prohibit residential open burning in areas of the state if the commission finds

(a) Such prohibition is necessary in the area affected to meet air quality standards, and

(b) Alternate disposal methods are reasonably available to a substantial majority of the population in the affected area

(3)(a) Nothing in this section prevents a local government from taking any of the following actions if that governmental entity otherwise has the power to do so

(A) Prohibiting residential open burning,

(B) Allowing residential open burning on fewer days than the number of days on which residential open burning is authorized by the commission, or

(C) Taking other action that is more restrictive of residential open burning than a rule adopted by the commission under this section

(b) Nothing in this section affects any local government ordinance, rule, regulation or provision that

(A) Is more restrictive of residential open burning than a rule adopted by the commission under this section, and

(B) Is in effect on August 21, 1981

(c) As used in this subsection, "local government" means a city, county, other local governmental subdivision or a regional air quality control authority established under ORS 468 505 [1981 c 765 §2]

MOTOR VEHICLE POLLUTION CONTROL

468.360 Definitions for ORS 468.360 to 468.405. As used in ORS 468 360 to 468 405

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468 375 (3)

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468 375 (1), whichever criteria are stricter

(3) "Motor vehicle" includes any self-propelled vehicle used for transporting persons or commodities on public roads and highways, but does not include a vehicle of special interest as that term is defined in ORS 801 605, if the vehicle is maintained as a collector's item and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle [Formerly 449 949 1975 c 670 §4, 1983 c 338 §932]

468.365 Legislative findings. For purposes of ORS 468 360 to 468 405, the Legislative Assembly finds

(1) That the emission of pollutants from motor vehicles is a significant cause of air pollution in many portions of this state

(2) That the control and elimination of such pollutants are of prime importance for the protection and preservation of the public health, safety and well-being and for the prevention of irrita-

tion to the senses, interference with visibility, and damage to vegetation and property

(3) That the state has a responsibility to establish procedures for compliance with standards which control or eliminate such pollutants

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property. [Formerly 449 951]

468.370 Motor vehicle emission and noise standards; copy to Motor Vehicles Division. (1) After public hearing and in accordance with the applicable provisions of ORS 183 310 to 183 550, the commission may adopt motor vehicle emission standards For the purposes of this section, the commission may include, as a part of such standards, any standards for the control of noise emissions adopted pursuant to ORS 467 030

(2) The commission shall furnish a copy of standards adopted pursuant to this section to the Motor Vehicles Division and shall publish notice of the standards in a manner reasonably calculated to notify affected members of the public [Formerly 449 957, 1974 s s c 73 §1]

468.375 Certification of motor vehicle pollution control systems and inspection of motor vehicles. The commission shall

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control systems In determining the criteria the commission shall consider the following

(a) The experience of any other state or the Federal Government,

(b) The cost of the system and of its installation,

(c) The durability of the system,

(d) The ease of determining whether the system, when installed on a motor vehicle, is functioning properly, and

(e) Any other factors which, in the opinion of the commission, render such a system suitable for the control of motor vehicle air pollution or for the protection of the health, safety and welfare of the public

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification However, no such rule shall require testing for certification more often than once during the period for which registration or renewal of registration for a motor vehicle is issued No rule shall require testing for certification of a motor vehicle that is exempted from the requirement for certification under ORS 816 300

(3) Issue certificates of approval for classes of motor vehicle pollution control systems which, after being tested by the commission or by a method acceptable to the commission, the commission finds meet the criteria adopted under subsection (1) of this section

(4) Designate by rule classifications of motor vehicles for which certified systems are available

(5) Revoke, suspend or restrict a certificate of approval previously issued upon a determination that the system no longer meets the criteria adopted under subsection (1) of this section pursuant to procedures for a contested case under ORS 183 310 to 183 550

(6) Designate suitable methods and standards for testing systems and inspecting motor vehicles to determine and insure compliance with the standards and criteria established by the commission

(7) Except as provided in ORS 468 377, contract for the use of or the performance of tests or other services within or without the state [Formerly 449 953, 1974 s s c 73 §2, 1975 c 535 §2, 1977 c 298 §3, 1983 c 196 §1, 1985 c 16 §466]

468.377 Cost effective inspection program; contracts for inspections. The commission shall determine the most cost effective method of conducting a motor vehicle pollution control system inspection program as required by ORS 468 375 Upon finding that savings to the public and increased efficiency would result and the quality of the program would be adequately maintained, the commission may contract with a unit of local government or with a private individual, partnership or corporation authorized to do business in the State of Oregon, for the performance of tests or other services associated with conducting a motor vehicle pollution control system inspection program [1977 c 298 §2, 1985 c 222 §3]

468.380 Notice to state agencies concerning certifications. The department shall notify the Motor Vehicles Division and the Oregon State Police whenever certificates of approval for motor vehicle pollution control systems are approved, revoked, suspended or restricted by the commission [Formerly 449 963]

468 385 [Formerly 483 815, repealed by 1983 c 338 §978]

468.390 Licensing of personnel and equipment; certification of motor vehicles. (1) The commission by rule may

(a) Establish criteria and examinations for the qualification of persons eligible to inspect motor vehicles and motor vehicle pollution control systems and execute the certificates described under ORS 815 310, and for the procedures to be followed in such inspections

(b) Establish criteria and examinations for the qualification of equipment, apparatus and methods used by persons to inspect motor vehicles and motor vehicle pollution control systems

(c) Establish criteria and examinations for the testing of motor vehicles

(2) Subject to rules of the commission, the department shall

(a) Issue licenses to any person, type of equipment, apparatus or method qualified pursuant to subsection (1) of this section

(b) Revoke, suspend or modify licenses issued pursuant to paragraph (a) of this subsection in accordance with the provisions of ORS 183 310 to 183 550 relating to contested cases

(c) Issue certificates of compliance for motor vehicles which, after being tested in accordance with the rules of the commission, meet the criteria established under subsection (1) of this section and the standards adopted pursuant to ORS 468 360 to 468 395 and 468 405 [1973 c 835 §72, 1974 s s c 73 §4, 1983 c 338 §933]

468.395 Determination of compliance of motor vehicles. (1) The commission shall establish and maintain procedures and programs for determining whether motor vehicles meet the minimum requirements necessary to secure a certificate under ORS 815 310

(2) Such procedures and programs include, but are not limited to, the installation of a certified system and the adjustment, tune-up, or other mechanical work performed on the motor vehicle in accordance with the requirements of the commission [Formerly 449 955, 1983 c 338 §934]

468.397 Designation of areas of the state subject to motor vehicle emission inspection program. (1) If the need for a motor vehicle pollution control system inspection program is identified for an area in the State of Oregon Clean Air Act Implementation Plan, then the Environmental Quality Commission, by rule, shall designate boundaries, in addition to the areas specified in ORS 815 300 (2)(a) and (b), within which motor vehicles are subject to the requirement under ORS 815 300 to have a certificate of compliance issued under ORS 468 390 to be registered or have the registration of the vehicle renewed

(2) Whenever the Environmental Quality Commission designates boundaries under this section within which vehicles are subject to the requirements of ORS 815 300, the commission shall notify the Motor Vehicles Division of the Department of Transportation and shall provide the division with information necessary to perform the division's duties under ORS 815 300 [1985 c 222 §2]

468.400 Bond; remedy against person licensed under ORS 468.390; cancellation of license. (1) Any person licensed to issue certificates of compliance pursuant to ORS 468 390 shall file with the department a surety bond The bond shall be executed to the State of Oregon in the sum of $1,000 It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468 360 to 468 405, 815 295, 815 300, 815 310, 815 320 and 815 325

(2) In addition to any other remedy that a person may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468 360 to 468 405, 815 295, 815 300, 815 310, 815 320 and 815 325 by a person licensed pursuant to ORS 468 390, the injured person has the right of action against the business employing such licensed person and a right of action in the person's own name against the surety upon the bond

(3) The license issued pursuant to ORS 468 390 of any person whose bond is canceled by legal notice shall be canceled immediately by the department If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond shall be relieved from liability accruing subsequent to such cancellation by the department [Formerly 449 959, 1983 c 338 §935]

468.405 Fees; collection; use. (1) The department shall

(a) Establish and collect fees for application, examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468 390

(A) The fee for licensing shall not exceed $5

(B) The fee for renewal of licenses shall not exceed $1

(b) Establish fees for the issuance of certificates of compliance The department may classify motor vehicles and establish a different fee

for each such class The fee for the issuance of certificates shall be established by the commission in an amount based upon the costs of administering this program established in the current biennial budget The fee for a certificate shall not exceed $10

(2) The department shall collect the fees established pursuant to paragraph (b) of subsection (1) of this section at the time of the issuance of certificates of compliance as required by ORS 468 390 (2)(c)

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Motor Vehicles Division of the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468 390 and 815 310

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state

(4) The department may enter into an agreement with the Motor Vehicles Division of the Department of Transportation to collect the licensing and renewal fees described in paragraph (a) of subsection (1) of this section subject to the fees being paid and credited as provided in subsection (3) of this section [Formerly 449 965, 1974 s s c 73 §5 1975 c 535 §3, 1977 c 704 §10, 1981 c 294 §1, 1983 c 338 §936]

468.410 Authority to limit motor vehicle operation and traffic. The commission and regional air pollution control authorities organized pursuant to 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 this chapter by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons [Formerly 449 747]

468.415 Administration and enforcement of rules adopted under ORS 468.410. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Highway Division, shall cooperate with the commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468 410 [Formerly 449 751]

468.420 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468 410 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic, and

(2) Issuing warnings or citations [Formerly 449 753]

FINANCING TREATMENT WORKS

468.423 Definitions for ORS 468.423 to 468.440. As used in ORS 468 423 to 468 440

(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 or the director's designee

(4) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468 427

(5) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities

(6) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works "Treatment works" includes

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, exten-

sion, improvement, remodeling, addition or alteration to the equipment,

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities, and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems

(c) Any other facility that the commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution [1987 c 648 §1]

Note 468 423 to 468 440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.425 Policy. It is declared to be the policy of this state

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works,

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund, and

(3) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates [1987 c 648 §2]

Note See note under 468 423

468.427 Water Pollution Control Revolving Fund; sources. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the department to be used for the purposes described in ORS 468 429

(2) The Water Pollution Control Revolving Fund shall consist of

(a) All capitalization grants provided by the Federal Government under the federal Water Quality Act of 1986,

(b) All state matching funds appropriated or authorized by the legislature,

(c) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects,

(d) All repayments of moneys borrowed from the fund,

(e) All interest payments made by borrowers from the fund, and

(f) Any other fee or charge levied in conjunction with administration of the fund

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund [1987 c 648 §3]

Note See note under 468 423

468.429 Uses of revolving fund. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance

(a) To public agencies for the construction or replacement of treatment works

(b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution

(c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes

(a) To buy or refinance the treatment works' debt obligations of public agencies if such debt was incurred after March 7, 1985

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund [1987 c 648 §4]

Note See note under 468 423

468 430 [1983 c 218 §1, repealed by 1985 c 222 §6]

