Chapter 448

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Swimming Facilities; Water and Sewage Systems

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SWIMMING FACILITIES

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

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

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

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

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

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

(a) Travelers' accommodations;

(b) Recreation parks;

(c) Colleges;

(d) Schools;

(e) Organizational camps as defined in ORS 446.310;

(f) Clubs;

(g) Associations;

(h) Business establishments for their patrons or employees;

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

(j) Recreation districts;

(k) Municipalities;

(L) Counties; or

(m) A state agency.

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

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

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

(9) "Travelers' accommodation" means those facilities as defined by ORS 446.310.

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

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

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

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

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

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

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

(3) After a construction permit is issued and upon request, the division shall cause an investigation to be made of the proposed public swimming pool, public spa pool or bathhouse. If the division determines that

the public swimming pool, public spa pool or bathhouse complies with the rules of the division, it shall issue a final approval which shall authorize the issuance of a license.

(4) An applicant for a permit to construct a public swimming pool, public spa pool or bathhouse to be owned, operated or maintained by a person for profit, or in conjunction with a travelers' accommodation or recreation park, shall pay the division a plan review fee of $100 and a construction permit fee of $200, which entitles the holder to two inspections toward final approval. The division shall not impose any new standards after a second or any subsequent inspection. For any subsequent construction inspection necessary, the permit holder shall pay $100 for each inspection. [Amended by 1961 c.566 §5; 1973 c.215 §4; 1979 c.453 §3; 1979 c.696 §5a; 1981 c.749 §24; 1983 c.781 §2]

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

(2) An annual fee of $100 shall be paid for a license to operate a public swimming pool, public spa pool or bathhouse. The annual fee for a license for a second or additional pool, spa pool or bathhouse, or any combination thereof, on the same site shall be an amount equal to 60 percent of the fee for the first license.

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

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

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

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

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

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

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

(2) If the assistant director determines that a public swimming pool, public spa pool or bathhouse is being operated or maintained in violation of the rules of the division or is found to be insanitary, unclean or dangerous to public health or safety the assistant director may suspend, revoke or deny the permit or license issued under ORS 448.030 or 448.035 in accordance with ORS 183.310 to 183.550. [1961 c.566 §10; (enacted in lieu of 448.050); 1973 c.215 §7; 1979 c.453 §6]

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

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

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

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

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

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

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

448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule. (1) The Assistant Di-

rector for Health shall delegate to any county board of commissioners which requests any of the authority, responsibilities and functions of the Assistant Director for Health under ORS 448.005 to 448.011, 448.020 to 448.035, 448.040 to 448.060 and this section if the assistant director determines that the county is able to carry out the rules of the division relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the division. Such standards shall be established by the division in consultation with the appropriate county officials and in accordance with ORS 431.345. The division shall review and monitor each county's performance under this subsection. In accordance with ORS 183.310 to 183.550, the assistant director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the division for carrying out the authority, responsibility and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 448.030 and 448.035. The county, quarterly, shall remit 15 percent of the state licensing fee or 15 percent of the county fee, whichever is less, to the division for consultation service and maintenance of the statewide program.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the division, the division shall be made a party to the action, suit or proceeding. [1973 c.215 §9; 1975 c.790 §2; 1983 c.370 §2]

448.110 [Repealed by 1967 c.344 §10]

WATER SYSTEMS

(Generally)

448.115 Definitions for ORS 448.115 to 448.285. As used in ORS 448.115 to 448.285, 454.235, 454.255 and 757.005 unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

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

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

(12) "Waterborne disease" means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability which is transported to human beings by water which has been ingested or through contact as in bathing or other domestic uses. [1981 c.749 §2; 1983 c.271 §3; 1985 c.178 §4]

448.119 Application of ORS 448.119 to 448.285 to water systems. Before a water system is subject to regulation under ORS 448.119 to 448.285, 454.235, 454.255 and 757.005, the system must have at least four service connections, or it must serve water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year. In a housing subdivision of four or more living units where the water service connections of individual units are only two or three per water system, at the discretion of the assistant di-

rector, the division may regulate the water systems within the subdivision under ORS 448.119 to 448.285, 454.235, 454.255 and 757.005. [1981 c.749 §3; 1985 c.178 §5]

448.120 [Repealed by 1967 c.344 §10]

448.123 Purpose. (1) It is the purpose of ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 to:

(a) Assure all Oregonians safe drinking water.

