

# Chapter 468B

1991 EDITION

## Water Quality

### WATER POLLUTION CONTROL

(Generally)

- 468B.005 Definitions for water pollution control laws
- 468B.010 Authority of commission over water pollution; construction
- 468B.015 Policy
- 468B.020 Prevention of pollution
- 468B.025 Prohibited activities
- 468B.030 Effluent limitations
- 468B.035 Implementation of Federal Water Pollution Control Act
- Note Cleanup of Tualatin River—1991 c.922 §1

(Surface Water)

- 468B.040 Certification of hydroelectric power project; comments of affected state agencies
- 468B.045 Certification of change to hydroelectric power project; notification of federal agency
- 468B.048 Standards of quality and purity; factors to be considered; meeting standards
- 468B.050 When permit required
- 468B.055 Plan approval required; exemptions
- 468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable
- 468B.065 When motor vehicle parts may be placed in waters of state
- 468B.070 Prohibited activities for certain municipalities
- 468B.075 Definitions for ORS 468B.080
- 468B.080 Prohibitions relating to garbage or sewage dumping into waters of state
- 468B.085 Depositing motor vehicles into water prohibited
- 468B.090 Permit authorized for discharge of shrimp and crab processing by-products; conditions
- 468B.095 Use of sludge on agricultural, horticultural or silvicultural land

(Forest Operations)

- 468B.100 Definitions for ORS 468B.105 and 468B.110
- 468B.105 Review of water quality standard affecting forest operations
- 468B.110 Authority to establish and enforce water quality standards; limitation on authority; instream water quality standards

(Phosphate Cleansing Agents)

- 468B.120 Definitions for ORS 468B.120 to 468B.135
- 468B.125 Policy to reduce phosphorous pollution
- 468B.130 Prohibition on sale or distribution of cleaning agent containing phosphorous
- 468B.135 Exemptions

(Ground Water)

- 468B.150 Definitions for ORS 468B.150 to 468B.185

- 468B.155 State goal to prevent ground water contamination
- 468B.160 Ground water management and use policy
- 468B.165 Ground water contaminants; maximum levels; establishing; rules
- 468B.170 Strategic Water Management Group; staffing
- 468B.175 Declaration of area of ground water concern
- 468B.180 Declaration of ground water management area; standards
- 468B.185 Ground water monitoring and assessment

### ANIMAL WASTE CONTROL

- 468B.200 Legislative findings
- 468B.205 Confined animal feeding operation; definition
- 468B.210 Maximum number of animals per facility; determination
- 468B.215 Fees; permit conditions
- 468B.220 Civil penalty for violation of permit requirement

### OIL OR HAZARDOUS MATERIAL SPILLAGE

(Generally)

- 468B.300 Definitions for ORS 468B.300 to 468B.500
- 468B.305 Entry of oil into waters of state prohibited; exceptions
- 468B.310 Liability for violation of ORS 468B.305
- 468B.315 Duty to collect and remove oil; dispersal of oil
- 468B.320 Action by state; liability for state expense; order; appeal
- 468B.325 Director's right of entry in response to oil spill; state liability for damages
- 468B.330 Action to collect costs
- 468B.335 Effect of federal regulations of oil spillage

(Contingency Planning)

- 468B.340 Legislative findings and intent
- 468B.345 Oil spill contingency plan required to operate facility or covered vessel in state or state waters
- 468B.350 Standards for contingency plans
- 468B.355 Submission of contingency plan; participation in maritime association; lien; liability of maritime association
- 468B.360 Review of contingency plan
- 468B.365 Plan approval; change affecting plan; certificate of approval
- 468B.370 Determination of adequacy of plan; practice drills
- 468B.375 Inspection of facilities and vessels; coordination with State of Washington
- 468B.380 Tank vessel inspection program
- 468B.385 Modification of approval of contingency plan; revocation of approval; violation

## **PUBLIC HEALTH AND SAFETY**

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- 468B.390 Compliance with Federal Oil Pollution Act of 1990
- 468B.395 Department duties
- 468B.400 Wildlife rescue training program
- 468B.405 Fees; disposition
- 468B.410 Oil Spill Prevention Fund; uses
- 468B.415 Oregon coast safety committee; subcommittees
- 468B.420 Committee recommendations
- 468B.425 Exemption from liability for removal costs or damages

(Willful or Negligent Discharge)

- 468B.450 Willful or negligent discharge of oil; civil penalty; authority of director to mitigate
- 468B.455 Oil Spillage Control Fund; source; use
- 468B.460 Rules

(Shipping)

- 468B.475 Legislative finding; need for evidence of financial assurance for ships transporting oil
- 468B.480 Ships that must establish evidence of financial assurance; amount

- 468B.485 Methods of establishing financial assurance
- 468B.490 Reporting ships not in compliance
- 468B.495 Interagency response plan for oil or hazardous material spills in certain waters
- 468B.500 Contents of plan

### **PENALTIES**

- 468B.990 Penalties

### **CROSS REFERENCES**

- Administration and enforcement of environmental quality laws, Ch. 468
- Civil penalty for intentional or reckless violation, 468.996

468B.155

- Activities of State Department of Geology and Mineral Industries, 516.135

468B.175

- Area of ground water concern, declaration by Health Division, 448.268

## WATER POLLUTION CONTROL

### (Generally)

**468B.005 Definitions for water pollution control laws.** As used in the laws relating to water pollution, unless the context requires otherwise:

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

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

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

(4) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapters 468, 468A and 468B.

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

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

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

(8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. [Formerly 449.075 and then 468.700]

**468B.010 Authority of commission over water pollution; construction.** (1) Except as otherwise provided in ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930, in so far as the authority of the commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapters 468, 468A and 468B is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468B.015. [Formerly 449.070 and then 468.705]

**468B.015 Policy.** Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

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

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

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

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives. [Formerly 449.077 and then 468.710]

**468B.020 Prevention of pollution.** (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468B.015.

(2) In order to carry out the public policy set forth in ORS 468B.015, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

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

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048. [Formerly 449.095 and then 468.715]

**468B.025 Prohibited activities.** (1) Except as provided in ORS 468B.050, no person shall:

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

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

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079 and then 468.720]

**468B.030 Effluent limitations.** In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081 and then 468.725]

**468B.035 Implementation of Federal Water Pollution Control Act.** The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation of this section. [Formerly 468.730]

**Note:** Section 1, chapter 922, Oregon Laws 1991, provides:

**Sec. 1. Cleanup of Tualatin River.** (1) The Legislative Assembly finds that in establishing and refining a scientific basis for the cleanup of the Tualatin River and other river basins in the state that have similar pollution problems, the scientific basis shall be sufficient to provide the Department of Environmental Quality with:

(a) Scientific data upon which to base any cleanup program, including water quality standards that are stringent, attainable and cost-effective;

(b) An analysis of the costs and benefits of various remedial actions; and

(c) A determination of the direct and indirect costs for each potential remedial action identified.