468.433 Duties of department. In administering the Water Pollution Control Revolving Fund, the department shall

(1) Allocate funds for loans in accordance with a priority list adopted by rule by the commission

(2) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards

(3) Prepare any reports required by the Federal Government as a condition to awarding federal capitalization grants [1987 c 648 §5]

Note See note under 468 423

468 435 [1983 c 218 §2 repealed by 1985 c 222 §6]

468.437 Loan applications; eligibility; waiver; default remedy (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department Each applicant shall demonstrate to the satisfaction of the State of Oregon bond counsel that the applicant has the legal authority to incur the debt To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the indebtedness and deposited into the fund [1987 c 648 §6]

Note See note under 468 423

468.440 Loan terms and interest rates; considerations (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468 423 to 468 440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs In establishing the policy, the commission shall take into consideration at least the following factors

(a) The capability of the project to enhance or protect water quality

(b) The ability of a public agency to repay a loan

(c) Current market rates of interest

(d) The size of the community or district to be served by the treatment works

(e) The type of project financed

(f) The ability of the applicant to borrow elsewhere

(2) The commission may establish an interest rate ranging from zero to the market rate The term of a loan may be for any period not to exceed 20 years

(3) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468 423 to 468 440 [1987 c 648 §7]

Note See note under 468 423

Note Section 8 chapter 648, Oregon Laws 1987 provides

Sec 8 Before awarding the first loan from the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board The report shall describe the Water Pollution Control Revolving Fund program and set forth in detail the operating procedures of the program [1987 c 648 §8]

FIELD BURNING REGULATION

468.450 Regulation of field burning on marginal days. (1) As used in this section

(a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety

(b) "Marginal day" means a day on which marginal conditions exist

(2) In exercising its functions under ORS 476 380 and 478 960, the commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions A schedule describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476 380 and 478 960 The schedule shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other

burning and shall prescribe duration of periods of time during the day when burning is authorized

(3) In preparing the schedule required under subsection (2) of this section, the commission shall weigh the economic consequences of scheduled burnings and the feasibility of alternative actions, and shall consider weather conditions and other factors necessary to protect the public health and welfare

(4) None of the functions of the commission under this section or under ORS 476 380 or 478 960, as it relates to agricultural burning, shall be performed by any regional air quality control authority established under ORS 468 505 [Formerly 449 840]

468.453 Definitions for ORS 468.455 to 468.490. As used in ORS 468 455 to 468 490

(1) "Smoke management" means the daily control of the conducting of open field burning to such times and places and in such amounts so as to provide for the escape of smoke and particulate matter therefrom into the atmosphere with minimal intrusion into cities and minimal impact on public health and in such a manner that under existing meteorological conditions a maximum number of acres registered can be burned in a minimum number of days without substantial impairment of air quality

(2) "Smoke management program" means a plan or system for smoke management A smoke management program shall include, but not be limited to, provisions for

(a) Annual inventorying and registering, prior to the burning season, of agricultural fields for open field burning,

(b) Preparation and issuance of field burning permits by affected governmental agencies,

(c) Gathering and disseminating regional and sectional meteorological conditions on a daily or hourly basis,

(d) Scheduling times, places and amounts of agricultural fields that may be open burned daily or hourly, based on meteorological conditions during the burning season,

(e) Conducting surveillance and gathering and disseminating information on a daily or more frequent basis,

(f) Effective communications between affected personnel during the burning season, and

(g) Employment of personnel to conduct the program [1977 c 650 §3 1979 c 181 §1]

468.455 Policy. In the interest of public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by the practice of open field burning Recognizing that open field burning is a nontraditional area source of air pollution that is not confined to a single point of emission and recognizing that limitation or bar of the practice at this time, without having found reasonable and economically feasible alternatives to the practice could seriously impair the public welfare, the Legislative Assembly declares it to be the public policy of the state to reduce air pollution from open field burning by smoke management and to continue to seek and encourage by research and development reasonable and economically feasible alternatives to the practice of annual open field burning, all consistent with ORS 468 280 [Formerly 449 930 1975 c 559 §4 1977 c 650 §4, 1979 c 181 §2]

468.458 Permits for field burning; delegation of duty to deliver permits. (1) On and after January 1, 1975, permits for open burning of perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in of ORS 468 460 (2) and shall be issued by the Department of Environmental Quality in accordance with air pollution control practices and subject to the fee prescribed in ORS 468 480 The permit described in this section shall be issued in conjunction with permits required under ORS 476 380 or 478 960

(2) The Environmental Quality Commission may by rule delegate to any county court or board of county commissioners or fire chief of a rural fire protection district the duty to deliver permits to burn acreage provided such acreage has been registered pursuant to ORS 468 480 (1)(a) and fees have been paid pursuant to ORS 468 480 (1)(b) [1975 c 559 §2]

468.460 Commission rules to regulate burning pursuant to ORS 468 475. In order to regulate open field burning pursuant to ORS 468 475

(1) In such areas of the state and for such periods of time as it considers necessary to carry out the policy of ORS 468 280, the commission by rule may prohibit, restrict or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass seed crops and grain crops

(2) In addition to but not in lieu of the provisions of ORS 468 475 and of any other rule adopted under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid phased reduction by certain permit areas, depending on particular local air

quality conditions and soil characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual grass seed crops and grain crops and the availability of alternative methods of field sanitation and straw utilization and disposal

(3) Before promulgating rules pursuant to subsections (1) and (2) of this section, the commission shall consult with Oregon State University and may consult with the Soil Conservation Service, the Agricultural Stabilization Commission, the State Soil and Water Conservation Commission and other interested agencies The department shall advise the commission in the promulgation of such rules The commission must review and show on the record the recommendations of the department in promulgating such rules

(4) No regional air quality control authority shall have authority to regulate burning of perennial grass seed crops, annual grass seed crops and grain crops

(5) Any amendments to the State Implementation Plan prepared by the state pursuant to the Federal Clean Air Act, as enacted by Congress, December 31, 1970, and as amended by Congress August 7, 1977, and Acts amendatory thereto shall be only of such sufficiency as to gain approval of the amendment by the United States Environmental Protection Agency and shall not include rules promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment of national ambient air quality standards [Formerly 449 933 1975 c 559 §5, 1977 c 650 §5, 1979 c 181 §3]

468.465 Where burning of cereal grain permitted; department inspection; civil penalty; exception. (1) Permits under ORS 468 458 for open field burning of cereal grain crops shall be issued in the counties listed in ORS 468 460 (2) only if the person seeking the permit submits to the issuing authority a signed statement under oath or affirmation that the acreage to be burned will be planted to seed crops other than cereal grains which require flame sanitation for proper cultivation

(2) The department shall inspect cereal grain crop acreage burned pursuant to subsection (1) of this section after planting in the following spring to determine compliance with subsection (1) of this section

(3) Any person planting contrary to the restrictions of subsection (1) of this section shall be assessed by the department a civil penalty of $25 for each acre planted contrary to the restrictions Any fines collected by the department pursuant to this subsection shall be used by the department for a smoke management program in cooperation with the Oregon Seed Council and for administration of this section

(4) Any person planting seed crops after burning cereal grain crops pursuant to subsection (1) of this section may apply to the department for permission to plant contrary to the restrictions of subsection (1) of this section if the seed crops fails to grow The department may allow planting contrary to the restrictions of subsection (1) of this section if the crop failure occurred by reasons other than the negligence or intentional act of the person planting the crop or one under the control of the person planting the crop [Formerly 449 935 1975 c 559 §6]

468.470 Duties and powers of department. (1) The department shall

(a) With the advice and assistance of the advisory committee established under ORS 468 495, adopt and implement programs for study, research and development of smoke management and of reasonable and economically feasible alternatives to the practice of open field burning, such programs to include, but not be limited to

(A) Utilization and marketing of crop residue,

(B) Research on development of alternate crops,

(C) Research on improvement of air quality and smoke management,

(D) A study of methods of field sanitation and the economic, agronomic and environmental effects of mobile burners and other alternatives,

(E) Research on development of alternate weed, pest and disease controls, and

(F) Research on the health effects of open field burning,

(b) Provide assistance to persons wishing to obtain the use of feasible methods of field sanitation and straw utilization and disposal and, in so doing, assist in purchasing, purchase and lease to users, and promote extensive use of such methods,

(c) Receive and disburse funds, including but not limited to voluntary contributions from within and outside this state, grants and gifts,

(d) Monitor and study the impact of open field burning on air quality in the Willamette Valley,

(e) Report annually to the Legislative Committee on Trade and Economic Development on the progress being made in discovering and utiliz-

ing alternatives to open field burning and on the effectiveness of the smoke management program, and

(f) Conduct a smoke management program

(2) The department may

(a) Enter into contracts with public and private agencies to carry out the purposes set forth in paragraph (a) of subsection (1) of this section,

(b) Obtain patents in the name of the State of Oregon and assign such rights therein as the department considers appropriate,

(c) Employ such personnel as is required to carry out the duties assigned to it, and

(d) Sell and dispose of all surplus property of the department, including but not limited to straw-based products produced or manufactured by the department [Formerly 449 937, 1974 s s c 40 §1, 1975 c 559 §7, 1977 c 650 §6, 1979 c 181 §4]

468.472 Emission standards. The commission shall establish emission standards for certified alternative methods to open field burning [1975 c 559 §9]

468.474 Power of department. The department, in coordinating efforts under ORS 468 140, 468 150, 468 290 and 468 455 to 468 480, shall

(1) Enforce all field burning rules adopted by the commission and all related statutes,

(2) Monitor and prevent unlawful field burning, and

(3) Aid fire districts in carrying out their responsibilities for administering field sanitation programs [1975 c 559 §10]

468.475 When open burning permitted; maximum acreage; emergency burning; when commission required to act on permit application. (1) Except as provided under ORS 468 490, no person shall open burn or cause to be open burned in the counties specified in ORS 468 460 (2), perennial or annual grass seed crops used for grass seed production or cereal grain crops, unless the acreage has been registered pursuant to ORS 468 480 and the permits required by ORS 468 450, 468 458, 476 380 and 478 960 have been obtained

(2) The maximum total registered acreage allowed to be open burned pursuant to subsection (1) of this section shall be 250,000 acres

(3) In the event of the registration of more than the maximum allowable acres for open burning in the counties specified in ORS 468 460 (2), the commission, after consultation with the department, by rule or order may allocate permits for acreage based on particular local air quality condition, soil characteristics, the type or amount of field burning or crops, the availability of alternative methods of field sanitation, the date of registration, proportional share, or any reasonable classification Priority shall be given to use of available alternatives to open field burning in Lane County and priority areas in other counties listed in ORS 468 460 (2)

(4) It is the intention of the Legislative Assembly that permits shall be issued and burning shall be allowed for the maximum acreage specified in subsection (2) of this section unless

(a) The daily determination of suitability of meteorological or other burning conditions requires that a maximum number of acres not be burned on a given day, or

(b) The commission finds after hearing that other reasonable and economically feasible alternatives to the practice of annual open field burning have been developed

