

Chapter 459

1991 EDITION

Solid Waste Control

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CROSS REFERENCES

- Environmental Quality Commission, duties and powers, Ch. 468
 - Master plans and service facilities for solid waste disposal authorized for certain counties, 451.010
 - Metropolitan service district control over waste disposal site modification, 268.318
 - Radioactive waste, 469.530 to 469.559
 - Reuse and recycling, Ch. 459A
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SOLID WASTE MANAGEMENT**(General Provisions)**

459.005 Definitions for ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665. As used in ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665, unless the context requires otherwise:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

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

(3) "Board of county commissioners" or "board" includes county court.

(4) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

(5) "Collection service" means a service that provides for collection of solid waste or recyclable material or both.

(6) "Commercial" means stores, offices including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals and other nonmanufacturing entities, but does not include other manufacturing activities or business, manufacturing or processing activities in residential dwellings.

(7) "Commission" means the Environmental Quality Commission.

(8) "Compost" means the controlled biological decomposition of organic material or the product resulting from such a process.

(9) "Conditionally exempt small quantity generator" means a person that generates a hazardous waste but is conditionally exempt from substantive regulation because the waste is generated in quantities below the threshold for regulation adopted by the commission pursuant to ORS 466.020.

(10) "Department" means the Department of Environmental Quality.

(11) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a

land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(12) "Hazardous waste" has the meaning given that term in ORS 466.005.

(13) "Hazardous waste collection service" means a service that collects hazardous waste from exempt small quantity generators and from households.

(14) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

(15) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(16) "Land reclamation" means the restoration of land to a better or more useful state.

(17) "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(18) "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under this chapter and ORS chapters 268, 459 and 459A.

(19) "Periodic collection event" means the collection of household hazardous waste or conditionally exempt small quantity generator hazardous waste at a temporary facility.

(20) "Permit" includes, but is not limited to, a conditional permit.

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

(22) "Recyclable material" means any material or group of materials that can be

collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(23) "Region" means the states of Idaho, Oregon and Washington and those counties in California and Nevada that share a common border with Oregon.

(24) "Regional disposal site" means:

(a) A disposal site selected pursuant to chapter 679, Oregon Laws 1985; or

(b) A disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from commercial haulers from outside the immediate service area in which the disposal site is located. As used in this paragraph, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

(25) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose.

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(26) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business operated under a certificate issued under ORS 822.110.

(27) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure,

vegetable or animal solid and semisolid wastes, dead animals, infectious waste as defined in ORS 459.387 and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(28) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

(29) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(30) "Transfer station" means a fixed or mobile facility normally used, as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a disposal site, including but not limited to a large hopper, railroad gondola or barge.

(31) "Waste" means useless or discarded materials.

(32) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

(33) "Yard debris" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials. [1971 c.648 §2; 1973 c.811 §1; 1973 c.835 §135; 1975 c.239 §1; 1977 c.867 §21; 1983 c.338 §931; 1983 c.729 §14; 1983 c.766 §5; 1987 c.876 §17; 1989 c.763 §12; 1989 c.833 §67; 1991 c.385 §6; 1991 c.765 §1]

459.010 [1967 c.428 §2; 1969 c.593 §42; repealed by 1971 c.648 §33]

459.015 Policy. (1) The Legislative Assembly finds and declares that:

(a) The planning, development and operation of recycling programs is a matter of statewide concern.

(b) The opportunity to recycle should be provided to every person in Oregon.

(c) There is a shortage of appropriate sites for landfills in Oregon.

(d) It is in the best interests of the people of Oregon to extend the useful life of solid waste disposal sites by encouraging recycling and reuse of materials, and by requiring solid

waste to undergo volume reduction through recycling and reuse measures before disposal in landfills to the maximum extent feasible. Implementation of recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with landfill operation.

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to establish a comprehensive statewide program for solid waste management which will:

(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

(A) First, to reduce the amount of solid waste generated;

(B) Second, to reuse material for the purpose for which it was originally intended;

(C) Third, to recycle material that cannot be reused;

(D) Fourth, to compost material that cannot be reused or recycled;

(E) Fifth, to recover energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and

(F) Sixth, to dispose of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other method approved by the department.

(b) Clearly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of ORS 459.005, 459.015, 459.035; 459.250, 459.992, 459.995 and 459A.005 to 459A.665.

(c) Retain primary responsibility for management of adequate solid waste management programs with cities, counties or metropolitan service districts, reserving to the state those functions necessary to assure effective programs, cooperation among cities, counties or metropolitan service districts and coordination of solid waste management programs throughout the state.

(d) Promote, encourage and develop markets first for reusable and then for recyclable material.

(e) Promote research, surveys and demonstration projects to encourage resource recovery.

(f) Promote research, surveys and demonstration projects to aid in developing more

sanitary, efficient and economical methods of solid waste management.

(g) Provide advisory technical assistance and planning assistance to affected persons, in the planning, development and implementation of solid waste management programs.

(h) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities for resource recovery.

(i) Provide for the adoption and enforcement of recycling rates and standards as well as performance standards necessary for safe, economic and proper solid waste management.

(j) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service in the field of solid waste management.

(k) Encourage utilization of the capabilities and expertise of private industry in accomplishing the purposes of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(L) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(m) Promote application of resource recovery systems which preserve and enhance the quality of air, water and land resources. [1971 c.648 §1; 1975 c.239 §2; 1983 c.729 §15; 1989 c.541 §1; 1991 c.385 §7]

459.017 Relationship of state to local governments in solid waste management.

(1) The Legislative Assembly finds and declares that:

(a) The planning, location, acquisition, development and operation of landfill disposal sites is a matter of statewide concern.

(b) Local government has the primary responsibility for planning for solid waste management.

(c) Where the solid waste management plan of a local government unit has identified a need for a landfill disposal site, the state has a responsibility to assist local government and private persons in establishing such a site.

(2) It is the intent of the Legislative Assembly that any action taken by the Environmental Quality Commission to establish a landfill disposal site under ORS 459.049 be recognized as an extraordinary measure that should be exercised only in the closest cooperation with local government units that have jurisdiction over the area affected by

the proposed establishment of a landfill disposal site. [1979 c.773 §2]

459.020 [1967 c.248 §1; repealed by 1971 c.648 §33]

(State Administration)

459.025 General powers and duties of department. Subject to policy direction by the commission, the department:

(1) Shall promote and coordinate research, studies and demonstration projects on improved methods and techniques in all phases of solid waste management.

(2) May apply to and receive funds from the Federal Government and from public and private agencies to carry out studies, research and demonstration projects in the field of solid waste management.

(3) May enter into agreements with the Federal Government, state agencies, local government units and private persons to carry out ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385. [1971 c.648 §4; 1973 c.835 §136]

459.030 [1967 c.428 §3; 1969 c.593 §43; repealed by 1971 c.648 §33]

459.035 Assistance in development and implementation of solid waste management plans and practices and recycling programs. Consistent with ORS 459.015 (2)(c), the department shall provide to state agencies, local government units and persons providing solid waste collection service, advisory technical and planning assistance in development and implementation of effective solid waste management plans and practices, implementation of recycling programs under ORS 459.250 and 459A.005 to 459A.665, and assistance in training of personnel in solid waste management. The department shall report to the Legislative Assembly from time to time on further assistance that will be needed to develop, implement and administer effective solid waste management programs or recycling programs. The department shall assist in surveys to locate potential disposal sites. The department may request the assistance of other state agencies. [1971 c.648 §3; 1983 c.729 §16]

459.040 [1967 c.428 §4; 1969 c.593 §44; repealed by 1971 c.648 §33]

459.045 Rules. (1) The commission shall adopt reasonable and necessary solid waste management rules governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, transmission of diseases to humans or animals, air pollution, pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

(b) Location of disposal sites, giving consideration to the adaptability of each disposal

site to the population served, topography and geology of the area and other characteristics as they affect protection of ground and surface waters and air pollution; minimum standards of design, management and operation of disposal sites; and open burning and salvage operations at disposal sites.

(c) Construction, loading and operation of vehicles used in performing solid waste collection service to prevent the contents thereof from dropping, sifting, leaking or escaping onto public highways.

(d) Definition of other "wastes" subject to regulation pursuant to ORS 459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.385, 459.992 (1) and (2) and 466.995 (1).

(e) Closure and post-closure maintenance of land disposal sites.

(2) The commission may by rule:

(a) Exempt a class of land disposal sites from the requirement to provide financial assurance under ORS 459.270; or

(b) Establish criteria which an individual land disposal site must meet to be exempted from the requirement to provide financial assurance under ORS 459.270.

(3) The commission shall adopt rules on other subjects as necessary to carry out ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(4) The commission shall adopt rules which have modified or limited application in different geographic areas of the state when special conditions prevail in specified geographic areas. Special conditions that shall be considered include, but are not limited to, climatic conditions, zone classification of the area, population characteristics, methods and costs of solid waste management, solid waste management plans and other conditions in the area. Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(5) All rules adopted under this section shall be adopted after public hearing and in accordance with ORS 183.310 to 183.550.

(6) Unless a rule adopted under this section is adopted pursuant to the authority granted by ORS 183.335 (2), the commission shall mail copies of the proposed rules to all persons who have requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by subsection (5) of this section. [1971 c.648 §5; 1973 c.835 §137; 1981 c.709 §2; 1983 c.766 §6]

459.047 Landfill assistance from department; landfill disposal site certificate; effect of issuance. Upon request by a city or county responsible for implementing a de-

partment approved solid waste management plan which identifies a need for a landfill disposal site, and subject to policy direction by the commission, the Department of Environmental Quality shall:

(1) Assist the local government unit in the establishment of the landfill including assisting in planning, location, acquisition, development and operation of the site.

(2) Site and issue a solid waste disposal permit pursuant to ORS 459.205 to 459.245, 459.255 and 459.265 for a landfill disposal site within the boundaries of the requesting local government unit. Subject to the conditions set forth therein, any permit for a landfill disposal site authorized by the Environmental Quality Commission under this subsection shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the landfill disposal site, subject only to condition of the site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate. [1979 c.773 §3]

459.049 Mandated sites in certain counties; establishment by state. (1) Upon its own motion or upon the recommendation of the department, the Environmental Quality Commission may determine that a landfill disposal site within the counties of Marion, Polk, Clackamas, Washington or Multnomah must be established in order to protect the health, safety and welfare of the residents of an area for which a local government solid waste management plan has identified the need for a landfill disposal site. In making its determination on the need for a landfill disposal site or, where applicable, on the location of a landfill disposal site, the commission shall give due consideration to:

(a) The legislative policy and findings expressed in ORS 459.015, 459.017 and 459.065, and particularly the policy that action taken under this section be exercised in cooperation with local government;

(b) The provisions of the solid waste management plan or plans for the affected area;

(c) Applicable local government ordinances, rules, regulations and plans other than for solid waste management;

(d) The statewide planning goals adopted under ORS 197.005 to 197.465;

(e) The need for a landfill disposal site;

(f) The availability and capacity of alternative disposal sites or resource recovery systems and facilities;

(g) The time required to establish a landfill disposal site;

(h) Information received from public comment and hearings; and

(i) Any other factors the commission considers relevant.

(2) If the commission makes a determination under subsection (1) of this section that there is a need for a landfill disposal site within a plan area, the commission may adopt an order directing the local government unit responsible for implementing the plan to establish a landfill disposal site within a specified period of time. The order may specify a time schedule for the completion of the major elements required to establish the site. A local government unit directed to establish a landfill disposal site under this section may request assistance from the department or request that the department establish the disposal site as provided in ORS 459.047.

(3) If the commission determines that the establishment of a landfill disposal site ordered by the commission under subsection (2) of this section is not being accomplished or that the completion of major elements has fallen behind the time schedule specified in the order, the commission may direct the department to establish the disposal site or complete the establishment of the disposal site undertaken by the local government unit. The commission may direct the department to establish or complete the establishment of a landfill under this section only if the commission finds that:

(a) The action is consistent with the statewide planning goals relating to solid waste management adopted under ORS chapters 196 and 197 and any applicable provisions of a comprehensive plan or plans; and

(b) The responsible local government unit is unable to establish the landfill disposal site ordered by the commission under subsection (2) of this section.

(4) If the commission directs the department to establish or complete the establishment of a landfill disposal site under subsection (3) of this section, the department may establish the site subject only to the approval of the commission and the provisions of the solid waste management plan adopted for the area and in consultation with all affected local government units. Notwithstanding any city, county or other local government charter or ordinance to the contrary, the department may establish a landfill disposal site under this subsection without obtaining any license, permit, franchise or

other form of approval from a local government unit. [1979 c.773 §4; 1983 c.827 §54; 1985 c.565 §74]

459.050 [1967 c.428 §5; 1969 c.593 §45; repealed by 1971 c.648 §33]

459.051 Procedural rules. In accordance with the requirements of ORS 183.310 to 183.550 and after public hearing, the commission shall adopt rules:

(1) To establish a procedure for local government units to request assistance from the department in the establishment of landfill disposal sites under ORS 459.047, and to give notice of such requests.

(2) To establish a procedure for obtaining public comment on determinations of need for landfill sites made by the commission under ORS 459.049.

(3) To provide for public hearings in the area affected by a proposed landfill disposal site to be established by the department under ORS 459.049. [1979 c.773 §5]

459.053 Powers of department regarding landfill disposal sites. Subject to policy direction by the commission in carrying out ORS 215.213, 215.214, 215.283, 459.017, 459.047 to 459.065, 459.245 and 468.220, the department may:

(1) By mutual agreement, return all or part of the responsibility for development or operation of the site to the local government unit within whose jurisdiction the site is to be established, or contract with the local government unit to establish the site.

(2) To the extent necessary, acquire by purchase, gift, grant or exercise of the power of eminent domain, real and personal property or any interest therein, including the property of public corporations or local government.

(3) Lease and dispose of real or personal property.

(4) At reasonable times and after reasonable notice, enter upon land to perform necessary surveys or tests.

(5) Acquire, modify, expand or build landfill disposal site facilities.

(6) Subject to any limitations in ORS 468.195 to 468.260, use money from the Pollution Control Fund created in ORS 468.215 for the purposes of carrying out ORS 459.047 and 459.049.

(7) Enter into contracts or other agreements with any local government unit or private person for the purposes stated in ORS 459.065 (1).

(8) Accept gifts, donations or contributions from any source to carry out the provisions of ORS 459.047 and 459.049.

(9) Establish a system of fees or user charges to fund the operation and maintenance of a department owned landfill disposal site and to repay department costs. [1979 c.773 §6; 1983 c.826 §22]

459.055 Landfills in farm use areas; waste reduction programs. (1) Before issuing a permit for a landfill disposal site to be established after October 3, 1979, in any area zoned for exclusive farm use, the department shall determine that the site can and will be reclaimed for uses permissible in the exclusive farm use zone. A permit issued for a disposal site in such an area shall contain requirements that:

(a) Assure rehabilitation of the site to a condition comparable to its original use at the termination of the use for solid waste disposal;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the facility on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

(2) Before issuing a permit for a landfill disposal site established under ORS 459.047 or 459.049, or for a disposal site established after October 3, 1979, the department shall require:

(a) Any person that sends more than 75,000 tons of solid waste a year to the disposal site to prepare a waste reduction program accepted by the department; and

(b) That any contract or agreement to dispose of more than 75,000 tons of out-of-state solid waste a year in an Oregon disposal site established under ORS 459.047 or 459.049 provides for a waste reduction program accepted by the department.

(3) A disposal site permitted under the provisions of subsection (2) of this section may not accept solid waste from any person disposing of solid waste originating in any local government unit that does not have a waste reduction program or a contract accepted by the department. The department shall review the local government programs and the contract programs in the manner provided in subsection (6) of this section. Such programs shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as source reduction, recycling, reuse and resource recovery;

(b) An opportunity to recycle that:

(A) Includes a program for recycling that achieves at least a material recovery rate

equivalent to the material recovery rate achieved in a comparable county in Oregon; and

(B) Meets or exceeds the requirements of ORS 459.250 and 459A.005 to 459A.665;

(c) A timetable for implementing each portion of the waste reduction program;

(d) Energy efficient, cost-effective approaches for waste reduction;

(e) Procedures commensurate with the type and volume of solid waste generated in the area; and

(f) Legal, technical and economical feasibility.

(4) If the waste reduction program required pursuant to this section is not implemented, the commission may, by order, direct such implementation, or may prohibit the disposal site from accepting waste from that person.

(5) The department shall report to each Legislative Assembly on the use made of this section, the level of compliance with waste reduction programs and recommendations for further legislation.

(6) A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed therein.

(7) Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted.

(8) No contract or agreement for the disposal of solid waste made between an owner or operator of a disposal site and a person shall affect the authority of the commission to establish or modify the requirements of an acceptable waste reduction program under subsection (2) of this section.

(9) Notwithstanding any other provision of law relating to solid waste disposal, if the laws of any state prohibit or restrict the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of such solid waste in Oregon. [1979 c.773 §8a; 1989 c.541 §2; 1991 c.765 §8]

459.057 Department to limit wastes allowed in landfills in certain counties. (1) Before issuing a permit for a landfill disposal site to be established under ORS 459.047 or 459.049 or for a disposal site established as a conditional use in an area zoned for exclusive farm use within the boundaries of Clackamas, Marion, Multnomah, Polk or Washington County, the department shall require that, to the extent legally, techni-

cally and economically feasible only solid waste from transfer stations or solid waste residues from resource recovery facilities will be deposited in the landfill. As used in this section, "transfer station" means a site established for the collection and temporary storage of solid waste pending shipment in a compact and orderly manner to a landfill disposal site.