(2) The scientific basis for the cleanup of the Tualatin River under subsection (1) of this section shall include:

(a) A determination of the natural level of pollutants that existed in the river before inhabitation by people other than natives to the area;

(b) A narrative description of the present water quality of the river and the water quality in 2001 and 2011, assuming no remediation and assuming remediation with the remediation alternatives identified under subsection (1) of this section;

(c) A determination of the input into the system of elevated amounts of pollutants of concern;

(d) A determination, for each pollutant and input into the river, of the change that could be expected in the river if identified remedial actions are implemented;

(e) A determination of the various remedial actions possible for each pollutant introduced into the river;

(f) A determination of the direct and indirect benefits of each remedial action identified;

(g) Development of a model of the Tualatin River cleanup system that may be transferred to the cleanup of other river systems, including constraints of using the model; and

(h) Identification of the local, state and federal public agencies involved in the use and management of the basin and the duties of each public agency related to remedial action.

(3) The Department of Environmental Quality shall contract with an appropriate nonprofit, educational institution that specializes in graduate level scientific education and research and that has a demonstrated knowledge and capacity to collect the scientific data under subsections (1) and (2) of this section. In addition to funding provided by the State of Oregon, the contractor shall attempt to obtain additional funding for the research from other public and private sources.

(4) The study conducted under this section shall:

- (a) Be completed on or before March 1, 1993; and
- (b) Be presented to the public by the contractor at a hearing conducted on or before March 15, 1993. [1991 c.922 §1]

**(Surface Water)**

**468B.040 Certification of hydroelectric power project; comments of affected state agencies.** The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

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

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

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

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

(c) Standards established in ORS 469.371 and 543.017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards; and

(d) Standards of other state and local agencies that are consistent with the standards of ORS 469.371 and 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. [Formerly 468.732]

**468B.045 Certification of change to hydroelectric power project; notification of federal agency.** Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 (1) of the Federal Water Pollution Control Act P.L. 92-500, as amended:

(1) The director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by changes in the project, according to sections 301, 302,

303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

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

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

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

(C) Standards established in ORS 469.371 and 543.017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards; and

(D) Standards of other state and local agencies that are consistent with the standards of ORS 469.371 and 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

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

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

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification. [Formerly 468.734]

**468B.048 Standards of quality and purity; factors to be considered; meeting standards.** (1) The commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468B.015. In establishing such standards, the commission shall consider the following factors:

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

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

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

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

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

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

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

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

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536.220 to 536.540.

(3) Subject to the approval of the department, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards. [Formerly 449.086 and then 468.735]

**468B.050 When permit required.** (1) Except as provided in ORS 468B.215, without first obtaining a permit from the director, which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall:

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

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

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

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

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) As used in this section, "confined animal feeding operation" has the meaning

given in ORS 468B.205. [Formerly 449.083 and then 468.740]

**468B.055 Plan approval required; exemptions.** (1) Except as provided in subsection (3) of this section, all plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems, shall be submitted to the Department of Environmental Quality for its approval or rejection pursuant to rules of the commission.

(2) No construction, installation or modification of the type described in subsection (1) of this section shall be commenced until the plans and specifications submitted to the department under subsection (1) of this section are approved. If the disposal or discharge is for a chemical process mine, as defined in ORS 517.953, such review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.987. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department.

(3) By rule, the commission may exempt from the requirement of subsection (1) of this section the class or classes of disposal systems, treatment works and sewerage systems for which the commission finds plan submittal and approval unnecessary or impractical. [Formerly 468.742]

**468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable.** (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration.

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

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the

State of Oregon upon relation of the Department of Environmental Quality or State Department of Fish and Wildlife or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered. [Formerly 449.103 and then 468.745]

**468B.065 When motor vehicle parts may be placed in waters of state.** (1) The commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

- (a) The possibility of pollution;
- (b) The esthetics of such use;
- (c) The utility of such use in reclamation projects;
- (d) The degradation of the waters, stream beds or banks; and
- (e) The nature of the waters such as tidewater, slough or running stream.

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies, shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section. [Formerly 449.111 and then 468.750]

**468B.070 Prohibited activities for certain municipalities.** (1) No municipality shall:

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

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

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

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

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

(2) As used in this section:

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

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

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468.195 to 468.245 unless:

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

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

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery. [Formerly 449.113 and then 468.755]

**468B.075 Definitions for ORS 468B.080.** For the purposes of ORS 468B.080, the term:

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

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

(3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food. [Formerly 449.140 and then 468.765]

**468B.080 Prohibitions relating to garbage or sewage dumping into waters of state.** (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the department. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.405, 454.425,

454.505 to 454.535, 454.605 to 454.745 and ORS chapters 468, 468A and 468B.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150 and then 468.770]

**468B.085 Depositing motor vehicles into water prohibited.** Subject to ORS 468B.065, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 801.360 or of any vehicle as defined by ORS 801.590, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means. [Formerly 449.109 and then 468.775]

**468B.090 Permit authorized for discharge of shrimp and crab processing by-products; conditions.** (1) The department may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468B.050 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

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

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

(c) The discharge shall not create a public nuisance.

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

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [Formerly 468.777]

**468B.095 Use of sludge on agricultural, horticultural or silvicultural land.** The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

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

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

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

(4) Records that a sludge applicator must keep;

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

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [Formerly 468.778]

**Note:** 468B.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapters 468, 468A or 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### (Forest Operations)

**468B.100 Definitions for ORS 468B.105 and 468B.110.** As used in ORS 468B.105 and 468B.110, "forestlands" and "operation" have the meaning for those terms provided in ORS 527.620. [1991 c.919 §22a]

**468B.105 Review of water quality standard affecting forest operations.** Upon request of the State Board of Forestry, the Environmental Quality Commission shall review any water quality standard that affects forest operations on forestlands. The commission's review may be limited to or coordinated with the triennial or any other regularly scheduled review of the state's water quality standards, consistent with ORS 468B.048, 468B.110 and applicable federal law. [1991 c.919 §23]

**468B.110 Authority to establish and enforce water quality standards; limitation on authority; instream water quality standards.** (1) Except as provided in subsection (2) of this section, as necessary to achieve and maintain standards of water quality or purity adopted under ORS 468B.048, the commission or department may, by rule or order, impose and enforce limitations or other controls which may include total maximum daily loads, wasteload allocations for point sources and load allocations for nonpoint sources, as provided in the federal Water Pollution Control Act (33 U.S.C. § 1321) and federal regulations and guidelines issued pursuant thereto.

(2) Unless required to do so by the provisions of the Federal Clean Water Act, neither the Environmental Quality Commission nor the Department of Environmental Quality shall promulgate or enforce any effluent limitation upon nonpoint source discharges of pollutants resulting from forest operations on forestlands in this state. Implementation of any limitations or controls applying to

nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770. However, nothing in this section is intended to affect the authority of the commission or the department provided by law to impose and enforce limitations or other controls on water pollution from sources other than forest operations.

