

Chapter 469

1991 EDITION

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POLICY

469.010 Legislative findings. The Legislative Assembly finds and declares that:

(1) Continued growth in demand for nonrenewable energy forms poses a serious and immediate, as well as future, problem. It is essential that future generations not be left a legacy of vanished or depleted resources, resulting in massive environmental, social and financial impact.

(2) It is the goal of Oregon to promote the efficient use of energy resources and to develop permanently sustainable energy resources. The need exists for comprehensive state leadership in energy production, distribution and utilization. It is, therefore, the policy of Oregon:

(a) That development and use of a diverse array of permanently sustainable energy resources be encouraged utilizing to the highest degree possible the private sector of our free enterprise system.

(b) That through state government example and other effective communications, energy conservation and elimination of wasteful and uneconomical uses of energy and materials be promoted. This conservation must include, but not be limited to, resource recovery and materials recycling.

(c) That the basic human needs of every citizen, present and future, shall be given priority in the allocation of energy resources, commensurate with perpetuation of a free and productive economy with special attention to the preservation and enhancement of environmental quality.

(d) That state government assist every citizen and industry in adjusting to a diminished availability of energy.

(e) That energy-efficient modes of transportation for people and goods shall be encouraged, while energy-inefficient modes of transportation shall be discouraged.

(f) That cost-effectiveness be considered in state agency decision-making relating to energy sources, facilities or conservation, and that cost-effectiveness be considered in all agency decision-making relating to energy facilities.

(g) That state government shall provide a source of impartial and objective information in order that this energy policy may be enhanced. [1975 c.606 §1; 1979 c.723 §1]

DEPARTMENT OF ENERGY

469.020 Definitions. As used in ORS 176.820, 469.010 to 469.225, 469.860 (3), 469.880 to 469.895, 469.900 (3), 469.990, 469.992, 757.710 and 757.720, unless the context requires otherwise:

(1) "Agency" includes a department or other agency of state government, city, county, municipal corporation, political subdivision, port, people's utility district, joint operating agency and electric cooperative.

(2) "Coal supplier" means any person engaged in the wholesale distribution in this state of coal intended for use in this state for an energy facility.

(3) "Cost-effective" means that an energy resource, facility or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility or conservation measure. Cost comparison under this definition shall include but not be limited to:

(a) Cost escalations and future availability of fuels;

(b) Waste disposal and decommissioning costs;

(c) Transmission and distribution costs;

(d) Geographic, climatic and other differences in the state; and

(e) Environmental impact.

(4) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(5) "Department" means the Department of Energy created under ORS 469.030.

(6) "Director" means the Director of the Department of Energy.

(7) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of 25,000 kilowatts or more, including but not limited to a thermal power plant, hydropower plant or combustion turbine power plant.

(b) A nuclear installation as defined in ORS 469.300.

(c) A high voltage transmission line of more than 10 miles in length with a capacity in excess of 230,000 volts, to be constructed in more than one political subdivision in this state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing 25,000 kilowatts or more of power.

(e) A pipeline that is:

(A) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a de-

rivative thereof, liquified natural gas or other fossil energy resource.

(B) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas.

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(f) A synthetic fuel plant which converts a natural resource, including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of 2×10^6 Btu of heat a day.

(8) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An energy generation area for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be as defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(9) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(10) "Nominal electric generating capacity" means the nameplate rating of the electrical generator proposed to be included in an industrial or energy facility, except in the case of a geothermal facility where the facility demonstrates to the council, through a power sales contract or other objective means, that the electrical generating capacity available for delivery at the point the facility is connected to the transmission system will be less than the nameplate rating.

(11) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(12) "Petroleum supplier" means a petroleum refiner in this state, or any person en-

gaged in the wholesale distribution of crude petroleum or derivative thereof or of propane in this state.

(13) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structure, road and rail access, pipeline basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility. "Related or supporting facilities" does not include geothermal reservoirs, geothermal production, injection or monitoring wells or geothermal wellhead equipment or pumps.

(14) "Site" means a proposed location of an energy facility, and its related or supporting facilities.

(15) "Thermal power plant" has the meaning given that term by ORS 469.300.

(16) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas. [1975 c.606 §2; 1977 c.794 §1; 1979 c.723 §2; 1981 c.629 §1; 1981 c.792 §1; 1991 c.480 §3]

469.030 Department of Energy; creation; duties. (1) There is created the Department of Energy.

(2) The department shall:

(a) Be the central repository within the state government for the collection of data on energy resources;

(b) Endeavor to utilize all public and private sources to inform and educate the public about energy problems and ways in which the public can conserve energy resources;

(c) Engage in research, but whenever possible, contract with appropriate public or private agencies and dispense funds for research projects and other services related to energy resources, except that the department shall endeavor to avoid duplication of research whether completed or in progress;

(d) Qualify for, accept and disburse or utilize any private or federal moneys or services available for the administration of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.580, 469.990, 757.710 and 757.720;

(e) Administer federal and state energy allocation and conservation programs and energy research and development programs and apply for and receive available funds therefor;

(f) Be a clearinghouse for energy research to which all agencies shall send information on all energy related research;

(g) Prepare contingent energy programs to include all forms of energy not otherwise provided pursuant to ORS 757.710 and 757.720;

(h) Maintain an inventory of energy research projects in Oregon and the results thereof;

(i) Collect, compile and analyze energy statistics, data and information;

(j) Contract with public and private agencies for energy activities consistent with ORS 469.010 and this section; and

(k) Upon request of the governing body of any affected jurisdiction, coordinate a public review of a proposed transmission line according to the provisions of ORS 469.445. [1975 c.606 §4; 1981 c.792 §2; 1987 c.200 §4]

469.040 Director; duties; appointment.

(1) The department shall be under the supervision of the director who shall:

(a) Supervise the day-to-day functions of the department;

(b) Supervise and facilitate the work and research on energy facility siting applications at the direction of the Energy Facility Siting Council;

(c) Hire, assign, reassign and coordinate personnel of the department, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law; and

(d) Adopt rules and issue orders to carry out the duties of the director and the department in accordance with ORS 183.310 to 183.550 and the policy stated in ORS 469.010.

(2) The director may delegate to any officer or employee in the management service of the department the exercise and discharge in the director's name of any power, duty or function of whatever character vested in the director by law. The official act of any person acting in the director's name and by the director's authority shall be considered an official act of the director.

(3) The director shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The director shall serve at the pleasure of the Governor. [1975 c.606 §5; 1985 c.593 §1]

469.050 Limitations on employment of past director; sanctions. (1) A person who

has been director shall not, within two years after the person ceases to be the director, be an employee of:

(a) An owner or operator of an energy facility;

(b) An applicant for a site certificate; or

(c) Any person who engages in the sale or manufacture of any energy resource or of any major component of an energy facility in Oregon.