(5) The commission, upon finding of extreme hardship, disease outbreak, insect infestation or irreparable damage to the land, may by order permit emergency open burning consistent with smoke management of more acreage than allowed by subsection (2) of this section Upon a finding of extreme danger to public health or safety, the commission may order temporary emergency cessation of all open field burning in any area of the counties listed in ORS 468 460 (2)

(6) The commission shall act on any application for a permit under ORS 468 458 within 60 days of registration and receipt of the fee provided in ORS 468 480 The commission shall act on any application for a finding of extreme hardship within 10 days upon receipt of the application The commission may order emergency cessation of open field burning at any time Such other decisions as may be required under this section must be made by the commission on or before June 1 of each year [Formerly 449 939, 1975 c 559 §11 1977 c 650 §8, 1979 c 181 §5]

468.480 Registration of number of acres to be burned; fees; disposition of fees. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register with the county court or board of county commissioners or the fire chief of a rural fire protection district, or the designated representative of the fire chief, the number of acres to be burned in the remainder of the year At the time of registration the Department of Environmental Quality shall collect a nonrefundable fee of $1 per acre registered The department may contract with counties and rural

fire protection districts for the collection of the fees which shall be forwarded to the department Any person registering after the dates specified in this subsection shall pay an additional fee of $1 per acre registered if the late registration is due to the fault of the late registrant or one under the control of the late registrant Late registrations must be approved by the department Copies of the registration form shall be forwarded to the department The required registration must be made and the fee paid before a permit shall be issued under ORS 468 458

(b) Except as provided in paragraph (c) of this subsection, after July 2, 1975, the department shall collect a fee of $2 50 per acre of crop burned prior to the issuance of any permit for open burning of perennial or annual grass seed crops or cereal grain crops under ORS 468 140, 468 150, 468 290 and 468 455 to 468 480 The department may contract with counties and rural fire protection districts for the collection of the fees which shall be forwarded to the department

(c) The fee required by paragraph (b) of this subsection shall be refunded for any acreage where efficient burning of stubble is accomplished with equipment using an auxiliary fuel or mobile field sanitizer which has been approved by the department for field sanitizing purposes or with any other certified alternative method to open field burning The fee required by paragraph (b) of this subsection shall be refunded for any acreage not harvested prior to burning and for any acreage not burned

(2) With regard to the disbursement of funds collected pursuant to subsection (1) of this section, the department shall

(a) Pay an amount to the county or board of county commissioners or the fire chief of the rural fire protection district, for each fire protection district 50 cents per acre registered for each of the first 5,000 acres registered in the district, 35 cents per acre registered for each of the second 5,000 acres registered in the district and 20 cents per acre registered for all acreage registered in the district in excess of 10,000 acres, to cover the cost of and to be used solely for the purpose of administering the program of registration of acreage to be burned, issuance of permits, keeping of records and other matters directly related to agricultural field burning

(b) Designate and retain an amount not to exceed $500,000 for the biennium beginning July 1, 1979, to be used for the smoke management program defined in ORS 468 453 The department by contract with the Oregon Seed Council or otherwise shall organize rural fire protection districts and growers, coordinate and provide communications, hire ground support personnel, provide aircraft surveillance and provide such added support services as are necessary

(c) Deposit the balance of acreage fees in the State Treasury to be credited to the account of the department Such fees shall be segregated from other funds and used for the carrying out of the provisions of ORS 468 470, but if the amount designated in paragraph (b) of this subsection is not sufficient to support the carrying out of the smoke management program, the fees shall be used for the smoke management program [Formerly 449 941, 1975 c 559 §12, 1977 c 650 §10, 1979 c 181 §6]

468 485 [Formerly 449 943 1974 s s c 36 §15, 1975 c 559 §13 repealed by 1977 c 650 §11]

468.490 Experimental open field burning allowed; rules. (1) Notwithstanding the provisions of ORS 468 475, for the purpose of improving by demonstration or investigation the environmental or agronomic effects of open field burning, the commission shall by rule, allow experimental open field burning under the direction of the department for perennial grass seed crops, annual grass seed crops and grain crops in such areas and for such periods of time as it considers necessary Experimental open field burning includes but is not limited to

(a) Development, demonstration or training personnel in the use of special or unusual field ignition techniques or methodologies

(b) Setting aside times, days or areas for special studies

(c) Operation of experimental mobile field sanitizers

(2) The commission may allow open burning under this section of acreage for which permits have not been issued pursuant to ORS 468 475 when it finds that the experimental burning

(a) Can, in theory, reduce the adverse effects on air quality or public health from open field burning, and

(b) Is necessary in order to obtain information on air quality, public health or the agronomic effects of an experimental form of open field burning

(3) The department may, by rule, establish fees, registration requirements and other requirements or limitations necessary to carry out the provisions of this section [1977 c 650 §9]

468.495 Advisory committee; members; expenses; vacancies. (1) To aid and assist the department in conducting the programs under ORS 468 470 (1)(a), there is created an advisory committee which shall consist of

(a) One member representing the Department of Environmental Quality appointed by the Director of the Department of Environmental Quality,

(b) One member representing Oregon State University appointed by the Dean of the School of Agriculture at Oregon State University,

(c) One member representing agriculture appointed by the Director of Agriculture,

(d) One member representing the public appointed by the Governor, and

(e) One member representing the Economic Development Department appointed by the Director of the Economic Development Department

(2) Each member shall be appointed for a term of two years

(3) Members of the advisory committee are not entitled to compensation, but at the discretion of the Governor may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to laws regulating travel and other expenses of state officers and employes

(4) A vacancy for any cause occurring before the expiration of a term shall be filled for the unexpired term by a person appointed by the person who appointed the vacating member [1977 c 650 §7]

REGIONAL AIR QUALITY CONTROL AUTHORITIES

468.500 Definitions for ORS 468.500 to 468.580. As used in ORS 468 280 and 468 500 to 468 580, unless the context requires otherwise

(1) "Board of directors" means the board of directors of a regional air quality control authority

(2) "Governing body" means the county court or city legislative body

(3) "Participating city" or "participating county" means a city or county or part of a county, or combination thereof, meeting the population requirements of ORS 468 505 or having had such requirements waived under ORS 468 510 that has joined with other eligible cities or counties or parts of counties to form a regional air quality control authority

(4) "Regional authority" means a regional air quality control authority established under the provisions of ORS 468 505 [Formerly 449 850]

468.505 Formation of regional air quality control authorities. (1) Notwithstanding the provisions of any law or charter to the contrary, a regional air quality control authority may be formed of contiguous territory having a population of at least 130,000 and consisting of two or more counties or parts of counties, two or more cities, or any combination thereof, or any county and a city or cities within the county

(2) A regional authority shall be formed in the following manner

(a) The cities and counties proposing to form a regional authority shall adopt ordinances or resolutions specifying the name of the proposed regional authority and setting forth the participating cities and counties, the principal places of business and the boundaries of the proposed regional authority, and

(b) A certified copy of the ordinances or resolutions adopted by each city or county shall be filed with the Secretary of State and with the director, and

(c) The commission shall order the regional authority formed if it finds that the participating governments plan adequate financing and the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control

(3) From and after the date of issuance of the order of the commission, the regional authority shall exercise its functions [Formerly 449 855]

468.510 Waiver of population requirements. The commission may waive the population requirement of ORS 468 505 whenever it is satisfied that adequate financing is planned by the participating governments and that the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control [Formerly 449 857]

468.515 Nature of authority. A regional air quality control authority is a body corporate, having perpetual succession and may

(1) Sue and be sued

(2) Adopt a seal

(3) Acquire and hold real and other property necessary or incident to the exercise of its functions and sell or otherwise dispose of such property [Formerly 449 870]

468.520 Board of directors; term. (1) The board of directors of a regional air quality control authority shall consist of not fewer than five nor more than nine members, designated as follows

(a) One member of the governing body of each participating county, to be designated by the governing body of the county

(b) One member of the governing body of each participating city and of each nonparticipating city of 25,000 or more population located within a participating county

(c) Where regional air pollution authorities cover only one county, one additional member for each 35,000 population over 25,000 in a participating city, not to exceed three members from the city, to be designated by the governing body of the city

(d) One member of the governing body of a participating city of less than 25,000 population, to be designated jointly by the governing bodies of participating cities, each with less than 25,000 population, located in a participating county, but the combined population of such cities must be at least 5,500

(e) One or more additional members, if the board would otherwise consist of an even number of members, or less than the minimum number required by subsection (1) of this section, to be selected by members designated under paragraphs (a) to (d) of this subsection, such member or members also to be a member of the governing body of a participating city or county

(2) A member designated under paragraphs (a) to (d) of subsection (1) of this section shall hold office at the pleasure of the governing body by which the member was designated The member or members designated under paragraph (e) of subsection (1) of this section, if any, shall serve for a term of two years The term of any member shall terminate at any time when the member is no longer a member of the governing body of the city or county by which the member was designated or, if appointed under paragraph (c) or (d) of subsection (1) of this section, when the member is no longer a member of the governing body of a participating city or if designated under paragraph (e) of subsection (1) of this section, when the member is no longer a member of the governing body of a participating city or county [Formerly 449 865]

468.525 Board where population requirement waived. ORS 468 520 applies to the designation of the members of the board of directors of a regional air quality control authority formed under a waiver authorized by ORS 468 510 However, there shall be no maximum number of members and, in lieu of the members designated as provided in ORS 468 520 (1)(b) to (d), members representing cities within the region shall be designated as follows

(1) One member of the governing body of each participating city and of each nonparticipating city, having a population of 2,000 or more and located within a participating county, not to exceed five members If the number of such cities exceeds five, the governing bodies of the cities described by this subsection shall jointly select five members from the governing bodies of such cities

(2) One member of the governing body of a participating city of less than 2,000 population, to be designated jointly by the governing bodies of participating cities, each having a population of less than 2,000 [Formerly 449 867]

468.530 Advisory committee; duties, members; term; chairperson; meetings. (1) The board of directors of the regional authority shall appoint an advisory committee which shall advise the board in matters pertaining to the region and particularly on methods and procedures for the protection of public health and welfare and of property from the adverse effects of air pollution

(2) The advisory committee shall consist of at least seven members appointed for a term of three years with at least one representative from each of the following interests within the region

(a) Public health agencies,

(b) Agriculture,

(c) Industry,

(d) Community planning,

(e) Fire suppression agencies, and

(f) The general public

(3) The advisory committee shall select a chairperson and vice-chairperson and such other officers as it considers necessary Members shall serve without compensation, but may be allowed actual and necessary expenses incurred in the discharge of their duties The committee shall meet as frequently as it or the board of directors considers necessary

(4) Notwithstanding the provisions of subsection (2) of this section, the board of directors of the regional authority shall adopt by rule a method for establishing the initial terms of office of advisory committee members so that the terms of office do not all expire on the same date [Formerly 449 885, 1983 c 233 §1]

468.535 Function of authority. (1) When authorized to do so by the commission, a regional authority formed under ORS 468 505 shall exercise the functions relating to air pollution control vested in the commission and the department by ORS 468 035, 468 065, 468 070,