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

(c) Provide a means to improve inadequate drinking water systems.

(2) In carrying out the purpose set forth in subsection (1) of this section, the Health Division shall act in accordance with the goal set forth in ORS 468B.155.

(3) If, in carrying out any duty prescribed by law, the Health Division acquires information related to ground water quality in Oregon, the Health Division shall forward a copy of the information to the centralized repository established pursuant to ORS 536.125. [1981 c.749 §4; 1989 c.833 §50]

448.127 Short title. ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 may be referred to as the Oregon Drinking Water Quality Act. [1981 c.749 §5]

448.130 [Repealed by 1967 c.344 §10]

(Administration)

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

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

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

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

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

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

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

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

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

(1) There is no unreasonable risk to health;

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

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

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

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

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

(b) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the division may grant the variance. [1981 c.749 §7; 1983 c.271 §5]

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

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

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

448.145 When permit may be issued; compliance schedule; hearing; notice. (1) A permit shall be issued by the division

when there are economic or other compelling factors such that the water supplier is unable to install the water treatment facilities or to meet the maximum contaminant levels.

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

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

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

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

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

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

448.150 Duties of division. (1) The division shall:

(a) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to insure the system is not creating an unreasonable risk to health. The division shall provide written reports of such examinations to the local health administrator and to the water supplier.

(b) Require regular water sampling by water suppliers. These samples shall be analyzed in a laboratory approved by the division. The results of the laboratory analysis shall be reported to the division by the water supplier, unless direct laboratory reporting is authorized by the water supplier.

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

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

(e) Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.680 and 757.005 to protect the public health and safety.

(f) Notify the Department of Environmental Quality of a potential ground water management area if, as a result of its water sampling under paragraphs (a) to (e) of this subsection, the division detects the presence in ground water of:

(A) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(B) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) The notification required under paragraph (f) of subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected. [1981 c.749 §10; 1989 c.833 §51; 1989 c.946 §1]

Note: Section 2, chapter 946, Oregon Laws 1989, provides:

Sec. 2. The Health Division shall report to the Sixty-sixth Legislative Assembly on the two types of reporting authorized under ORS 448.150 by submitting its report to the President of the Senate and the Speaker of the House of Representatives who may refer the report to appropriate interim or standing committees. [1989 c.946 §2]

448.155 Personnel training; public information. The division:

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

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

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

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

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

(2) Cities or counties, whichever have authority to issue building permits, must

certify that the division has approved the construction and installation plans of a proposed water system development and the development plan does not violate city or county water service plans before issuing a building permit.

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

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

(2) In any action, suit or proceeding arising out of county administration of functions pursuant to ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 455.170 and 757.005 and involving the validity of a rule adopted by the division, the division shall be made a party to the action, suit or proceeding. [1981 c.749 §14]

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

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

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

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

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

448.180 Waiver of construction standards. The division may grant waivers on construction standards if the division is satisfied there will be no unreasonable risk to health. [1983 c.271 §2]

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

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

448.215 [Formerly 449.215; 1975 c.254 §3; repealed by 1981 c.749 §28]

448.220 [Formerly 449.223; 1975 c.254 §4; repealed by 1981 c.749 §28]

448.222 [1975 c.254 §17; repealed by 1981 c.749 §28]

448.225 [Formerly 449.220; 1975 c.254 §5; 1979 c.696 §7; repealed by 1981 c.749 §28]

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

448.228 [1975 c.254 §17a; repealed by 1981 c.749 §28]

448.230 [Formerly 449.225; 1975 c.254 §6; repealed by 1981 c.749 §28]

448.235 [Formerly 449.235; 1975 c.254 §7; repealed by 1981 c.749 §28]

448.240 [Formerly 449.227; 1975 c.254 §8; repealed by 1981 c.749 §28]

448.245 [Formerly 449.237; 1975 c.254 §9; repealed by 1981 c.749 §28]

448.246 [1975 c.691 §2; repealed by 1981 c.749 §28]

448.248 [1975 c.691 §3; repealed by 1981 c.749 §28]

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

(2)(a) If the water supplier refuses to comply with the order of the court, in addition to other remedies, the court may appoint a special master to operate the water system. Costs of operation and improvement during operation by the special master are to be charged to the water supplier and may be collected by impounding revenue due to the water supplier from customers of the supplier; or, if those funds are insufficient, from other revenues due to the water supplier.