(2) Nothing in this section shall be construed to prohibit the department from allowing other solid waste to be deposited in the landfill in order to protect the public health and safety or the waters of this state during a temporary emergency condition. [1979 c.773 §86]

459.060 [1967 c.428 §6; 1969 c.593 §46; repealed by 1971 c.648 §33]

(Local Administration)

459.065 State preemption; intergovernmental agreements authorized. (1) The Legislative Assembly finds that solid waste disposal is a matter of statewide concern. The Legislative Assembly finds that carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 by cities, counties and metropolitan service districts is a matter of statewide concern. In carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385, a county or a city, or a metropolitan service district for one of its authorized functions, may enter into any agreement which the county, city or metropolitan service district determines is desirable, for any period of time, with the department, any local government unit or other person:

(a) For joint or regional franchising of service or the franchising or licensing of disposal sites.

(b) For joint preparation or implementation of a solid waste management plan.

(c) For establishment of a regional solid waste management system.

(d) For cooperative establishment, maintenance, operation or use of regional disposal sites, including but not limited to resource recovery facilities.

(e) For the employment of persons to operate a site owned or leased by the county, city or metropolitan service district.

(f) For promotion and development of markets for energy and materials from resource recovery.

(g) For the establishment of landfill disposal sites including site planning, location, acquisition, development and placing into operation.

(2) Authority granted by ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to

459.385 to local government units is specific and is in no way intended to restrict the general authority granted under ORS 190.010 to 190.030, 190.110, 203.010 to 203.075, 203.111, 203.145 to 203.810 and ORS chapter 268, and is in addition to and not in lieu of such authority. [1971 c.648 §14; 1973 c.835 §138; 1975 c.239 §3; 1977 c.95 §6; 1979 c.773 §7]

459.070 [1967 c.428 §7; 1969 c.593 §47; repealed by 1971 c.648 §33]

459.075 Acquisition of property for disposal sites by cities and counties. Subject to the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385, a county or a city may acquire real or personal property by lease, purchase, exercise of the power of eminent domain or otherwise for the purpose of operating and maintaining disposal sites. With the consent of the city involved, a county may acquire property for a site within the limits of a city. With the consent of the county having jurisdiction, a city may acquire property for a site outside the limits of the city. [1971 c.648 §15]

459.080 [1967 c.428 §8; repealed by 1971 c.648 §33]

459.085 County authority outside cities; effect of annexation; interagency agreements. (1) With respect to areas outside of cities, a board of county commissioners may, by ordinance or by regulation or order adopted pursuant thereto:

(a) Prescribe the quality and character of and rates for solid waste collection service, and the minimum requirements to guarantee maintenance of service.

(b) Divide the unincorporated area into service areas, grant franchises to persons for solid waste collection service within service areas, and establish and collect fees from persons holding franchises.

(c) Prescribe a procedure for issuance, renewal or denial of a franchise to a person providing or proposing to provide solid waste collection service.

(d) Establish an agency to be responsible for investigation or inspection of solid waste collection service proposed or provided under a franchise or proposed franchise, such agency to have authority to order modifications, additions or extensions to the physical equipment, facilities, plan or service as shall be reasonable and necessary in the public interest.

(e) Regulate solid waste management.

(2) With respect to areas outside of cities, a board of county commissioners may adopt ordinances to provide for:

(a) The licensing of disposal sites as an alternative to franchising of service.

(b) The regulation, licensing or franchising of salvage businesses or the operation of

salvage sites where such action is found necessary to implement any part of a solid waste management plan applicable in the county; however, such an ordinance shall grant the same authority and prescribe the same procedures as provided for other franchises or licenses under this section.

(3)(a) Where a city annexes all or a portion of a service area previously franchised by a county, the city, county and affected persons or local government units providing solid waste collection service shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the city, to protect the quality of service within the city and to protect the rights of affected persons or local government units.

(b) A city and county may, with permission of the city collector, provide by prior agreement that an area, or portion of an area, annexed by the city but previously franchised by the county shall continue to be served by the county franchisee or shall be transferred to the city collector with compensation from the city collector to the county franchisee.

(c) A city with permission of the city collector, or a city-regulated collector with permission of the city, may provide by prior agreement that an area, or portion of an area, annexed by the city but previously served by a collector located in an unfranchised area of the county shall continue to be served by the county collector or shall be transferred to the city collector with compensation from the city collector to the county collector.

(d) Where no agreement has been reached under paragraph (a), (b) or (c) of this subsection, upon annexation of territory to a city the county-franchised collector may continue to serve the annexed area until:

(A) The county collector is compensated by the city collector for the collection service in the annexed area, which compensation shall be the sum of the fair market value of the service at the time of the annexation and applicable severance damages; or

(B) The expiration of the longer of the county franchise term or the term of the current city license, contract or franchise regulating solid waste collection; provided that term does not include any renewals or extensions made after the effective date of the annexation and that the total term does not exceed 10 years from the effective date of the annexation.

(e) Nothing in this subsection shall restrict the right of a county to franchise, license or regulate solid waste management or

any portion thereof as otherwise provided in subsections (1), (2) and (4) of this section.

(4) If a county under the authority of ORS 670.210 to 670.240 (1969 Replacement Part) enacted an ordinance providing for the licensing of garbage dumps prior to July 1, 1971, the ordinance or that portion of the ordinance dealing specifically with garbage dumps shall be continued in full force and effect, and licenses issued pursuant thereto shall be in full force and effect until action is taken by the board of county commissioners under this section to amend or repeal the ordinance or to suspend or revoke the license. [1971 c.648 §16; 1977 c.639 §1]

459.095 Restrictions on authority of local government units. (1) No ordinance, order, regulation or contract affecting solid or liquid waste disposal, resource recovery or solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with regulations adopted by the commission pursuant to ORS 459.045 or with a solid waste management plan or program adopted by a metropolitan service district and approved by the department or any ordinances or regulations adopted pursuant to such plan or program.

(2) Solid waste management regulations adopted by a sanitary district or sanitary authority shall be limited to regulations supplemental to the rules adopted by the commission pursuant to ORS 459.045 and necessary to meet special local conditions. [1971 c.648 §17; 1973 c.835 §139; 1977 c.95 §7]

459.105 Regulations on use of disposal sites. A local government unit may adopt regulations for patrons using each disposal site owned or operated by the local government unit, governing the volume or type of solid wastes that will be received at the site and the particular class or classes of person that may use the site. [1971 c.648 §18]

459.108 Civil penalty to enforce ordinance prohibiting action described in ORS 164.775, 164.785 or 164.805. (1) A city or county may impose a civil penalty to enforce the requirements of an ordinance that prohibits any action or conduct described in ORS 164.775, 164.785 or 164.805.

(2) An ordinance described in subsection (1) of this section may establish a maximum or minimum amount for the civil penalty imposed under the ordinance for each violation. The total amount of the civil penalty may be increased to include all of the costs incurred by the city or county in removing the refuse or offensive substance unlawfully placed on property and in eliminating the effects of such unlawful placement.

(3) A civil penalty imposed for violation of an ordinance prohibiting any action or conduct described in ORS 164.775, 164.785 or 164.805 shall be an alternative to criminal enforcement of the ordinance. A city or county that commences and maintains a civil action to collect such a civil penalty from any person shall not cause a criminal prosecution to be commenced or maintained against that person for the same violation of the ordinance.

(4) When a city or county ordinance prohibits any action or conduct that is described in ORS 164.775, 164.785 or 164.805, a name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation of the ordinance constitutes rebuttable evidence that the person whose name appears on the items has violated the ordinance. However, the rebuttable presumption created by this subsection exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope. [1991 c.653 §7]

Note: 459.108 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.110 [1969 c.509 §1; repealed by 1971 c.648 §33]

(Regional Administration)

459.111 Findings; need for regional coordination. The Legislative Assembly finds:

(1) Solid waste management is a regional concern;

(2) Management of solid waste among the states of Idaho, Oregon and Washington and those counties in California and Nevada that share a common border with Oregon is interconnected and decisions related to solid waste management in one state can affect solid waste management in the other two states;

(3) It is appropriate that solid waste be managed on a regional basis; and

(4) There is a need for regional coordination of solid waste management decisions. [1991 c.653 §11]

Note: 459.111 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.112 Findings; fee for disposal of solid waste generated outside region. (1) The Legislative Assembly finds:

(a) Solid waste management is a regional concern;

(b) Management of solid waste among the states of Idaho, Oregon and Washington and those counties in California and Nevada that

share a common border with Oregon is interconnected and decisions related to solid waste management in one state can affect solid waste management in the other two states;

(c) It is appropriate that solid waste be managed on a regional basis; and

(d) It is not Oregon's responsibility to manage solid waste for states outside the region.

(2) Therefore, the Legislative Assembly finds it is appropriate that Oregon impose a fee for the disposal of solid waste in Oregon that was generated outside the region in order to:

(a) Compensate Oregon for managing solid waste for states outside the region; and

(b) Assure that the disposal of solid waste in Oregon is not less expensive for a state outside the region than for the state to dispose of the solid waste within the state. [1991 c.765 §3]

459.114 Out-of-region fee differential. When allowed by federal law, the Legislative Assembly may assess an out-of-region fee differential that is consistent with the policy set forth in ORS 459.112. [1991 c.765 §4]

459.116 Intent not to limit right to ban disposal of solid waste generated out of region. Nothing in ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 shall be interpreted to restrict any right the State of Oregon may have to ban solid waste from outside the region. [1991 c.765 §5]

459.118 Study of transportation routes and modes of transportation for transport of out-of-region solid waste. Before any disposal site operator enters into a new contract to receive more than 75,000 tons per year of solid waste from outside the region, the person proposing to transport the solid waste to the disposal site shall conduct or have conducted a study of the alternative transportation routes and modes of transportation that may be used to transport the solid waste to the disposal site. The study conducted under this section shall be made available, upon request, to any person. [1991 c.765 §6]

459.120 [1969 c.509 §2; 1971 c.648 §29; repealed by 1981 c.81 §3]

459.121 Legislative committee hearing on transportation study. Upon completion of the study required under ORS 459.118, the appropriate legislative committee shall conduct a hearing on the proposed contract and transportation study to allow the public to discuss the adequacy of the study and the best transportation route and mode to be used to transport the solid waste under the proposed contract. [1991 c.765 §7]

(Marion County Authority)

459.125 Authority of Marion County over products or by-products of county sites. (1) Subject to ORS 459.145 and the requirements of ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665, the board of county commissioners of Marion County may:

(a) Sell, enter into short or long-term contracts, solicit bids, enter into direct negotiations, deal with brokers or use other methods of sale or disposal for the products or by-products of the disposal sites of the county.

(b) Require any person or class of persons who generate solid or liquid wastes to make use of the disposal, transfer or resource recovery sites or facilities of the county or disposal, transfer or resource recovery sites or facilities designated by the county.

(c) Require any person or class of persons who pick up, collect or transport solid or liquid wastes to make use of the disposal, transfer or resource recovery sites or facilities of the county or disposal, transfer or resource recovery sites or facilities designated by the county.

(d) Regulate, license, franchise and certify disposal, transfer and resource recovery sites or facilities; establish, maintain and amend rates charged by disposal, transfer and resource recovery sites or facilities; establish and collect license or franchise fees; and otherwise control and regulate the establishment and operation of all public or private disposal, transfer and resource recovery sites or facilities located within the county. Licenses or franchises granted by the board may be exclusive.

(e) Cause solid wastes received and accepted at the disposal sites of the county to be processed, recycled or reused.

(2) Contracts and other agreements authorized under subsection (1) of this section may be for terms not longer than 20 years. [1981 c.386 §2]

459.130 [1969 c.509 §3; 1971 c.330 §1; 1971 c.648 §30; 1979 c.190 §421; repealed by 1981 c.81 §3]

459.135 Marion County authority over private facility in county. Subject to ORS 459.145 and the requirements of ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665, a public or private disposal, transfer or resource recovery site or facility shall not be established, modified or extended in Marion County without the prior approval of the board of county commissioners. The board may deny an application for the establishment, modification or extension of a site

or facility if pursuant to its solid waste management plan the county has either:

(1) Entered into contracts obligating the county to supply or direct minimum quantities of solid wastes to sites or facilities designated in the contract in order that those sites or facilities will operate economically and generate sufficient revenues to liquidate any bonded or other indebtedness incurred by reason of those sites or facilities; or

(2) Adopted a franchise system for the disposal of solid or liquid wastes. [1981 c.386 §3]

459.140 [1969 c.509 §4; 1975 c.239 §5; repealed by 1981 c.81 §3]

459.145 Limits on Marion County authority. ORS 459.125 and 459.135 do not apply to, or grant to Marion County any authority over:

(1) Material kept separate from waste material for the purpose of recycling or reuse by persons who generate solid waste and which is handled separately from waste material.

(2) Resource recovery involving the collection, storage, processing or use of materials kept separate from waste material for the purpose of recycling or reuse by persons who generate solid waste. [1981 c.386 §4]

459.150 [1969 c.509 §5; 1975 c.239 §6; repealed by 1981 c.81 §3]

459.153 Intent not to discourage recycling. It is not the intent of the Legislative Assembly that Marion County, under ORS 459.125 and 459.135, take any action that would hinder or discourage recycling activities in the county. [1981 c.386 §5]

459.155 [1975 c.239 §8; 1979 c.772 §23; repealed by 1981 c.81 §3]

459.160 [1969 c.509 §7; repealed by 1971 c.648 §33]

459.165 [1983 c.729 §2; 1991 c.385 §9; renumbered 459A.005 in 1991]

459.168 [1983 c.729 §9; renumbered 459A.015 in 1991]

459.170 [1983 c.729 §3; renumbered 459A.025 in 1991]

459.175 [1983 c.729 §5; 1991 c.385 §10; renumbered 459A.045 in 1991]

459.180 [1983 c.729 §6; 1991 c.385 §11; renumbered 459A.050 in 1991]

459.185 [1983 c.729 §7; 1991 c.385 §12; renumbered 459A.055 in 1991]

459.188 [1983 c.729 §8; renumbered 459A.065 in 1991]

459.190 [1983 c.729 §11; 1991 c.385 §3; renumbered 459A.070 in 1991]

459.192 [1983 c.729 §12; renumbered 459A.075 in 1991]

459.195 [1983 c.729 §13; renumbered 459A.080 in 1991]

459.200 [1983 c.729 §10; renumbered 459A.085 in 1991]

(Disposal Sites)

459.205 Permit required. (1) Except as provided by ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved,

and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the department as provided in ORS 459.235.

(2) The person who holds or last held the permit issued under subsection (1) of this section, or, if that person fails to comply, then the person owning or controlling a land disposal site that is closed and no longer receiving solid waste after January 1, 1980, must continue or renew the permit required under subsection (1) of this section after the site is closed for the duration of the period in which the department continues to actively supervise the site, even though solid waste is no longer received at the site. [1971 c.648 §6; 1983 c.766 §7]

459.210 [1969 c.90 §2; repealed by 1971 c.648 §33]

459.215 Exclusion of certain sites from permit requirement. (1) By rule and after public hearing, the commission may prescribe criteria and conditions for excluding classes of disposal sites from the permit requirements of ORS 459.205. Disposal sites so excluded shall be limited to those which, because of the nature or volume of solid waste handled, are not likely to create a public nuisance, health hazard, air or water pollution, or other serious problem. Facilities operated under a permit issued under ORS 468B.050 are not required to obtain a permit from the department pursuant to ORS 459.205. However, exclusion from the permit requirements of ORS 459.205 does not relieve any person from compliance with other requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 and the rules and regulations adopted pursuant thereto.

(2) By rule and after public hearing, the commission may delay the date after that prescribed by ORS 459.205 on which permits shall be required for a class or classes of disposal sites. However, a date after which a permit shall be required shall not be delayed later than July 1, 1975. In making its determination, the commission shall consider the nature, type and volume of solid waste handled at such sites, the threat of air or water pollution, the potential for creation of a public or private nuisance or health hazard, and the cost and funding of the program for carrying out this section.

(3) By rule and after public hearing the commission may establish classes of disposal sites that qualify for exclusion or for time extensions under this section. [1971 c.648 §7; 1973 c.835 §140]

459.220 [1969 c.90 §1; repealed by 1971 c.648 §33]

459.225 Variances or conditional permits authorized. (1) If the commission finds

that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a conditional permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.

(2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a conditional permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.

(3) The commission shall grant a variance or conditional permit only if:

(a) Conditions exist that are beyond the control of the applicant.

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

(c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

(4) A variance or conditional permit may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance or conditional permit is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.

(5) In addition to the authority to issue a variance or conditional permit under subsections (1) to (4) of this section, the commission may modify an existing disposal site permit to specify the conditions under which the disposal site may accept and dispose of infectious waste as defined in ORS 459.386. The commission also may require that a resource recovery facility or solid waste incinerator accept infectious waste generated in Oregon if the infectious waste has been contained and transported in accordance with ORS 459.390 and 767.034, but only so long as the volume of infectious waste generated outside the county in which the facility or incinerator is located does not affect the ability of the facility or incinerator to process or dispose of all waste generated

within the county in which the facility or incinerator is located.