468 090, 468 120, 468 295, 468 310, 468 320, 468 325, 468 335, 468 340 and 468 875 to 468 897 insofar as such functions are applicable to the conditions and situations of the territory within the regional authority The regional authority shall carry out these functions in the manner provided for the commission and the department to carry out the same functions Such functions may be exercised over both incorporated and unincorporated areas within the territory of the regional authority, regardless of whether the governing body of a city within the territory of the region is participating in the regional authority

(2) No regional authority is authorized to establish or alter areas or to adopt any rule or standard that is less strict than any rule or standard of the commission The regional authority must submit to the commission for its approval all air quality standards adopted by the regional authority prior to enforcing any such standards

(3) Subject to ORS 468 540, 468 545 and 468 565, when a regional authority is exercising functions under subsection (1) of this section, the commission and the department shall not exercise the same functions in the same territory The regional authority's jurisdiction shall be exclusive The regional authority shall enforce rules and standards of the commission as required to do so by the commission

(4) The commission and the regional authorities may regulate, limit, control or prohibit by rule all air contamination sources not otherwise exempt within their respective jurisdictions However, field burning and forest land burning shall be regulated by the commission and fire permit agencies as provided in ORS 468 450, 468 460 to 468 480, 476 380, 477 505 to 477 550 and 478 960 [1973 c 835 §99, 1987 c 660 §28 1987 c 741 §20]

468.540 Assumption, retention and transfer of control over classes of air contamination sources (1) The commission may assume and retain control over any class of air contamination source if it finds that such control is beyond the reasonable capabilities of the regional authorities because of the complexity or magnitude of the source

(2) If the commission does assume or retain control over any class of air contamination source under subsection (1) of this section, a regional authority may petition for the restoration or transfer of such control If the commission finds that the reason for its assumption or retention is no longer valid, it may restore or transfer control over the class of air contaminants to the regional authority [Formerly 449 910]

468.545 Contract for commission to retain authority under ORS 468.535. A regional authority may contract with the commission for the commission to retain all or part of the authority that would otherwise be granted to the regional authority under ORS 468 535, subject to terms of the contract [Formerly 449 863]

468.550 Conduct of public hearings; entry of orders. (1) All public hearings other than those held prior to adoption of rules or standards shall be held by the board of directors or before any member or members of the board of directors or a hearing officer, as the board of directors may designate Such hearings shall be conducted in the manner prescribed in ORS 183 310 to 183 550

(2) If a majority of the board of directors has conducted the hearing, it shall enter its order within 60 days after the conclusion of the hearing If the hearing is conducted by a hearing officer, or by a member or members constituting less than a majority of the board, the final decision shall be made and entered by the board within 60 days after conclusion of the hearing if no exceptions are filed, or within 60 days after final arguments on written exceptions to a proposed decision are heard [Formerly 449 890]

468.555 Permit programs may be authorized. (1) The commission by rule may authorize regional authorities to issue permits for air contamination sources within their areas of jurisdiction

(2) Permit programs established by regional authorities pursuant to subsection (1) of this section shall conform to the requirements of ORS 468 065 and shall be subject to review and approval by the commission [Formerly 449 883]

468.560 Expansion or dissolution of authority. (1) The territory of a regional authority may be expanded in the manner provided for forming regions by inclusion of an additional contiguous county or city if

(a) All of the governing bodies of the participating counties and cities adopt ordinances or resolutions authorizing the inclusion of the additional territory, and

(b) The governing body of the proposed county or city adopts such ordinance or resolution as would be required to form a regional authority, and

(c) The commission approves the expansion

(2) Any regional authority may be dissolved by written consent of the governing bodies of all participating counties and cities Upon dissolution, any assets remaining after payment of all

debts shall be divided among the participating counties and cities in direct proportion to the total amount contributed by each However, all rules, standards and orders of the regional authority shall continue in effect until superseded by action of the commission [Formerly 449 900]

468.565 Compliance with state standards required; hearing; notice. (1) The commission may require that necessary corrective measures be undertaken within a reasonable time if, after hearing, it finds that

(a) A regional authority has failed to establish an adequate air quality control program within a reasonable time after its formation, or

(b) An air quality control program in force in the territory of a regional authority is being administered in a manner inconsistent with the requirements of 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 this chapter

(2) Notice of the hearing required under subsection (1) of this section shall be sent to the regional authority not less than 30 days prior to the hearing

(3) If the regional authority fails to take the necessary corrective measures within the time required, the commission shall undertake a program of administration and enforcement of the air quality control program in the territory of the regional authority The program instituted by the commission shall supersede all rules, standards and orders of the regional authority

(4) If, in the judgment of the commission, a regional authority is able to requalify to exercise the functions authorized in ORS 468 535, the commission shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority [Formerly 449 905]

468.570 Payment of costs of services to authority by state. Any consultation and services provided to regional authorities or local air quality control programs by the commission may be paid for either from funds appropriated to the commission or under agreements between the parties on a reimbursable basis [Formerly 449 915]

468.575 State aid. (1) Subject to the availability of funds therefor

(a) Any air quality control program conforming to the rules of the commission and operated by not more than one unit of local government shall be eligible for state aid in an amount not to exceed 30 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled

(b) Any air quality control program exercising functions operated by a regional authority shall be eligible for state aid in an amount not to exceed 50 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled

(2) Applications for state funds shall be made to the commission and funds shall be made available under subsection (1) of this section according to the determination of the commission In making its determination, the commission shall consider

(a) The adequacy and effectiveness of the air quality control program

(b) The geographic and demographic factors in the territory under the program

(c) The particular problems of the territory under the program

(3) In order to qualify for any state aid and subject to the availability of funds therefor, the local government or the regional authority must submit all applications for federal financial assistance to the commission before submitting them to the Federal Government

(4) When certified by the commission, claims for state aid shall be presented for payment in the manner that other claims against the state are paid [Formerly 449 920]

468.580 Payment of certain court costs not required. A regional authority shall not be required to pay any filing, service or other fees or furnish any bond or undertaking upon appeal or otherwise in any action or proceedings in any court in this state in which it is a party or interested [Formerly 449 923]

AEROSOL SPRAY CONTROL

468.600 Findings. The Legislative Assembly finds that

(1) Scientific studies have revealed that certain chlorofluorocarbon compounds used in aerosol sprays may be destroying the ozone layer in the earth's stratosphere,

(2) The ozone layer is vital to life on earth, preventing approximately 99 percent of the sun's mid-ultraviolet radiation from reaching the earth's surface,

(3) Increased intensity of ultraviolet radiation poses a serious threat to life on earth including increased occurrences of skin cancer, damage to food crops, damage to phytoplankton which is vital to the production of oxygen and to the food chain, and unpredictable and irreversible global climatic changes,

(4) It has been estimated that production of ozone destroying chemicals is increasing at a rate of 10 percent per year, at which rate the ozone layer will be reduced 13 percent by the year 2014,

(5) It has been estimated that there has already been one-half to one percent depletion of the ozone layer,

(6) It has been estimated that an immediate halt to production of ozone destroying chemicals would still result in an approximate three and one-half percent reduction in ozone by 1990, and

(7) There is substantial evidence to believe that inhalation of aerosol sprays is a significant hazard to human health [1975 c 366 §1]

Note 468 600 and 468 605 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.605 Prohibition on sale or promotion; exemption from medical use. (1) Unless otherwise provided by law, after March 1, 1977, no person shall sell or offer to sell or give as a sales inducement in this state any aerosol spray which contains as a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen

(2) Nothing in this section prohibits the sale of any aerosol spray containing any propellant described in subsection (1) of this section if such aerosol spray is intended to be used for a legitimate medical purpose in the treatment of asthma or any respiratory disorder, or such aerosol spray is intended to be used for a legitimate medical purpose and the State Board of Pharmacy determines by administrative rule that the use of the aerosol spray is essential to such intended use [1975 c 366 §2 1977 c 18 §1, 1977 c 206 §1 1983 c 148 §1]

Note See note under 468 600

468.610 Wholesale transactions permitted. Nothing in ORS 468 605 shall prevent wholesale transactions, including but not limited to the transportation, warehousing, sale, and delivery of any aerosol spray described in ORS 468 605 (1) [1977 c 206 §4]

468 615 [1977 c 206 §2, repealed by 1987 c 414 §172]

468 620 [1977 c 206 §3, repealed by 1987 c 414 §172]

WOODSTOVE EMISSIONS CONTROL

468.630 Policy. In the interest of the public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by woodstove emissions The Legislative Assembly declares it to be the public policy of the state to reduce woodstove emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the effects of woodstove emissions and the desirability of achieving better woodstove emission performance and heating efficiency [1983 c 333 §4]

468.635 Prohibited acts relating to uncertified and unlabeled woodstove. On and after July 1, 1986, a person may not advertise to sell, offer to sell or sell a new woodstove in Oregon unless

(1) The woodstove has been tested to determine its emission performance and heating efficiency,

(2) The woodstove is certified by the department under the program established under ORS 468 655 (1), and

(3) An emission performance and heating efficiency label is attached to the woodstove [1983 c 333 §8]

468.640 Evaluation of woodstove emission performance; fee. (1) After July 1, 1984, a woodstove manufacturer or dealer may request the department to evaluate the emission performance of a new woodstove

(2) The commission shall establish by rule the amount of the fee that a manufacturer or dealer must submit to the department with each request to evaluate a woodstove

(3) A new woodstove may be certified at the conclusion of an evaluation and before July 1, 1986, if

(a) The department finds that the emission levels of the woodstove comply with the emission standards established by the commission, and

(b) The woodstove manufacturer or dealer submits the application for certification fee established by the commission under ORS 468 655 (1)

(4) As used in this section, "evaluate" means to review a woodstove's emission levels as determined by an independent testing laboratory, and compare the emission levels of the woodstove to the emission standards established by the commission under ORS 468 655 (1) [1983 c 333 §7]

468.645 Used woodstoves exempt from prohibition on sale. (1) The provisions of ORS 468 275, 468 290 and 468 630 to 468 655 do not apply to a used woodstove

(2) As used in this section, "used woodstove" means any woodstove that has been sold, bar-

gained, exchanged, given away or has had its ownership transferred from the person who first acquired the woodstove from the manufacturer or the manufacturer's dealer or agency, and so used to have become what is commonly known as "second hand" within the ordinary meaning of that term [1983 c 333 §9]

468.650 Use of net emission reductions in airshed. The commission shall use a portion of the net emission reductions in an airshed achieved by the woodstove certification program to provide room in the airshed for emissions associated with commercial and industrial growth [1983 c 333 §10]

468.655 Standards and certification program; fee; advisory committee. (1) Before July 1, 1984, the commission shall establish by rule

(a) Emission performance standards for new woodstoves,

(b) Criteria and procedures for testing a new woodstove for compliance with the emission performance standards,

(c) A program administered by the department to certify a new woodstove that complies with the emission performance standards when tested by an independent testing laboratory, according to the criteria and procedures established in paragraph (b) of this subsection,

(d) A program, including testing criteria and procedures to rate the heating efficiency of a new woodstove,

(e) The form and content of the emission performance and heating efficiency label to be attached to a new woodstove, and