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

(3) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(4) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisance or for recovery of damages brought by private persons or by the state on relation of any person. [Formerly 449.247; 1975 c.254 §10; 1979 c.284 §145; 1981 c.749 §15]

448.255 Notice of violation; content; hearing; order; appeal. (1) Whenever the assistant director has reasonable grounds to believe that a water system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448.115 to 448.285, 454.235, 454.255 and 757.005, the assistant director shall give written notice to the water supplier responsible for the system.

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

(a) Citation of the rule allegedly violated;

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

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

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

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS 183.310 to 183.550 and shall be in accordance with rules adopted by the division.

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

(6) The order shall be affirmed or reversed by the assistant director after hearing. A copy of the assistant director's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon the petitioner. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §171; 1975 c.254 §11; 1981 c.749 §16]

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

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

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

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

(2) Violation of paragraph (a) or (b) of subsection (1) of this section is a public nuisance and may be abated as other nuisances under the laws of this state. [Formerly 449.320; 1975 c.254 §12; 1981 c.749 §18]

448.268 Area of ground water concern; declaration. If, as a result of its activities under ORS 448.150, the Health Division confirms the presence in ground water drinking water supplies of contaminants resulting at least in part from suspected nonpoint source activities, the division shall declare an area of ground water concern. The declaration shall identify the substances confirmed in the ground water and all ground water aquifers that may be affected. [1989 c.833 §32]

Note: 448.268 and 448.271 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

448.270 [1973 c.835 §170; repealed by 1981 c.749 §28]

448.271 Transfer of property that includes well; testing; effect. (1) In any transaction for the sale or exchange of real estate that includes a well that supplies ground water for domestic purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, have the well tested for nitrates and total coliform bacteria. The Health Division also may require additional tests for specific contaminants in an area of ground water concern or ground water management area. The seller shall submit the results of the test required under this section to the Health Division.

(2) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction. [1989 c.833 §30]

Note: See note under 448.268.

(Federal Safe Drinking Water Act Administration)

448.273 Federal Safe Drinking Water Act administration. The Legislative Assembly finds that an agreement between this state and the Federal Government to assume primary enforcement responsibility in this state for the federal Safe Drinking Water Act

is in the best interest of this state, subject to the following assumptions:

(1) The Federal Government provides an annual program grant in an amount no less than that allocated for the state in the 1984 fiscal year.

(2) The Federal Government provides technical assistance to this state, as requested, in emergency situations and during outbreaks of waterborne diseases.

(3) The Federal Government must negotiate an annual work plan for the Health Division of the Department of Human Resources, in cooperation with the division, that can be accomplished within the amount of program grant funding available.

(4) The Health Division adopts standards no less stringent than the National Primary Drinking Water Regulations of the United States Environmental Protection Agency.

(5) The Health Division provides engineering assistance through regional offices in at least four geographically distributed areas in this state.

(6) In cooperation with representatives of local health departments, the Health Division develops an equitable formula for distribution of available funds to support local health department water programs.

(7) The primacy agreement may be canceled by the Health Division, upon 90 days notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1).

(8) The Federal Government can impose financial sanctions against this state if the state fails to meet the objectives of the annual negotiated work plan without reasonable explanation by tying the next annual funding to specific state production and by withholding of funds a possibility if continued unexplained failures occur but no sanction exists to interfere with other types of federal funding in this state.

(9) The Federal Government may seek to enforce the safe drinking water standards if this state fails to take timely compliance action against a public water system that violates such standards.