(2) Employment of any individual in violation of paragraph (a) or (b) of subsection (1) of this section shall be grounds for the revocation of any license issued by this state or any agency thereof and held by the person that employs such individual. [1975 c.606 §§6, 7]

469.060 Comprehensive energy plan; energy pricing structures research. (1)

Every odd-numbered year, the department shall transmit to the Governor and the Legislative Assembly a comprehensive plan including comments on the energy forecasts of the utilities and on the department's independent analysis and evaluation. The plan shall be designed to identify emerging trends related to energy supply, need and conservation and public health and safety factors, to estimate the level of statewide energy need for each year in the forthcoming 5-year period and for the 10th and 20th year following issuance of the plan.

(2) Notwithstanding ORS 469.030 (2)(c), the department shall conduct research into all energy pricing structures, relating price to consumption and considering the interchangeability of the various energy forms. In conducting the research, the department shall consider matters including, but not limited to, price elasticity, cross elasticity of demand and energy rate structures, as well as the rate structure studies of the Public Utility Commission. This research shall be submitted biennially to the Legislative Assembly and the Governor as a part of the plan described in subsection (1) of this section.

(3) Consistent with the legislatively approved budget, the plan described in subsections (1) and (2) of this section shall include, but not be limited to:

(a) An inventory of existing energy resources available to Oregon.

(b) An estimation of the potential contribution that various energy resources could make in satisfying Oregon's future energy needs consistent with the policy stated in ORS 469.010 and where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(c) Recommendations for state and local governments to assist in the development and maximum use of cost-effective conservation and renewable resources, consistent with the policy stated in ORS 469.010 and, where appropriate, the energy plan and fish and wildlife program adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to P.L. 96-501.

(d) Recommendations for proposed research, development and demonstration projects and programs necessary to evaluate the availability and cost-effectiveness of conservation and renewable resources in Oregon.

(e) A strategy for reducing the emission of gases that contribute to global warming. The purpose of the strategy shall be to reduce these emissions by at least 20 percent below 1988 levels by 2005 by giving priority to the use of conservation, renewable resources and alternative fuels. The department shall develop the strategy in conjunction with the Department of Transportation, the Land Conservation and Development Commission, the Environmental Quality Commission, the Public Utility Commission, the State Climatologist at the Department of Atmospheric Sciences at Oregon State University and the Pacific Northwest Electric Power and Conservation Planning Council.

(4) The plan described in this section shall be compiled by organizing and refining data acquired by the department in the performance of its existing duties.

(5) Prior to issuing its final plan, the department shall review the status of its global warming strategy with the Energy Policy Review Committee. [1975 c.606 §8; 1983 c.273 §1; 1989 c.466 §1]

469.070 Energy forecast; contents. (1) At least biennially the department shall issue a forecast on the energy situation as it affects Oregon. The forecast shall include, but not be limited to, an estimate of:

(a) Energy demand and the resources available to meet that demand; and

(b) Impacts of conservation and new technology, increased efficiency of present energy facilities, additions to present facilities, and construction of new facilities, on the availability of energy to Oregon.

(2) The forecast shall include summary forecasts for:

(a) Each of the first five years immediately following issuance of the forecast; and

(b) The 10th and 20th year following the issuance of the forecast.

(3) The forecast shall identify all major components of demand and any anticipated increase in demand, including but not limited to population, commercial, agricultural and industrial growth.

(4) The department, by July 1 of each even-numbered year, shall issue a statement setting forth the methodology and assumptions it intends to employ in preparing the forthcoming forecast, any changes in the preceding forecast, and an outline of the contents of the biennial plan to be published by the department on the following January 1, and not later than the 45th day thereafter, commence public hearings thereon.

(5) All state agencies, energy suppliers, owners of energy facilities, and other persons whom the director believes have an interest in the subject or who have applied to the director therefor, shall be supplied a copy of the statement issued by the department on July 1 of each even-numbered year. The director may charge a reasonable fee for a copy of this statement not to exceed the cost thereof.

(6) After the public hearings required by subsection (4) of this section, but not later than January 1 following the issuance of its statement, the department shall issue the forecast required by subsection (1) of this section.

(7) The forecast shall be included within the plan provided for in ORS 469.060 (1). [1975 c.606 §9; 1977 c.794 §3; 1983 c.273 §2]

469.080 Energy resource information; subpoena power; depositions; limitations on obtaining information; protection from abuse. (1) The director may obtain all necessary information from producers, suppliers and consumers of energy resources within Oregon, and from political subdivisions in this state, as necessary to carry out ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.580, 469.990, 469.992, 757.710 and 757.720. Such information may include, but not be limited to:

(a) Sales volume;

(b) Forecasts of energy resource requirements;

(c) Inventory of energy resources; and

(d) Local distribution patterns of information under paragraphs (a) to (c) of this subsection.

(2) In obtaining information under subsection (1) of this section, the director with the written consent of the Governor may subpoena witnesses, material and relevant books, papers, accounts, records and memoranda, administer oaths, and may cause the depositions of persons residing within or without Oregon to be taken in the manner

prescribed for depositions in civil actions in circuit courts, to obtain information relevant to energy resources.

(3) In obtaining information under this section the director:

(a) Shall avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state or local regulatory authority that is available to the director for such study; and

(b) Shall cause reporting procedures, including forms, to conform to existing requirements of federal, state and local regulatory authorities.

(4) Any person who is served with a subpoena to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or the documents or records as provided in ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.580, 469.990, 469.992, 757.710 and 757.720, may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C. [1975 c.606 §18; 1977 c.358 §9; 1977 c.794 §4a; 1979 c.284 §154]

469.085 Procedure for imposing civil penalties. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall be imposed as provided in ORS 183.090.

(2) Notwithstanding ORS 183.090 (2), the notice to the person against whom a civil penalty is to be imposed shall reflect a complete statement of the consideration given to the factors listed in subsection (7) of this section. The notice may be served by either the director or the council.

(3) Notwithstanding ORS 183.090, if a hearing is not requested or if the person requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(4) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the director or the council under this section may be joined by the director or the council with any other action against the same person under this chapter.

(5) Any civil penalty recovered under this section shall be paid into the General Fund.

(6) The director or the council shall adopt by rule a schedule of the amount of civil penalty that may be imposed for a particular violation.

(7) In imposing a penalty under ORS 469.992, the director or the council shall consider:

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

(b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged violation;

(c) The impact of the violation on public health and safety or public interests in fishery, navigation and recreation;

(d) Any other factors determined by the director or the council to be relevant; and

(e) The alleged violator's cooperativeness and effort to correct the violation.

(8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and conditions as the director or council determines to be proper. Upon the request of the person incurring the penalty, the director or council shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [1991 c.480 §2; 1991 c.734 §106]

469.090 Confidentiality of information submitted under ORS 469.080. (1) Information furnished under ORS 469.080 shall be confidential and maintained as such, if so requested by the person providing the information, if the information meets one of the following requirements:

(a) The information is proprietary in nature; or

(b) The information consists of geological and geophysical information and data, including maps, concerning oil, gas or geothermal resource wells.