(f) The application fee to be submitted to the department by a manufacturer, dealer or seller applying for certification of a woodstove

(2) To aid and advise the commission in the adoption of emission performance standards and testing criteria, the commission may establish an advisory committee The members of the advisory committee shall include, but need not be limited to, representatives from Oregon woodstove manufacturers [1983 c 333 §§5, 6]

WATER POLLUTION CONTROL

468.700 Definitions for water pollution control laws. As used in the laws relating to water pollution, unless the context requires otherwise

(1) "Disposal system" means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources

(3) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof

(4) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of 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 this chapter

(5) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal

(6) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes

(7) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state

(8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those

private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction [Formerly 449 075]

468.705 Authority of commission over water pollution; construction. (1) Except as otherwise provided in ORS 469 300 to 469 570, 469 590 to 469 621 and 469 930, in so far as the authority of the commission over water pollution granted by ORS 448 305, 454 010 to 454 040, 454 205 to 454 225, 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745 and this chapter is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468 710 [Formerly 449 070]

468.710 Policy. Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state

(1) To conserve the waters of the state,

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses,

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters,

(4) To provide for the prevention, abatement and control of new or existing water pollution, and

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives [Formerly 449 077]

468.715 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468 710

(2) In order to carry out the public policy set forth in ORS 468 710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state, and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468 710 and to conform to the standards of water quality and purity established under ORS 468 735 [Formerly 449 095]

468.720 Prohibited activities. (1) Except as provided in ORS 468 740, no person shall

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468 740

(3) Violation of subsection (1) or (2) of this section is a public nuisance [Formerly 449 079]

468.725 Effluent limitations. In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto [Formerly 449 081]

468.730 Implementation of Federal Water Pollution Control Act. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state

the provisions of the Federal Water Pollution Control Act, enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto The commission may adopt, modify or repeal rules, pursuant to ORS 183 310 to 183 550, for the administration and implementation of this section [1973 c 92 §3]

468.732 Certification of hydroelectric power project; comments of affected state agencies. The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P L 92-500, as amended In making a decision as to whether to approve or deny such certification, the director shall

(1) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P L 92-500, as amended

(2) Approve or deny a certification only after making findings that the approval or denial is consistent with

(a) Rules adopted by the Environmental Quality Commission on water quality,

(b) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P L 92-500, as amended,

(c) Standards established in ORS 469 371 and 543 017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards, and

(d) Standards of other state and local agencies that are consistent with the standards of ORS 469 371 and 543 017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P L 92-500, as amended [1985 c 569 §7]

468.734 Certification of change to hydroelectric power project; notification of federal agency. Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 (1) of the Federal Water Pollution Control Act P L 92-500, as amended

(1) The director shall

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P L 92-500, as amended

(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with

(A) Rules adopted by the Environmental Quality Commission on water quality,

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P L 92-500, as amended,

(C) Standards established in ORS 469 371 and 543 017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards, and

(D) Standards of other state and local agencies that are consistent with the standards of ORS 469 371 and 543 017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P L 92-500, as amended

(2) On the basis of the evaluation and determination under subsection (1) of this section, the director shall notify the appropriate federal agency that

(a) The proposed change to the project is approved, or

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P L 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification [1985 c 569 §8]

468.735 Standards of quality and purity; factors to be considered; meeting standards. (1) The commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468 710 In establishing such standards, the commission shall consider the following factors

(a) The extent, if any, to which floating solids may be permitted in the water,

(b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted,

(c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters,

(d) The extent of the oxygen demand which may be permitted in the receiving waters,

(e) The minimum dissolved oxygen content of the waters that shall be maintained,

(f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state,

(g) The extent to which any substance must be excluded from the waters for the protection and preservation of public health, and

(h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536 220 to 536 540

(3) Subject to the approval of the department, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards [Formerly 449 086 1985 c 673 §178]

468.740 When permit required. Without first obtaining a permit from the director, which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall

(1) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system

(2) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto

(3) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit

(4) Construct, install, operate or conduct any industrial, commercial or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized

(5) Construct or use any new outlet for the discharge of any wastes into the waters of the state [Formerly 449 083]

468.742 Plan approval required; exemptions. (1) Except as provided in subsection (3) of this section, all plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems, shall be submitted to the Department of Environmental Quality for its approval or rejection pursuant to rules of the commission

(2) No construction, installation or modification of the type described in subsection (1) of this section shall be commenced until the plans and specifications submitted to the department under subsection (1) of this section are approved Any construction, installation or modification must be in accordance with the plans and specifications approved by the department

(3) By rule, the commission may exempt from the requirement of subsection (1) of this section the class or classes of disposal systems, treatment works and sewerage systems for which the commission finds plan submittal and approval unnecessary or impractical [Formerly 454 415, 1979 c 98 §1]

468.745 Liability for damage to fish or wildlife or habitat; agency to which damages payable. (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration, within a period of 60 days from the date of mailing by registered or certified mail of written demand therefor

(3) Any action or suit for the recovery of damages described in subsection (1) of this sec-

tion shall be brought in the name of the State of Oregon upon relation of the Department of Environmental Quality or State Department of Fish and Wildlife or the Attorney General Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered [Formerly 449 103, 1979 c 584 §1]

468.750 When motor vehicle parts may be placed in waters of state. (1) The commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state In adopting such rules the commission shall consider, among other things

(a) The possibility of pollution,

(b) The esthetics of such use,

(c) The utility of such use in reclamation projects,

(d) The degradation of the waters, stream beds or banks, and

(e) The nature of the waters such as tidewater, slough or running stream

(2) In the manner described in ORS 468 065, the commission may issue a permit to an applicant to place chassis, bodies, shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section [Formerly 449 111 1975 c 172 §1]

468.755 Prohibited activities for certain municipalities (1) No municipality shall

(a) Dump polluting substances into any public or private body of water that empties directly or indirectly into any navigable body of water in or adjacent to a municipality, except by permit issued by the department

(b) Dump polluting substances into any open dump or sanitary landfill where by drainage or seepage any navigable body of water in or adjacent to a municipality may be affected adversely unless

(A) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit,

(B) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed, and

(C) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery

(2) As used in this section

(a) "Municipality" means any city having a population of 250,000 or more or any home-rule county having a population of 350,000 or more

(b) "Polluting substances" means dead animal carcasses, excrement, and putrid, nauseous, noisome, decaying, deleterious or offensive substances including refuse of any kind or description.

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468 195 to 468 245 unless

(a) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit,

(b) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed, and

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery [Formerly 449 113]

468.760 Regulation of synthetic cleansing agent (1) No synthetic cleansing agent shall be sold for use in this state unless the agent will normally decompose when acted upon by biological means or will degrade in a secondary sewage treatment plant

(2) All synthetic cleansing agents that are sold in this state must be labeled with the percent of phosphorous by weight, including equivalency in grams of phosphorous per recommended use level

(3) The commission shall adopt rules governing the labeling requirements imposed by subsection (2) of this section [Formerly 449 137]

468.765 Definitions for ORS 468.770. For the purposes of ORS 468 770, the term:

(1) "Buildings or structures" shall also include but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such

(2) "Sewage" means human excreta as well as kitchen, bath and laundry wastes

(3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling,

preparation, cooking and serving of food [Formerly 449 140]

468.770 Prohibitions relating to garbage or sewage dumping into waters of state. (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the department All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448 305, 454 010 to 454 040, 454 205 to 454 255, (1973 Replacement Part), 454 405, 454 425, 454 505 to 454 535, 454 605 to 454 745 and this chapter

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available [Formerly 449 150]

468.775 Depositing motor vehicles into water prohibited. Subject to ORS 468 750, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 801 360 or of any vehicle as defined by ORS 801 590, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means [Formerly 449 109 1983 c 338 §937]

468.777 Permit authorized for discharge of shrimp and crab processing by-products; conditions. (1) The department may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468 740 for the purpose of enhancing aquatic life production The permit shall impose the following conditions

(a) No toxic substances shall be present in the by-products discharged

(b) The oxygen content of the estuarine waters shall not be reduced

(c) The discharge shall not create a public nuisance

(d) Other beneficial uses of the estuary shall not be adversely affected

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section [1979 c 617 §2]

468.778 Use of sludge on agricultural, horticultural or silvicultural land. The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to

(1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing,

(2) Requirements for sludge treatment and processing before sludge is applied,

(3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied,

(4) Records that a sludge applicator must keep,

(5) Restrictions on public access to and cropping of land on which sludge has been applied, and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application [1983 c 257 §2]

Note 468 778 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

OIL SPILLAGE REGULATION

468.780 Definitions for ORS 468 780 to 468.815. As used in ORS 468 020, 468 095, 468 140 (3) and 468 780 to 468 815, unless the context requires otherwise

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

(2) "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil

(3) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind [Formerly 449 155]

468.785 Entry of oil into waters of state prohibited; exception. (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or negligent conduct, accident or other cause Such entry constitutes pollution of the waters of the state

(2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state under the following circumstances

(a) The person discharging the oil was expressly authorized to do so by the department, having obtained a permit therefor required by ORS 468 740, or

(b) The person having control over the oil can prove that the entry thereof into the waters of the state was caused by

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

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

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent [Formerly 449 157]

468.790 Liability for violation of ORS 468.785. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468 785 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry 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 oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468 785 (2)

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section [Formerly 449 159]

468.795 Duty to collect and remove oil; dispersal of oil. (1) In addition to any other liability or penalty imposed by law, it shall be the obligation of any person owning or having control over oil which enters the waters of the state in violation of ORS 468 785 to collect and remove the oil immediately

(2) If it is not feasible to collect and remove the oil, the person shall take all practicable actions to contain, treat and disperse the oil

(3) The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest [Formerly 449 161]

468.800 Action by state; liability for state expense; order; appeal. (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468 795, the department is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state

(2) The director shall keep a record of all necessary expenses incurred in carrying out any action authorized under this section, including a reasonable charge for costs incurred by the state, including state's equipment and materials utilized

(3) The authority granted under this section shall be limited to actions which are designed to protect the public interest or public property

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468 795, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section The order may be appealed pursuant to ORS 183 310 to 183 550 but not as a contested case [Formerly 449 163]

468.802 Director's right of entry in response to oil spill; state liability for damages (1) The director shall have the power to enter upon any public or private property, premises or place for the purpose of controlling, collecting, removing, treating, containing or dispersing oil which reasonably appears to the director to threaten imminent and unlawful entry into the waters of the state, when the person responsible for an oil spill or an owner of property on which oil has been spilled fails to act to restrain or to remove the oil

(2) Damages, other than those caused by the oil spill, suffered from the actions of the director pursuant to subsection (1) of this section shall be the responsibility of the state [1977 c 222 §§2 3]

468.805 Action to collect costs. (1) If the amount of state-incurred expenses under ORS 468 800 is not paid by the responsible person to the commission at 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 commission

(2) Payment must be made within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court renders its decision if the decision affirms the order [Formerly 449 165]

468 810 [Formerly 449 167 1977 c 704 §11 repealed by 1985 c 733 §23]