(10) Enforcement under subsection (9) of this section may be by injunctive relief or, in the case of willful violation, civil penalties authorized by 42 U.S.C. 300g-3 (a) and (b). [1985 c.178 §1]

448.275 [1973 c.835 §173; repealed by 1981 c.749 §28]

448.277 Health Division as administrator. The Health Division is authorized to enter into an agreement with the Federal Government to administer the federal Safe Drinking Water Act in this state. The agreement is subject to the legislative assumption stated in ORS 448.273. The agreement shall remain in effect subject to annual renegotiation of the duties to be performed and the remuneration to be received by the division except that it may be canceled by the division, upon 90 days notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1). [1985 c.178 §2]

(Civil Penalties)

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

(2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the division or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed. [1973 c.835 §174; 1975 c.254 §13; 1981 c.749 §19]

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

(2) The assistant director may impose the penalty without hearing but only after the notice required by ORS 448.280 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the assistant director shall consider the following factors:

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

(b) Any prior violations of statutes, rules, orders and permits pertaining to the water system.

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

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the division considers proper and consistent with the public health and safety. [1973 c.835 §175; 1975 c.254 §14; 1981 c.749 §20]

448.290 Process for imposing civil penalty. (1) Civil penalties under ORS 448.285 shall be imposed as provided in ORS 183.090.

(2) All amounts recovered under this section shall be paid into the State Treasury and credited to the General Fund. [1973 c.835 §176; 1989 c.706 §15; 1991 c.734 §28]

(Jurisdiction of Cities)

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

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

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

(3) Acquired, owned or occupied by cities within the areas draining into the domestic water supply sources. [Formerly 449.305; 1983 c.740 §170]

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

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

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

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

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

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

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

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

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

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

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

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

(4) When on duty, shall wear in plain view a badge or shield bearing the words "Special Police" and the name of the city for which appointed. [Formerly 449.315; 1991 c.67 §124]

448.320 Jurisdiction over violations of city ordinances. The municipal or recorder's court of any city passing an ordinance under authority of ORS 448.300 or 448.305 and the justice of the peace court or district court of the county wherein such city is located or in which the watershed area is located shall have concurrent jurisdiction to

try and determine any prosecution brought under such ordinance. If prosecution is had in a justice of the peace court or a district court, the court shall remit to the city, after deducting court costs, the amount of any fine collected, except as otherwise provided by ORS 46.045 (2). If a jail term is imposed, the convicted person shall be confined in the city jail or in the county jail and if confined in the county jail the county shall be entitled to recover from the city the actual costs of such incarceration. [Formerly 449.328]

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

(Water Pipes and Fittings)

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

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

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

(4) Notwithstanding subsection (1) or (3) of this section, the Assistant Director for Health may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the necessary use by a well driller in the installation of a well. The assistant director may require any person using water pipe used to carry potable water under this subsection to notify the Health Division of the date and location of that use. [1979 c.535 §1; 1987 c.414 §152]

OPERATOR CERTIFICATION FOR SEWAGE TREATMENT WORKS AND POTABLE WATER TREATMENT PLANTS

(Generally)

448.405 Definitions for ORS 448.405 to 448.470. As used in ORS 448.405 to 448.470:

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

(5) "Operator" means a person responsible for the operation of a potable water treatment plant, water distribution system or sewage treatment works.

(6) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of this state, any interstate body or any other legal entity.

(7) "Potable water treatment plant" means that portion of a water system that in some way alters the physical, chemical or bacteriological quality of the water being treated.

(8) "Sewage treatment works" means any structure, equipment or process required to collect, carry away and treat domestic waste and dispose of sewage as defined in ORS 454.010.

(9) "Supervise" means to operate or to be responsible for directing employees that are responsible for the operation of a water system.

(10) "Water distribution system" means that portion of the water system in which water is stored and conveyed from the potable water treatment plant or other supply point to the premises of a consumer.