(2) Nothing in this section prohibits the use of confidential information to prepare statistics or other general data for publication, so presented as to prevent identification of particular persons. [1975 c.606 §19]

469.095 Department of Energy to certify producers of gasohol for tax exemption purposes. The department shall provide the certifications required by ORS 307.705, 316.849 and 317.392. As soon as is practicable, the department shall adopt the procedures and rules it considers necessary to provide such certifications. [1979 c.561 §9]

Note: 469.095 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 469 but was not added to and made a part of any specific series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.097 Duty to monitor industry progress in energy conservation. The department shall to the extent permitted by its resources monitor industry progress in achieving energy conservation. [1981 c.865 §3; 1987 c.158 §96]

469.100 Agency consideration of legislative policy; report to Energy Policy Review Committee. (1) All agencies shall consider the policy stated in ORS 469.010 in adopting or modifying their rules and policies.

(2) All agencies shall review their rules and policies to determine their consistency with the policy stated in ORS 469.010.

(3)(a) On July 1, 1976, and annually thereafter, each state agency shall submit to the Energy Policy Review Committee created under ORS 469.130 a report that identifies the rules and policies of the agency that are consistent and inconsistent with the policy stated in ORS 469.010 and that indicates the reasons for the inconsistencies. The report shall be submitted in such form as the committee may require.

(b) As used in this subsection, "state agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or to issue orders, except those in the legislative and judicial branches. [1975 c.606 §3]

469.110 Dealings with Federal Government; intervention by department in agency action. (1) As to any matter involving the Federal Government, its departments or agencies, which is within the scope of the power and duties of the department, the department may represent its interest or, upon request, may represent the interest of any county, city, state agency, special district or owner or operator of any energy facility.

(2) The department may intervene in any proceeding undertaken by an agency for the purpose of expressing its views as to the effect of an agency action, upon state energy resources and state energy policy. [1975 c.606 §12]

469.120 Energy Department Account; appropriation; record of moneys. (1) The Energy Department Account is established.

(2) All funds received by the department pursuant to law shall be paid into the State Treasury and credited to the Energy Department Account. All moneys in the account are continuously appropriated to the department for payment of expenses of the department.

(3) The department shall keep a record of all moneys deposited in the Energy Department Account. The record shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. [1975 c.606 §13]

469.130 Energy Policy Review Committee; appointment; term; vacancy; duties; compensation; recommendations to

Legislative Assembly. (1) There is created the Energy Policy Review Committee. The committee shall be composed of nine members appointed in the following manner:

(a) The Governor shall appoint three public members, except that the Governor shall not appoint employees of the Executive Department or members of the Legislative Assembly.

(b) The President of the Senate shall appoint three members of the Senate, including at least one member recommended by the Minority Leader. If the President of the Senate is a member, the president may designate from time to time an alternate from among the members of the Senate to exercise the powers of the president as a member of the committee except that the alternate shall not preside if the President is chairperson.

(c) The Speaker of the House of Representatives shall appoint three members of the House, including at least one member recommended by the Minority Leader. If the Speaker of the House of Representatives is a member, the speaker may designate from time to time an alternate from among the members of the House to exercise the powers of the speaker as a member of the committee except that the alternate shall not preside if the Speaker is chairperson.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, the term of office of each member is two years. Before the expiration of the term of any public member, the Governor shall appoint a successor whose term begins on July 1 next following.

(b) The term of office of a legislative member expires upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. Before the expiration of the term of any legislative member, the appointing authority shall appoint a successor.

(c) No member shall serve more than two terms.

(d) A vacancy shall be filled by the appointing authority in the manner provided for the original appointment.

(3) The committee shall:

(a) Represent to the director public concerns on contingency or curtailment planning;

(b) Review for the director conservation programs and recommend public information policy thereon;

(c) Advise the director on areas of needed research and development;

(d) Comment upon the statement and the forecast prepared pursuant to ORS 469.070;

(e) Review statutes and rules of agencies for consistency with the policy set forth in ORS 469.010, review reports submitted to it pursuant to ORS 469.100 (3)(a); and

(f) Before January 1 of each odd-numbered year, submit a report containing the results of its review, including any proposed legislation, and recommended policy changes to the Legislative Assembly.

(4) Committee members who are not members of the Legislative Assembly shall be entitled to compensation and expenses as provided in ORS 292.495. Members of the committee who are members of the Legislative Assembly shall be paid compensation and expense reimbursement as provided in ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(5)(a) The committee shall select one of its members as chairman and another member as vice chairman for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the committee shall act as the chairman of the committee in the absence of the chairman.

(b) The committee shall meet at least quarterly at the time and place determined by the chairman.

(6) The committee shall recommend to the Legislative Assembly changes in the state's energy policy and other energy-related legislation. [1975 c.606 §47; 1977 c.794 §5; 1977 c.891 §10; 1987 c.879 §16]

469.135 Energy Conservation Clearinghouse for Commerce and Industry. The department shall expand the Energy Conservation Clearinghouse for Commerce and Industry so that it provides:

(1) Current information to business and industry on:

(a) State and federal financing mechanisms;

(b) Tax advantages of energy conservation investments; and

(c) General economic advantages of energy conservation investments.

(2) Teaching on conservation techniques and management of energy by corporations. [1981 c.865 §2]

Note: Section 2, chapter 933, Oregon Laws 1991, provides:

Sec. 2. (1) The Department of Energy in consultation with the Economic Development Department shall assess the state's methane, ethanol, solar electric and other renewable fuel production capacity, assess the feasibility and cost of achieving state fuel independence based on its findings and determine the investment needs for cost-effective development of renewable fuel production. As part of its study, the department shall also assess the feasibility of replacing department passenger-carrying gasoline powered vehicles with com-

pressed natural gas powered vehicles. The department shall report to the Sixty-seventh Legislative Assembly on its findings and propose legislation.

(2) The Director of the Department of Energy may accept contributions of funds and assistance from the Federal Government, its agencies or any other public or private source for the purpose of assisting the department in carrying out its duties under subsection (1) of this section. The director may agree to conditions that are not inconsistent with the purpose of subsection (1) of this section. All such funds are to aid in the study, plan development and report required under subsection (1) of this section and shall be deposited in the General Fund of the State Treasury to the credit of a separate account of the Department of Energy and shall be disbursed for the purpose for which contributed in the same manner as funds appropriated for the Department of Energy. [1991 c.933 §2]

469.140 [1975 c.606 §48; repealed by 1977 c.794 §6]

469.150 Energy suppliers to provide conservation services and information. (1)

As used in this section "energy conservation services" means services provided by energy suppliers to educate and inform customers and the public about energy conservation. Such services include but are not limited to providing answers to questions concerning energy saving devices and providing inspections and making suggestions concerning the construction and siting of buildings and residences.