468.815 Effect of federal regulations of oil spillage. Nothing in ORS 468 020, 468 095, 468 140 (3) and 468 780 to 468 815 or the rules adopted thereunder shall require or prohibit any act if such requirement or prohibition is in conflict with any applicable federal law or regulation [Formerly 449 175]

USED OIL RECYCLING

468.850 Definitions for ORS 468.850 to 468.871 As used in ORS 468 850 to 468 871 unless the context requires otherwise

(1) "Commission" means the Environmental Quality Commission

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

(3) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations

(4) "Person" means any individual, private or public corporation, partnership, cooperative association, estate, municipality, political or jurisdictional subdivision or governmental agency or instrumentality

(5) "Used oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties [1977 c 483 §2]

Note 468 850 to 468 871 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.853 Legislative findings. The Legislative Assembly finds that

(1) Millions of gallons of used oil are generated each year in the state,

(2) Used oil is a valuable petroleum resource which can be recycled, and

(3) In spite of this potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the waters, land and air and endanger the public health and welfare [1977 c 483 §3]

Note See note under 468 850

468.856 Used oil to be collected and recycled. The Legislative Assembly declares that used oil shall be collected and recycled to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources, preserve and enhance the quality of natural and human environments, and protect public health and welfare [1977 c 483 §4]

Note See note under 468 850

468.859 Used oil information center; public education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and preserve the environment As part of this program, the department shall

(1) Establish, maintain and publicize a used oil information center that will explain local, state and federal laws and regulations governing used oil and will inform holders of quantities of used oil on how and where used oil may be properly disposed of, and

(2) Encourage the establishment of voluntary used oil collection and recycling programs and provide technical assistance to persons organizing such programs [1977 c 483 §5]

Note See note under 468 850

468.862 Recycling information to be posted. The commission shall adopt rules, in accordance with the provisions of ORS 468 020, requiring sellers of more than 500 gallons of lubrication or other oil annually, in containers for use off the premises, to post and maintain at or near the point of sale durable and legible signs,

unless otherwise prohibited by law, informing the public of the importance of proper collection and disposal of used oil, and how and where used oil may be properly disposed of, including locations and hours of operation of conveniently located collection facilities [1977 c 483 §6]

Note See note under 468 850

468.865 Prohibited disposal of used oil. Unless permitted pursuant to ORS 468 740, no person shall dispose of used oil by discharge into sewers, drainage systems or the waters of this state as defined by ORS 468 700 (8), or by incineration other than for energy generating purposes [1977 c 483 §7]

Note See note under 468 850

468.868 Enforcement powers of commission. The commission shall have the power to enforce compliance with or restrain violation of ORS 468 865 or any rule adopted under ORS 468 862 in the same manner provided for enforcement proceedings under this chapter [1977 c 483 §8]

Note See note under 468 850

468.871 Short title. ORS 468 850 to 468 868 may be cited as the "Used Oil Recycling Act" [1977 c 483 §1]

Note See note under 468 850

ASBESTOS ABATEMENT PROJECTS

468.875 Definitions for ORS 468.875 to 468.899. As used in ORS 468 875 to 468 899

(1) "Accredited" means a provider of asbestos abatement training courses is authorized by the department to offer training courses that satisfy department requirements for contractor licensing and worker training

(2) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employe of the contractor

(3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummungtonite-grunerite (amosite), anthophyllite, actinolite and tremolite

(4) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, inclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air

(5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight

(6) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person As used in this subsection, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services

(7) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including but not limited to ships

(8) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry

(9) "Person" means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political subdivision, the state and any agency of the state or any other entity, public or private, however organized

(10) "Trained worker" means a person who has successfully completed specified training in and can demonstrate knowledge of the health and safety aspects of working with asbestos

(11) "Worker" means an employe or agent of a contractor or facility owner or operator [1987 c 741 §2]

468.877 Findings The Legislative Assembly finds and declares that

(1) Asbestos-containing material in a friable condition, or when physically or chemically altered, can release asbestos fibers into the air Asbestos fibers are respiratory hazards proven to cause lung cancer, mesothelioma and asbestosis and as such, are a danger to the public health

(2) There is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health

(3) Asbestos-containing material found in or on facilities or used for other purposes within the state is a potential health hazard

(4) The increasing number of asbestos abatement projects increases the exposure of contractors, workers and the public to the hazards of asbestos

(5) If improperly performed, an asbestos abatement project creates unnecessary health and safety hazards that are detrimental to citizens and to the state in terms of health, family life, preservation of human resources, wage loss, insurance, medical expenses and disability compensation payments

(6) It is in the public interest to reduce exposure to asbestos caused by improperly performed asbestos abatement projects through the upgrading of contractor and worker knowledge, skill and competence [1987 c 741 §3]

468.879 License required for asbestos abatement project. (1) Except as provided in paragraph (c) of subsection (1) and subsection (3) of section 4, chapter 741, Oregon Laws 1987, after the commission adopts rules under ORS 468 893 and section 4, chapter 741, Oregon Laws 1987, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the department under ORS 468 883

(2) A contractor carrying out an asbestos abatement project shall be responsible for the safe and proper handling and delivery of waste that includes asbestos-containing material to a landfill authorized to receive such waste [1987 c 741 §5]

468.881 Licensed contractor required, exception (1) Except as provided in subsection (2) of this section, an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects

(2) A facility owner or operator whose own employes maintain repair, renovate or demolish the facility may allow the employes to work on asbestos abatement projects only if the employes comply with the training and certification requirements established under ORS 468 887 [1987 c 741 §6]

468.883 Qualifications for license; application. (1) The department shall issue an asbestos abatement license to a contractor who

(a) Successfully completes an accredited training course for contractors

(b) Requires each employe or agent of the contractor who works on or is directly responsible for an asbestos abatement project to be certified under ORS 468 887

(c) Certifies that the contractor has read and understands the applicable state and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations

(2) A contractor shall apply for a license or renewal of a license according to the procedures established by rule by the Environmental Quality Commission [1987 c 741 §7]

468.885 Grounds for license suspension or revocation. (1) The department may suspend or revoke an asbestos abatement license issued to a contractor under ORS 468 883 if the licensee

(a) Fraudulently obtains or attempts to obtain a license

(b) Fails at any time to satisfy the qualifications for a license or to comply with rules adopted by the commission under ORS 468 875 to 468 899

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement

(d) Permits an untrained worker to work on an asbestos abatement project

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement

(2) In addition to any penalty provided by ORS 468 140, the department may suspend or revoke the license or certification of any person who violates the conditions of ORS 468 875 to 468 897 or rules adopted under ORS 468 875 to 468 897 [1987 c 741 §§8, 17]

468.887 Worker certificate required; qualifications; renewal application; suspension or revocation. (1) Except as provided in paragraph (c) of subsection (1) and subsection (3) of section 4, chapter 741, Oregon Laws 1987, after the commission adopts rules under ORS 468 893, no worker shall work on an asbestos abatement project unless the person holds a certificate issued by the Department of Environmental Quality or the department's authorized representative under subsection (2) of this section

(2) The department or an authorized representative of the department shall issue an asbestos abatement certificate to a worker who successfully completes an accredited asbestos abatement training course approved by the department

(3) If the commission determines there is a need for a category of workers to update the workers' training in order to meet new or changed conditions, the commission may require the worker, as a condition of certificate renewal, to successfully complete an accredited asbestos abatement review course

(4) A worker or the facility owner or operator shall submit an application for an asbestos abatement certificate and renewal of a certificate according to procedures established by rule by the Environmental Quality Commission

(5) The department may suspend or revoke a certificate if a worker fails to comply with applicable health and safety rules or standards [1987 c 741 §9]

468.889 Alternatives to protection requirements; approval. Subject to the direction of the Environmental Quality Commission, the director may approve, on a case-by-case basis, an alternative to a specific worker and public health protection requirement for an asbestos abatement project if the contractor or facility owner or operator submits a written description of the alternative procedure and demonstrates to the director's satisfaction that the proposed alternative procedure provides worker and public health protection equivalent to the protection that would be provided by the waived provisions [1987 c 741 §10]

468.891 Accreditation requirements. (1) The commission by rule shall provide for accreditation of courses that satisfy training requirements contractors must comply with to qualify for an asbestos abatement license under ORS 468 883 and courses that workers must successfully complete to become certified under ORS 468 887

(2) The accreditation requirements established by the commission under subsection (1) of this section shall reflect the level of training that a course provider must offer to satisfy the licensing requirements under ORS 468 883 and the certification requirements under ORS 468 887

(3) In order to be accredited under subsection (1) of this section, a training course shall include at a minimum material relating to

(a) The characteristics and uses of asbestos and the associated health hazards,

(b) Local, state and federal standards relating to asbestos abatement work practices,

(c) Methods to protect personal and public health from asbestos hazards,

(d) Air monitoring,

(e) Safe and proper asbestos abatement techniques, and

(f) Proper disposal of waste containing asbestos

(4) In addition to the requirements under subsection (3) of this section, the person providing a training course for which accreditation is sought shall demonstrate to the department's satisfaction the ability and proficiency to conduct the training

(5) Any person providing accredited asbestos abatement training shall make available to the department for audit purposes, at no cost to the department, all course materials, records and access to training sessions

(6) Applications for accreditation and renewals of accreditation shall be submitted according to procedures established by rule by the commission

(7) The department may suspend or revoke training course accreditation if the provider fails to meet and maintain any standard established by the commission

(8) The commission by rule shall establish provisions to allow a worker or contractor trained in another state to use training in other states to satisfy Oregon licensing and certification requirements, if the commission finds that the training received in the other state would meet the requirements of this section [1987 c 741 §11]

468.893 Rules; variances; training; standards; procedures. The Environmental Quality Commission shall adopt rules to carry out its duties under ORS 279 025, 468 125, 468 535 and 468 875 to 468 899 In addition, the commission may

(1) Allow variances from the provisions of ORS 468 875 to 468 897 in the same manner variances are granted under ORS 468 345

(2) Establish training requirements for contractors applying for an asbestos abatement license

(3) Establish training requirements for workers applying for a certificate to work on asbestos abatement projects

(4) Establish standards and procedures to accredit asbestos abatement training courses for contractors and workers

(5) Establish standards and procedures for licensing contractors and certifying workers

(6) Issue, renew, suspend and revoke licenses, certificates and accreditations

(7) Determine those classes of asbestos abatement projects for which the person undertaking the project must notify the department before beginning the project

(8) Establish work practice standards, compatible with standards of the Accident Prevention Division of the Department of Insurance and Finance, for the abatement of asbestos hazards and the handling and disposal of waste materials containing asbestos

(9) Provide for asbestos abatement training courses that satisfy the requirements for contractor licensing under ORS 468 883 or worker certification under ORS 468 887 [1987 c 741 §12]

Note Section 4, chapter 741, Oregon Laws 1987, provides

Sec 4 (1) Not later than July 1 1988 the Environmental Quality Commission by rule shall

(a) Establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training

(b) Establish the date after which a contractor must be licensed under section 7 of this 1987 Act [ORS 468 883] and a worker must hold a certificate under section 9 of this 1987 Act [ORS 468 887] Such date shall be not later than December 31, 1988