(6) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance or a conditional permit is not a violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 or any rule or regulation adopted pursuant thereto. [1971 c.648 §8; 1973 c.835 §141; 1989 c.763 §13]

459.230 [1969 c.90 §3; repealed by 1971 c.648 §33]

459.235 Applications for permits; fees; bond or letter of credit. (1) Applications for permits shall be on forms prescribed by the department. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by the local government unit or units having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) The commission shall establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on 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) In addition to the fees imposed under subsection (2) of this section, the commission shall establish a schedule of annual permit fees for the purpose of implementing this section and ORS 90.318, 182.375, 279.545 to 279.555, 279.570 to 279.650, 459.005, 459.015, 459.247, 459.418, 459.419, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.060, 459A.070, 459A.110, 459A.115, 459A.500 to 459A.685 and 459A.750. The fees shall be assessed annually and shall be based on the amount of solid waste received at the disposal site in the previous calendar year.

(4) If the application is for a regional disposal facility, the applicant shall file with the department a surety bond or an irrevocable letter of credit issued by a commercial bank as defined in ORS 706.005, in either case, in the form and amount established by rule by the commission. The bond, letter of credit or financial assurance shall be executed in favor of the State of Oregon and shall be in an amount as determined by the department to be reasonably necessary to protect the environment, and the health,

safety and welfare of the people of the state. The commission may allow the applicant to substitute other financial assurance for the bond or letter of credit, in the form and amount the commission considers satisfactory. [1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.876 §18; 1989 c.833 §154; 1991 c.331 §65; 1991 c.385 §12a]

459.236 Additional permit fees for remedial action or removal; amount; utilization; eligibility of local governments. (1) In addition to the permit fees provided in ORS 459.235, upon prior approval by the Executive Department and a report to the Emergency Board prior to adopting the fees, and annually on January 1, there is imposed a fee on all disposal sites that receive domestic solid waste except transfer stations. The amount raised shall be up to \$1 million per year, based on the estimated tonnage or the actual tonnage, if known, received at the site and any other similar or related factors the commission finds appropriate. Such fees shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(2) For solid waste generated within the boundaries of a metropolitan service district, the fee imposed under subsection (1) of this section, but not the permit fees provided in ORS 459.235, shall be levied on the district, not the disposal site.

(3)(a) A local government unit that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government unit that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the solid waste collection service rate.

(4) Except as provided in subsection (5) of this section, moneys collected under this section shall be deposited in the Orphan Site Account created under ORS 466.590 to be used to pay the costs of removal or remedial action of hazardous substances, in excess of the maximum amount collected under ORS 459.311 at:

(a) Solid waste disposal sites owned or operated by a local government unit; or

(b) Privately owned or operated solid waste disposal sites that receive or received domestic solid waste for which the department determines the responsible party is unknown, unwilling or unable to undertake any

portion or phase of a removal or remedial action.

(5) The moneys collected under this section, or proceeds of any bond sale under ORS 468.195 for which moneys collected under this section are pledged for repayment shall be made available to a local government unit to pay removal or remedial action costs at a site if:

(a) The local government unit is responsible for conducting removal or remedial action under ORS 466.570; and

(b) The local government unit repays any moneys equal to the amount that may be raised by the charge imposed under ORS 459.311 and interest on such moneys, in accordance with an agreement between the local government unit and the department. A local government unit is not required to repay the first \$100,000 the local government unit expends on removal or remedial action.

(6) As used in this section, "removal" and "remedial action" have the meaning given those terms in ORS 466.540. [1989 c.833 §138; 1991 c.703 §43]

Note: 459.236 was added to and made a part of ORS 459.005 to 459.426 by legislative action but was not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

459.240 [1969 c.90 §4; repealed by 1971 c.648 §33]

459.245 Issuance of permits; terms. (1) If the disposal site meets the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385, the department shall issue the permit. Every completed application shall be approved or disapproved within 60 days after its receipt by the department. Except as provided in ORS 459.055 or for a permit issued under the process set forth in ORS 517.952 to 517.987, if the department fails to act within the time allowed, the application shall be considered approved unless an extension of time is granted by the commission on a showing of good cause by the department.

(2) Disposal site permits shall be issued for a period not to exceed 10 years, to be determined by the department and specified in the permit.

(3) Subject to the provisions of ORS 183.310 to 183.550, the department may refuse to renew a permit unless the disposal site and the facilities thereon meet the requirements of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 and the rules of the commission adopted pursuant thereto. [1971 c.648 §10; 1973 c.835 §142; 1979 c.773 §8; 1991 c.735 §26]

459.247 Prohibition on disposal of certain solid waste at disposal site. (1) No person shall dispose of and no disposal site

operator shall knowingly accept for disposal the following types of solid waste at a solid waste disposal site:

- (a) Discarded or abandoned vehicles;
- (b) Discarded large home or industrial appliances;
- (c) Used oil;
- (d) Tires; or
- (e) Lead-acid batteries.

(2) As used in this section, "used oil" has the meaning given that term in ORS 468.850.

(3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this section. [1991 c.385 §39]

459.250 Place for collecting source separated recyclable material required for disposal site permit; revision of permits. (1) After January 1, 1985, the department shall require as a condition to issuing a disposal site permit under ORS 459.245 that a place for collecting source separated recyclable material located either at the disposal site or at another location more convenient to the population served by the disposal site is provided for every person whose solid waste enters the disposal site.

(2) Before July 1, 1986, the department shall revise all disposal site permits issued under ORS 459.245 before January 1, 1985, to require as a condition to the permit that a place for collecting source separated recyclable material located either at the disposal site or at another location more convenient to the population served by the disposal site is provided for every person whose solid waste enters the disposal site.

(3) The department may modify the requirements of this section if the department finds that the opportunity to recycle is being provided through an acceptable alternative method. [1983 c.729 §4]

459.255 Suspension of permits. (1) A permit may be suspended or revoked at any time if the department determines that the site or the solid waste management facilities located on the site are being operated in violation of ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385 or rules of the commission adopted pursuant thereto.

(2) The procedures for denial, suspension, modification of a condition or variance, revocation or refusal to renew a permit shall be those specified for a contested case in ORS 183.310 to 183.550. [1971 c.648 §11; 1973 c.835 §143]

459.265 Hearings; appeal. (1) Except as provided by ORS 459.376, the commission

may on its own motion or upon the request of the department, and shall upon application of any person entitled to appeal, fix a time and place for a public hearing on any action of the department or commission:

(a) Ordering action to be taken by a person subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(b) Ordering, or approving action resulting in, the closure or curtailment of use of a disposal site.

(2) In making its determination upon appeal from the action of a local government unit or the department, which action would result in the closure or curtailment of the use of a disposal site, the commission shall consider and make findings with respect to:

(a) The nature and magnitude of the problems created by the site or its operation.

(b) The applicable solid waste management plan.

(c) The existence or threat of air or water pollution.

(d) The need for the particular disposal site and alternative methods of disposal or alternate disposal sites.

(e) The costs, funds available to meet the costs and the minimum time required for a change in disposal method or disposal site.

(3) In making its determination under subsection (2) of this section with respect to a disposal site owned or operated by a local government unit, and prior to ordering closure or curtailment of use of the site, the commission shall make a finding as to whether there is an alternative method of disposal or an alternate disposal site. [1971 c.648 §12; 1973 c.835 §144]

459.268 Closure of land disposal site. When solid waste is no longer received at a land disposal site, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of ORS chapters 459 and 459A, any applicable rule adopted by the commission under ORS 459.045 and any requirement imposed by the department as a condition to renewing or issuing a disposal site permit. [1983 c.766 §2]

459.270 Renewal of permit prior to proposed closure of disposal site; proof of financial assurance. (1) At least five years before the proposed closure of a land disposal site, the person holding the disposal site permit shall apply to renew the permit.

(a) A permit renewed under this subsection shall be issued for the period including the remaining time of operation of the disposal site, closure of the site and all or part of the post-closure period established by the department during which active supervision of the land disposal site is necessary.

(b) Application for the renewal of a permit under this subsection shall not prevent the disposal site permittee from applying for an extension of the useful life of the land disposal site for receiving solid waste.

(c) If the anticipated useful life of a land disposal site on October 15, 1983, is less than five years after January 1, 1984, the permittee shall apply for a renewal of the disposal site permit within 30 days after January 1, 1984.

(2) Unless exempted under rules adopted by the commission under ORS 459.045 (2), the applicant under subsection (1) of this section shall provide proof of satisfactory financial assurance. The financial assurance shall be sufficient to cover the cost of:

(a) Closing the land disposal site;

(b) Installing, operating and maintaining any environmental system required on the disposal site;

(c) Monitoring and providing security for the land disposal site; and

(d) Complying with any other requirement the department may impose as a condition of renewing the permit.

(3) When a disposal site permit is renewed under subsection (1) of this section, the applicant shall submit to the department a proposed amount of financial assurance to provide for adequate closure and post-closure maintenance of the site.

(4)(a) In reviewing the adequacy of the amount of financial assurance proposed by the applicant under subsection (3) of this section, the department shall consider the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges;

(G) The portion of the site property closed before final closure of the entire site;

(H) Any other conditions imposed on the permit relating to closure or post-closure of the site; and

(I) The financial capability of the applicant.

(b) After reviewing the proposed amount of financial assurance under paragraph (a) of this subsection, the department may either:

(A) Approve the amount proposed by the applicant; or

(B) Disapprove the amount and require the applicant to submit a revised amount consistent with the factors considered by the department under paragraph (a) of this subsection.

(5) No moneys in excess of the amount approved by the department may be set aside or collected by the disposal site operator unless the department approves an additional amount of financial assurance during a review conducted in conjunction with:

(a) A subsequent application to amend or renew the disposal site permit; or

(b) A request by the owner or operator of a disposal site to extend the useful life of the disposal site.

(6) Nothing in subsection (5) of this section is intended to prevent modification of a permit to reduce the amount of financial assurance required.

(7) The financial assurance required under this section may be in any form proposed by the applicant and approved by the department.

(8) If the department and permit applicant or permittee agree that a period longer than five years is necessary to accumulate funds for the financial assurance necessary under subsections (2) to (7) of this section, the department may include as a condition to issuing any disposal site permit that provisions be made to establish adequate financial assurance.

(9) Unless the department finds a need to protect against a significant hazard or risk to the public health, safety or environment, the department shall terminate any permit for and active supervision of a land disposal site 10 years after the site is closed. The department may terminate a permit for or active supervision of a land disposal site any time after a site is closed if the department finds the site has been adequately closed.

(10) Notwithstanding subsection (7) of this section, any time after a land disposal site is closed according to the requirements of this section, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee.

Before the department grants a termination or release under this section, the department must find that there is no longer a need for:

- (a) Active supervision of the site;
- (b) Maintenance of the site; or
- (c) Maintenance or operation of any system or facility on the site.

(11) As used in this section, "financial assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close, maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued under subsection (1) of this section. [1983 c.766 §3]

459.273 Disposition of excess moneys and interest received for financial assurance. An applicant required to provide financial assurance under ORS 459.270 shall establish provisions satisfactory to the department for disposing of any excess moneys received or interest earned on moneys received for financial assurance. To the extent practicable, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(1) A reduction of the rates a person within the area served by the land disposal site is charged for solid waste collection service; or

(2) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received. [1983 c.766 §4]

459.275 [1971 c.648 §13; repealed by 1973 c.826 §3 (459.276 enacted in lieu of 459.275); 1973 c.835 §145; see 459.277]

459.276 [1973 c.826 §4 (enacted in lieu of 459.275); renumbered 459.376 in 1987]

459.277 [Formerly 459.275; repealed by 1974 s.s. c.36 §28]

459.280 Definitions for ORS 459.284 and 459.290. As used in ORS 459.284 and 459.290:

(1) "Disposal site" has the meaning given that term in ORS 459.005, but does not include a material recovery, recycling or reuse facility.

(2) "Disposal site" does not include a regional disposal site as defined in ORS 459.005. [1987 c.876 §4]

459.284 Use of disposal site fees. Each local government unit that has a disposal site operating under the provisions of ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 and for which the local government unit collects a fee may apportion an amount of the service or user charges collected for solid waste disposal at each publicly owned, franchised or privately owned solid waste disposal site within or for

the local government unit and dedicate and use the moneys obtained for rehabilitation and enhancement of the area around the disposal site from which the fees have been collected. That portion of the service and user charges set aside by the local government unit for the purposes of this section shall be not more than \$1 for each ton of solid waste. If any local government unit apportions moneys under this section, another local government unit may not also apportion moneys under this section for the same disposal site. [1987 c.876 §2; 1989 c.763 §15]

459.285 [1971 c.648 §19; 1973 c.835 §146; 1981 c.81 §1; 1981 c.709 §3; renumbered 459.385 in 1987]

459.290 Disposal site rehabilitation and enhancement advisory committee. Each local government unit that apportions money under ORS 459.284 shall establish a citizens advisory committee to select plans, programs and projects for the rehabilitation and enhancement of the area around disposal sites for which the local government unit has apportioned moneys under ORS 459.284. If any local government unit establishes a citizens advisory committee under this section, another local government unit may not also establish a local citizens advisory committee under this section for the same disposal site. [1987 c.876 §3; 1989 c.763 §16]

459.292 [1989 c.833 §150; renumbered 459A.100 in 1991]

459.293 [1989 c.833 §151; renumbered 459A.105 in 1991]

459.294 [1989 c.833 §152; 1991 c.385 §13; 1991 c.385 §91; renumbered 459A.110 in 1991]

459.295 [1989 c.833 §153; renumbered 459A.120 in 1991]

459.297 Surcharge on solid waste generated out-of-state. (1) Beginning on January 1, 1991, every person who disposes of solid waste generated out-of-state in a disposal site or regional disposal site shall pay a surcharge as established by the Environmental Quality Commission under ORS 459.298. The surcharge shall be in addition to any other fee charged for disposal of solid waste at the site.

(2) The surcharge collected under this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to meet the costs of the department in administering the solid waste program under ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665. [1989 c.833 §155]

Note: 459.297 and 459.298 were added to and made a part of ORS 459.005 to 459.426 by legislative action but were not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

459.298 Amount of surcharge on solid waste generated out-of-state. Subject to approval by the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim between sessions, the Environmental Quality Commission shall establish by rule the amount of the surcharge to be collected under ORS 459.297. The amount of the surcharge shall be based on the costs to the State of Oregon and its political subdivisions of disposing of solid waste generated out-of-state which are not otherwise paid for under the provisions of ORS 459.235 and 459.297, 459.298, 459.411 to 459.417, 459A.100 to 459A.120 and sections 70 to 73, chapter 833, Oregon Laws 1989. These costs may include but need not be limited to costs incurred for:

- (1) Solid waste management;
- (2) Issuing new and renewal permits for solid waste disposal sites;
- (3) Environmental monitoring;
- (4) Ground water monitoring; and
- (5) Site closure and post-closure activities. [1989 c.833 §156]

Note: See note under 459.297.

459.300 Metropolitan service district site selection. (1) The metropolitan service district may provide for the disposal of solid waste from Clackamas, Multnomah or Washington County at a disposal site or sites other than the site selected by the Environmental Quality Commission under section 5, chapter 679, Oregon Laws 1985.

(2) The Department of Environmental Quality shall not use the selection of a disposal site under chapter 679, Oregon Laws 1985, to find that there is not a clearly demonstrated need for a site or sites selected by the metropolitan service district for disposal of waste under subsection (1) of this section. [1987 c.876 §5]

459.305 Certification that government unit has implemented opportunity to recycle; rules; fee; special provisions for metropolitan service district. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (3) of this section, after July 1, 1988, a disposal site may not accept solid waste generated outside the county in which the disposal site is located unless the Department of Environmental Quality certifies that the person responsible for solid waste management in the area from which the solid waste originates has implemented an opportunity to recycle that:

(a) Includes a program for recycling that achieves at least a material recovery rate equivalent to the material recovery rate

achieved in a comparable county in Oregon; and

(b) Meets the requirements of ORS 459.250 and 459A.005 to 459A.665.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by a person in order to comply with the requirement of subsection (1) of this section. No contract or agreement for the disposal of solid waste made between an owner or operator of a disposal site and a person shall affect the authority of the commission to establish or modify the requirements established under subsection (1) of this section.

(3) Not later than July 1, 1988, the commission shall establish by rule the amount of solid waste that may be accepted from outside the county in which the disposal site is located before the person must comply with the requirements set forth in subsection (1) of this section. Such rule shall not become effective until July 1, 1990.

(4) Subject to prior approval of the Executive Department and a report to the Emergency Board prior to adopting the fee, and within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board, the department may establish a certification fee in accordance with ORS 468.065. The fees shall not exceed the cost of the program.

(5) After July 1, 1988, if the metropolitan service district sends solid waste generated within the boundary of the metropolitan service district to a regional disposal site, the metropolitan service district shall:

(a) At least semiannually operate or cause to be operated a collection system or site for receiving household hazardous waste;

(b) Provide residential recycling containers, as a pilot project implemented not later than July 1, 1989; and

(c) Provide an educational program to increase participation in recycling and household hazardous materials collection programs.

(6) The certification requirement under subsection (1) of this section shall not apply to a person implementing a waste reduction program under ORS 459.055.