(3) When the Environmental Quality Commission establishes instream water quality standards to protect designated beneficial uses in the waters of the state, it shall consider, where applicable, available scientific information including, but not limited to, stream flow, geomorphology and other factors representing the variability and complexity of hydrologic systems and intrinsic water quality conditions.

(4) When the Environmental Quality Commission establishes instream water quality standards, it will also issue guidelines describing how the department and the commission will determine whether water quality standards in waters affected by nonpoint source activities are being met. In developing these guidelines, the commission shall include, where applicable, those physical characteristics such as stream flow, geomorphology, seasons, frequency, duration, magnitude and other factors which represent the variability and complexity of forested and other appropriate hydrologic systems. [1991 c.919 §24]

#### (Phosphate Cleansing Agents)

**468B.120 Definitions for ORS 468B.120 to 468B.135.** As used in ORS 468B.120 to 468B.135:

(1) "Cleaning agent" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household commercial premises. "Cleaning agent" does not include foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleaning agents exempted under ORS 468B.135.

(2) "Commercial premises" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, including but not limited to laundries, hotels, motels and food or restaurant establishments.

(3) "Person" means any individual, firm, partnership or corporation.

(4) "Phosphorus" means elemental phosphorus. [1991 c.764 §3]

Note: 468B.120 to 468B.135 take effect July 1, 1992. See section 9, chapter 764, Oregon Laws 1991.

**468B.125 Policy to reduce phosphorous pollution.** (1) The Legislative Assembly of the State of Oregon finds that:

(a) Phosphorous loading of the waters of the state is a serious pollution problem affecting water quality in some river basins in the state.

(b) Phosphate detergents contribute significant phosphorous loading to the treated waste water released to the surface waters of the state.

(c) When phosphorous loading becomes a serious pollution problem, federal and state water quality standards may require advanced waste water treatment facilities at public expense, in addition to primary and secondary treatment facilities.

(2) Therefore, the Legislative Assembly declares that it is a policy of this state to reduce phosphorous pollution at its source to maintain existing water quality and to enhance cost-effective waste water treatment where phosphorous pollution becomes a serious pollution problem. [1991 c.764 §2]

Note: See note under 468B.120.

**468B.130 Prohibition on sale or distribution of cleaning agent containing phosphorus.** (1) Except as provided in subsection (2) of this section, no person may sell, offer to sell or distribute for sale within Oregon, any cleaning agent containing more than 0.5 percent phosphorus by weight.

(2) A cleaning agent used in automatic dishwashers may be sold, offered for sale or distributed in Oregon if the cleaning agent is sold, offered for sale or distributed on or after July 1, 1992, and contains 8.7 percent or less phosphorus by weight.

(3) All cleaning agents that are sold in this state shall be labeled with the percent of phosphorus by weight, including equivalency in grams of phosphorus per recommended use level.

(4) The commission shall adopt rules governing the labeling requirements imposed by subsection (3) of this section. [1991 c.764 §4]

Note: See note under 468B.120.

**468B.135 Exemptions.** ORS 468B.130 (1) and (2) do not apply to any cleaning agent:

(1) Used in dairy, beverage or food processing equipment;

(2) Used as an industrial sanitizer, brightener, acid cleaner or metal conditioner, including phosphoric acid products or trisodium phosphate;

(3) Used in hospitals, veterinary hospitals or clinics or health care facilities;

(4) Used in agricultural production and the production of electronic components;

(5) Used in a commercial laundry for laundry services provided to a hospital, veterinary hospital or clinic or health care facility;

(6) Used by industry for metal cleaning or conditioning;

(7) Manufactured, stored or distributed for use or sale outside Oregon;

(8) Used in any laboratory, including a biological laboratory, research facility, chemical, electronic or engineering laboratory;

(9) Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, stoves, tubs or other food preparation surfaces and plumbing fixtures;

(10) Used as a water softening chemical, antiscaling chemical or corrosion inhibitor intended for use in closed systems, including but not limited to boilers, air conditioners, cooling towers or hot water systems; and

(11) For which the Department of Environmental Quality determines that the prohibition under ORS 468B.130 (1) and (2) will either:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent. [1991 c.764 §5]

Note: See note under 468B.120.

### (Ground Water)

**468B.150 Definitions for ORS 468B.150 to 468B.185.** As used in ORS 448.268, 448.271, 468B.150 to 468B.185 and 536.125 to 536.169:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the Health Division under ORS 448.268.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

(4) "Fertilizer" has the meaning given that term in ORS 633.310.

(5) "Group" means the Strategic Water Management Group.

(6) "Pesticide" has the meaning given that term in ORS 634.006. [Formerly 468.691]

Note: 468B.150 to 468B.180 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468, 468A or 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468B.155 State goal to prevent ground water contamination.** The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses. [Formerly 468.692]

Note: See note under 468B.150.

**468B.160 Ground water management and use policy.** In order to achieve the goal set forth in ORS 468B.155, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in ORS 468B.155.

(3) Statewide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows. [Formerly 468.693]

Note: See note under 468B.150.

**468B.165 Ground water contaminants; maximum levels; establishing; rules.** (1) Within 90 days after receiving the recommendations of the technical advisory committee under ORS 536.137, the Environmental Quality Commission shall begin rulemaking to first adopt final rules establishing maximum measurable levels for contaminants in

ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335.

(2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.310 to 633.495 or the use of pesticides under ORS chapter 634. [Formerly 468.694]

Note: See note under 468B.150.

**468B.170 Strategic Water Management Group; staffing.** The Department of Environmental Quality shall provide staff for project oversight and the day-to-day operation of the Strategic Water Management Group for those activities authorized under ORS 468B.165 and 536.125 to 536.169, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities. [Formerly 468.695]

Note: See note under 468B.150.

**468B.175 Declaration of area of ground water concern.** (1) If, as a result of its statewide monitoring and assessment activities under ORS 468B.185, the Department of Environmental Quality confirms the presence in ground water of contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

(2) Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration. [Formerly 468.696]

Note: See note under 468B.150.

**468B.180 Declaration of ground water management area; standards.** (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its statewide monitoring and assessment activities under ORS 468B.185, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

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

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

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

(3) Before declaring a ground water management area under subsections (1) and (2) of this section, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration. [Formerly 468.698]

Note: See note under 468B.150.

**468B.185 Ground water monitoring and assessment.** (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing statewide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to identify:

(a) Areas of the state that are especially vulnerable to ground water contamination;

(b) Long-term trends in ground water quality;

(c) Ambient quality of the ground water resource of Oregon; and

(d) Any emerging ground water quality problems.