(c) Establish criteria and provisions for granting an extension of time beyond December 31 1988 for contractor licensing and worker certification, which may consider the number of workers and the availability of accredited training courses

(2) The program established under subsection (1) of this section shall include at least

(a) Criteria for contractor licensing and training,

(b) Criteria for worker certification and training,

(c) Standardized training courses, and

(d) A procedure for inspecting asbestos abatement projects

(3) In establishing the training requirements under subsections (1) and (2) of this section, the commission shall adopt different training requirements that reflect the different levels of responsibility of the contractor or worker so that within the category of contractor, sublevels shall be separately licensed or exempted and within the category of worker, sublevels shall be separately certified or exempted The commission shall specifically address as a separate class, those contractors and workers who perform small scale, short duration renovating and maintenance activity As used in this subsection, "small scale short duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job including but not limited to

(a) Removal of asbestos-containing insulation on pipes,

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings,

(c) Replacement of an asbestos-containing gasket on a valve,

(d) Installation or removal of a small section of drywall, or

(e) Installation of electrical conduits through or proximate to asbestos-containing materials

(4) The department on behalf of the commission, shall consult with the Accident Prevention Division of the Department of Insurance and Finance and the Health Division about proposed rules for the asbestos abatement program to assure that the rules are compatible with all other state and federal statutes and regulations related to asbestos abatement

(5) The department shall cooperate with the Accident Prevention Division of the Department of Insurance and Finance and the Health Division to promote proper and safe asbestos abatement work practices and compliance with the provisions of this 1987 Act [ORS 279 025, 468 125 468 535 and 468 875 to 468 899] [1987 c 741 §4]

468.895 Fee schedule; waiver; disposition. (1) By rule and after hearing, the Environmental Quality Commission shall establish a schedule of fees for

(a) Licenses issued under ORS 468 883,

(b) Worker certification under ORS 468 887,

(c) Training course accreditation under ORS 468 891, and

(d) Notices of intent to perform an asbestos abatement project under ORS 468 893 (8)

(2) The fees established under subsection (1) of this section shall be based upon the costs of the Department of Environmental Quality in carrying out the asbestos abatement program established under section 4, chapter 741, Oregon Laws 1987

(3) In adopting the schedule of fees under this section the commission shall include provisions and procedures for granting a waiver of a fee

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Department of Environmental Quality Such moneys are continuously appropriated to the Department of Environmental Quality to pay the department's expenses in administering and enforcing the asbestos abatement program [1987 c 741 §13]

468.897 Exemptions. (1) Except as provided in subsection (2) of this section, ORS 468 875 to 468 895 do not apply to an asbestos abatement project in a private residence if

(a) The residence is occupied by the owner, and

(b) The owner occupant is performing the asbestos abatement work

(2) Any person exempt from ORS 468 875 to 468 895 under subsection (1) of this section shall handle and dispose of asbestos-containing material in compliance with standards established by the commission under ORS 468 893 [1987 c 741 §14]

468.899 Content of bid advertisement. Any public agency requesting bids for a proposed project shall first make a determination of whether or not the project requires a contractor licensed under ORS 468 883 The public agency shall include such requirement in the bid advertisement under ORS 279 025 [1987 c 741 §16]

Note Sections 15, 21 and 22, chapter 741 Oregon Laws 1987, provide

Sec 15 (1) There is established an Asbestos Advisory Board to

(a) Review and advise the commission on proposed rules related to the asbestos abatement program, including but not

limited to criteria for training, certification, licensing and accreditation, fees and waivers

(b) Make recommendations to provide for and facilitate interagency coordination and cooperation in asbestos abatement

(c) Prepare recommendations on methods of providing for reciprocity with other states in the training licensing and certification of asbestos contractors and workers

(2) The Asbestos Advisory Board shall consist of 11 members as follows

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

(b) The administrator or a designee of the Administrator of the Accident Prevention Division of the Workers' Compensation Department,

(c) The Assistant Director for Health or designee,

(d) The Superintendent of Public Instruction, or designee,

(e) The Chair of the Builders Board, or designee,

(f) The State Director of Apprenticeship and Training of the Bureau of Labor and Industries, or designee,

(g) Two representatives of business appointed by the director one of whom is a representative of small business as defined in ORS 183 310

(h) One representative of organized labor, appointed by the director, and

(i) Two members of the public, appointed by the director

(3) Each member of the board appointed by the director shall serve a two-year term, commencing on July 1 of the year of appointment, and until a successor is appointed and qualified

(4) The board shall elect its own presiding officer adopt rules for its procedure and meet on call of the presiding officer or a majority of the members A majority of the members shall constitute a quorum to do business The director shall provide administrative facilities and services for the board

(5) Members of the Asbestos Advisory Board appointed by the director shall be entitled to expenses as provided in ORS 292 495 [1987 c 741 §15]

Sec 21 The Department of Environmental Quality shall present to the Sixty-fifth Legislative Assembly a report on the implementation of the asbestos abatement program developed under this Act [ORS 279 025, 468 125, 468 535, 468 875 to 468 899] [1987 c 741 §21]

Sec 22 Section 15 of this Act is repealed July 1, 1991 [1987 c 741 §22]

468 900 [1977 c 867 §23, 1983 c 740 §183, renumbered 466 505]

468 901 [1985 c 737 §2, repealed by 1987 c 539 §1 (466 705 enacted in lieu of 468 901)]

468 902 [1985 c 737 §3, repealed by 1987 c 539 §3 (466 715 enacted in lieu of 468 902)]

468 903 [1977 c 867 §24, renumbered 466 510]

468 904 [1985 c 737 §4, repealed by 1987 c 539 §7 (466 725 enacted in lieu of 468 904)]

468 905 [1985 c 737 §5, repealed by 1987 c 539 §19 (466 765 enacted in lieu of 468 905)]

468 906 [1977 c 867 §25, renumbered 466 515]

468 907 [1985 c 737 §6, repealed by 1987 c 539 §29 (466 805 enacted in lieu of 468 907)]

468 908 [1985 c 737 §7, repealed by 1987 c 539 §12 (466 745 enacted in lieu of 468 908)]

468 909 [1977 c 867 §26, renumbered 466 520]

468 910 [1985 c 737 §8, 1987 c 539 §31, renumbered 466 800 in 1987]

468 911 [1985 c 737 §9, 1987 c 539 §18, renumbered 466 710 in 1987]

468 912 [1977 c 867 §27, renumbered 466 525]

468 913 [1985 c 737 §10, 1987 c 539 §40 renumbered 466 720 (2) in 1987]

468 914 [1985 c 737 §11 repealed by 1987 c 539 §33, 466 820 enacted in lieu of 468 914]

468 915 [1977 c 867 §28 repealed by 1979 c 32 §1]

468 916 [1985 c 737 §12, repealed by 1987 c 539 §45]

468 917 [1985 c 737 §13, repealed by 1987 c 539 §45]

468 918 [1977 c 867 §29, repealed by 1979 c 32 §1]

468 921 [1977 c 867 §30, renumbered 466 530]

RECLAIMED PLASTIC PRODUCT TAX CREDIT

468.925 Definitions for ORS 468.925 to 468.965. As used in ORS 468 925 to 468 965

(1) "Capital investment" means the amount of money a person invests to acquire or construct equipment or machinery necessary to manufacture a reclaimed plastic product

(2) "Qualifying business" means a manufacturing business that manufactures a reclaimed plastic product in Oregon

(3) "Reclaimed plastic" means plastic that originates within Oregon from industrial consumers or post-consumer waste and is intended to be used to manufacture a nonmedical or nonfood plastic product

(4) "Reclaimed plastic product" means a plastic product for which the majority of the plastic used in the product is reclaimed plastic [1985 c 684 §3]

468.930 Policy. In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of solid waste in this state by providing tax relief to Oregon businesses that make capital investments in order to manufacture a reclaimed plastic product [1985 c 684 §2]

468.935 Application for certification of capital investment to manufacture

reclaimed plastic product. (1) Any person may apply to the commission for certification under ORS 468 940 of a capital investment made by the person in Oregon to allow the person to manufacture a reclaimed plastic product if the investment was made on or after January 1, 1986, and before January 1, 1989

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the actual capital investment including a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of manufacturing a reclaimed plastic product and the portion of the actual cost properly allocable to the process of manufacturing such reclaimed plastic product as set forth in ORS 468 960

(3) The director may require any further information the director considers necessary before a certificate is issued

(4) The application shall be accompanied by a fee established under subsection (5) of this section The fee may be refunded if the application for certification is rejected

(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the department may require of applicants for certificates issued under ORS 468 940 Before the adoption or revision of any such fees the commission shall estimate the total cost of the program to the department The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting the applications and shall be designed not to exceed the total cost estimated by the commission Any excess fees shall be held by the department and shall be used by the commission to reduce any future fee increases The fee may vary according to the size and complexity of the capital investment The fees shall not be considered by the commission as part of the cost of the capital investment to be certified

(6) Any person applying for certification of investment costs shall submit an application between January 1, 1986, and December 31, 1988 Failure to file a timely application shall make the investment cost ineligible for tax credit certification An application shall not be considered filed until it is complete and ready for processing The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable [1985 c 684 §4]

468.940 Action on application; rejection; appeal; certification of investment. (1) The commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468 935 The action of the commission shall include certification of the actual cost of the capital investment and the portion of the actual cost properly allocable to the manufacture of a reclaimed plastic product as set forth in ORS 468 960 Each certificate shall bear a separate serial number for each such facility

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the capital investment or a lesser portion of the actual cost properly allocable to the manufacture of a reclaimed plastic product than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application Failure of the commission to act constitutes approval of the application

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the capital investment, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to the manufacture of a reclaimed plastic product, the applicant may appeal from the rejection as provided in ORS 468 110 The rejection or the certification is final aud conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468 110 before the 30th day after notice was mailed by the commission

(4)(a) The commission shall certify a capital investment, for which an application has been made under ORS 468 935, if the commission finds that the capital investment was made in accordance with the requirements of ORS 468 935 and 468 945

(b) No determination of the proportion of the actual cost of the capital investment to be certified shall be made until receipt of the application

(5) A person receiving a certificate under this section may take tax relief only under ORS 316 103 or 317 106, depending upon the tax status of the person's trade or business

(6) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316 103, based on that shareholder's pro rata share of the certified cost of the capital investment

(7) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316 103, based on that partner's pro rata share of the certified cost of the capital investment

(8) Certification under this section of a capital investment qualifying under ORS 468 935 shall be granted for a period of five consecutive years which five-year period shall begin with the tax year of the person in which the capital investment is certified under this section [1985 c 684 §5]

468.945 Preliminary certification of capital investment (1) Any person proposing to apply for certification of a capital investment under ORS 468 935, before making the investment, shall file a request for preliminary certification with the Department of Environmental Quality The request shall be in a form prescribed by the department For capital investments made, the commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such capital investment would otherwise qualify for tax credit certification pursuant to ORS 468 925 to 468 965