(7) Notwithstanding any other provision of law relating to solid waste disposal, if the laws of any state prohibit or restrict the disposal of any kind of solid waste within the state of origin, such prohibition or restriction shall also apply to the disposal of such solid waste in Oregon. [1987 c.876 §6; 1989 c.541 §3; 1991 c.703 §8; 1991 c.765 §9]

459.310 Surcharge on solid waste disposal; surcharge use. (1) Each board of

county commissioners of a county in which a regional disposal site is operating under provisions of ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 may impose a surcharge on the solid waste received at the regional disposal site. The county may negotiate with the owner or operator of the regional disposal site to establish the amount of the surcharge imposed under this subsection. If the regional disposal site is publicly owned, the board of county commissioners shall give priority in expending the moneys to mitigation of adverse impacts on the area in and around the regional disposal site and related transfer stations located in the county including but not limited to rehabilitation and enhancement of the area, development of alternate water systems, road construction and maintenance and mitigation of adverse effects on wildlife and the environment, if provisions to mitigate such adverse impacts are not assured by permit conditions or bond requirements.

(2) If the parties negotiating a surcharge under subsection (1) of this section do not reach an agreement within 90 days after the Department of Environmental Quality receives an application under ORS 459.235 for a permit for the regional disposal site, the board of county commissioners shall unilaterally impose the following surcharge:

- (a) For the first 2,000 tons per day..... \$ 0.75/ton
- (b) For each ton between 2,000 to 4,000 tons per day..... \$ 1.00/ton
- (c) For each ton above 4,000 tons per day..... \$ 1.25/ton

(3) If a board of county commissioners imposes the surcharge under subsection (2) of this section:

(a) The surcharge shall be adjusted annually in accordance with the Portland Consumer Price Index;

(b) Up to 10 percent of the surcharge shall go into a transition fund to be used by the county after the regional disposal site is closed for the purpose of minimizing the dislocation resulting from the loss of revenue from closure of the site; and

(c) Of that portion of the surcharge not placed into a transition fund under paragraph (b) of this subsection, give priority in expending the moneys to mitigation of adverse impacts on the area in and around the regional disposal site and related transfer stations located in the county including but not limited to rehabilitation and enhancement of the area, development of alternate water systems, road construction and maintenance and mitigation of adverse effects on wildlife and the environment, if provisions to mitigate such adverse impacts are not as-

sured by permit conditions or bond requirements. [1987 c.876 §7]

459.311 Surcharge for remedial action or removal; amount; collection; allocation. A local government unit that is responsible for conducting a remedial action or removal or related activities under ORS 466.570 at a solid waste disposal site, or a local government unit that contributed solid waste to a solid waste disposal site for which the local government is liable under ORS 466.567 or other applicable law, shall impose a charge to be added to all billings for solid waste collection services rendered within the boundaries of that local government unit unless the local government unit provides an equivalent amount of funding through another source. A charge imposed under this section shall be subject to the following requirements:

(1) The charge shall be:

(a) An amount equal to a maximum amount of \$12 per capita per year and \$60 per capita per local government unit;

(b) Collected for each volumetric or weight unit of solid waste collected;

(c) Imposed equitably on all persons who dispose of solid waste; and

(d) For a local government unit imposing and collecting a charge on behalf of another local government unit responsible for remedial action or related activities at a disposal site, an amount that, as a proportion of the total cost, equals the proportion of solid waste the local government unit contributed to such disposal site.

(2) The charge shall be collected on behalf of the local government unit by solid waste collectors who are subject to franchising, licensing or permitting requirements adopted by the local government unit. Notwithstanding any restriction on rates contained in a franchise or other local regulations, a solid waste collector may add the charge to bills for solid waste collection. The local government unit may enter into an intergovernmental agreement with any other unit of local government to provide for imposition and collection of the charge on behalf of the local government unit.

(3) The solid waste collector shall remit the proceeds of the charge to the local government unit according to procedures adopted by the local government unit by ordinance. However, solid waste collectors shall not be responsible for covering any shortage caused by failure of a customer to pay charges for solid waste collection.

(4) A local government unit imposing a charge under this subsection may require solid waste collectors to submit reports or

other documentation necessary to establish compliance with the requirements of this section or the ordinance adopted by the local government unit. All information contained in such reports relating to the number of accounts served by the solid waste collector or the revenue produced from such accounts shall be exempt from public disclosure.

(5) A solid waste collector required to collect charges under this subsection may retain five percent of the charge in order to defray the costs of collecting and accounting for the proceeds of the charge.

(6) If a person disposes of solid waste at a disposal site within the boundaries of a local government unit imposing a fee under this section without using the services of a commercial solid waste collector, the person shall pay the fee established by this section at the time the person disposes of solid waste at the disposal site. That portion of the charge attributable to administrative costs as provided in subsection (5) of this section shall be retained by the operator of the solid waste disposal site. The operator of the solid waste disposal site shall remit the balance of the charge according to procedures established by ordinance by the local government unit imposing the charge.

(7) Except for the amount allocated to defray the administrative expenses of a solid waste collector or disposal site operator under subsections (5) and (6) of this section, proceeds of the charge shall be placed into a dedicated local government remedial action fund established by the local government unit and may be used only to pay for remedial action costs. As used in this subsection, "remedial action costs" also includes the cost of retiring debt incurred in connection with a remedial action.

(8) The amount collected through the charge shall be the amount necessary to fund the local government unit's remedial action costs at one or more solid waste disposal sites for which a local government unit is responsible for conducting a remedial action or removal or related activities under ORS 466.570, or is liable under ORS 466.567 or other applicable law and necessary administrative expenses incurred under this section, and may include an increment to cover any delinquencies in collections. The amount of the charge may be adjusted from time to time as necessary to maintain the remedial action fund at the level necessary to accommodate the local government unit's remedial action responsibilities, but shall not exceed the maximum amounts provided in paragraph (a) of subsection (1) of this section.

(9) Any local government unit located within the boundaries of a metropolitan ser-

vice district may enter into an intergovernmental agreement with the district to transfer to the district the funding authority granted under this subsection and the responsibility for performing all remedial action obligations for which the local government unit may be responsible.

(10) As used in this section, "remedial action," "remedial action costs" and "removal" have the meaning given those terms in ORS 466.540. [1989 c.833 §137]

Note: 459.311 was added to and made a part of ORS 459.005 to 459.426 by legislative action but was not added to any smaller series therein. (The series 459.005 to 459.426 became 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 in 1991.) See Preface to Oregon Revised Statutes for further explanation.

459.315 Definitions for ORS 459.315 to 459.330. As used in ORS 459.315 to 459.330:

(1) "Committee" means a local citizens advisory committee established under ORS 459.320.

(2) "Permittee" means a person operating a regional disposal site under a permit issued under ORS 459.245. [1987 c.876 §8]

459.320 Disposal site advisory committee; membership; terms. (1) Except as provided in subsection (3) of this section, the board of county commissioners of a county in which a regional disposal site is proposed to be located shall establish a local citizens advisory committee when the Department of Environmental Quality receives an application for a regional disposal site within the county. The board shall select members of the committee who reflect a fair and equal representation of each of the following groups:

(a) Residents residing near or adjacent to the regional disposal site.

(b) Owners of real property adjacent to or near the regional disposal site.

(c) Persons who reside in or own real property within the county in which the regional disposal site is located.

(d) Employees of the permittee.

(e) Local organizations and citizen interest groups whose majority of members either:

(A) Are electors of the county in which the regional disposal site is located; or

(B) Own real property in the county in which the regional disposal site is located.

(2) Members of the local citizens advisory committee shall serve a term of two years. The committee shall elect from among its members a chairperson of the committee with such duties and powers as the committee imposes. The committee shall meet at least four times each year for so long as the regional disposal site is proposed or operating.

(3) If the regional disposal site is operated by a metropolitan service district, the local citizens advisory committee shall be established by the governing body of the metropolitan service district.

(4) Notwithstanding the term of office specified by subsection (2) of this section, of the initial members of a local citizens advisory committee created pursuant to subsection (2) of this section, one-half shall serve for a term ending one year after their appointment. [1987 c.876 §9; subsection (4) enacted as 1987 c.876 §10]

459.325 Disposal site advisory committee duties. The duties of the local citizens advisory committee established under ORS 459.320 shall include but need not be limited to:

(1) Reviewing with the permittee, the regional disposal site including but not limited to siting, operation, closure and long-term monitoring of the regional disposal site; and

(2) Providing a forum for citizen comments, questions and concerns about the regional disposal site and promoting a dialogue between the community in which the regional disposal site is to be located and the owner or operator of the regional disposal site. The committee shall prepare an annual written report summarizing the local citizens' concerns and the manner in which the owner or operator is addressing those concerns. The report shall be considered by the Department of Environmental Quality in issuing and renewing a solid waste permit under ORS 459.245. [1987 c.876 §11]

459.330 Notification of disposal site advisory committee by permittee. The permittee shall notify the local citizens advisory committee established under ORS 459.320 when the permittee proposes to apply for a change to any state or local permit. [1987 c.876 §12]

459.335 Use of fees collected by the metropolitan service district. Notwithstanding any other provision of ORS 268.330 or 268.515 or section 9, chapter 679, Oregon Laws 1985, the metropolitan service district shall use moneys collected by the district as service or user fees for solid waste disposal for activities of the metropolitan service district related to solid waste and related planning, administrative and overhead costs of the district. [1987 c.876 §12a]

459.340 Implementation of the solid waste reduction program by metropolitan service district. (1) The metropolitan service district shall implement the provisions of the solid waste reduction program as adopted by the metropolitan service district.

(2) After September 27, 1987, before the metropolitan service district council adopts

an amendment to the district's solid waste reduction program, the district shall submit the proposed amendment to the Department of Environmental Quality for review and comment. The department shall review the proposed amendment to determine whether the amendment meets the requirements of section 8, chapter 679, Oregon Laws 1985. [1987 c.876 §13]

459.345 Metropolitan service district biennial report to commission. (1) Not later than July 1, 1988, and every two years thereafter, the metropolitan service district shall report to the commission on the implementation of its solid waste reduction program approved under section 8, chapter 679, Oregon Laws 1985, or as amended in accordance with ORS 459.340.

(2) The report submitted by the metropolitan service district under this section shall be in writing and shall include, but need not be limited to:

(a) A summary of the progress of the metropolitan service district in acquiring property and permits for the site selected under chapter 679, Oregon Laws 1985.

(b) The current status of implementation of the metropolitan service district's solid waste reduction program including the use of landfill disposal sites, recycling opportunities and the use of resource recovery technologies.

(c) A summary of the amount and percent of solid waste that is currently reused, recycled or disposed of in a solid waste disposal site and a comparison of such amounts and percentages to the district's existing and projected annual goals for the next two years for:

(A) The amount and percent of solid waste that will be reused, recycled or disposed of in a solid waste disposal site operated by the metropolitan service district or in a solid waste disposal site that the district has entered into an agreement to use; and

(B) The amount in tons by which solid waste disposed of annually in a landfill operated by the district or which the district has entered into an agreement to use will be reduced.

(d) A summary of the metropolitan service district's solid waste budget. [1987 c.876 §14]

459.350 Commission review of metropolitan service district report. The commission shall review the report submitted by the metropolitan service district under ORS 459.345 to determine:

(1) Whether the district's activities related to solid waste disposal comply with the district's solid waste reduction program and

any goals established by the district in previous reports submitted under ORS 459.345; and

(2) Whether the program and all disposal sites operated by or used by the district continue to meet the criteria established under ORS 459.015. [1987 c.876 §15; 1989 c.171 §59]

459.355 Reports by Department of Environmental Quality to legislature. Not later than September 1, 1988, the Department of Environmental Quality shall make a preliminary report to the President of the Senate and the Speaker of the House of Representatives and to the appropriate legislative interim committee. The preliminary report shall address the criteria required in the metropolitan service district report under ORS 459.345. The department shall submit a full report to the Legislative Assembly on or before January 1, 1989, and every two years thereafter, to correspond with the report submitted to the commission under ORS 459.345. [1987 c.876 §16]

(Limitation on Disposal of Certain Radioactive Materials)

Note: Sections 12 to 16 and 18, chapter 653, Oregon Laws 1991, provide:

Sec. 12. (1) The Legislative Assembly finds and declares:

(a) It is the policy of this state to minimize the release to the environment of radioactive material resulting from human activities;

(b) The United States Congress, the United States Nuclear Regulatory Commission, the United States Department of Energy and the United States Environmental Protection Agency have adopted measures intended to make possible federal deregulation of certain radioactive material;

(c) Deregulation would result in virtually unrestricted disposal or release of this radioactive material into land disposal sites, incinerators, transportation systems, waterways, sewage systems, recycling centers, consumer products or other parts of the environment;

(d) Such dissemination of radioactive material in the environment would represent an unnecessary increased risk to the health, safety and welfare of the citizens of this state and the environment;

(e) Such risk would necessitate the implementation of a costly and widespread radiation monitoring system to enable this state to insure that citizens are not exposed to radiation from deregulated radioactive material; and

(f) Such monitoring and verification of the absence of unacceptable risks resulting from federal deregulation will be more costly to this state than the current regulatory regime.

(2) Therefore, the State of Oregon hereby declares that radioactive material shall continue to be subject to regulatory control by this state. It is the purpose of sections 12 to 15 of this Act to guarantee that all radioactive material that was subject to regulation by this state, the United States Nuclear Regulatory Commission, the United States Department of Energy, the United States Environmental Protection Agency or any other state or federal agency as of January 1, 1989, shall remain subject to regulation by this state and shall be stored and disposed of only in licensed or ap-

proved radioactive waste storage or disposal facilities. [1991 c.653 §12]

Sec. 13. As used in sections 12 to 14 of this Act:

(1) "Facility approved by the Health Division" means a facility for which there is a license, permit, letter of agreement or other means by which the state officially accepts the treatment, storage, recycling, incineration or disposal method for radioactive material.

(2) "Radioactive material" means any radioactive waste or other radioactive material resulting from activities of the Federal Government, the United States Nuclear Regulatory Commission or its licensees or licensees of a state that has entered into an agreement under 42 U.S.C. 2021 and that satisfies the definition of low-level radioactive waste in the federal Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021b(9)(a), as of January 1, 1989. "Radioactive material" does not include naturally occurring radionuclides, uranium mill tailings or high-level radioactive waste. [1991 c.653 §13]

Sec. 14. Notwithstanding any declaration by the Federal Government that certain radioactive material may be exempt from regulatory control or below regulatory concern, no radioactive material may be recycled, incinerated or disposed of in Oregon except at a facility approved by the Health Division specifically for the recycling, incineration or disposal of radioactive material. [1991 c.653 §14]

Sec. 15. (1) No land disposal site in this state shall knowingly accept solid waste from another state that contains radioactive material. For purposes of this section, solid waste shall be presumed not to contain radioactive material if:

(a) The solid waste is from a state that is a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management set forth in ORS 469.930; or

(b) The solid waste is from a state that has a policy opposing exemption of radioactive material from regulation that is similar to the policy carried out by sections 12 to 15 of this 1991 Act.

(2) As used in this section, "radioactive material" has the meaning given in section 13 of this 1991 Act. [1991 c.653 §15]

Sec. 16. Section 15 of this Act is added to and made a part of ORS 459.005 to 459.105. [1991 c.653 §16]

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the Federal Government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 §18]

(Enforcement)

459.376 Action to enforce regulations or orders. (1) The commission may take whatever action is appropriate for the enforcement of its regulations or orders.

(2) The commission may institute proceedings to enforce compliance with or restrain violations of ORS chapters 459 and 459A, or any rule, standard, permit or order adopted, entered or issued pursuant to ORS chapters 459 and 459A, in the same manner provided for enforcement proceedings under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapters 468, 468A and 468B. [Formerly 459.276]

459.385 Entry upon private premises authorized. The department or county, district or city board of health personnel, authorized sanitarians or other authorized city or county personnel may enter upon the premises of any person regulated under ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385, 466.005 to 466.385 and 466.890 or under rules adopted pursuant to ORS 450.075, 450.810, 450.820 and 451.570, at reasonable times, to determine compliance with and to enforce ORS 450.075, 450.810, 450.820, 451.570, 459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.385, 466.005 to 466.385 and 466.890 and any rules adopted pursuant thereto. [Formerly 459.285]

(Infectious Waste Disposal)

459.386 Definitions for ORS 459.386 to 459.400. As used in ORS 459.386 to 459.400:

(1) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(2) "Infectious waste" includes:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(b) "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures.

(c) "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(3) "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

(4) "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point or to the point of final treatment.

(5) "Treatment" means incineration, sterilization or other method, technique or process approved by the Health Division of the Department of Human Resources that changes the character or composition of any infectious waste so as to render the waste noninfectious. [1989 c.763 §3]

459.387 Policy. The Legislative Assembly finds and declares that:

(1) The collection, transportation, storage, treatment and disposal of infectious waste in a manner that protects the health, safety and welfare of the workers who handle the waste and of the public is a matter of statewide concern.

(2) The public health, safety and welfare is best protected by an infectious waste collection system that serves as many persons as possible in this state, including medical care and laboratory facilities, nursing care facilities and private residences.

(3) In the interest of public health, safety and welfare, it is the policy of this state to establish requirements for collection, transportation, storage, treatment and disposal of infectious waste that will establish priority in methods of treating and disposing of infectious waste. [1989 c.763 §2]

459.388 Restrictions on discarding, storing or transporting infectious waste.

(1) No person who generates infectious waste shall discard or store such waste except as provided in ORS 459.390.