(2) Energy suppliers other than public utilities as defined in ORS 757.005, that produce, transmit, deliver or furnish heat, light or power shall establish energy conservation services and shall provide energy conservation information to customers and to the public. The services shall be performed in accordance with such guidelines as the director may by rule prescribe.

(3) As used in this section "energy supplier" means a publicly owned utility or fuel oil dealer which supplies electricity or fuel oil for the space heating of dwellings. [1977 c.887 §13]

469.155 Advisory energy conservation standards for dwellings. (1) As used in this section:

(a) "Dwelling" means real or personal property inhabited as the principal residence of an owner or renter. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and multiple unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(b) "Energy conservation standards" means standards for the efficient use of energy for space and water heating in a dwelling.

(2) The director shall establish advisory energy conservation standards for existing dwellings. The standards shall be adopted by rule in accordance with ORS 183.310 to 183.410. The standards:

(a) Shall take cost-effectiveness into account; and

(b) Shall be compatible with and further the state's incentive programs for residential energy conservation.

(3) The director shall publicize the energy conservation standards and encourage home owners to voluntarily comply with the standards. [1981 c.565 §2; 1987 c.158 §97; 1989 c.648 §65]

469.157 Finding when increasing grant. When making an expenditure limitation increase request for any grant-in-aid to a proposed alternative energy project which is to be funded out of assessments from energy resource suppliers, the Department of Energy shall demonstrate that the development incentive provided by the proposed grants is not already duplicated by an incentive provided by other legislation passed by the Sixty-first Legislative Assembly including but not limited to ORS 469.097 and 469.135 or chapter 714, Oregon Laws 1981. The department shall also demonstrate that assessment revenue already authorized cannot fund the amount of the grant. [1981 c.746 §7]

Note: 469.157 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ALTERNATIVE ENERGY DEVICES

469.160 Definitions for ORS 469.160 to 469.180. As used in ORS 469.160 to 469.180:

(1) "Alternative energy device" means any system, mechanism or series of mechanisms which uses solar radiation, water, wind or geothermal resource for space heating, cooling, electrical energy or any combination thereof for one or more dwellings which meets or exceeds 10 percent of the total energy requirements for the dwelling or dwellings. "Alternative energy device" includes any system that uses solar radiation, water, wind or geothermal resources for domestic water heating. "Alternative energy device" includes any system that uses solar radiation, water, wind or geothermal resources for swimming pool, spa or hot tub heating and that meets the requirements set forth in ORS 316.116 (1). "Alternative energy device" includes a ground water heat pump.

(2) "Coefficient of performance" means the ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(3) "Contractor" means a person whose trade or business consists of offering for sale an alternative energy device, installation service or design service.

(4) "Cost" means the actual cost of the acquisition, construction and installation of the alternative energy device paid by the taxpayer for the alternative energy device.

(5) "Domestic water heating" means the heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(6) "Dwelling" means real or personal property ordinarily inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(7) "First year energy yield" of an alternative energy device is the usable energy produced under average environmental conditions in one year.

(8) "Placed in service" means the date an alternative energy device is ready and available to produce usable energy or save energy. [1977 c.196 §2; 1979 c.670 §3; 1981 c.894 §4; 1983 c.346 §1; 1983 c.768 §2; 1987 c.492 §2; 1989 c.880 §1]

469.165 Rules; federal standards. (1) For the purposes of carrying out the provisions of ORS 469.160 to 469.180, the Department of Energy may adopt rules prescribing minimum performance criteria for alternative energy devices for dwellings.

(2) The Department of Energy, in adopting rules under this section for solar heating and cooling systems, shall take into consideration applicable standards of federal performance criteria prescribed pursuant to the provisions of section 5506, title 42, United States Code (Solar Heating and Cooling Act of 1974). [1977 c.196 §3; 1989 c.880 §2]

469.170 Claim for tax credit for alternative energy devices in dwellings; eligibility; contents; contractor system certification. (1) Any person may claim a tax credit under ORS 316.116 if the person meets the requirements under ORS 469.160 to 469.180 and if that person pays all or a portion of the costs of an alternative energy device for a dwelling or dwellings.

(2) In order to be eligible for a tax credit under ORS 316.116, a person claiming a tax credit for an alternative energy device shall have the system certified by the Department of Energy or installed by a contractor certified by the Department of Energy under subsection (4) of this section.

(3) Verification of the installation of an alternative energy device shall be made in writing on a form provided by the Department of Revenue and shall contain:

(a) The location of the alternative energy device;

(b) A description of the type of device;

(c) If the device was installed by a contractor, evidence that the contractor has any license, bond, insurance and permit required to sell and install the alternative energy device;

(d) If the device was installed by a contractor, a statement signed by the contractor that the applicant has received:

(A) A statement of the reasonably expected energy savings of the device;

(B) A copy of consumer information published by the Department of Energy;

(C) An operating manual for the alternative energy device; and

(D) A copy of the contractor's certification certificate or alternative energy device system certificate as appropriate;

(e) If the device was not installed by a contractor, evidence that:

(A) The Department of Energy has issued an alternative energy device system certificate for the device; and

(B) The taxpayer has obtained all building permits required for installation of the device;

(f) A statement, signed by both the taxpayer claiming the credit and the contractor if the device was installed by a contractor, that the installation meets all the requirements of ORS 469.160 to 469.180;

(g) The date the alternative energy device was purchased;

(h) The date the alternative energy device was placed in service; and

(i) Any other information that the Department of Revenue determines is necessary.

(4)(a) When the Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the director may issue a contractor system certification to the person selling and installing the alternative energy device.

(b) An application for a contractor system certification shall be made in writing on a form provided by the Department of Energy and shall contain:

(A) A statement that the contractor has any license, bonding, insurance and permit that is required for the sale and installation of the alternative energy device;

(B) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing and siting method and installation procedure;

(C) The addresses of three installations of the system that are available for inspection by the Department of Energy;

(D) The range of installed costs to purchasers of the device;

(E) Any important installation or operating instructions; and

(F) Any other information that the Department of Energy determines is necessary.

(c) A new application for contractor system approval shall be filed when there is a change in the information supplied under paragraph (b) of this subsection.

(d) The Department of Energy may issue contractor system certificates to each contractor who on October 3, 1989, has a valid dealer system certification which shall authorize the sale and installation of the same domestic water heating alternative energy devices authorized by the dealer certification.

(e) If the Department of Energy finds that an alternative energy device can meet the standards adopted under ORS 469.165, the director may issue an alternative energy device system certificate to the taxpayer installing or having an alternative energy device installed.

(f) An application for an alternative energy device system certificate shall be made in writing on a form provided by the Department of Energy and shall contain:

(A) A specific description of the alternative energy device, including, but not limited to, the material, equipment and mechanism used in the device, operating procedure, sizing, siting method and installation procedure;

(B) The installed cost of the device; and

(C) A statement that the taxpayer has all permits required for installation of the device.