(2) The department and Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the statewide monitoring and assessment program conducted under this section to the Strategic Water Management Group for inclusion in the central repository of information about Oregon's ground water resource established pursuant to ORS 536.125. [Formerly 468.699]

## ANIMAL WASTE CONTROL

**468B.200 Legislative findings.** The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state. [Formerly 468.686]

**468B.205 Confined animal feeding operation; definition.** As used in ORS 468B.200 to 468B.220, "confined animal feeding operation" means the concentrated confined feeding or holding of animals or poultry, including, but not limited to horse, cattle, sheep or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms, in buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet

weather or which have waste water treatment works. [Formerly 468.687]

**468B.210 Maximum number of animals per facility; determination.** (1) All permits for confined animal feeding operations issued under ORS 468B.050 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.992. [Formerly 468.688]

**468B.215 Fees; permit conditions.** (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.175.

(2) A fee shall not be assessed to nor a permit required of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation in this category shall be subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state without a permit or in violation of a permit.

(3) In order to recover costs associated with increased monitoring and inspection, for the three years after a confined animal feeding operation owner or operator is assessed a civil penalty for violation of any provisions of ORS chapters 468, 468A and 468B, any rule adopted under ORS chapter 468, 468A and 468B or any permit condition, the owner or operator shall pay an annual inspection fee of \$1,000 rather than the fee established under ORS 561.175 and shall have an annual inspection for each of the three years. An owner or operator shall be considered to have been assessed a civil penalty only if the penalty has been adjudicated pursuant to ORS 468.135.

(4) The department may impose on the permit required for a confined animal feeding operation only those conditions necessary to assure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(5) A permit for a confined animal feeding operation shall not expire, but may be

revoked or modified by the director or may be terminated upon request by the permit holder. Each confined animal feeding operation under permit may be inspected by the State Department of Agriculture. [Formerly 468.689]

**468B.220 Civil penalty for violation of permit requirement.** Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of \$500 in addition to other penalties that the director may assess. [Formerly 468.690]

## OIL OR HAZARDOUS MATERIAL SPILLAGE (Generally)

**468B.300 Definitions for ORS 468B.300 to 468B.500.** As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

(1) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.

(3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

(4) "Contingency plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

(5) "Covered vessel" means a tank vessel, cargo vessel or passenger vessel.

(6) "Damages" includes damages, costs, losses, penalties or attorney fees of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil.

(7) "Discharge" means any emission other than natural seepage of oil, whether intentional or unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

(8) "Exploration facility" means a platform, vessel or other offshore facility used to explore for oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels used for stratigraphic

drilling or other operations that are not authorized or intended to drill to a producing formation.

(9) "Facility" means any structure, group of structures, equipment, pipeline or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil. "Facility" does not include:

(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;

(b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.706 to 466.835 and 466.895; or

(c) Any structure, group of structures, equipment, pipeline or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil but does not receive oil from tank vessels, barges or pipelines.

(10) "Federal on-scene coordinator" means the federal official predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses or the official designated by the lead agency to coordinate and direct removal under the National Contingency Plan.

(11) "Hazardous material" has the meaning given that term in ORS 466.605.

(12) "Maritime association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil spill response planning and spill related communications services within the state.

(13) "Maximum probable spill" means the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the same class operating on the west coast of the United States.

(14) "Navigable waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tide water.

(15) "National Contingency Plan" means the plan prepared and published under section 311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

(16) "Offshore facility" means any facility located in, on or under any of the navigable waters of the state.

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

(18) "Onshore facility" means any facility located in, on or under any land of the state, other than submerged land, that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or adjoining shorelines.

(19) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(20) "Person" has the meaning given the term in ORS 468.005.

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

(22) "Pipeline" means an onshore facility, including piping, compressors, pump stations and storage tanks, used to transport oil between facilities or between facilities and tank vessels.

(23) "Region of operation" with respect to the holder of a contingency plan means the area where the operations of the holder that require a contingency plan are located.

(24) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from the incident.

(25) "Responsible party" has the meaning given under section 1001 of the Oil Pollution Act of 1990 (P.L. 101-380).

(26) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(27) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue. "Tank vessel" does not include:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(28) "Worst case spill" means:

(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions; and

(b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [Formerly 468.780]

**468B.305 Entry of oil into waters of state prohibited; exceptions.** (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the state.

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

(a) The person discharging the oil was expressly authorized to do so by the department, having obtained a permit therefor required by ORS 468B.050; or

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

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

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

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent. [Formerly 449.157 and then 468.785]

**468B.310 Liability for violation of ORS 468B.305.** (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section. [Formerly 449.159 and then 468.790]

**468B.315 Duty to collect and remove oil; dispersal of oil.** (1) In addition to any other liability or penalty imposed by law, it shall be the obligation of any person owning

or having control over oil which enters the waters of the state in violation of ORS 468B.305 to collect and remove the oil immediately.

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

(3) The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest. [Formerly 449.161 and then 468.795]

**468B.320 Action by state; liability for state expense; order; appeal.** (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, the department is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state.

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

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

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section.

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed pursuant to ORS 183.310 to 183.550 but not as a contested case. [Formerly 449.163 and then 468.800]

**468B.325 Director's right of entry in response to oil spill; state liability for damages.** (1) The director shall have the power to enter upon any public or private property, premises or place for the purpose of controlling, collecting, removing, treating, containing or dispersing oil which reasonably appears to the director to threaten imminent and unlawful entry into the waters of the state, when the person responsible for an oil

spill or an owner of property on which oil has been spilled fails to act to restrain or to remove the oil.

(2) Damages, other than those caused by the oil spill, suffered from the actions of the director pursuant to subsection (1) of this section shall be the responsibility of the state. [Formerly 468.802]

**468B.330 Action to collect costs.** (1) If the amount of state-incurred expenses under ORS 468B.320 is not paid by the responsible person to the commission at the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the commission.

(2) Payment must be made within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court renders its decision if the decision affirms the order. [Formerly 449.165 and then 468.805]

**468B.335 Effect of federal regulations of oil spillage.** Nothing in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500 or the rules adopted thereunder shall require or prohibit any act if such requirement or prohibition is in conflict with any applicable federal law or regulation. [Formerly 449.175 and then 468.815]

#### (Contingency Planning)

**468B.340 Legislative findings and intent.** (1) The Legislative Assembly finds that:

(a) Oil spills present a serious danger to the fragile natural environment of the state.

(b) Commercial vessel activity on the navigable waters of the state is vital to the economic interests of the people of the state.

(c) Recent studies conducted in the wake of disastrous oil spills have identified the following problems in the transport and storage of oil:

(A) Gaps in regulatory oversight;

(B) Incomplete cost recovery by states;

(C) Despite research in spill cleanup technology, it is unlikely that a large percentage of oil can be recovered from a catastrophic spill;

(D) Because response efforts cannot effectively reduce the impact of oil spills, prevention is the most effective approach to oil spill management; and

(E) Comprehensive oil spill prevention demands participation by industry, citizens, environmental organizations and local, state, federal and international governments.