(2) No person shall transport infectious waste other than infectious waste that is an incidental part of other solid waste except as provided in ORS 459.390 (6) and 767.034. [1989 c.763 §4]

459.390 Procedures for segregation and containment of infectious waste; exemption. (1) Infectious waste shall be segregated from other wastes by separate containment at the point of generation. Enclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and shall be marked with prominent warning signs.

(2) Infectious waste, except for sharps, shall be contained in disposable red plastic bags or containers made of other materials impervious to moisture and strong enough to prevent ripping, tearing or bursting under normal conditions of use. The bags or containers shall be closed to prevent leakage or expulsion of solid or liquid wastes during storage, collection or transportation.

(3) Sharps shall be contained for storage, collection, transportation and disposal in leakproof, rigid, puncture-resistant red containers that are taped closed or tightly lidded to prevent loss of the contents. Sharps may be stored in such containers for more than seven days.

(4) All bags, boxes or other containers for infectious waste and rigid containers of discarded sharps shall be clearly identified as containing infectious waste.

(5) Infectious waste shall be stored at temperatures and only for times established by rules of the Health Division of the Department of Human Resources.

(6) Infectious waste shall not be compacted before treatment and shall not be placed for collection, storage or transportation in a portable or mobile trash compactor.

(7) Infectious waste contained in disposable bags as specified in this section shall be placed for collection, storage, handling or transportation in a disposable or reusable pail, carton, box, drum, dumpster, portable bin or similar container. The container shall have a tight-fitting cover and be kept clean and in good repair. The container may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to be readily visible from any lateral direction when the container is upright.

(8) Each time a reusable container for infectious waste is emptied, the container shall be thoroughly washed and decontaminated unless the surfaces of the container have been protected from contamination by a disposable red liner, bag or other device removed with the waste.

(9) Trash chutes shall not be used to transfer infectious waste between locations where it is contained or stored.

(10) Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the specific requirements of subsections (5), (7) and (8) of this section. [1989 c.763 §5]

459.395 Treatment of infectious wastes. (1) Pathological wastes shall be treated by incineration in an incinerator that provides complete combustion of waste to carbonized or mineralized ash. The ash shall be disposed of as provided in rules adopted by the Environmental Quality Commission. However, if the Department of Environmental Quality determines that incineration is not reasonably available within a watershed, pathological wastes may be dis-

posed of in the same manner provided for cultures and stocks.

(2) Cultures and stocks shall be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Health Division rule. Sterilized waste may be disposed of in a permitted land disposal site if it is not otherwise classified as hazardous waste.

(3) Liquid or soluble semisolid biological wastes may be discharged into a sewage treatment system that provides secondary treatment of waste.

(4) Sharps and biological wastes may be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Health Division rule. Sharps may be disposed of in a permitted land disposal site only if the sharps are in containers as required in ORS 459.390 (3) and are placed in a segregated area of the landfill.

(5) Other methods of treatment and disposal may be approved by rule of the Environmental Quality Commission. [1989 c.763 §6]

459.398 Rules. The Environmental Quality Commission may adopt rules for storage and handling of infectious waste at a solid waste disposal site. [1989 c.763 §7]

459.400 Exceptions. The requirements of ORS 459.386 to 459.400 shall not apply to waste, other than sharps as defined in ORS 459.386, that is:

(1) Generated in the practice of veterinary medicine; and

(2) Not capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans. [1989 c.763 §8]

459.405 Transport of infectious waste; certification; records. Each person who transports infectious waste for consideration, other than waste that is an incidental part of other solid waste, shall:

(1) Provide written certification to a person who discards more than 50 pounds per month of infectious waste that such waste will be disposed of in compliance with the provisions of ORS 459.386 to 459.405; and

(2) Maintain records showing the point of origin and date and place of final disposal of infectious waste collected from generators. A copy of these records shall be given to the generator or the Department of Environmental Quality upon request. [1989 c.763 §9]

459.410 [1971 c.699 §1; 1973 c.778 §1; 1977 c.867 §1; 1979 c.132 §1; 1981 c.709 §4; 1983 c.703 §9; 1985 c.670 §1; renumbered 466.005]

(Household and Small Quantity Generator Hazardous Waste)

459.411 Policy. (1) The Legislative Assembly finds:

(a) Persons have limited opportunities to properly manage household hazardous waste;

(b) Businesses that are conditionally exempt small quantity generators of hazardous waste do not have feasible options for the management of hazardous waste; and

(c) The disposal of household hazardous waste and exempt small quantity generator hazardous waste in solid waste disposal sites and sewage facilities presents a potential hazard to the public health and the environment because these sites and facilities may not be designed for the disposal of hazardous waste.

(2) Therefore, the Legislative Assembly declares that it is in the interest of public health, safety and the environment to provide:

(a) Alternatives to disposal of hazardous waste and household hazardous waste at solid waste disposal sites and sewage facilities; and

(b) Information and education programs about:

(A) Alternatives for the management of hazardous waste and household hazardous waste;

(B) Methods of reusing and recycling hazardous waste and household hazardous waste; and

(C) Alternatives to the use of products that lead to the generation of hazardous waste and household hazardous waste. [1989 c.833 §69]

459.413 Household hazardous waste depots; location; promotion program. (1) On or before January 1, 1991, the metropolitan service district shall establish permanent depots to receive household hazardous waste. The depots shall be:

(a) Developed at geographically diverse locations throughout the district; and

(b) Located and operationally designed to conveniently receive household hazardous waste from the general public on an ongoing basis.

(2) In conjunction with establishing permanent depots under subsection (1) of this section, the metropolitan service district also shall develop and implement a promotion program to encourage citizens to use the depots for household hazardous waste disposal. [1989 c.833 §74]

459.415 Department approval for collection activity required; written pro-

posal. (1) Before any local government operates a permanent collection depot or periodic collection events for household hazardous waste or conditionally exempt small quantity generator hazardous waste, the local government shall receive written approval from the department.

(2) In requesting written approval from the department, a local government unit proposing to operate a permanent collection depot or periodic collection events shall submit a detailed proposal. The proposal shall include at least the following information:

(a) Measures to be taken to insure safety of the public and employees or volunteers working at the collection site;

(b) Measures to be taken to prevent spills or releases of hazardous waste and a plan to respond to a spill or release if one occurs;

(c) A copy of the request for proposals for a contractor to properly manage and recycle or dispose of the waste collected in a manner consistent with the commission's rules for hazardous waste collection, storage, transportation and disposal; and

(d) Measures to be implemented to insure no waste is accepted from generators of hazardous waste subject to regulation under ORS 466.005 to 466.385 and 466.890 unless the intent is to specifically collect such waste.

(3) The department may request additional information about the proposed program from the local government unit. The department shall not approve a program unless the program provides adequate provisions to protect the public health, safety and the environment. [1989 c.833 §75]

459.417 Statewide household hazardous waste public education program. The department shall implement a statewide household hazardous waste public education program. The program shall include but need not be limited to providing information about:

(1) Alternatives to disposal of household hazardous waste at solid waste disposal sites;

(2) Methods of reusing or recycling household hazardous waste; and

(3) Alternatives to the use of products that lead to the generation of household hazardous waste. [1989 c.833 §76]

459.418 Contract for statewide collection of household hazardous waste. The Department of Environmental Quality may contract with a hazardous waste collection service to provide for the statewide collection of household hazardous waste. [1991 c.385 §51]

Note: Section 13b, chapter 385, Oregon Laws 1991, provides:

Sec. 13b. Study of funding alternatives for management of household hazardous waste. The Department of Environmental Quality shall study funding alternatives for the management of household hazardous waste including the provisions of section 51 of this Act [459.418], and make recommendations for long-term funding to the Sixty-seventh Legislative Assembly. [1991 c.385 §13b]

(Plastic Bags)

459.419 Requirement for retail establishment supplying plastic bags for customer use. On and after January 1, 1992, any retail establishment that offers plastic bags to customers for purchases of goods made at the establishment shall offer at the location where the customer pays for the goods, paper bags as an alternative to plastic bags and inform customers that a choice is available. Nothing in this subsection shall be construed as requiring retail establishments to use plastic bags. [1991 c.385 §38]

(Pilot Projects for Household Hazardous Waste and Small Quantity Generator Hazardous Waste)

Note: Sections 70 to 73, chapter 833, Oregon Laws 1989, provide:

Sec. 70. (1) The department shall conduct, for a period not to exceed three years, a pilot project to operate periodic household hazardous waste collection events in local government units outside the boundaries of the metropolitan service district. The pilot project may include periodic collection of conditionally exempt small quantity generator waste.

(2) In determining which local government units are to be involved in the pilot project, the department shall consider:

(a) The amount of money available for the pilot project;

(b) The order in which the department receives requests from local government units to participate;

(c) The population of each local government unit requesting to be part of the pilot project, and the area served by the proposed collection event so that the most people and the widest areas can be served;

(d) Geographic coverage throughout the state that allows as many areas of the state as possible to have some kind of reasonable access to the pilot project; and

(e) The information provided by each local government unit requesting to be part of the pilot project.

(3) In addition to conducting the pilot project, the department shall assist local government units to promote an effective household hazardous waste collection program.

(4) The department shall report to the Sixty-seventh Legislative Assembly on the implementation of the pilot project and the results of the pilot project. [1989 c.833 §70]

Sec. 71. In order to participate in the pilot project under section 70 of this 1989 Act, a local government unit shall:

(1) Submit a written request to the department describing the local government's proposed periodic collection events, including a detailed description of the work to be provided by the local government unit;

(2) Agree to promote the project at a level acceptable to the department;

(3) Select sites suitable for holding the collection events;

(4) Recruit and train volunteers to assist with the collection events; and

(5) Otherwise assist with local coordination of the periodic collection event. [1989 c.833 §71]

Sec. 72. As a part of the pilot project described in section 70 of this 1989 Act, and at the request of a local government unit, the department may contract for administration of all or part of a periodic household hazardous waste collection event, including the management, recycling and disposal of waste collected by the local government unit in its program. [1989 c.833 §72]

Sec. 73. (1) The Department of Environmental Quality shall study management options and funding alternatives for hazardous waste generated by conditionally exempt generators. The department shall report its findings and recommendations to the Sixty-sixth Legislative Assembly.

(2) The department shall contract for a pilot project, for a period not to exceed three years, within the boundaries of the metropolitan service district, to provide for the collection or receipt of hazardous waste from conditionally exempt small quantity generators. The pilot project may also collect or receive household hazardous waste.

(3) The pilot project under this section may include a collection service or receiving stations for conditionally exempt small quantity generator hazardous waste or other management alternatives identified in the study conducted under subsection (1) of this section.

(4) Any fees charged to conditionally exempt generators involved in the pilot project shall be reasonable and balance the need to promote waste reduction through fees on disposal and the need to encourage the public to use the service.

(5) The department may contract with the metropolitan service district to carry out the requirements of subsections (2) to (4) of this section.

(6) To the extent funds are available, the department may conduct similar pilot projects in other local government units outside the boundaries of the metropolitan service district.

(7) The department shall report to the Sixty-seventh Legislative Assembly on the implementation of the pilot project and the results of the pilot project. [1989 c.833 §73]

(Batteries)

459.420 Permitted lead-acid battery disposal; disposal by retailers. (1) No person may place a used lead-acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead-acid battery in this state except by delivery to a lead-acid battery retailer or wholesaler, to a collection or recycling facility authorized under ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency.

(2) No lead-acid battery retailer shall dispose of a used lead-acid battery in this state except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency, to a col-

lection or recycling facility authorized under ORS 459.005 to 459.426, 459.705 to 459.790 and 459A.005 to 459A.665 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency. [1989 c.290 §2]

459.422 Acceptance of used batteries by retailers and wholesalers. (1) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the State of Oregon shall accept after December 31, 1993, used lead-acid batteries of the same type purchased from a customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by the customer.

(2) Any person selling new lead-acid batteries at wholesale shall accept used lead-acid batteries of the same type from any customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by a customer.

(3) A person accepting batteries in transfer from an automotive battery retailer shall be allowed up to 90 days to remove batteries from the retail point of collection. [1989 c.290 §§3, 4]

459.426 Notice to customers. (1) Any person selling new lead-acid batteries shall post in each area where lead-acid batteries are sold a clearly visible and legible sign stating that:

(a) Lead-acid batteries cannot be disposed of in household solid waste or mixed municipal waste, but must be recycled; and

(b) The dealer will accept used lead-acid batteries of the same type sold by the dealer.

(2) If a person selling new lead-acid batteries requires a customer to pay a fee for a new lead-acid battery if the customer does not provide a used lead-acid battery for trade-in, the dealer shall also include on or near the sign required under subsection (1) of this section a statement advising potential customers that the dealer charges a fee if the customer does not provide a used lead-acid battery for trade-in. [1989 c.290 §5]

Note: Sections 6 and 10, chapter 290, Oregon Laws 1989, provide:

Sec. 6. Notwithstanding section 3 of this 1989 Act [459.422 (1)], any person selling new lead-acid batteries shall accept at least one used lead-acid battery from any person, if offered. [1989 c.290 §6]

Sec. 10. Section 6 of this Act is repealed December 31, 1993. [1989 c.290 §10]

459.430 [1971 c.699 §3; 1973 c.778 §2; 1973 c.835 §147; 1977 c.867 §2; 1979 c.132 §2; 1981 c.709 §5; renumbered 466.015]

459.431 Definitions for ORS 459.431 to 459.439. As used in ORS 459.431 to 459.439:

(1) "Alkaline manganese battery" means a battery consisting of manganese dioxide

positive electrode material, zinc negative electrode material, and an alkaline electrolyte.

(2) "Battery" means one or more cells, each consisting of a positive electrode, a negative electrode, and an electrolyte.

(3) "Battery pack" means one or more batteries enclosed in a housing.

(4) "Consumer product" means any product sold primarily for family or household use, and which is normally sold through consumer retail distribution.

(5) "Distributor" means a seller of batteries.

(6) "Easily removed" means a battery or battery pack that is either detachable or readily removable from a consumer product by the consumer with the use of common household tools and that can be removed by the consumer without cutting or desoldering any wires.

(7) "Nickel cadmium battery" means a battery consisting of nickel positive electrode material and cadmium negative electrode material.

(8) "Small lead battery" means a battery consisting of positive and negative electrode materials which are leads or compounds thereof, used in nonvehicular applications, and weighing less than 25 pounds. [1991 c.653 §2]

Note: 459.431 to 459.439 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.432 Policy. (1) The Legislative Assembly finds and declares that:

(a) Batteries have come to play an important role in the advancement of social, medical and economic concerns.

(b) It is important to advance environmental interests without unnecessary interference with, or complications of, local, interstate and international commerce to the detriment of our state's economy.

(c) It is important to provide clear, safe and practical guidelines to our state's citizens, businesses and governmental bodies.

(d) There are inherent differences in batteries and products using batteries with respect to their composition, distribution and application.

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to:

(a) Require that the mercury content in alkaline manganese batteries be reduced to a level that minimizes risk to public health

and environment, and prohibit the sale in Oregon of batteries having a mercury content above that level.

(b) Maximize consumer acceptance and convenience in accomplishing important objectives of environmental protection.

(c) Minimize unnecessary administrative expense to the state and avoid undue burdens on the state's consumers, retailers, manufacturers and suppliers. [1991 c.653 §1]

Note: See note under 459.431.

459.434 Limitations on sale of alkaline manganese batteries. (1) Except as provided in subsection (2) of this section, no person may sell or offer for sale in this state an alkaline manganese battery manufactured on or after January 1, 1992, that contains more than 0.025 percent mercury by weight of the battery.

(2) Any alkaline manganese batteries having a size and shape resembling a button or coin may be sold if the mercury content of the battery is 25 milligrams or less of mercury. [1991 c.653 §3]

Note: See note under 459.431.

459.436 Limitations on sale of product or battery pack containing nickel cadmium battery or small lead battery. No distributor may sell or offer for sale in this state any product manufactured on or after July 1, 1993, that contains a nickel cadmium or small lead battery or a battery pack containing a nickel cadmium or small lead battery unless:

(1) In the case of consumer products:

(a) The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed from the product; and

(b) The battery and the package containing the battery are labeled in a manner to meet the requirements of the International Standards Organization (ISO 7000-1135) recycling symbol with the chemical composition "Cd" for nickel cadmium batteries or "Pb" for small lead batteries included as a part of the recycling symbol.

(2) In the case of nonconsumer products, the battery can be removed or is contained in a battery pack that is separate from the product. [1991 c.653 §4]

Note: See note under 459.431.

459.438 Certification of mercury content of batteries sold or offered for sale in Oregon. (1) Any alkaline manganese battery manufacturer that distributes batteries in Oregon shall certify in writing to the Department of Environmental Quality the mercury content of any batteries sold or offered for sale in Oregon.

(2) The certification required under subsection (1) of this section shall:

(a) Be submitted biennially; and

(b) Include information about the efforts of the manufacturer to reduce to zero the mercury content of any batteries produced by the manufacturer. [1991 c.653 §5]

Note: See note under 459.431.

459.439 Penalty for violation of ORS 459.434 to 459.438. A person who fails to comply with ORS 459.434 to 459.438 shall be subject to the penalty under ORS 459.995. [1991 c.653 §6]

Note: See note under 459.431.