(5) To claim the tax credit, the verification form described in subsection (3) of this section shall be submitted with the taxpayer's Oregon personal income tax return for the year the alternative energy device is purchased. A copy of the contractor's certification certificate or alternative energy device system certificate also shall be submitted.

(6) The verification form and contractor's certificate or alternative energy device system certificate described under this section shall be effective for purposes of tax relief allowed under ORS 316.116.

(7) The verification form and contractor's certificate described under this section may be transferred, by an applicant who does not qualify for tax relief under ORS 316.116, to the first purchaser of a dwelling who intends

to use it as a principal or secondary residence. [1977 c.196 §4; 1979 c.670 §4; 1981 c.894 §5; 1983 c.346 §2; 1987 c.492 §3; 1989 c.880 §3]

469.172 Ineligible devices. The following devices are not eligible for the alternative energy device tax credit under ORS 316.116:

- (1) Standard furnaces;
- (2) Standard back-up heating systems;
- (3) Wood stoves or wood furnaces, or any part of a heating system that burns wood;
- (4) Air-to-air and air-to-water heat pumps or any device that uses ambient air to make heat;
- (5) Heat pump water heaters;
- (6) Structures that cover or enclose a swimming pool;
- (7) Swimming pools, hot tubs or spas used to store heat;
- (8) Aboveground, uninsulated swimming pools, hot tubs or spas;
- (9) Photovoltaic systems installed on recreational vehicles;
- (10) Conversion of an existing alternative energy device to another type of alternative energy device;
- (11) Repair or replacement of an existing alternative energy device; or
- (12) Any other device identified by the Department of Energy. [1989 c.880 §7]

469.175 [1977 c.196 §5; 1979 c.670 §5; 1981 c.894 §6; 1983 c.346 §3; 1987 c.492 §4; repealed by 1989 c.880 §4 (469.176 enacted in lieu of 469.175)]

469.176 Performance assumptions and prescriptive measures for tax credits. (1) In order to carry out the provisions of ORS 469.160 to 469.180, the Department of Energy shall develop performance assumptions and prescriptive measures to determine the eligibility and tax credit amount for alternative energy devices for dwellings.

(2) The Department of Energy shall use the performance assumptions and prescriptive measures to develop information for the Department of Revenue to use to allow taxpayers to determine their eligibility and tax credit amount. The Department of Energy may review this information on an annual basis to take into consideration new technology and performance assumption accuracy.

(3) For the purpose of determining the first year energy yield of an alternative energy device, the Department of Energy shall use the following assumptions and test standards:

(a) Solar Rating and Certification Corporation standard SRCC 100, 200, American Society of Heating, Refrigerating and Air-Conditioning Engineers 93-77, or the Ameri-

can Refrigeration Institute standard 325-85 test at 50 degrees entering water temperature, as appropriate. The testing requirements under this paragraph shall not apply to an owner-built alternative energy device.

(b) For an alternative energy device used as a source for domestic water heating energy, a hot water use of 75 gallons per day at 120 degrees Fahrenheit. The load of 75 gallons per day at 120 degrees Fahrenheit shall be achieved by including conservation measures in the installation of the alternative energy device.

(c) For an alternative energy device used as a source for space heating or cooling, the heating or cooling energy load as determined by a heat loss or gain calculation performed in accordance with the methods established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers.

(d) For an alternative energy device used as a source for electrical energy, the first year energy yield shall be based upon the electrical energy load of the dwelling as determined according to the procedure established by the Department of Energy.

(e) For an alternative energy device used as a source for swimming pool, spa or hot tub heating, the first year energy yield shall be based on the heating load of the swimming pool, spa or hot tub as determined according to the procedure established by the Department of Energy. [1989 c.880 §5 (enacted in lieu of 469.175)]

469.180 Forfeiture of tax credits; inspection; effect of failure to allow inspection. (1) Upon the Department of Revenue's own motion, or upon request of the Department of Energy, the Department of Revenue may initiate proceedings for the forfeiture of a tax credit allowed under ORS 316.116 if:

(a) The verification was fraudulent because of a misrepresentation by the taxpayer;

(b) The verification was fraudulent because of a misrepresentation by the contractor;

(c) The alternative energy device has not been installed or operated in substantial compliance with the requirements of ORS 469.160 to 469.180; or

(d) The taxpayer failed to consent to an inspection of the installed alternative energy device by the Department of Energy after a reasonable, written request for such an inspection by the Department of Energy.

(2) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Director of the Department of Energy may order the revocation of a contractor certificate issued under ORS 469.170 if the direc-

tor finds that the contractor certificate was obtained by fraud or misrepresentation by the contractor certificate holder.

(3) If the tax credit allowed under ORS 316.116 for the installation of an alternative energy device is ordered forfeited due to an action of the taxpayer under paragraph (a), (c) or (d) of subsection (1) of this section, all prior tax relief provided to the taxpayer shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116.

(4) If the tax credit for the installation of an alternative energy device is ordered forfeited due to an action of the contractor under paragraph (b) of subsection (1) of this section, the Department of Revenue shall proceed to collect, from the contractor, an amount equivalent to those taxes not paid by the taxpayer as a result of the tax credit relief under ORS 316.116. So long as the forfeiture is due to an action of the contractor and not to an action of the taxpayer, the assessment of such taxes shall be levied on the contractor and not on the taxpayer. Notwithstanding ORS 314.835, the Department of Revenue may disclose information from income tax returns or reports to the extent such disclosure is necessary to collect amounts from contractors under this subsection.

(5) In order to obtain information necessary to verify eligibility and amount of the tax credit, the Department of Energy or its representative may inspect an alternative energy device that has been installed. The inspection shall be made only with the consent of the owner of the dwelling. Failure to consent to the inspection is grounds for the forfeiture of any tax credit relief under ORS 316.116. The Department of Revenue shall proceed to collect any taxes due according to subsection (4) of this section. For electrical generating alternative energy devices, the Department of Energy may obtain energy consumption records for the dwelling the device serves, for a 12-month period, in order to verify eligibility and amount of the tax credit. [1977 c.196 §6; 1979 c.670 §6; 1981 c.894 §7; 1983 c.346 §4; 1987 c.492 §5; 1989 c.880 §8]

RENEWABLE ENERGY RESOURCES

469.185 Definitions for ORS 469.185 to 469.225. As used in ORS 469.185 to 469.225:

(1) "Alternative fuel fleet vehicle" means a vehicle in a fleet as defined by the director by rule that is used in connection with the conduct of a trade or business and that is manufactured or modified to use an alternative fuel, including but not limited to electricity, ethanol, methanol, gasohol and

propane or compressed natural gas, regardless of energy consumption savings.

(2) "Cost" means the capital costs and expenses necessarily incurred in the acquisition, erection, construction and installation of a facility.