(2) Within 30 days of the receipt of a request for preliminary certification, the department may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications After examination thereof, the department may request corrections and revisions to the plans and specifications The department may also require any other information necessary to determine whether the proposed capital investment is in accordance with the provisions of this chapter and ORS chapter 459 and applicable rules and standards adopted pursuant thereto

(3) If the department determines that the proposed capital investment is in accordance with the provisions of this chapter and ORS chapter 459 and applicable rules or standards adopted pursuant thereto, it shall issue a preliminary certificate approving the capital investment. If the department determines that the capital investment does not comply with the provisions of this chapter and ORS chapter 459 and applicable rules or standards adopted pursuant thereto, the commission shall issue an order denying certification

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the department fails to issue a preliminary certificate of approval and the commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted

(5) Within 20 days from the date of mailing of the order, any person against whom an order is directed pursuant to subsection (3) of this section may demand a hearing The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department The hearing shall be conducted in accordance with the applicable provisions of ORS 183 310 to 183 550 [1985 c 684 §6]

468.950 Final certification. Except if the commission, under ORS 468 945 (1), waives the requirement for preliminary certification, no final certification shall be issued by the commission under ORS 468 940 unless the capital investment was made in accordance with the requirements of ORS 468 945 and in accordance with the applicable provisions of this chapter and ORS chapter 459 and the applicable rules or standards adopted pursuant thereto [1985 c 684 §7]

468.955 Revocation of certificate; consequences. (1) Pursuant to the procedures for a contested case under ORS 183 310 to 183 550, the commission may order the revocation of the certification issued under ORS 468 940 of any capital investment, if it finds that

(a) The certification was obtained by fraud or misrepresentation, or

(b) The holder of the certificate has failed substantially to operate the qualifying business to manufacture a reclaimed plastic product as specified in such certificate

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue of such order

(3) If the certification of a capital investment is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 316 103 and 317 106

(4) If the certification of a capital investment is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 316 103 or 317 106 in connection with

such capital investment, as the case may be, from and after the date that the order of revocation becomes final [1985 c 684 §8, 1987 c 158 §95]

468.960 Allocation of costs to manufacture reclaimed plastic product. (1) In establishing the portion of costs properly allocable to the investment costs incurred to allow a person to manufacture a reclaimed plastic product qualifying for certification under ORS 468 940, the commission shall consider the following factors

(a) If applicable, the extent to which the manufacturing process for which the capital investment is made is used to convert reclaimed plastic into a salable or usable commodity

(b) Any other factors which are relevant in establishing the portion of the actual cost of the capital investment except return on the capital investment properly allocable to the process that allows a person to manufacture a reclaimed plastic product

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent If zero percent the commission shall issue an order denying certification

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the manufacture of a reclaimed plastic product [1985 c 684 §9]

468.965 Limit on costs certified by commission for tax credit. (1) The total of all costs of capital investments that receive a preliminary certification from the commission for tax credits in any calendar year shall not exceed $1,500,000 If the applications exceed the $1,500,000 limit, the commission, in the commission's discretion, shall determine the dollar amount certified for any capital investments and the priority between applications for certification based upon the criteria contained in ORS 468 925 to 468 965

(2) Not less than $500,000 of the $1,500,000 annual certification limit shall be allocated to capital investments having a certified cost of $100,000 or less for any qualifying business

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any capital investments shall not exceed $500,000 However, if the applications certified in any calendar year do not total $1,000,000, the commission may increase the certified costs above the $500,000 maximum for previously certified capital investments The increases shall be allocated according to the commission's determination of how the previously certified capital investments meet the criteria of ORS 468 925 to 468 965 The increased allocation to previously certified capital investments under this subsection shall not include any of the $500,000 reserved under subsection (2) of this section [1985 c 684 §10]

ASSESSMENT DEFERRAL LOAN PROGRAM

468.970 Definitions for ORS 468.970 to 468.983. As used in ORS 468 970 to 468 983

(1) "Commission" means the Environmental Quality Commission

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

(3) "Extreme financial hardship" has the meaning given within the assessment deferral programs adopted by public agencies and approved by the Department of Environmental Quality

(4) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized to construct water pollution control facilities

(5) "Treatment works" means a sewage collection system [1987 c 695 §1]

Note 468 970 to 468 983 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation

468.973 Policy. It is declared to be the policy of this state

(1) To provide assistance to property owners who will experience extreme financial hardship resulting from payment of assessed costs for the construction of treatment works required by a federal grant agreement or an order issued by a state commission or agency

(2) To provide assistance through an interest loan program to defer all or part of property assessments

(3) To capitalize an assessment deferral loan program with moneys available in the Pollution Control Fund, available federal funds or available local funds [1987 c 695 §2]

Note See note under 468 970

468.975 Assessment Deferral Loan Program Revolving Fund; uses; sources. (1) There is established the Assessment Deferral Loan Program Revolving Fund separate and dis-

tinct from the General Fund in the State Treasury The moneys in the Assessment Deferral Loan Program Revolving Fund are appropriated continuously to the Department of Environmental Quality to be used for the purposes described in ORS 468 977

(2) The Assessment Deferral Loan Program Revolving Fund may be capitalized from any one or a combination of the following sources of funds in an amount sufficient to fund assessment deferral loan programs provided for in ORS 468 977

(a) From the Water Pollution Control Revolving Fund

(b) From capitalization grants or loans from the Pollution Control Fund

(3) In addition to those funds used to capitalize the Assessment Deferral Loan Program Revolving Fund, the fund shall consist of

(a) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance to water pollution control projects,

(b) All repayments of money borrowed from the fund,

(c) All interest payments made by borrowers from the fund,

(d) Any other fee or charge levied in conjunction with administration of the fund, and

(e) Any available local funds

(4) The State Treasurer may invest and reinvest moneys in the Assessment Deferral Loan Program Revolving Fund in the manner provided by law All earnings from such investment and reinvestment shall be credited to the Assessment Deferral Loan Program Revolving Fund [1987 c 695 §§3, 11]

Note See note under 468 970

468.977 Conditions for program; administrative expenses; priority; report. (1) The Department of Environmental Quality shall use the moneys in the Assessment Deferral Loan Program Revolving Fund to provide funds for assessment deferral loan programs administered by public agencies that meet all of the following conditions

(a) The program demonstrates that assessments or charges in lieu of assessments levied against benefited properties for construction of treatment works required by a federal grant agreement or by an order issued by a state commission or agency will subject property owners to extreme financial hardship

(b) The governing body has adopted a program and the department has approved the program

(c) The treatment works meets the requirements of section 2, Article XI-H of the Oregon Constitution concerning eligibility of pollution control bond funds

(2) The department also may use the moneys in the Assessment Deferral Loan Program Revolving Fund to pay the expenses of the department in administering the Assessment Deferral Loan Program Revolving Fund and to repay capitalization loans

(3) In administering the Assessment Deferral Loan Program Revolving Fund, the department shall

(a) Allocate funds to public agencies for assessment deferral loan programs in accordance with a priority list adopted by the Environmental Quality Commission

(b) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards

(c) Prepare any reports required by the Federal Government as a condition to the award of federal capitalization grants

(4) The Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board before awarding the first loan from the Assessment Deferral Loan Program Revolving Fund The report shall describe the assessment deferral loan program and set forth in detail the operating procedures of the program [1987 c 695 §§4 5, 8]

Note See note under 468 970

468.980 Application for loan; terms and conditions. Any public agency desiring funding of its assessment deferral loan program from the Assessment Deferral Loan Program Revolving Fund may borrow from the Assessment Deferral Loan Program Revolving Fund in accordance with the procedures contained in ORS 468 220 and 468 970 to 468 983 The public agency shall submit an application to the department on a form provided by the department After final approval of the application, the department shall offer the public agency funds from the Assessment Deferral Loan Program Revolving Fund through a loan agreement with terms and conditions that

(1) Require the public agency to repay the loan with interest according to a repayment schedule corresponding to provisions governing repayment of deferred assessments by property owners as defined in the public agency's adopted assessment deferral loan program,

(2) Require the public agency to secure the loan with an assessment deferral loan program financing lien as described in ORS 468 983, and

(3) Limit the funds of the public agency that are obligated to repay the loan to proceeds from repayment of deferred assessments by property owners participating in the assessment deferral loan program adopted by the public agency [1987 c 695 §6]

Note See note under 468 970

468.983 Lien against assessed property; docket; enforcement. (1) Any public agency that pays all or part of a property owner's assessment pursuant to the public agency's adopted assessment deferral loan program shall have a lien against the assessed property for the amount of the public agency's payment and interest thereon as specified in the public agency's assessment deferral loan program

(2) The public agency's auditor, clerk or other officer shall maintain a docket describing all payments of assessments made by the public agency pursuant to its adopted assessment deferral loan program The liens created by such payments shall attach to each property for which payment is made at the time the payment is entered in this docket The liens recorded on this docket shall have the same priority as a lien on the bond lien docket maintained pursuant to ORS 223 230 A lien shall be discharged upon repayment to the public agency of all outstanding principal and interest in accordance with the requirements of the public agency's adopted assessment deferral loan program

(3) The lien may be enforced by the public agency as provided by ORS 223 505 to 223 650 The lien shall be delinquent if not paid according to the requirements of the public agency's adopted assessment deferral loan program [1987 c 695 §7]

Note See note under 468 970

PENALTIES

468.990 Penalties. (1) Wilful or negligent violation of ORS 468 720 or 468 740 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than $25,000 or by imprisonment in the county jail for not more than one year, or by both Each day of violation constitutes a separate offense

(2) Violation of ORS 468 775 is a Class A misdemeanor Each day of violation constitutes a separate offense

(3) Violation of ORS 468 760 (1) or (2) is a Class A misdemeanor

(4) Violation of ORS 454 425 or 468 742 is a Class A misdemeanor

(5) Violation of ORS 468 770 is a Class A misdemeanor [1973 c 835 §28, subsection (5) formerly part of 448 990, enacted as 1973 c 835 §177a]

468.992 Penalties for pollution offenses. (1) Wilful or negligent violation of any rule, standard or order of the commission relating to water pollution is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than $25,000 or by imprisonment in the county jail for not more than one year, or by both Each day of violation constitutes a separate offense

(2) Refusal to produce books, papers or information subpenaed by the commission or the regional air quality control authority or any report required by law or by the department or a regional authority pursuant to 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 this chapter is a Class A misdemeanor

(3) Violation of the terms of any permit issued pursuant to ORS 468 065 is a Class A misdemeanor Each day of violation constitutes a separate offense [1973 c 835 §26]

468.995 Penalties for air pollution offenses. (1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense

(3) Violation of ORS 468 475 or of any rule adopted pursuant to ORS 468 460 is a Class A misdemeanor Each day of violation constitutes a separate offense

(4) Violation of the provisions of ORS 468 605 is a Class A misdemeanor [1973 c 835 §27, subsection (6) enacted as 1975 c 366 §3, 1983 c 338 §938]

468.997 Joinder of certain offenses. Where any provision of 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 this chapter provides that each day of violation of 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 or a section of this chapter constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or complaint, or information, in several counts [Formerly 449 992]