(2) Therefore, the Legislative Assembly declares it is the intent of ORS 468B.345 to 468B.415 to establish a program to promote:

(a) The prevention of oil spills especially on the large, navigable waters of the Columbia River, the Willamette River and the Oregon coast;

(b) Oil spill response preparedness, including the identification of actions and content required for an effective contingency plan;

(c) A consistent west coast approach to oil spill prevention and response;

(d) The establishment, coordination and duties of safety committees as provided in ORS 468B.415; and

(e) To the maximum extent possible, coordination of state programs with the programs and regulations of the United States Coast Guard and adjacent states. [1991 c.651 §2]

**468B.345 Oil spill contingency plan required to operate facility or covered vessel in state or state waters.** (1) Unless an oil spill prevention and emergency response plan has been approved by the Department of Environmental Quality and has been properly implemented, no person shall:

(a) Cause or permit the operation of an onshore facility in the state;

(b) Cause or permit the operation of an offshore facility in the state; or

(c) Cause or permit the operation of a covered vessel within the navigable waters of the state.

(2) It is not a defense to an action brought for a violation of subsection (1) of this section that the person charged believed that a current contingency plan had been approved by the department.

(3) A contingency plan shall be renewed at least once every five years. [1991 c.651 §4]

**468B.350 Standards for contingency plans.** (1) On or before July 1, 1992, the Environmental Quality Commission shall adopt by rule standards for the preparation of contingency plans for facilities and covered vessels.

(2) The rules adopted under subsection (1) of this section shall be coordinated with rules and regulations adopted by the State of Washington and the United States Coast Guard and shall require contingency plans that at a minimum meet the following standards. The plan shall:

(a) Include complete details concerning the response to oil spills of various sizes from any covered vessel or facility covered by the contingency plan.

(b) To the maximum extent practicable, be designed, in terms of personnel, materials and equipment, to:

(A) Remove oil and minimize any damage to the environment resulting from a maximum probable spill; and

(B) Remove oil and minimize any damage to the environment resulting from a worst case spill.

(c) Consider the nature and number of facilities and marine terminals in a geographic area and the resulting ability of a facility to finance a plan and pay for department review.

(d) Describe how the contingency plan relates to and is coordinated with the response plan developed by the Department of Environmental Quality under ORS 468B.495 and 468B.500 and any relevant contingency plan prepared by a cooperative, port, regional entity, the state or the Federal Government in the same area of the state covered by the plan.

(e) Provide procedures for early detection of an oil spill and timely notification of appropriate federal, state and local authorities about an oil spill in accordance with applicable state and federal law.

(f) Demonstrate ownership of or access to an emergency response communications network covering all locations of operation or transit by a covered vessel. The emergency response communications network also shall provide for immediate notification and continual emergency communications during cleanup response.

(g) State the number, training preparedness and fitness of all dedicated, pre-positioned personnel assigned to direct and implement the plan.

(h) Incorporate periodic training and drill programs to evaluate whether the personnel and equipment provided under the plan are in a state of operational readiness at all times.

(i) State the means of protecting and mitigating the effects of a spill on the environment, including fish, marine mammals and other wildlife, and insuring that implementation of the plan does not pose unacceptable risks to the public or to the environment.

(j) Provide a detailed description of equipment, training and procedures to be used by the crew of a vessel, or the crew of a tugboat involved in the operation of a nonself-propelled tank vessel, to minimize vessel damage, stop or reduce spilling from the vessel and only when appropriate and the vessel's safety is assured, contain and clean up the spilled oil.

(k) Provide arrangements for pre-positioning oil spill containment and cleanup equipment and trained personnel at strategic locations from which the personnel and equipment can be deployed to the spill site to promptly and properly remove the spilled oil.

(L) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan.

(m) Provide for disposal of recovered oil in accordance with local, state and federal laws.

(n) State the measures that have been taken to reduce the likelihood a spill will occur, including but not limited to design and operation of a vessel or facility, training of personnel, number of personnel and backup systems designed to prevent a spill.

(o) State the amount and type of equipment available to respond to a spill, where the equipment is located and the extent to which other contingency plans rely on the same equipment.

(p) If the commission has adopted rules permitting the use of dispersants, describe the circumstances and the manner for the application of dispersants in conformance with the rules of the commission. [1991 c.651 §5]

**468B.355 Submission of contingency plan; participation in maritime association; lien; liability of maritime association.** (1) A contingency plan for a facility or covered vessel shall be submitted to the Department of Environmental Quality within 12 months after the commission adopts rules under ORS 468B.350. The department may adopt a schedule for submission of an oil contingency plan within the 12-month period. The schedule for the Columbia River shall be coordinated with the State of Washington. The department may adopt an alternative schedule for the Oregon coast and the Willamette River.

(2) The contingency plan for a facility shall be submitted by the owner or operator of the facility or by a qualified oil spill response cooperative in which the facility owner or operator is a participating member.

(3) The contingency plan for a tank vessel shall be submitted by:

(a) The owner or operator of the tank vessel;

(b) The owner or operator of the facility at which the vessel will be loading or unloading its cargo; or

(c) A qualified oil spill response cooperative in which the tank vessel owner or operator is a participating member.

(4) Subject to conditions imposed by the department, the contingency plan for a tank vessel, if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank vessels of a particular class that will be loading or unloading cargo at the facility.

(5) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(6) A person that has contracted with a facility or covered vessel to provide containment and cleanup services and that meets the standards established by the commission under ORS 468B.350 may submit the contingency plan for any facility or covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(7) The requirements of submitting a contingency plan under this section may be satisfied by a covered vessel by submission of proof of assessment participation by the vessel in a maritime association. Subject to conditions imposed by the department, the association may submit a single plan for more than one facility or covered vessel or may submit a single plan providing contingencies to respond for different classes of covered vessels.

(8) A contingency plan prepared for an agency of the Federal Government or an adjacent state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the Environmental Quality Commission may be accepted as a plan under ORS 468B.345. The commission shall assure that to the greatest extent possible, requirements for a contingency plan under ORS 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

(9) Covered vessels may satisfy the requirements of submitting a contingency plan under this section through proof of current assessment participation in an approved plan maintained with the department by a maritime association.

(10) A maritime association may submit a contingency plan for a cooperative group of covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the navigable waters of the state if, upon entering such waters, the vessel pays

the established assessment for participation in the approved plan maintained by the association.

(11) A maritime association shall have a lien on the responsible vessel if the vessel owner or operator fails to remit any regular operating assessments and shall further have a lien for the recovery for any direct costs provided to or for the vessel by the maritime association for oil spill response or spill related communications services. The lien shall be enforced in accordance with applicable law.

(12) Obligations incurred by a maritime association and any other liabilities or claims against the association shall be enforced only against the assets of the association, and no liability for the debts or action of the association exists against either the State of Oregon or any other subdivision or instrumentality thereof, or against any member, officer, employee or agent of the association in an individual or representative capacity.

(13) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the members of the association, its officers, agents or employees, nor the business entities by whom the members are regularly employed, may be held individually responsible for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime.