(3) "Energy facility" means any capital investment for which the first year energy savings yields a simple payback period of greater than one year. An energy facility includes:

(a) Any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business and actually used in the processing or utilization of renewable energy resources to:

(A) Replace a substantial part or all of an existing use of electricity, petroleum or natural gas;

(B) Provide the initial use of energy where electricity, petroleum or natural gas would have been used;

(C) Generate electricity to replace an existing source of electricity or to provide a new source of electricity for sale by or use in the trade or business; or

(D) Perform a process that obtains energy resources from material that would otherwise be solid waste as defined in ORS 459.005.

(b) Any acquisition of, addition to, reconstruction of or improvement of land or an existing structure, building, installation, excavation, machinery, equipment or device necessarily acquired, erected, constructed or installed by any person in connection with the conduct of a trade or business in order to substantially reduce the consumption of purchased energy.

(c) A necessary feature of a new commercial building or multiple unit dwelling, as dwelling is defined by ORS 469.160, that causes that building or dwelling to exceed an energy performance standard in the state building code.

(d) The replacement of an electric motor with another electric motor that substantially reduces the consumption of electricity.

(4) "Facility" means an energy facility, recycling facility, alternative fuel fleet vehicle or facilities necessary to operate alternative fuel fleet vehicles, including but not limited to an alternative fuel fleet vehicle refueling station.

(5) "Recycling facility" means equipment used by a trade or business solely for recycling:

(a) Including:

(A) Equipment used solely for hauling and refining used oil;

(B) New vehicles or modifications to existing vehicles used solely to transport used recyclable materials that cannot be used further in their present form or location such as glass, metal, paper, aluminum, rubber and plastic;

(C) Trailers, racks or bins that are used for hauling used recyclable materials and are added to or attached to existing waste collection vehicles; and

(D) Any equipment used solely for processing recyclable materials such as bailers, flatteners, crushers, separators and scales.

(b) But not including equipment used for transporting or processing scrap materials that are recycled as a part of the normal operation of a trade or business as defined by the director.

(6)(a) "Renewable energy resource" includes, but is not limited to, straw, forest slash, wood waste or other wastes from farm or forest land, industrial waste, solar energy, wind power, water power or geothermal energy.

(b) "Renewable energy resource" does not include a hydroelectric or geothermal electric generating facility larger than one megawatt of installed capacity unless the facility qualifies as a research, development or demonstration facility. [1979 c.512 §3; 1981 c.894 §17; 1985 c.745 §1; 1991 c.711 §1]

469.190 Policy. In the interest of the public health, safety and welfare, it is the policy of the State of Oregon to encourage the conservation of electricity, petroleum and natural gas by providing tax relief for Oregon facilities that conserve energy resources or meet energy requirements through the use of renewable resources. [1979 c.512 §2]

469.195 Priority given to certain projects; criteria. In determining the eligibility of facilities for tax credits, preference shall be given to those projects which:

(1) Provide energy savings for real or personal property within the state inhabited as the principal residence of a tenant, including:

(a) Nonowner occupied single family dwellings; and

(b) Multiple unit residential housing; or

(2) Provide long-term energy savings from the use of renewable resources or conservation of energy resources. [1979 c.512 §4; 1985 c.745 §2]

469.200 Annual limits to costs of facilities in granting tax credits. (1) The total of all costs of facilities that receive a preliminary certification from the director for tax credits in any calendar year shall not exceed \$40 million. The director annually may set aside \$6 million of the \$40 million limit to be allocated, in accordance with applicable standards and application deadlines, to research, development or demonstration facilities of new renewable resource generating and conservation technologies. The director shall determine the dollar amount certified for any facility and the priority between applications for certification based upon the criteria contained in ORS 469.185 to 469.225 and applicable rules and standards adopted under ORS 469.185 to 469.225.

(2) Not less than \$5 million of the \$40 million annual certification limit shall be allocated to facilities having a certified cost of \$100,000 or less for any facility.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any facility shall not exceed \$10 million. However, if the applications certified in any calendar year do not total \$35 million; the director, in the director's discretion, may increase the certified costs above the \$10 million maximum for previously certified facilities. The increases shall be allocated according to the director's determination of how the previously certified facilities meet the criteria of ORS 469.185 to 469.225. The increased allocation to previously certified facilities under this subsection shall not include any of the \$5 million reserved under subsection (2) of this section.

(4) Not more than \$2.5 million of the \$40 million annual certification limit shall be allocated to alternative fuel fleet vehicles and facilities required to operate those vehicles. [1979 c.512 §5; 1981 c.894 §18; 1985 c.745 §3; 1987 c.158 §98; 1991 c.711 §3]

469.205 Application for renewable energy resource facility tax credit; eligibility; contents; fees. (1) Prior to erection, construction, installation or acquisition of a proposed facility any person may apply to the department for preliminary certification under ORS 469.210 if:

(a) The erection, construction, installation or acquisition of the facility is to be commenced on or after October 3, 1979, and before January 1, 1996;

(b) The facility complies with the standards or rules adopted by the director; and

(c) The applicant meets one of the following criteria:

(A) The applicant will be the owner or contract purchaser of the facility at the time

of erection, construction, installation or acquisition of the proposed facility, and:

(i) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to utilize the facility in connection with Oregon property; or

(ii) The applicant is the owner, contract purchaser or lessee of a trade or business that plans to lease the facility to a person who will utilize the facility in connection with Oregon property.

(B) Notwithstanding ORS 317.104 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing rental housing unit energy conservation measures as described in ORS 469.636 or for the purposes of financing energy conservation measures or alternative fuel fleet vehicles for commercial or industrial customers as provided in ORS 469.878.

(C) Notwithstanding ORS 317.104 (9)(a) and (b), the applicant is a public utility as defined in ORS 757.005 or a subsidiary or an affiliated interest of a public utility as defined in ORS 757.015, for purposes of financing alternative fuel fleet vehicles or associated facilities.

(2) An application for preliminary certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the applicant or the lessee of the applicant's facility:

(A) Intends to convert from a purchased energy source to a renewable energy resource;

(B) Plans to acquire, construct or install a facility that will use a renewable energy resource or solid waste instead of electricity, petroleum or natural gas;

(C) Plans to use a renewable energy resource in the generation of electricity for sale or to replace an existing or proposed use of an existing source of electricity;

(D) Plans to acquire, construct or install a facility that substantially reduces the consumption of purchased energy;

(E) Plans to acquire, construct or install equipment for recycling as defined in ORS 469.185 (5);

(F) Plans to acquire an alternative fuel fleet vehicle or to convert an existing vehicle to an alternative fuel fleet vehicle; or

(G) Plans to acquire, construct or install a facility necessary to operate alternative fuel fleet vehicles.

(b) A detailed description of the proposed facility and its operation and information

showing that the facility will operate as represented in the application.