Note: Sections 9 and 10, chapter 653, Oregon Laws 1991, provide:

Sec. 9. Notwithstanding any provision of sections 1 to 6 of this Act, any battery or consumer product manufactured before the effective date of this Act shall not be subject to sections 1 to 6 of this Act. [1991 c.653 §9]

Sec. 10. On or before January 1, 1993, the Department of Environmental Quality shall evaluate and report to the Legislative Assembly on the implementation of this Act. [1991 c.653 §10]

459.440 [1971 c.699 §3a; 1973 c.835 §148; 1977 c.867 §3; 1981 c.709 §5a; renumbered 466.020]

459.442 [1981 c.709 §20; renumbered 466.070]

459.445 [1977 c.867 §6; 1981 c.709 §6; 1983 c.703 §10; 1985 c.565 §75; 1985 c.670 §37; renumbered 466.075]

459.450 [1971 c.699 §16a; 1973 c.835 §150; 1977 c.867 §4; renumbered 466.080]

459.455 [1983 c.703 §2; 1985 c.735 §2; renumbered 466.085]

459.460 [1971 c.699 §21; 1973 c.835 §149; 1981 c.709 §7; renumbered 466.090]

(New Tire Fee)

459.504 Definitions for ORS 459.504 to 459.619. As used in ORS 459.504 to 459.619, unless the context otherwise requires:

(1) "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling new tires in this state.

(2) "Department" means the Department of Revenue.

(3) "Place of business" means any place where new tires are sold.

(4) "Retail dealer" means every person who is engaged in the business of selling to ultimate consumers new tires.

(5) "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling new tires, for advertising, as a means of evading the provisions of ORS 459.504 to 459.619, or for any other purposes whatsoever.

(6) "Tire" has the meaning given that term in ORS 459.705.

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tire to a distributor, after any discount or other reduction for quantity or cash. [1987 c.706 §20]

Note: Section 17, chapter 882, Oregon Laws 1991, provides:

Sec. 17. ORS 459.504, 459.509, 459.514, 459.519, 459.524, 459.529, 459.534, 459.539, 459.544, 459.549, 459.554, 459.559, 459.564, 459.569, 459.574, 459.579, 459.584, 459.589, 459.594, 459.599, 459.604, 459.609, 459.614, 459.619, 459.770 and 459.997 are repealed on January 1, 1996. [1991 c.882 §17]

Note: 459.504 to 459.619 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.505 [1977 c.867 §12; 1979 c.132 §10; 1981 c.709 §8; 1985 c.670 §38; renumbered 466.095]

459.509 Fee on sale of new replacement tires; remittance. (1) A fee is hereby imposed upon the retail sale of all new replacement tires in this state of \$1 per tire sold. The fee shall be imposed on retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer.

(2) The amount remitted to the Department of Revenue by the retail dealer for each quarter shall be equal to 85 percent of the total fees due and payable by the retail dealer for the quarter. [1987 c.706 §21; 1991 c.882 §5]

Note: See notes under 459.504.

Note: Section 15, chapter 882, Oregon Laws 1991, provides:

Sec. 15. Notwithstanding ORS 459.509 (1989 Edition), the fee imposed under ORS 459.509 (1989 Edition) is imposed upon the retail sale of all new replacement tires sold in this state on or after July 1, 1991, and before October 1, 1992. For periods beginning on or after July 1, 1991, and prior to the effective date of this Act [September 29, 1991], and for periods beginning on or after the effective date of this Act and prior to October 1, 1992, all of the provisions of ORS 459.504 to 459.619 (1989 Edition) shall apply to the fee, including but not limited to its imposition, rate, measure, collection, administration and distribution. [1991 c.882 §15]

459.510 [1971 c.699 §2; 1973 c.778 §3; 1973 c.835 §151; 1977 c.867 §7; 1981 c.709 §9; renumbered 466.100]

459.514 Exclusions from ORS 459.504 to 459.619. The fee imposed under ORS 459.504 to 459.619 shall not apply to new tires for:

- (1) Any device moved exclusively by human power.
- (2) Any device used exclusively upon stationary rails or tracks.
- (3) A motorcycle.
- (4) An all-terrain vehicle.
- (5) Any device used exclusively for farming purposes, except a farm truck. [1987 c.706 §22]

Note: See notes under 459.504.

459.517 [1977 c.867 §13; 1979 c.132 §11; 1981 c.709 §10; 1983 c.703 §11; renumbered 466.105]

459.519 Quarterly payment of fees; return; extension; interest. (1) Except as otherwise provided in ORS 459.504 to 459.619, the fee imposed by ORS 459.509 shall be paid by each retail dealer to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter.

(2) With each quarterly payment, the retail dealer shall submit a return to the department, in such form and containing such information as the department shall prescribe.

(3) The fee, penalties and interest imposed by ORS 459.504 to 459.619 shall be a personal debt, from the time liability is incurred, owed by the retail dealer to the State of Oregon until paid.

(4) The returns required of retail dealers under this section shall be filed by all such retail dealers regardless of whether any fee is owed by them.

(5) The department for good cause may extend for not to exceed one month the time for making any return and paying any fee due with a return under ORS 459.504 to 459.619. The extension may be granted at any time if a written request therefor is filed with the department within or prior to the period for which the extension may be granted. When the time for filing a return and payment of fee is extended at the request of a retail dealer, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment, shall be added and paid. [1987 c.706 §23]

Note: See notes under 459.504.

459.520 [1971 c.699 §2a; 1973 c.835 §152; repealed by 1977 c.867 §8]

459.524 Nonapplicability of fee. The fee imposed by ORS 459.509 does not apply with respect to any new tires which under the Constitution and laws of the United States may not be made the subject of taxation by the state. [1987 c.706 §24]

Note: See notes under 459.504.

459.529 Application to sell new tires as retail dealer; exception. Every person desiring to engage in the sale of new tires as a retail dealer, except a person who desires merely to sell or accept orders for new tires which are to be transported from a point outside this state to a consumer within this state, shall file with the department an application, in such form as the department may prescribe, for a certificate. A retail dealer shall apply for and obtain a certificate for each place of business at which the retail

dealer engages in the business of selling new tires. No fee shall be charged for such certificate. [1987 c.706 §25]

Note: See notes under 459.504.

459.530 [1971 c.699 §4; 1977 c.867 §9; repealed by 1985 c.670 §49]

459.534 Security; amount. (1) If the department considers such action necessary to insure compliance with ORS 459.504 to 459.619, it may require any person subject to ORS 459.504 to 459.619 to place with the department such security as the department may determine.

(2) The amount of the security shall be fixed by the department but, except as provided in subsection (3) of this section, may not be greater than twice the estimated liability for fees of a person for the reporting period under ORS 459.504 to 459.619 determined in such manner as the department considers proper.

(3) In the case of a person who, pursuant to ORS 459.544, has been given notice of proposed revocation or suspension of certificate, the amount of the security may not be greater than twice the liability of the person for the reporting period under ORS 459.504 to 459.619 determined in such manner as the department considers proper, up to \$10,000.

(4) The limitations provided in this section apply regardless of the type of security placed with the department. The required amount of the security may be increased or decreased by the department subject to the limitations provided in this section. [1987 c.706 §26]

Note: See notes under 459.504.

459.535 [1977 c.867 §14; 1979 c.132 §12; renumbered 466.110]

459.539 Retail dealer certificate. Upon receipt of a completed application and such security as may be required by the department under ORS 459.504 to 459.619, the department shall issue to the applicant a certificate as a retail dealer. A separate certificate shall be issued for each place of business of the retail dealer within the state. A certificate is valid only for engaging in business as a retail dealer at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The certificate is not transferable and is valid until canceled, suspended or revoked. [1987 c.706 §27]

Note: See notes under 459.504.

459.540 [1971 c.699 §5; 1979 c.132 §3; renumbered 466.115]

459.544 Revocation of certificate; refusal to issue or renew; notice; appeal. (1) If any person fails to comply with any provision of ORS 459.504 to 459.619 relating to the fee or any rule of the department relat-

ing to the fee adopted under ORS 459.504 to 459.619, the department may suspend or revoke the certificate held by the person. The department shall not issue a new certificate after the revocation of a certificate unless it is satisfied that the former holder of the certificate will comply with the provisions of ORS 459.504 to 459.619 relating to the fee and the rules of the department.

(2) If the department proposes to refuse to issue or renew a certificate, or proposes to suspend or revoke a certificate, the department shall give notice of the proposed refusal, suspension or revocation at least 30 days before the refusal, suspension or revocation will be final. Appeal following the notice of the determination may be taken to the director in the manner provided in ORS 305.275 within the time provided in ORS 305.280 (1).

(3) An appeal from the director's order sustaining a proposed refusal to issue or renew, or suspension or revocation, may be taken by the person by filing an appeal to the Oregon Tax Court following the procedure provided in ORS chapter 305 within the time prescribed under ORS 305.560. [1987 c.706 §28]

Note: See notes under 459.504.

459.545 [1977 c.867 §15; 1979 c.132 §13; renumbered 466.120]

459.549 Records; contents; preservation; examination. (1) Every retail dealer shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of new tire products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retail dealers in this state, and of all new tire sales made to the ultimate consumer.

(2) The records required by subsection (1) of this section shall show the names and addresses of purchasers, the inventory of all new tires on hand on January 1, 1988, and other pertinent papers and documents relating to the sale of new tires.

(3) When a certified retail dealer sells new tires exclusively to the ultimate consumer at the address given in the certificate, itemized invoices shall be made of all new tires sold by that certified retail dealer.

(4)(a) All books, records and other papers and documents required by this section to be kept shall be preserved for a period of at least three years after the initial date of the books, records and other papers or documents, or the date of entries appearing therein, unless the Department of Revenue, in writing, authorizes their destruction or disposal at an earlier date.

(b) The department or its authorized representative, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 459.504 to 459.619.

(c) If the department, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the certificate of the retail dealer at such premises shall be subject to revocation by the department. [1987 c.706 §29]

Note: See notes under 459.504.

459.550 [1971 c.699 §6; 1979 c.132 §4; renumbered 466.125]

459.554 Invoice given by person selling to ultimate consumer; contents; preservation. Every person who sells new tires to the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the date of sale, the fee collected and all prices and discounts. The person shall preserve legible copies of all such invoices for three years from the date of sale. [1987 c.706 §30]

Note: See notes under 459.504.

459.559 Invoices of retail dealer purchases; inspection by department. Every retail dealer shall procure itemized invoices of all tires purchased. The invoices shall show the name and address of the seller and the date of purchase. The retail dealer shall preserve a legible copy of each such invoice for three years from the date of purchase. Invoices shall be available for inspection by the Department of Revenue or its authorized agents or employees at the retail dealer's place of business. [1987 c.706 §31]

Note: See notes under 459.504.

459.560 [1971 c.699 §7; 1979 c.132 §5; renumbered 466.130]

459.564 Department administration and enforcement; rules. The department shall administer and enforce ORS 459.504 to 459.619. The department is authorized to establish those rules and procedures for the implementation and enforcement of ORS 459.504 to 459.619 that are consistent with its provisions and as are considered necessary and appropriate. [1987 c.706 §32]

Note: See notes under 459.504.

459.569 Prohibited acts. (1) No person shall:

(a) Fail to furnish any return required to be made pursuant to ORS 459.504 to 459.619;

(b) Fail to furnish a supplemental return or other data required by the department; or

(c) Render a false or fraudulent return, report or claim for refund.

(2) No person who is required to make, render, sign or verify any report or return under ORS 459.504 to 459.619 shall make a false or fraudulent report or return with intent to defeat or evade the determination of an amount due required by law. [1987 c.706 §33]

Note: See notes under 459.504.

459.570 [1971 c.699 §8; 1973 c.835 §152a; 1979 c.132 §6; renumbered 466.135]

459.574 Delinquency penalty. (1) If there is a failure to file a return required under ORS 459.504 to 459.619 or a failure to pay a fee at the time the fee becomes due, and no extension is granted under ORS 459.519, or if the time granted as an extension has expired and there is a failure to file a return or pay a fee, there shall be added to the amount of fee required to be shown on the return a delinquency penalty of five percent of the amount of the fee.

(2) If the failure to file a return continues for a period in excess of three months after the due date:

(a) There shall be added to the fee required to be shown on the return a failure to file penalty of 20 percent of the amount of such fee; and

(b) Thereafter, the department may send a notice and demand to the person to file a return within 30 days of the mailing of the notice. If after such notice and demand no return is filed within the 30 days, the department may determine the fee according to the best of its information and belief, assess the fee with appropriate penalty and interest, plus an additional penalty of 25 percent of the fee deficiency determined by the department, and give written notice of the determination and assessment to the person required to make the filing.

(3) A penalty equal to 100 percent of any deficiency determined by the department shall be assessed and collected if:

(a) There is a failure to file a return with intent to evade the fee; or

(b) A return was falsely prepared and filed with intent to evade the fee.

(4) Interest shall be collected on the unpaid fee at the rate established under ORS 305.220, for each month or fraction of a month, computed from the time the fee became due, during which the fee remains unpaid.

(5) Each penalty imposed under this section is in addition to any other penalty imposed under this section. However, the total amount of penalty imposed under this section with respect to any deficiency shall not exceed 100 percent of the deficiency. [1987 c.706 §34]

Note: See notes under 459.504.

459.579 Show cause order from tax court; hearing; appeal. (1) If a person fails to file a report or return within 60 days of the time prescribed under ORS 459.504 to 459.619, the department may petition the Oregon Tax Court for an order requiring the person to show cause why the person is not required to file the report or return.

(2) Within 10 days after the filing of the petition, the tax court shall enter an order directing the person to appear and show cause why no report or return is required to be filed. The petition and order shall be served upon the person in the manner provided by law. Not later than 20 days after service, the person shall:

(a) File the requested report or return with the department;

(b) Request from the court an order granting reasonable time within which to file the requested report or return with the department; or

(c) File with the court an answer to the petition showing cause why such report or return is not required to be filed.

(3) If an answer is filed, the court shall set the matter for hearing within 20 days from the filing of the answer, and shall determine the matter in an expeditious manner, consistent with the rights of the parties.

(4) An appeal may be taken to the Supreme Court as provided in ORS 305.445, from an order of the tax court made and entered after a hearing and determination under subsection (3) of this section.

(5) Costs shall be awarded to the prevailing party. [1987 c.706 §35]

Note: See notes under 459.504.

459.580 [1971 c.699 §9; 1979 c.132 §7; renumbered 466.140]

459.584 Applicability of provisions of tax laws. The provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitations, determination of and notices of deficiencies, assessments, liens, delinquencies, claims for refund and refunds, conferences, appeals to the director of the department, appeals to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, shall apply to the determinations of fees, penalties and interest under ORS 459.504 to 459.619, except where the context requires otherwise. [1987 c.706 §36]

Note: See notes under 459.504.

459.585 [1979 c.132 §15; renumbered 466.145]

459.589 Department determination of amount of fee; deficiency determinations; liens. If, under ORS 459.504 to 459.619, the

department is not satisfied with the return of the fee or as to the amount of fee required to be paid to this state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period. Notices of deficiency shall be given and interest on deficiencies shall be computed as provided in ORS 305.265. Subject to ORS 314.421 and 314.423, liens for fees or deficiencies shall arise at the time of assessment, shall continue until the fees, interest and penalties are fully satisfied and may be recorded and collected in the manner provided for the collection of delinquent income taxes. [1987 c.706 §37]

Note: See notes under 459.504.

459.590 [1971 c.699 §10; 1973 c.778 §4; 1973 c.835 §153; 1977 c.867 §10; 1979 c.132 §8; 1981 c.709 §11; 1983 c.703 §12; 1985 c.670 §39; renumbered 466.150]

459.594 Immediate determination and collection of tax. If the department believes that the collection of any fee imposed under ORS 459.504 to 459.619 or any amount of the fee required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall make a determination of the fee or amount of fee required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable and the department shall assess the fees, notify the person and proceed to collect the fee in the same manner and using the same procedures as for the collection of income taxes under ORS 314.440. [1987 c.706 §38]

Note: See notes under 459.504.

459.595 [1973 c.778 §7; 1977 c.867 §11; renumbered 466.155]

459.599 Warrant to sheriff to levy upon and sell property of delinquent taxpayer; recording; execution; agents; remedies for warrant returned not satisfied. (1) If any fee imposed under ORS 459.504 to 459.619 or any portion of the fee is not paid within the time provided by law and no provision is made to secure the payment of the fee by bond, deposit or otherwise, pursuant to rules adopted by the department, the department may issue a warrant under its official seal directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the retail dealer found within the county, for the payment of the amount of the fee, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the department and pay to it the money collected from the sale,

within 60 days after the date of receipt of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record the name of the retail dealer mentioned in the warrant, the amount of the fee or portion of the fee and penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant so recorded shall become a lien upon the title to and interest in real property of the retail dealer against whom it is issued in the same manner as a judgment duly docketed. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect the fees imposed by ORS 459.504 to 459.619. In the execution of the warrant, the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(4) If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for fees against the retail dealer as if the people of the state had recovered judgment against the retail dealer for the amount of the fee. [1987 c.706 §39]

Note: See notes under 459.504.