(14) Assessment participation in a maritime association does not constitute a defense to liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment participation shall not relieve a covered vessel from complying with those portions of the approved maritime association contingency plan that may require vessel specific oil spill response equipment, training or capabilities for that vessel. [1991 c.651 §6]

**468B.360 Review of contingency plan.** In reviewing the contingency plan required by ORS 468B.345, the Department of Environmental Quality shall consider at least the following factors:

(1) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(2) The nature and amount of vessel traffic within the area covered by the plan;

(3) The volume and type of oil being transported within the area covered by the plan;

(4) The existence of navigational hazards within the area covered by the plan;

(5) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(6) The sensitivity of fisheries and wild-life and other natural resources within the area covered by the plan;

(7) Relevant information on previous spills contained in on-scene coordinator reports covered by the plan; and

(8) The extent to which reasonable, cost-effective measures to reduce the likelihood that a spill will occur have been incorporated into the plan. [1991 c.651 §7]

**468B.365 Plan approval; change affecting plan; certificate of approval.** (1) The department shall approve a contingency plan only if it determines that the plan meets the requirements of ORS 468B.345 to 468B.360 and:

(a) The covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; and

(b) If implemented, the plan is capable, to the maximum extent practicable in terms of personnel, materials and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(2) An owner or operator of a covered vessel or facility shall notify the department in writing immediately of any significant change affecting the contingency plan, including changes in any factor set forth in this section or in rules adopted by the Environmental Quality Commission. The department may require the owner or operator to update a contingency plan as a result of these changes.

(3) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, after notifying the department, equipment, materials or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or return the transferred equipment, materials and personnel as soon as feasible.

(4) The department may attach any reasonable term or condition to its approval or modification of a contingency plan that the department determines is necessary to insure that the applicant:

(a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent, contain, clean up and mitigate

potential oil discharges from the facility or tank vessel;

(b) Maintains personnel levels sufficient to carry out emergency operations; and

(c) Complies with the contingency plan.

(5) The contingency plan must provide for the use by the applicant of the best technology available at the time the contingency plan was submitted or renewed.

(6) The department may require an applicant or a holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including:

(a) Periodic training;

(b) Response team exercises; and

(c) Verification of access to inventories of equipment, supplies and personnel identified as available in the approved contingency plan.

(7) The department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk of oil discharges from the facility or tank vessel for which the plan is submitted or being modified.

(8) Before the department approves or modifies a contingency plan required under ORS 468B.345, the department shall provide a copy of the contingency plan to the State Department of Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Development for review. The agencies shall review the plan according to procedures and time limits established by rule of the Environmental Quality Commission.

(9) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the plan has been approved. The certificate shall include the name of the facility or tank vessel for which the certificate is issued, the effective date of the plan and the date by which the plan must be submitted for renewal.

(10) The approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan or constitute a defense to liability imposed under ORS chapters 468, 468A and 468B or any other state law. [1991 c.651 §8]

**468B.370 Determination of adequacy of plan; practice drills.** (1)(a) The Environmental Quality Commission by rule shall

adopt procedures to determine the adequacy of a contingency plan approved under ORS 468B.365.

(b) The rules shall require random practice drills without prior notice to test the adequacy of the responding entities. The rules may provide for unannounced practice drills of an individual contingency plan.

(c) The rules may require the contingency plan holder to publish a report on the drills. This report shall include an assessment of response time and available equipment and personnel compared to those listed in the contingency plan relying on the responding entities and requirements, if any, for changes in the plans or their implementation. The department shall review the report and assess the adequacy of the drill.

(d) The department may require additional drills and changes in arrangements for implementing the approved plan that are necessary to insure the effective implementation of the plan.

(2) The Environmental Quality Commission by rule may require any tank vessel carrying oil as cargo in the navigable waters of the state to:

(a) Place booms, in-water sensors or other detection equipment around tank vessels during transfers of oil; and

(b) Submit to the department evidence of a structural and mechanical integrity inspection of the tank vessel equipment and hull structures.

(3) A tank vessel that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of subsection (1) of this section if the tank vessel has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department. [1991 c.651 §9]

**468B.375 Inspection of facilities and vessels; coordination with State of Washington.** (1) In addition to any other right of access or inspection conferred upon the department by ORS 468B.370, the department may at reasonable times and in a safe manner enter and inspect facilities and tank vessels in order to insure compliance with the provisions of ORS 468B.345 to 468B.415.

(2) The department shall coordinate with the State of Washington in the review of the tank vessel structural integrity inspection programs conducted by the United States Coast Guard and other federal agencies to determine whether the programs as actually operated by the federal agencies adequately protect the navigable waters of the state. If the department determines that tank vessel

inspection programs conducted by the federal agencies are not adequate to protect the navigable waters of the state, the department shall establish a state tank vessel inspection program. [1991 c.651 §10]

**468B.380 Tank vessel inspection program.** If the department determines under ORS 468B.375 that a state tank vessel inspection program is necessary, the Environmental Quality Commission shall adopt rules necessary to enable the department to implement the state tank vessel inspection program. [1991 c.651 §11]

**468B.385 Modification of approval of contingency plan; revocation of approval; violation.** (1) Upon request of a plan holder or on the department's own initiative, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of the facility or tank vessel necessitating an amended or supplemental plan, or that the operator's discharge experience demonstrates a necessity for modification.

(2) The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that:

(a) Approval was obtained by fraud or misrepresentation;

(b) The operator does not have access to the quality or quantity of resources identified in the plan;

(c) A term or condition of approval or modification has been violated; or

(d) The plan holder is not in compliance with the plan and the deficiency materially affects the plan holder's response capability.

(3) Failure of a holder of an approved or modified contingency plan to comply with the plan or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to 468B.415 for purposes of ORS 466.890, 468.140, 468.992 and any other applicable law.

(4) If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under ORS 466.890 and 468.140.

(5) In order to be considered in compliance with a contingency plan, the plan holder must:

(a) Establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(b) Have access to and have on hand the quantity and quality of equipment, personnel and other resources identified as being accessible or on hand in the plan;

(c) Fulfill the assurances espoused in the plan in the manner described in the plan;

(d) Comply with terms and conditions attached to the plan by the department under ORS 468B.345 to 468B.380; and

(e) Successfully demonstrate the ability to carry out the plan when required by the department under ORS 468B.370. [1991 c.651 §12]

**468B.390 Compliance with Federal Oil Pollution Act of 1990.** (1) No person shall cause or permit the operation of a facility in the state unless the person has proof of compliance with Section 1016 of the Federal Oil Pollution Act of 1990 (P.L. 101-380), if such compliance is required by federal law.

(2) No person may cause or permit the operation of an offshore exploration or production facility in the state unless the person has proof of compliance with Section 1016 of the Federal Oil Pollution Act of 1990 (P.L. 101-380).