(c) Information on the amount by which consumption of electricity, petroleum or natural gas by the applicant or the lessee of the applicant's facility will be reduced, and on the amount of energy that will be produced for sale, as the result of using the facility.

(d) The projected cost of the facility.

(e) Any other information the director considers necessary to determine whether the proposed facility is in accordance with the provisions of ORS 469.185 to 469.225, and any applicable rules or standards adopted by the director.

(3) An application for preliminary certification shall be accompanied by a fee established under ORS 469.217. The director may refund the fee if the application for certification is rejected.

(4) The director may allow an applicant to file the preliminary application after the start of erection, construction, installation or acquisition of the facility if the director finds:

(a) Filing the application before the start of erection, construction, installation or acquisition is inappropriate because special circumstances render filing earlier unreasonable; and

(b) The facility would otherwise qualify for tax credit certification pursuant to ORS 469.185 to 469.225. [1979 c.512 §6; 1981 c.894 §19; 1985 c.745 §4; 1989 c.765 §7; 1991 c.711 §2]

469.207 Tax credit for rental housing units. (1) An applicant under ORS 469.205 (1)(c)(B) shall be eligible for a tax credit for energy conservation measures installed in rental housing units pursuant to ORS 469.636. The tax credit shall apply to only the first \$5,000 of actually installed energy conservation measure costs per dwelling unit.

(2) An owner, contract purchaser or lessee of a rental housing unit for which energy conservation measures have been financed by an applicant under subsection (1) of this section is ineligible for an energy conservation measure tax credit for such measures. [1985 c.745 §9]

469.210 Submission of plans and specifications; preliminary certification; request for hearing upon denial. (1) The director may require the submission of plans and specifications and, after examination thereof, may request corrections and revisions of the plans and specifications.

(2) If the director determines that the proposed acquisition, erection, construction or installation is technically feasible and should operate in accordance with the rep-

representations made by the applicant, and is in accordance with the provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director, the director shall issue a preliminary certificate approving the acquisition, erection, construction or installation of the facility. If the director determines that the acquisition, erection, construction or installation does not comply with the provisions of ORS 469.185 to 469.225 and applicable rules and standards, the director shall issue an order denying certification.

(3) If within 120 days of the receipt of an application for preliminary certification, the director fails to issue a preliminary certificate of approval or an order denying certification, the preliminary certificate shall be considered to have been denied.

(4) Within 60 days from the date of mailing of the order under subsection (2) of this section or from a denial under subsection (3) of this section, any person whose preliminary application has been denied may request a hearing. The request shall be in writing, shall state the grounds for hearing and shall be mailed to the director. The hearing shall be conducted in accordance with the provisions of ORS 183.310 to 183.550 applicable to contested cases. [1979 c.512 §7]

469.215 Final certification; eligibility; application; content; appeal. (1) No certification shall be issued by the director under this section unless the facility was acquired, erected, constructed or installed under a preliminary certificate of approval issued under ORS 469.210 and in accordance with the applicable provisions of ORS 469.185 to 469.225 and any applicable rules or standards adopted by the director.

(2) Any person may apply to the department for final certification of a facility:

(a) After having obtained preliminary certification for the facility under ORS 469.210; and

(b) After completion of erection, construction or installation of the proposed facility.

(3) An application for final certification shall be made in writing on a form prepared by the department and shall contain:

(a) A statement that the conditions of the preliminary certification have been complied with;

(b) The actual cost of the facility certified to by a certified public accountant who is not an employee of the applicant or, if the actual cost of the facility is less than \$50,000, copies of receipts for purchase and installation of the facility;

(c) A statement that the facility is in operation or, if not in operation, that the applicant has made every reasonable effort to make the facility operable; and

(d) Any other information determined by the director to be necessary prior to issuance of a final certificate, including inspection of the facility by the department.

(4) The director shall act on an application for certification before the 60th day after the filing of the application under this section. The director, after consultation with the Public Utility Commission, may issue the certificate together with such conditions as the director determines are appropriate to promote the purposes of this section and ORS 317.104, 469.185, 469.200, 469.205 and 469.878. The action of the director shall include certification of the actual cost of the facility. However, in no event shall the director certify an amount for tax credit purposes which is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the facility.

(5) If the director rejects an application for final certification, or certifies a lesser actual cost of the facility than was claimed in the application, the director shall send to the applicant written notice of the action, together with a statement of the findings and reasons therefor, by certified mail, before the 60th day after the filing of the application. Failure of the director to act constitutes rejection of the application.

(6) If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of cost, then, within 60 days of the date of mailing of the notice under subsection (5) of this section or from a denial under subsection (5) of this section, the applicant may request a hearing to appeal the rejection under the provisions of ORS 183.310 to 183.550 governing contested cases.

(7) Upon approval of an application for final certification of a facility, the director shall certify the facility. Each certificate shall bear a separate serial number for each device. Where one or more devices constitute an operational unit, the director may certify the operational unit under one certificate.

(8) The director shall not grant final certification under this section for any facility after December 31, 1998. [1979 c.512 §8; 1981 c.894 §20; 1985 c.745 §5; 1989 c.765 §8; 1991 c.711 §4]

469.217 Fees for certification. By rule and after hearing, the director may adopt a schedule of reasonable fees which the department may require of applicants for preliminary or final certification under ORS 469.185 to 469.225. Before the adoption or revision of the fees, the department shall esti-

mate the total cost of the program to the department. The fees shall be used to recover the anticipated cost of filing, investigating, granting and rejecting applications for certification and shall be designed not to exceed the total cost estimated by the department. Any excess fees shall be held by the department and shall be used by the department to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fee shall not be considered as part of the cost of the facility to be certified. [1985 c.745 §8]

469.220 Certificate required for tax credits; certification not to exceed five years. A certificate issued under ORS 469.215 is required for purposes of obtaining tax credits in accordance with ORS 316.140 and 317.104. Such certification shall be granted for a period not to exceed five years. The five-year period shall begin with the tax year of the applicant during which a certified facility is placed into operation, or the year the facility is certified under ORS 469.215, at the election of the applicant. [1979 c.512 §9]

469.225 Revocation of certificate; forfeiture of tax credits; collection. (1) Under the procedures for a contested case under ORS 183.310 to 183.550, the director may order the revocation of the certificate issued under ORS 469.215 if the director finds that:

(a) The certification was obtained by fraud or misrepresentation; or

(b) The holder of the certificate has failed substantially to construct or to make every reasonable effort to operate the facility in compliance with the plans, specifications and procedures in such certificate.

(2) As soon as the order of revocation under this section becomes final, the director shall notify the Department of Revenue of such order.