459.600 [1971 c.699 §11; 1979 c.132 §9; 1981 c.709 §12; renumbered 466.160]

459.604 Refund agreement with governing body of Indian reservation; appropriation for refunds. (1) The director is authorized to enter into a tire fee refund agreement with the governing body of any Indian reservation in Oregon. The agreement may provide for a mutually agreed upon amount as a refund to the governing body of any tire fee collected under ORS 459.504 to 459.619 in connection with the sale of new tires on the Indian reservation. This provision is in addition to other laws allowing refunds of fees or taxes.

(2) There is annually appropriated to the director from the suspense account established under ORS 293.445 and 459.614, the amounts necessary to make the refunds provided by subsection (1) of this section. [1987 c.706 §40]

Note: See notes under 459.504.

459.609 Remedies cumulative. The remedies of the state provided for in ORS 459.504 to 459.619 are cumulative, and no action taken by the department or Attorney General constitutes an election by the state to pursue any remedy to the exclusion of any other remedy for which provision is made in ORS 459.504 to 459.619. [1987 c.706 §41]

Note: See notes under 459.504.

459.610 [1971 c.699 §12; 1973 c.835 §154; 1981 c.709 §13; 1983 c.90 §1; renumbered 466.165]

459.614 Disposition of moneys. All moneys received by the Department of Revenue under ORS 459.504 to 459.619 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of ORS 459.504 to 459.619 and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the Waste Tire Recycling Account established under ORS 459.775. [1987 c.706 §42]

Note: See notes under 459.504.

459.619 Fees imposed in lieu of all other state or local fees on sale of new tires. (1) The fees imposed by ORS 459.509 are in addition to all other state, county or municipal fees on the sale of new tires.

(2) Any new tire with respect to which a fee has once been imposed under ORS 459.509 shall not be subject upon a subsequent sale to the fees imposed by ORS 459.509. [1987 c.706 §43]

Note: See notes under 459.504.

459.620 [1971 c.699 §16; 1973 c.835 §155; renumbered 466.170]

459.625 [1975 c.483 §3; 1977 c.796 §3; renumbered 469.375]

459.630 [1975 c.483 §2; 1977 c.796 §4; renumbered 469.525]

459.635 [1975 c.483 §4; 1985 c.670 §40; renumbered 466.175]

459.640 [1981 c.709 §22; 1985 c.670 §41; renumbered 466.180]

459.650 [1971 c.699 §13a; 1977 c.867 §16; 1979 c.132 §16; 1981 c.709 §14; 1983 c.703 §13; renumbered 466.185]

459.660 [1971 c.699 §14; 1973 c.835 §156; 1977 c.867 §17; 1979 c.132 §17; 1981 c.709 §15; 1983 c.703 §14; renumbered 466.190]

459.670 [1971 c.699 §13; 1977 c.867 §18; 1979 c.132 §18; 1981 c.709 §16; 1983 c.90 §2; renumbered 466.195]

459.680 [1971 c.699 §15a; 1977 c.867 §19; 1979 c.132 §19; 1981 c.709 §16a; 1983 c.703 §15; renumbered 466.200]

459.685 [1973 c.778 §§8, 9, 10, 11, 12, 13; 1977 c.867 §20; 1985 c.685 §3; renumbered 466.205]

459.690 [1971 c.699 §15; 1973 c.835 §157; 1979 c.284 §150; renumbered 466.210]

459.695 [1983 c.703 §3; renumbered 466.215]

(Waste Tire Disposal)

459.705 Definitions for ORS 459.705 to 459.790. As used in ORS 459.705 to 459.790:

(1) "Commission" means the Environmental Quality Commission.

(2) "Consumer" means a person who purchases a new tire to satisfy a direct need, rather than for resale.

(3) "Danger" or "nuisance" includes but is not limited to the unpermitted storage of waste tires or the storage of waste tires in a manner that does not comply with a condition of a permittee's waste tire storage permit.

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

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

(6) "Dispose" means to deposit, dump, spill or place any waste tire on any land or into any waters of the state as defined by ORS 468B.005.

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

(8) "Private carrier" means a person who receives or generates waste tires and who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which the person is engaged. "Private carrier" does not include a person whose primary tire business is collecting, sorting or transporting used or waste tires.

(9) "Retreadable casing" means a waste tire suitable for retreading.

(10) "Store" or "storage" means to accumulate waste tires above ground, or to own or control property on which there are waste tires above ground. "Storage" includes the beneficial use of waste tires as fences and other uses with similar potential for causing environmental risks. "Storage" does not include the use of waste tires as a ballast to maintain covers on agricultural materials or at a construction site or a beneficial use such as a planter except when the department determines the use creates an environmental risk.

(11) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is or may be transported in or drawn by upon a highway.

(12) "Tire carrier" means any person engaged in picking up or transporting waste

tires for the purpose of storage, removal to a processor or disposal. "Tire carrier" does not include a solid waste collector operating under a license or franchise from any local government unit, a private individual or private carrier who transports the person's own waste tires to a processor or for proper disposal, a person who transports fewer than five tires for disposal, or the United States, the State of Oregon, any county, city, town or municipality in this state, or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state.

(13) "Tire retailer" means any person actively engaged in the business of selling new replacement tires.

(14) "Tire retreader" means any person actively engaged in the business of retreading waste tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(15) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(16) "Wrecking business" means a business operating according to a certificate issued under ORS 822.110. [1987 c.706 §1; 1991 c.882 §6]

459.708 Waste tire generator; requirements. (1) After September 29, 1991, any person who generates waste tires shall either:

(a) Have the waste tires transported by a waste tire carrier operating under a permit issued by the department under ORS 459.705 to 459.790; or

(b) Transport the waste tires generated by the person to a waste tire storage site operating under a permit issued by the department, to a solid waste disposal site permitted by the department to accept waste tires or to another site authorized by the department.

(2) After September 29, 1991, any person who generates waste tires shall maintain a written record of the disposition of the waste tires including:

(a) Receipts indicating the disposition of the waste tires;

(b) The name and permit number of the waste tire carrier to whom waste tires were given for disposal;

(c) The name and location of the disposal site where waste tires were taken, including the date and number of waste tires; and

(d) Any other information the department may require.

(3) The information maintained under subsection (2) of this section shall be made

available to the department upon request of the department. [1991 c.882 §3]

Note: 459.708 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.710 Disposal in land disposal site prohibited; exceptions; use in construction of reefs prohibited; exception.

(1) Except as provided in subsection (2) of this section, after July 1, 1989, no person shall dispose of waste tires in a land disposal site, as defined in ORS 459.005.

(2) After July 1, 1989, a person may dispose of waste tires in a land disposal site permitted by the department if:

(a) The waste tires are chipped in accordance with standards established by the Environmental Quality Commission;

(b) The waste tires were located for disposal before July 1, 1989, at a land disposal site permitted by the department;

(c) The commission finds that the reuse or recycling of waste tires is not economically feasible;

(d) The waste tires are received from a solid waste collector, operating under a license or franchise from any local government unit, who transports fewer than 10 tires at any one time; or

(e) The waste tires are received from a person transporting fewer than five tires in combination with the person's own solid waste for disposal.

(3) Except as provided in subsection (4) of this section, no person shall use waste tires as material in the construction of artificial reefs in the ocean waters of the State of Oregon.

(4) Subsection (3) of this section shall not apply to the use of waste tires in the construction of any artificial reef in any tidal or nontidal bay or estuary of this state. As used in this subsection, "estuary" has the meaning given that term in ORS 541.605. [1987 c.706 §2; 1989 c.203 §1]

459.712 Transport without carrier permit prohibited; exceptions. (1) No person shall collect or transport waste tires for the purpose of storage, processing or disposal or purport to be in the business of collecting or transporting waste tires unless the person has a waste tire carrier permit issued by the department under ORS 459.705 to 459.790.

(2) As a condition to holding a permit issued under subsection (1) of this section, each waste tire carrier shall:

(a) Comply with the provisions of ORS 459.705 to 459.790.

(b) Report periodically to the department on numbers of waste tires transported and the manner of disposition.

(c) Maintain financial assurance in the amount of \$5,000 in the name of the State of Oregon.

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

(3) Subsection (1) of this section shall not apply to:

(a) A solid waste collector operating under a license or franchise from a local government unit.

(b) A private individual transporting the individual's own waste tires to a processor or for proper disposal.

(c) A private carrier transporting the carrier's own waste tires to a processor or for proper disposal.

(d) The United States, the State of Oregon, any county, city, town or municipality in this state or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state. [1991 c.882 §2]

Note: 459.712 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.715 Storage prohibited; exceptions.

(1) No person shall store more than 100 waste tires anywhere in this state except at a waste tire storage site operated under a permit issued under ORS 459.715 to 459.760.

(2) Subsection (1) of this section shall not apply to:

(a) A solid waste disposal site permitted by the department if the permit has been modified by the department to authorize the storage of tires;

(b) A tire retailer with not more than 1,500 waste tires in storage;

(c) A tire retreader with not more than 3,000 waste tires in storage so long as the waste tires are of the type the retreader is actively retreading; or

(d) A wrecking business with not more than 1,500 waste tires in storage.

(3) The exception allowed to a tire retailer under subsection (2) of this section shall not apply unless the tire retailer submits the return required under ORS 459.519 and the return indicates the sale of new tires during the reporting period. [1987 c.706 §3; 1991 c.882 §7]

459.720 Conditions for storage site permit. (1) Each waste tire storage site

permittee shall be required to do the following as a condition to holding the permit:

(a) Report periodically to the department on numbers of waste tires received and the manner of disposition.

(b) Maintain current contingency plans to minimize damage from fire or other accidental or intentional event.

(c) Maintain financial assurance acceptable to the department and in such amounts as determined by the department to be reasonably necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state.

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

(2) The department may waive any of the requirements of subsection (1) of this section for a waste tire storage site in existence on or before January 1, 1988. [1987 c.706 §4]

459.725 Application for storage site operator or carrier. (1) The department shall furnish an application form to anyone who wishes to operate a waste tire storage site or to be a waste tire carrier.

(2) In addition to information requested on the application form, the department also shall require the submission of such information relating to the construction, development or establishment of a proposed waste tire storage site and facilities to be operated in conjunction therewith and such additional information, data and reports as it considers necessary to make a decision granting or denying a permit. [1987 c.706 §5]

459.730 Information in application for storage site permit; carrier permit; bond. (1) Permit applications submitted to the department for operating a waste tire storage site shall contain the following:

(a) The management program for the operation of the site, including the person to be responsible for the operation of the site, the proposed method of disposal and the proposed emergency measures to be provided at the site.

(b) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used.

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

(d) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(e) Any additional information requested by the department.

(2) A permit application submitted to the department for operating as a waste tire carrier shall include the following:

(a) The name and place of business of the applicant.

(b) A description and license number of each truck used for transporting waste tires.

(c) The locations of the sites at which waste tires will be stored or disposed.

(d) A bond in the sum of \$5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the department.

(e) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(f) Any additional information requested by the department.

(3) The bond required under subsection (2) of this section shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon. The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 to 459.790 and rules adopted by the commission regarding tire carriers; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 to 459.790 or the rules adopted by the commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the injury. [1987 c.706 §6]

459.735 Notification of permit application in county of proposed disposal site.

(1) Following the submittal of a waste tire storage site permit application, the director shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and may fix a time and

place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application. [1987 c.706 §7]

459.740 Hearing on site permit application. The department may conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1987 c.706 §8]

459.745 Department action on application; appeal. Based upon the department's review of the waste tire storage site or waste tire carrier permit application, and any public comments received by the department, the director shall issue or deny the permit. The director's decision shall be subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §9]

459.750 Storage site and carrier permit fees. A fee may be required of every permittee under ORS 459.715 to 459.760. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor, by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 459.760 and to cover related administrative costs. [1987 c.706 §10]

459.755 Revocation of storage site or carrier permit. The director may revoke any permit issued under ORS 459.715 to 459.760 upon a finding that the permittee has violated any provision of ORS 459.715 to 459.760 or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the commission and judicial review under ORS 183.310 to 183.550. [1987 c.706 §11]

459.760 Monitoring and inspection of storage site; access to site and records. The department shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers or may contract with any qualified public or private agency to do so. After reasonable notice, owners and operators of these facilities must allow necessary access to the site of waste tire storage and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1987 c.706 §12]

459.765 Department use of fees. Fees received by the department pursuant to ORS 459.730 and 459.750 shall be deposited in the

State Treasury and credited to the department and are continuously appropriated to carry out the provisions of ORS 459.720 to 459.760. [1987 c.706 §12a]

459.770 Partial reimbursement for purchase or use of tire chips; rules. (1) Any person who purchases waste tires generated in Oregon or tire chips or similar materials from waste tires generated in Oregon and who uses the tires or chips or similar material for energy recovery or other appropriate uses may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials.

(2) Any person who uses, but does not purchase, waste tires or chips or similar materials, for energy recovery or another appropriate use, may apply for a reimbursement of part of the cost of such use.

(3) If during any quarter requests for reimbursement for waste tires or waste tire products used exceed available funds for the reporting calendar quarter, the in-state users shall be reimbursed first, and any remaining funds shall be prorated among out-of-state users. Out-of-state users may reapply again in the next quarter for reimbursement for the waste tires or waste tire products used but not reimbursed during the previous quarter.

(4) Any costs reimbursed under this section shall not exceed the amount in the Waste Tire Recycling Account. If applications for reimbursement during a period specified by the commission exceed the amount in the account, the commission shall prorate the amount of all reimbursements.

(5) The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials. The commission shall limit or eliminate reimbursements if the commission finds they are not necessary to promote the use of waste tires. All reimbursements shall cease not later than July 1, 1992, although the commission may provide reimbursements to users of waste tires or chips or similar materials after July 1, 1992, for those purchases made in the calendar quarter immediately preceding July 1, 1992.

(6) The commission shall adopt rules to carry out the provisions of this section. The rules shall:

(a) Govern the types of energy recovery or other appropriate uses eligible for reimbursement under this section. These uses shall include but need not be limited to:

(A) Recycling other than retreading; or

(B) Artificial fishing reefs in nonocean waters of this state.

(b) Establish the procedure for applying for a reimbursement.

(c) Establish the amount of reimbursement. [1987 c.706 §13; 1989 c.203 §2; 1991 c.882 §8]

Note: See note under 459.504.

459.772 Use of processed, source-separated waste tires for energy recovery. Notwithstanding any other provision of ORS 459.015, for purposes of encouraging the use of waste tires under ORS 459.705 to 459.790, the use of processed, source-separated waste tires having a positive market value as a new product to recover energy shall be considered recycling under ORS 459.015 (2)(a)(C). [1991 c.882 §4]

Note: 459.772 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.775 Waste tire recycling account; use of funds. (1) The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Department of Revenue under ORS 459.504 to 459.619 (1989 Edition) shall be deposited to the credit of the account. Moneys in the account are appropriated continuously to the Department of Environmental Quality to be used:

(a) For expenses in cleaning up waste tire piles as provided in ORS 459.780;

(b) To reimburse persons for the costs of using waste tires or chips or similar materials; and

(c) For expenses incurred by the Department of Environmental Quality in carrying out the provisions of sections ORS 459.710, 459.715 and 459.770 to 459.790.

(2) Any moneys remaining in the Waste Tire Recycling Account on July 1, 1992, shall be used:

(a) To reimburse users for the costs of using waste tires or chips or similar material for requests made for the calendar quarter immediately preceding July 1, 1992; and

(b) By the Department of Environmental Quality for other programs and activities related to waste tire storage, removal or disposal. [1987 c.706 §14; 1991 c.882 §9]

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The department, as a condition of a waste tire storage site permit issued under ORS 459.715 to 459.760, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Such assistance may include the

payment by the department of the total costs of removal or processing the waste tires and the entering into an agreement between the department and the permittee that requires the permittee to pay to the department a portion of the costs of removal or processing calculated according to rules adopted by the Environmental Quality Commission. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may proceed under subsections (4) to (8) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760;

(b) A permittee fails to meet the conditions of such permit; or

(c) An owner of real property fails to remove waste tires as required by the department.

(4) The department may abate any danger or nuisance created by waste tires or other waste tire materials by removing or processing the tires or other waste tire materials. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires or materials, or owning the property upon which the tires or materials are located, notice of the department's intentions and order the person to abate the danger or nuisance in a manner approved by the department. After the abatement, the department, upon request, may conduct a hearing according to the provisions of ORS 183.310 to 183.550 applicable to contested case hearings to determine the financial responsibility of any party involved. If a hearing is not requested, the department may proceed to recover the costs incurred in abating the waste tires or other waste tire materials.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the director may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires or other waste tire materials into public custody and providing for their processing or removal.

(6) The department may bring an action or proceeding against the property owner or

the person having possession, care, custody or control of the waste tires or other waste tire materials to enforce the abatement order issued under subsection (4) of this section and recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) In lieu of entering an order and conducting a contested case hearing, the department may enter into a stipulation, agreed settlement or consent order with any or all of the applicable parties, allowing the department to enter and remove the waste tires on the property. The stipulation, agreed settlement or consent order also may provide that the parties shall pay to the department either a specified sum of money representing the department's costs in removing the waste tires from the property, or if the exact amount of the costs are unknown at the time of the agreement, the parties may agree to pay to the department a percentage of the department's final costs incurred in removing the waste tires from the property. Upon completion of the waste tire removal, the department shall send to the applicable parties a certified statement indicating the total cost of removal and the percentage of the total costs the parties are required to pay to the department. The costs or percentage of costs to be paid by the parties shall be computed according to rules adopted by the Environmental Quality Commission.