(11) "Water system" includes sewage treatment works or potable water treatment plants and water distribution systems that have 15 or more service connections used by year-round residents or that regularly serve 25 or more year-round residents. [1987 c.635 §1]

Note: 448.405 to 448.470 and 448.992 and 448.994 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 448 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

448.407 Advisory committee to commission and division. To aid and advise the Environmental Quality Commission and Health Division in the adoption of rules under ORS 448.410 and 448.450, the Director of the Department of Environmental Quality and the Assistant Director for Health shall appoint an advisory committee. The members of the committee shall include but need not be limited to representatives of all types of water systems. [1987 c.635 §16]

Note: See note under 448.405.

448.409 Biennial report. On or before January 1, 1989, and biennially thereafter, the Department of Environmental Quality and Health Division shall develop and submit a joint report to the Legislative Assembly. The report shall include, but need not be limited to:

(1) A summary of actions taken under ORS 448.405 to 448.470, 448.992 and 448.994;

(2) An evaluation of the effectiveness of such actions; and

(3) Any information and recommendations, including legislative recommendations the department or the division considers appropriate. [1987 c.635 §17]

Note: See note under 448.405.

(Sewage Treatment Works)

448.410 Authority and duties of Environmental Quality Commission. (1) The commission shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.410 to 448.430 and 448.992.

(b) Classify all sewage treatment works. In classifying the sewage treatment works, the commission shall take into consideration size and type, character of wastewater to be treated and other physical conditions affecting the sewage treatment works and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of sewage treatment works.

(d) Subject to the prior approval of the Executive Department and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the costs incurred by the department in carrying out the provisions of ORS 448.410 to 448.430 and 448.992 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) The commission may grant a variance from the requirements of ORS 448.415, according to criteria established by rule by the commission.

(3) In adopting rules under this section, the commission shall consult with the Health Division in order to coordinate rules adopted under this section with rules adopted by the Health Division under ORS 448.450. [1987 c.635 §2; 1991 c.703 §9]

Note: See note under 448.405.

448.415 Certification required for operators. (1) Except as provided in ORS 448.430, any sewage treatment works, whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.410. The operator's certification must correspond to the classification of the sewage treatment works supervised by the operator.

(2) Except as provided in ORS 448.430, a person may not:

(a) Allow any sewage treatment works to be operated unless the operator is certified or the sewage treatment works is supervised by an operator certified under the provisions of ORS 448.410 to 448.430 and 448.992.

(b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §§3, 4]

Note: See note under 448.405.

448.420 Special certification provisions. On and after September 27, 1987, an operator holding a current Oregon sewage treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.410 at the same classification and grade. Certification of operators by any state that, as determined by the director, accepts certifications made under ORS 448.410 to 448.430 and 448.992, shall be accorded re-

ciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.410 to 448.430 and 448.992, if in the judgment of the director, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.410 to 448.430 and 448.992 or any rule adopted under ORS 448.410 to 448.430 and 448.992. [1987 c.635 §5]

Note: See note under 448.405.

448.425 Deposit and use of fees. Any fees collected pursuant to the schedule adopted under ORS 448.410 shall be deposited in the General Fund of the State Treasury to the credit of the Department of Environmental Quality. Such fees are continuously appropriated to the department to pay the cost of administering the provisions of ORS 448.410 to 448.430 and 448.992. [1987 c.635 §6]

Note: See note under 448.405.

448.430 Certification exception. The requirements of ORS 448.415 shall not apply to:

(1) Any sewage treatment works with an approved design flow of less than 75,000 gallons a day, if the owner has contracted with a certified operator to provide part-time supervision as the commission by rule determines necessary; or

(2) A subsurface sewage disposal system as defined in ORS 454.605. [1987 c.635 §7]

Note: See note under 448.405.

(Potable Water Treatment Plants)

448.450 Authority and duties of Health Division. (1) The Health Division shall:

(a) Adopt rules necessary to carry out the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

(b) Classify all potable water treatment plants and water distribution systems actually used or intended for use by the public. In classifying the potable water treatment plants and water distribution systems, the division shall take into consideration size and type, character of water to be treated and other physical conditions affecting the treatment plants and distribution systems and the skill, knowledge and experience required of an operator.

(c) Certify persons qualified to supervise the operation of a potable water treatment plant or a water distribution system.