(3) Except for a barge that does not carry oil as cargo or fuel or a spill response vessel or barge, the owner of any vessel over 300 gross tons shall have proof of financial responsibility for the following vessels:

(a) For tank vessels over 300 gross tons:

(A) \$1,200 per gross ton or \$2 million for vessels of 3,000 gross tons or less, whichever is greater; and

(B) \$1,200 per gross ton or \$10 million for vessels over 3,000 gross tons, whichever is greater; or

(b) For any other covered vessel over 300 gross tons, \$600 per gross ton or \$500,000, whichever is greater.

(4) On or before January 1, 1992, the department shall enter into an agreement with the United States Coast Guard to receive notification of noncompliance with the provisions of this section. [1991 c.651 §13]

**468B.395 Department duties.** The Department of Environmental Quality shall:

(1) In cooperation with other natural resource agencies, develop a method of natural resource valuation that fully incorporates nonmarket and market values in assessing damages resulting from oil discharges;

(2) Work with other potentially affected states to develop a joint oil discharge prevention education program for operators of

fishing vessels, ferries, ports, cruise ships and marinas;

(3) Review the adequacy of and make recommendations for improvements in equipment, operating procedures and the appropriateness of west coast locations for transfer of oil;

(4) In cooperation with industry and the United States Coast Guard, develop local programs to provide oil discharge response training to fishing boat operators and marinas;

(5) Adopt an incident command system to enhance the department's ability to manage responses to a major oil discharge;

(6) Coordinate oil spill research with other west coast states and develop a framework for information sharing and combined funding of research projects;

(7) Annually review and revise the inter-agency response plan for oil spills in certain navigable waters of the state developed under ORS 468B.495 and 468B.500;

(8) On the Oregon coast, assist affected local agencies and industry groups to complete an inventory of existing plans and resources and to identify or establish an organization to coordinate oil spill contingency planning as part of the alternative schedule adopted for the Oregon coast described in ORS 468B.355 (1);

(9) Where adequate resources do not exist to prevent, contain, clean up and mitigate potential oil spills, assist local agencies and industry groups to secure necessary funds and equipment; and

(10) In its annual review and revision of the plan developed under ORS 468B.495 and 468B.500:

(a) Consult with all affected local, state and federal agencies, municipal and community officials and representatives of industry;

(b) Provide training in the use of the plan; and

(c) Conduct spill exercises to test the adequacy of the plan. [1991 c.651 §14]

**468B.400 Wildlife rescue training program.** The State Department of Fish and Wildlife shall develop and implement a program to provide wildlife rescue training for volunteers. In developing the program, the department shall:

(1) Work with agencies responsible for wildlife protection in other west coast states;

(2) Rely upon the oil wildlife rehabilitation plan developed under ORS 468B.495; and

(3) Take such action as is required for reimbursement in accordance with the pro-

visions of the Federal Oil Pollution Act of 1990 (P.L. 101-380). [1991 c.651 §15]

**468B.405 Fees; disposition.** (1) The Department of Environmental Quality shall assess fees on covered vessels and offshore and onshore facilities to recover the costs of reviewing the plans and conducting the inspections, exercises, training and activities required under ORS 468B.345 to 468B.400.

(2) The fees assessed by the department on cargo vessels and nonself-propelled tank vessels under subsection (1) of this section shall be:

- (a) On all cargo vessels, \$25 per trip.
- (b) On all nonself-propelled tank vessels, \$28 per trip.

(3) As used in this subsection, "trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of Oregon. For the purpose of assessing trip fees under this section, self-propelled tank vessels transiting the navigable waters of the state in ballast shall be considered cargo vessels.

(4) The Environmental Quality Commission shall establish by rule a schedule of fees to be assessed under subsection (1) of this section on offshore facilities, onshore facilities and on self-propelled tank vessels in an amount not to exceed \$153,600 per year for all such facilities and vessels.

(5) Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established under ORS 468B.410. [1991 c.651 §17]

**468B.410 Oil Spill Prevention Fund; uses.** (1) The Oil Spill Prevention Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys received by the Department of Environmental Quality for the purpose of oil and hazardous material spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil Spill Prevention Fund in the manner prescribed by law.

(3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in subsection (4) of this section.

(4) The Oil Spill Prevention Fund may be used by the Department of Environmental Quality to:

- (a) Pay all costs of the department incurred to:

- (A) Review the contingency plans submitted under ORS 468B.360;

- (B) Conduct training, response exercises, inspection and tests in order to verify equipment inventories and ability to prevent and respond to oil release emergencies and to undertake other activities intended to verify or establish the preparedness of the state, a municipality or a party required by ORS 468B.345 to 468B.415 to have an approved contingency plan to act in accordance with that plan; and

- (C) Verify or establish proof of financial responsibility required by ORS 468B.390.

- (b) Review and revise the oil spill response plan required by ORS 468B.495 and 468B.500. [1991 c.651 §18]

**468B.415 Oregon coast safety committee; subcommittees.** (1) There is established a safety committee for the Oregon coast. A subcommittee shall be appointed for Coos Bay and Yaquina Bay. In addition, the department also shall consult with the State of Washington to establish a joint regional safety committee for the Columbia River and may appoint a subcommittee for the Willamette River. The safety committee shall operate under the direction of the Ports Division of the Economic Development Department pursuant to ORS 777.817.

(2) Each committee shall consist of not more than 11 members, appointed by the Director of the Economic Development Department in consultation with the Director of the Department of Environmental Quality. At a minimum, the following groups should be considered for representation on the committees:

- (a) Local port authorities;
- (b) Tank vessel operators;
- (c) Tug and barge operators;
- (d) Pilots' organizations;
- (e) Cargo vessel operators;
- (f) Commercial fishermen;
- (g) Pleasure boat operators;
- (h) Environmental organizations;
- (i) Local planning authorities; and
- (j) The public at large.

(3) The members shall be appointed to the safety committee for a term of four years. The Director of the Economic Development Department in consultation with the Director of the Department of Environmental Quality shall appoint the chairperson of each committee to serve a term of four years.

(4) A majority of the members shall constitute a quorum for the transaction of business.

(5) The duties of the safety committees shall include but are not limited to:

(a) Planning for safe navigation and operation of covered vessels within each harbor;

(b) Developing safety plans;

(c) Reviewing and making recommendations to the Oregon Board of Maritime Pilots, ports and the United States Coast Guard on the following:

(A) Pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(B) Reducing deadweight tonnage specifications for pilotage service for vessels carrying oil;

(C) Guidelines for tugs on tank vessels for tow cable size and material specifications, cable maintenance practices, cable handling equipment design and barge recovery plan preparation;

(D) Establishing regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters;

(E) Requiring towing systems and plans on all tank vessels carrying oil; and

(F) The feasibility of establishing a pilot program for a near-miss reporting system that is coordinated with vessel inspection information compiled as a result of inspections under ORS 468B.370 and 468B.375.

(6) Members of the safety committees established under this section are entitled to compensation and expenses as provided in ORS 292.495.