(8) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a person or local government unit for the cost of abatement.

(9) No state or local government shall be liable for costs or damages as a result of actions taken under the provisions of ORS 459.705 to 459.790. This subsection shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For purposes of this subsection, reckless, willful or wanton misconduct shall constitute gross negligence. [1987 c.706 §15; 1991 c.882 §10]

459.785 Commission authority to adopt rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt rules necessary to carry out the provisions of ORS 459.705 to 459.790.

(2) The commission may adopt rules that limit, restrict or prohibit the storage of waste tire chips not chipped and disposed of in accordance with standards adopted by the commission under ORS 459.710, or used for the purposes described in ORS 459.770. The rules also may include requirements for obtaining a permit from the department for the storage of tire chips. [1987 c.706 §16; 1991 c.882 §11]

459.790 Exceptions to ORS 459.705 to 459.785. Except for the purposes of waste tire removal under ORS 459.780 (2) and (4) to (8), the provisions of ORS 459.705 to 459.785 do not apply to:

(1) Tires from:

(a) Any device moved exclusively by human power.

(b) Any device used exclusively upon stationary rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle.

(e) Any device used exclusively for farming purposes, except a farm truck.

(2) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader. [1987 c.706 §18; 1991 c.882 §12]

ESTABLISHMENT OF SOLID WASTE DISPOSAL SITE WITHIN CLACKAMAS, MULTNOMAH AND WASHINGTON COUNTIES

Note: Sections 1, 2, and 4 to 10, chapter 679, Oregon Laws 1985, provide:

Sec. 1. Sections 2 and 4 to 9 of this Act are added to and made a part of ORS 459.005 to 459.385. [1985 c.679 §1]

Sec. 2. (1) The Legislative Assembly finds that the siting and establishment of a disposal site for the disposal of solid waste within or for Clackamas, Multnomah and Washington Counties is necessary to protect the health, safety and welfare of the residents of those counties.

(2) It is the intent of the Legislative Assembly that the Environmental Quality Commission and Department of Environmental Quality, in locating and establishing a disposal site within Clackamas, Multnomah and Washington Counties give due consideration to:

(a) Except as provided in subsections (3) and (4) of section 5 of this 1985 Act, the statewide planning goals adopted under ORS 197.005 to 197.430 and the acknowledged comprehensive plans and land use regulations of affected counties.

(b) Information received during consultation with local governments.

(c) Information received from public comment and hearings.

(d) Any other factors the commission or department considers relevant. [1985 c.679 §2]

Sec. 4. (1) Subject to subsections (3) and (4) of section 5 of this 1985 Act, the Environmental Quality Commission may locate and order the establishment of a disposal site under this 1985 Act in any area, including an area of forestland designated for protection un-

der the statewide planning goals, in which the commission finds that the following conditions exist:

(a) The disposal site will comply with applicable state statutes, rules of the commission and applicable federal regulations;

(b) The size of the disposal site is sufficiently large to allow buffering for mitigation of any adverse effects by natural or artificial barriers;

(c) Projected traffic will not significantly contribute to dangerous intersections or traffic congestion, considering road design capacities, existing and projected traffic counts, speed limits and number of turning points;

(d) Facilities necessary to serve the disposal site can be available or planned for the area; and

(e) The proposed disposal site is designed and operated to the extent practicable so as to mitigate conflicts with surrounding uses. Such conflicts with surrounding uses may include, but are not limited to:

(A) Visual appearance, including lighting and surrounding property.

(B) Site screening.

(C) Odors.

(D) Safety and security risks.

(E) Noise levels.

(F) Dust and other air pollution.

(G) Bird and vector problems.

(H) Damage to fish and wildlife habitats.

(2) When appropriate, the conditions listed in this section may be satisfied by a written agreement between the Department of Environmental Quality and the appropriate government agency under which the agency agrees to provide facilities as necessary to prevent impermissible conflict with surrounding uses. If such an agreement is relied on to satisfy any approval criteria, a condition shall be imposed to guarantee the performance of the actions specified. [1985 c.679 §4]

Sec. 5. (1) The commission, not later than July 1, 1987, shall issue an order directing the Department of Environmental Quality to establish a disposal site under chapter 679, Oregon Laws 1985, within Clackamas, Multnomah or Washington County or, subject to subsection (2) of section 3 of chapter 679, Oregon Laws 1985, within another county.

(2) In selecting a disposal site under this section, the commission shall review the study conducted under section 3 of chapter 679, Oregon Laws 1985, and the locations for disposal sites recommended by the department under section 3 of chapter 679, Oregon Laws 1985.

(3)(a) When findings are issued by the department under subsection (4) of this section, the commission in selecting a disposal site under chapter 679, Oregon Laws 1985, must comply with the statewide planning goals adopted under ORS 197.005 to 197.430 and with the acknowledged comprehensive plan and land use regulations of the local government unit with jurisdiction over the area in which the disposal site is located.

(b) However, when findings are not issued under subsection (4) of this section, the standards established by section 4 of chapter 679, Oregon Laws 1985, take precedence over provisions in the comprehensive plan or land use regulations of the affected local government unit, and the commission may select a disposal site in accordance with those standards instead of, and without regard to, any provisions for locating and establishing disposal sites that are contained in the comprehensive plan or land use regulations of the affected local government unit. Any provision in a comprehensive plan or land use regulation that prevents the location and establishment of a disposal site that can be located and established under the standards set forth in section 4 of chapter 679, Oregon Laws 1985, shall not apply to the

selection of a disposal site under chapter 679, Oregon Laws 1985.

(4) The department, not later than July 1, 1986, may determine whether the acknowledged comprehensive plans and land use regulations of the counties in which possible disposal sites being considered by the department are situated contain standards for determining the location of land disposal sites that are identical to or consistent with the standards specified in section 4 of chapter 679, Oregon Laws 1985. If the standards contained in the comprehensive plan and land use regulations of a county are identical to or consistent with the standards specified in section 4 of chapter 679, Oregon Laws 1985, the department may issue written findings to that effect and shall submit the findings to the commission.

(5) When selecting a disposal site under chapter 679, Oregon Laws 1987, the commission may attach limitations or conditions to the development, operation or maintenance of the disposal site, including but not limited to, setbacks, screening and landscaping, off-street parking and loading, access, performance bonds, noise or illumination controls, structure height and location limits, construction standards and periods of operation.

(6) If the Environmental Quality Commission directs the Department of Environmental Quality to establish or complete the establishment of a disposal site under this section, the department shall establish the site subject only to the approval of the commission. Notwithstanding any other provision of chapter 679, Oregon Laws 1985 or any city, county or other local government charter or ordinance to the contrary, the Department of Environmental Quality may establish a disposal site under this section without obtaining any license, permit, franchise or other form of approval from a local government unit.

(7) The department shall identify conflicts with surrounding uses for any disposal site established under chapter 679, Oregon Laws 1985, and, to the extent practicable, shall mitigate or require the operator of the site to mitigate those conflicts.

(8) Notwithstanding any other provision of law, any order of the Environmental Quality Commission requiring the Department of Environmental Quality to establish a disposal site at the location selected by the commission under this section shall not expire before July 1, 1989. [1985 c.679 §5; 1987 c.876 §20]

Sec. 6. (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825, exclusive jurisdiction for review of any decision made by the Environmental Quality Commission under this 1985 Act relating to the establishment or siting of a disposal site, any order to the Department of Environmental Quality to establish or complete such a site or any findings made by the department under section 5 of this 1985 Act is conferred upon the Supreme Court.

(2) Proceedings for review shall be instituted when any person adversely affected or aggrieved by the order of the commission files a petition with the Supreme Court. The petition shall be filed within 30 days following the date on which the order upon which the petition is based is served. The petition shall state the nature of the order or decision the petitioner desires reviewed and shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved. Copies of the petition shall be served by registered or certified mail upon the commission. Within 30 days after service of the petition, the commission shall transmit to the Supreme Court the original or a certified copy of the entire record of the proceeding under review. Review under this section shall be confined to the record, and the court shall not substitute its judgment for that of the commission as to any issue of fact or agency discretion. Upon review, the Supreme Court may affirm, reverse or remand the order of the commission if the court finds that the order is not sup-

ported by substantial evidence in the record or is unconstitutional. Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(3) Notwithstanding ORS 197.850, jurisdiction for judicial review of a final order of the Land Use Board of Appeals issued in any proceeding arising under this 1985 Act is conferred upon the Supreme Court. The procedure for judicial review of a final order under this section shall be as provided in subsection (2) of this section. [1985 c.679 §6]

Sec. 7. (1) Subject to policy direction by the commission in carrying out sections 3 and 5 of this 1985 Act, the department may:

(a) By mutual agreement, return all or part of the responsibility for development of the site to a local government unit, or contract with a local government unit to establish the site.

(b) To the extent necessary, acquire by purchase, gift, grant or exercise of the power of eminent domain, real and personal property or any interest therein, including the property of public corporations or local government.

(c) Lease and dispose of real or personal property.

(d) At reasonable times and after reasonable notice, enter upon land to perform necessary surveys or tests.

(e) Acquire, modify, expand or build landfill or resource recovery site facilities.

(f) Subject to any limitations in ORS 468.195 to 468.260, use money from the Pollution Control Fund created in ORS 468.215 for the purposes of carrying out section 5 of this 1985 Act.

(g) Enter into contracts or other agreements with any local government unit or private person for the purposes stated in ORS 459.065 (1).

(h) Accept gifts, donations or contributions from any source to carry out the provisions of sections 3 and 5 of this 1985 Act.

(i) Establish a system of fees or user charges to reimburse the department for costs incurred under this 1985 Act and to allow repayment of moneys borrowed from the Pollution Control Fund.

(2) The metropolitan service district shall have the responsibility for the operation of the disposal sites established under this 1985 Act. [1985 c.679 §7]

Sec. 8. (1) The metropolitan service district organized under ORS chapter 268 shall prepare a solid waste reduction program. Such program shall provide for:

(a) A commitment by the district to substantially reduce the volume of solid waste that would otherwise be disposed of in land disposal sites through techniques including, but not limited to, rate structures, source reduction, recycling, reuse and resource recovery;

(b) A timetable for implementing each portion of the solid waste reduction program;

(c) Energy efficient, cost-effective approaches for solid waste reduction that are legally, technically and economically feasible and that carry out the public policy described in ORS 459.015 (2); and

(d) Procedures commensurate with the type and volume of solid waste generated within the district.

(2) Not later than January 1, 1986, the metropolitan service district shall submit its solid waste reduction program to the Environmental Quality Commission for review and approval. The commission shall approve the program if the commission finds that:

(a) The proposed program presents effective and appropriate methods for reducing dependence on land disposal sites for disposal of solid wastes;

(b) The proposed program will substantially reduce the amount of solid waste that must be disposed of in land disposal sites;

(c) At least a part of the proposed program can be implemented immediately; and

(d) The proposed program is legally, technically and economically feasible under current conditions.

(3) After review of the solid waste reduction program, if the commission does not approve the program as submitted, the commission shall allow the metropolitan service district not more than 90 days in which to modify the program to meet the commission's objections.

(4) Notwithstanding ORS 268.310 (2) and 268.317, if the commission does not approve the solid waste reduction program submitted by the metropolitan service district after any period allowed for modification under subsection (3) of this section, all the duties, functions and powers of the metropolitan service district relating to solid waste disposal are imposed upon, transferred to and vested in the Department of Environmental Quality and no part of such duties, functions and powers shall remain in the metropolitan service district. The transfer of duties, functions and powers to the department under this section shall take effect on July 1, 1986. Notwithstanding such transfer of duties, functions and powers, the lawfully adopted ordinances and other rules of the district in effect on July 1, 1986, shall continue in effect until lawfully superseded or repealed by rules of the commission.

(5) If the solid waste reduction program is approved by the commission, a copy of the program shall be submitted to the Sixty-fourth Legislative Assembly not later than February 1, 1987. [1985 c.679 §8]

Sec. 9. (1) The metropolitan service district shall apportion an amount of the service or user charges collected for solid waste disposal at each general purpose landfill within or for the district and dedicate and use the moneys obtained for rehabilitation and enhancement of the area in and around the landfill from which the fees have been collected. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be 50 cents for each ton of solid waste. The metropolitan service district may not apportion moneys under ORS 459.284 for a general purpose landfill for which the district sets aside service and user charges under this subsection.

(2) The metropolitan service district, commencing on July 13, 1985, shall apportion an amount of the service or user charges collected for solid waste disposal and shall transfer the moneys obtained to the Department of Environmental Quality. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be \$1 for each ton of solid waste. Moneys transferred to the department under this section shall be paid into the Land Disposal Mitigation Account in the General Fund of the State Treasury, which is hereby established. All moneys in the account are continuously appropriated to the department and shall be used for carrying out the department's functions and duties under chapter 679, Oregon Laws 1985. The department shall keep a record of all moneys deposited in the account. The record shall indicate by cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. Apportionment of moneys under this subsection shall cease when the department is reimbursed for all costs incurred by it under chapter 679, Oregon Laws 1985.

(3) The metropolitan service district shall adjust the amount of the service and user charges collected by the district for solid waste disposal to reflect the loss of those duties and functions relating to solid waste disposal that are transferred to the commission and department under chapter 679, Oregon Laws 1985. Moneys no longer necessary for such duties and functions shall

be expended to implement the solid waste reduction program submitted under section 8, chapter 679, Oregon Laws 1985. The metropolitan service district shall submit a statement of proposed adjustments and changes in expenditures under this subsection to the department for review. [1985 c.679 §9; 1989 c.763 §17]

Sec. 10. ORS 459.049 does not apply to a disposal site established under this Act other than for the purposes of ORS 215.213 (1)(i). [1985 c.679 §10]

459.810 [1971 c.745 §1; renumbered 459A.700 in 1991]

459.820 [1971 c.745 §2; renumbered 459A.705 in 1991]

459.830 [1971 c.745 §3; 1973 c.758 §1; renumbered 459A.710 in 1991]

459.840 [1971 c.745 §4; 1973 c.758 §2; 1981 c.513 §1; renumbered 459A.715 in 1991]

459.850 [1971 c.745 §5; 1977 c.151 §1; 1977 c.157 §1; 1979 c.188 §1; renumbered 459A.720 in 1991]

459.860 [1971 c.745 §6; 1973 c.693 §1; renumbered 459A.725 in 1991]

459.870 [1971 c.745 §7; renumbered 459A.730 in 1991]

459.880 [1971 c.745 §8; 1973 c.758 §3; renumbered 459A.735 in 1991]

459.890 [1971 c.745 §9; renumbered 459A.740 in 1991]

PENALTIES

459.990 [1967 c.428 §16; 1969 c.593 §48; subsection (2) enacted as 1969 c.509 §6; repealed by 1971 c.648 §33]

459.992 Criminal penalties. (1) The following are Class A misdemeanors:

(a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105, 459.205 to 459.245 and 459.255 to 459.385.

(b) Violation of ORS 459.205.

(c) Violation of ORS 459.270.

(d) Violation of ORS 459A.080.

(2) Each day a violation referred to by subsection (1) of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

(3) Violation of ORS 459A.705, 459A.710 or 459A.720 is a Class A misdemeanor.

(4) In addition to the penalty prescribed by subsection (3) of this section, the commission or the State Department of Agriculture may revoke or suspend the license of any person who willfully violates ORS 459A.705, 459A.710 or 459A.720, who is required by ORS 474.105 and 474.115 and ORS chapter 471 or 635, respectively, to have a license. [Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) enacted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10; 1973 c.835 §158; 1977 c.867 §22; 1981 c.81 §2; 1981 c.709 §17; 1983 c.729 §17; 1983 c.766 §8; subsections (3) and (4) renumbered 466.995]

459.995 Civil penalties. (1) In addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459A.005 to 459A.665 or the provisions of ORS 459.386 to 459.400, 459.434, 459.705 to 459.790, 459A.675 to 459A.685 or any rule or order of the Environmental

Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(2) Any civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135. [1973 c.835 §130; 1977 c.317 §1; 1981 c.709 §18; 1983 c.703 §16; 1983 c.729 §18; 1983 c.766 §9; subsections (2) and (3) renumbered 466.880; 1987 c.706 §19; 1989 c.290 §7; 1989 c.763 §14; 1991 c.385 §§14, 90; 1991 c.650 §3; 1991 c.653 §8; 1991 c.734 §32; 1991 c.882 §13]

459.997 Civil and criminal penalties for violation of ORS 459.504 to 459.619. (1) If a person or an officer or employee of a corporation or a member or employee of a partnership violates ORS 459.569 (1)(a) or (b), the Department of Revenue shall assess against the person a civil penalty of not more than \$1,000. The penalty shall be recovered as provided in subsection (4) of this section.

(2) A person or an officer or employee of a corporation or a member or employee of a partnership who violates ORS 459.569 (1)(c) or (2), is liable to a penalty of not more than \$1,000, to be recovered in the manner provided in subsection (4) of this section.

(3) If any person violates any provision of ORS 459.504 to 459.619 other than ORS 459.569, the department shall assess against the person a civil penalty of not more than \$1,000, to be recovered as provided in subsection (4) of this section.

(4) Any person against whom a penalty is assessed under this section may appeal to the director as provided in ORS 305.275. If the penalty is not paid within 10 days after the order of the department becomes final, the department may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430. [1987 c.706 §44]

Note: 459.997 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 459 or 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: See note under 459.504.