(d) Subject to the prior approval of the Executive Department and a report to the Emergency Board prior to adopting the fee, establish a schedule of fees for certification under paragraph (c) of this subsection. The fees established under the schedule shall be sufficient to pay the cost of the division in carrying out the provisions of ORS 448.450 to 448.470, 448.992 and 448.994 and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) The division may grant a variance from the requirements of ORS 448.455 according to criteria established by rule by the division.

(3) In adopting rules under this section, the division shall consult with the Department of Environmental Quality in order to coordinate rules adopted under this section with rules adopted by the Environmental Quality Commission under ORS 448.410. [1987 c.635 §9; 1991 c.67 §125; 1991 c.703 §10]

Note: See note under 448.405.

448.455 Certification required for operators. Except as provided in ORS 448.470, any potable water treatment plant or water distribution system whether publicly or privately owned, used or intended for use by the public or private persons must be supervised by an operator certified pursuant to ORS 448.450. The operator's certification must correspond to the classification of the water treatment plant or distribution system supervised by the operator.

(2) Except as provided in ORS 448.470, a person may not:

(a) Allow any potable water treatment plant or water distribution system to be operated unless the operator is certified or the potable water treatment plant or water distribution system is supervised by an operator certified under the provisions of ORS 448.450 to 448.470, 448.992 and 448.994.

(b) Perform the duties of an operator unless the person is certified under the provisions of ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §§10, 11]

Note: See note under 448.405.

448.460 Special certification provisions. On and after September 27, 1987, an operator holding a current Oregon water treatment certification issued under a voluntary certification program shall be considered certified under the program established under ORS 448.450 at the same classification and grade. Certification of operators by any state that, as determined by the division, accepts certifications made under ORS 448.450 to 448.470, 448.992 and 448.994, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of ORS 448.450 to 448.470, 448.992 and 448.994, if in the judgment of the Assistant Director for Health, the certification requirements of such state are substantially equivalent to the requirements of ORS 448.450 to 448.470, 448.992 and 448.994 or any rule adopted under ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §12]

Note: See note under 448.405.

448.465 Deposit of fees. Any fees collected pursuant to the schedule adopted under ORS 448.450 shall be deposited in the General Fund of the State Treasury to the credit of the Health Division. Such fees are continuously appropriated to the department to pay the cost of administering the provisions of ORS 448.450 to 448.470, 448.992 and 448.994. [1987 c.635 §13]

Note: See note under 448.405.

448.470 Certification exception. (1) The requirements of ORS 448.455 shall not apply to a water system for which the source of water is ground water and that has less than 150 service connections. However, the operator of a water system exempt under this section shall not be exempt from any continuing educational requirements established by rule by the Health Division.

(2) The requirements of ORS 448.455 shall not apply to a water system that is directly supervised by a registered professional engineer who has a valid certificate to practice engineering issued under ORS 672.002 to 672.325. [1987 c.635 §14; 1989 c.1091 §1]

Note: See note under 448.405.

PENALTIES

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

(2) Violation of any of the following is punishable as a Class A misdemeanor:

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

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

(c) ORS 448.265 or 448.315 (2)(a). [Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.835 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990; 1983 c.271 §4]

448.992 Sewage treatment works violation penalties. (1) Except as provided in subsection (2) of this section, any person who knowingly and willfully violates ORS 448.415 (2) shall upon conviction be punished by a fine of not more than $500 per day of violation or imprisonment for not more than six months, or both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.410 to 448.430, or by any rule adopted under ORS 448.410 to 448.430, shall upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both. [1987 c.635 §8]

Note: See note under 448.405.

448.994 Potable water treatment plant violation penalty. (1) Except as provided in subsection (2) of this section, any person who knowingly and willfully violates ORS 448.455 (2) shall upon conviction be punished by a fine of not more than $500 per day of violation or imprisonment for not more than six months, or both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under ORS 448.450 to 448.470 and 448.992, or by any rule adopted under ORS 448.450 to 448.470 and 448.992, shall upon conviction, be punished by a fine of not more than $500 or by imprisonment for not more than six months, or both. [1987 c.635 §15]

Note: See note under 448.405.