(7) The Department of Environmental Quality shall serve in an advisory capacity to the safety committees and review the safety plans. In addition, the United States Coast Guard shall be invited to also act in an advisory capacity to the safety committees and may participate in the review of safety plans. [1991 c.651 §19]

**468B.420 Committee recommendations.** If a safety committee established under ORS 468B.415 determines that the United States Coast Guard has not acted on the recommendations submitted under ORS 468B.415 (5)(c)(C) and (E) in a timely and adequate manner, the committee may recommend to the port that the port adopt rules to implement the committee's recommendations under ORS 468B.415 (5)(c)(C) and (E). [1991 c.651 §19a]

**Note:** 468B.420 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapters 468, 468A and 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 23, chapter 651, Oregon Laws 1991, provides:

**Sec. 23.** In cooperation with the State Fire Marshal, the Department of Environmental Quality shall conduct a study regarding whether the provisions of this Act also should apply to the hazardous material spills in the navigable waters of the state. As used in this section, "hazardous material" has the meaning given in ORS 466.605. [1991 c.651 §23]

**468B.425 Exemption from liability for removal costs or damages.** (1) Notwithstanding any other provision of law, a person is not liable for removal costs or damages that result from action taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by a state official responsible for oil spill response.

(2) Subsection (1) of this section does not apply:

(a) To a responsible party;

(b) With respect to personal injury or wrongful death; or

(c) If the person is grossly negligent or engages in willful misconduct.

(3) A responsible party is liable for any removal costs or damages for which a person is relieved of under subsection (1) this section.

(4) Nothing in this section affects the liability of a responsible party for oil spill response under ORS 468B.300 to 468B.500. [1991 c.606 §3]

#### (Willful or Negligent Discharge)

**468B.450 Willful or negligent discharge of oil; civil penalty; authority of director to mitigate.** (1) Any person who willfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of ORS 468B.450 to 468B.460, and such other considerations as the director considers appropriate. The penalty provided for in this subsection shall be imposed and enforced in accordance with ORS 468.135.

(2) The director may, upon written application therefor received within 15 days after receipt of notice under ORS 468.135, and when considered in the best interest of this state in carrying out the purposes of ORS chapters 468, 468A and 468B, remit or mitigate any penalty provided for in subsection

(1) of this section or discontinue any prosecution to recover the same upon such terms as the director in the director's discretion considers proper. [Formerly 468.817]

**468B.455 Oil Spillage Control Fund; source; use.** (1) There is established an Oil Spillage Control Fund within the General Fund. This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control Fund.

(2) All penalties recovered under ORS 468B.450 (1) shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468B.060.

(3) With the approval of the commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.776, and earnings from such investment shall be credited to the fund.

(4) The Oil Spillage Control Fund shall not be used for any purpose other than that for which the fund was created. [Formerly 468.819]

**468B.460 Rules.** The commission shall adopt rules necessary to carry out the provisions of ORS 468B.450 and 468B.455. [Formerly 468.821]

### (Shipping)

**468B.475 Legislative findings; need for evidence of financial assurance for ships transporting oil.** The Legislative Assembly finds that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state. Therefore, it is the intent of ORS 468B.475 to 468B.490 to establish financial assurance for ships that transport oil and other hazardous material in the waters of the state. [Formerly 468.823]

**468B.480 Ships that must establish evidence of financial assurance; amount.** (1) Any ship over 300 gross tons, that transports oil in bulk as cargo, using any port or place in this state or the waters of the state shall establish, under rules adopted by the Environmental Quality Commission, evidence of financial assurance in the amount of the greater of:

- (a) \$1 million; or
- (b) \$150 per gross ton of the ship.

(2) The financial assurance established under subsection (1) of this section shall meet the liability to the State of Oregon for:

(a) Actual costs for removal of spills of oil;

(b) Civil penalties and fines imposed in connection with the spill of oil; and

(c) Natural resource damages. [Formerly 468.825]

**468B.485 Methods of establishing financial assurance.** (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

- (a) Evidence of insurance;
- (b) Surety bond;
- (c) Qualifications as a self-insurer; or
- (d) Any other evidence of financial assurance approved by the commission.

(2) Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(3) Documentation of the financial assurance shall be kept on the ship or filed with the department. The owner or operator of any other ship shall maintain on the ship a certificate issued by the United States Coast Guard evidencing compliance with the requirements of section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. [Formerly 468.827]

**468B.490 Reporting ships not in compliance.** The maritime pilot piloting a ship subject to the provisions of ORS 468B.480 shall report to the Department of Environmental Quality any ship owner or operator having control over oil who does not provide financial assurance as required under ORS 468B.480 and 468B.485. [Formerly 468.829]

**468B.495 Interagency response plan for oil or hazardous material spills in certain waters.** (1) The Department of Environmental Quality shall develop an integrated, interagency response plan for oil or hazardous material spills in the Columbia River, the Willamette River up to Willamette Falls and the coastal waters and estuaries of the state. In developing the response plan, the department shall work with all affected local, state and federal agencies and with any volunteer group interested in participating in oil or hazardous material spill response.

(2) The plan developed under subsection (1) of this section shall be consistent to the extent practicable with the plan for a state-wide hazardous material emergency response system established by the State Fire Marshal under ORS 453.374. [Formerly 468.831]

**468B.500 Contents of plan.** The plan developed under ORS 468B.495 shall include at a minimum:

(1) A compilation of maps and information about the waters of the state including

shorelines, access points, critical habitats, shoreline sensitivity, disposal sites, ownership and jurisdictional control over each area. This portion of the plan shall use and expand the computer mapping system currently being developed by the Department of Energy.

(2) An index of federal, state and local agency personnel, private contractors, volunteers, labor employment centers, wildlife rehabilitation centers and other sources of persons and equipment available to respond in the event of an oil or hazardous material spill. The index shall include information necessary to contact the organizations and persons in the index in the event of an oil or hazardous material spill.

(3) A spill response strategy. This strategy shall include methods for discovery of the spill, notification of agencies, organizations and individuals in the index, evaluation and initiation of response, containment and countermeasures and cleanup. The spill response strategy shall also include provisions for documenting the response measures taken and procedures for cost recovery.

(4) Provisions for coordinating Oregon's oil or hazardous material spill response procedures for coastal and interstate waters with the states of Washington and California. To the maximum extent practicable, inter-

state cooperation shall include but need not be limited to coordination of:

(a) Development of coastal and ocean information systems with those of adjacent states; and

(b) Oregon's oil or hazardous material spill response, damage assessment and cost recovery procedures for coastal or interstate waters with those developed by adjacent states. [Formerly 468.833]

### PENALTIES

**468B.990 Penalties.** (1) Willful or negligent violation of ORS 468B.025 or 468B.050 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Violation of ORS 468B.085 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(3) Violation of ORS 454.425 or 468B.055 is a Class A misdemeanor.

(4) Violation of ORS 468B.080 is a Class A misdemeanor.

(5) Intentional or negligent violation of ORS 468B.305 (1) is a Class A misdemeanor. [Formerly 468.990]