(3) If the certificate is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax credits provided to the holder of the certificate by virtue of such certificate shall be forfeited and upon notification under subsection (2) of this section the Department of Revenue immediately shall proceed to collect those taxes not paid by the certificate holder as a result of the tax credits provided to the holder under ORS 316.140 or 317.104. The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to paragraph (b) of subsection (1)

of this section, the certificate holder shall be denied any further relief under ORS 316.140 or 317.104 in connection with such facility from and after the date that the order of revocation becomes final. [1979 c.512 §10]

OIL HEAT COMMISSION

(Generally)

469.228 Definitions for ORS 469.228 to 469.298. As used in ORS 469.228 to 469.298, unless the context requires otherwise:

(1) "Administrator" means the administrator of the Oil Heat Commission.

(2) "Building" means any oil space heated building with human habitation, except a building owned by a government agency.

(3) "Commission" means the Oil Heat Commission.

(4) "Heating oil" means Number 1 or 2 heating oil that is delivered to a tank and used to create heat. It does not include any petroleum products that are subject to the requirements of section 3a, Article IX of the Oregon Constitution, ORS 319.020 or 319.530 or are otherwise used as transportation fuels.

(5) "Heating oil tank" means any one or combination of above ground or underground tanks and above ground or underground pipes connected to the tank, which is used to contain heating oil used for space heating a building with human habitation or water heating not used for commercial processing.

(6) "Oil marketer" means a person who supplies heating oil at retail in this state.

(7) "Person" has the meaning given that term in ORS 174.100.

(8) "Release" means any spilling, leaking, emitting, escaping or leaching into the environment.

(9)(a) "Remedial action" means those actions consistent with a permanent remedial action taken instead of or in addition to removal actions, in the event of the release of heating oil from a heating oil tank into the environment, to prevent or minimize the release of heating oil from a heating oil tank so that it does not migrate to cause substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes, but is not limited to:

(A) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released heating oil from a heating oil tank and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, collection of lacerate and runoff, onsite treatment or

incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that such actions protect the public health, safety, welfare and the environment.

(B) Offsite transport and offsite storage, treatment, destruction or secure disposition of heating oil released from a heating oil tank and associated contaminated materials.

(C) Such actions as may be necessary to monitor, assess, evaluate or investigate a release of heating oil from a heating oil tank.

(b) "Remedial action" may include the full or partial reimbursement of costs incurred to install a heating oil tank that offers equal or greater environmental protection than the tank being replaced. Reimbursement shall be based on ability to pay.

(10) "Remedial action costs" means reasonable costs which are attributable to or associated with a removal or remedial action in accordance with the standards set forth in ORS 466.573 and rules adopted pursuant to ORS 466.553 (2), including, but not limited to, the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(11)(a) "Removal" means:

(A) The cleanup or removal from the environment of heating oil released from a heating oil tank;

(B) Such actions as may be necessary in the event of a release of heating oil from a heating oil tank into the environment;

(C) Such actions as may be necessary to monitor, assess and evaluate the release of heating oil from a heating oil tank;

(D) The disposal of removed material; or

(E) The taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, which may otherwise result from a release of heating oil from a heating oil tank.

(b) "Removal" also includes, but is not limited to, security fencing or other measures to limit access, provisions of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 466.570 relating to a release of heating oil from a heating oil tank. [1989 c.926 §1; 1991 c.67 §134; 1991 c.641 §5]

Note: 469.228 to 469.298 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.230 Purpose; functions. The purpose of the Oil Heat Commission is to provide for economic development of this state,

to promote the health, safety and welfare of the people of this state and to stabilize and protect the oil heat industry of this state. To carry out these purposes, the commission may provide:

(1) For research to develop and discover technologically advanced and more efficient oil heat equipment and to disseminate reliable information founded upon that and otherwise available research.

(2) For programs to encourage energy conservation among oil heat users through home weatherization and through developing and disseminating educational materials regarding energy conservation. The development of such programs shall be coordinated with the Department of Energy.

(3) For programs to encourage energy conservation among oil heat users through the use of energy efficient oil heat equipment.

(4) For programs to offer financial assistance to low income oil heat users to help defray the cost of fuel, modern equipment installation and weatherization expenses.

(5) Programs for qualified educational training of oil heat industry employees with regard to the maintenance of oil heating equipment to insure proper installation for safe and efficient operation, and disseminate information regarding the safe and efficient operation and maintenance of oil heat equipment.

(6) Programs for training oil marketers' drivers, delivery personnel and inventory staff, for the safe, efficient transfer of heating oil from a point of wholesale to the end user to avoid waste and contamination and, in the event of a release, to properly contain and clean up the affected environment.

(7) For the establishment and administration of a Heating Oil Remedial Action Account, as established in ORS 469.269, to pay certain costs associated with remedial action. [1989 c.926 §3]

Note: See note under 469.228.

(Commission)

469.232 Oil Heat Commission; members; term; confirmation; expenses. (1) There is established an Oil Heat Commission consisting of seven members appointed by the Governor. Five members shall be from industry and two members shall be from the public. At least one public member shall be 60 years of age or older.

(2) The term of office of each member is three years, but a member serves at the pleasure of the Governor. If there is a vacancy for any cause, the Governor shall

make an appointment to become immediately effective for the unexpired term.

(3) One industry member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130. In making appointments of industry members to the commission, the Governor may take into consideration any nominations or recommendations made by oil marketers or oil marketers' organizations. Each member shall continue in office until a successor is appointed.

(4) All appointments of members to the commission by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

(5) Members, officers and employees of the commission shall receive their actual and necessary travel and other expenses incurred in the performance of their official duties according to ORS 292.495. [1989 c.926 §§4, 10]

Note See note under 469.228.

469.234 Qualifications of members; vacancy. (1) Members of the commission shall have the following qualifications which shall continue during the term of office:

(a) Each shall be a citizen of the United States.

(b) Each shall be a bona fide resident of this state.

(2) The industry members of the commission shall have the following qualifications which shall continue during the term of office:

(a) An active interest in the development of the oil heat industry in Oregon, demonstrated through membership in an oil marketers' organization, public service or otherwise.

(b) Currently and for at least five years previously, operate as an oil marketer or be employed by an oil marketer in this state.

(3) The public members of the commission shall not be oil marketers or employed by an oil marketer.

(4) The administrator shall immediately declare the office of any appointed member of the commission vacant whenever the administrator finds that the member has ceased to meet the qualifications of ORS 469.234 or is unable to perform the duties of office. [1989 c.926 §§5, 9]

Note: See note under 469.228.

469.236 Ex officio members. The Director of the Department of Energy and the Director of the Department of Environmental Quality, or the directors' representatives, shall be ex officio members of the commission, without right to vote. ORS 469.232 and

469.234 do not apply to ex officio members. [1989 c.926 §6]

Note: See note under 469.228.

469.240 Meetings. (1) The commission shall establish a meeting place anywhere within this state, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the commission or be affected by its acts.

(2) The commission shall meet as soon as practicable for the purpose of organizing. The commission shall elect a chairperson from among its members. It shall transact such other business as is necessary to start the work of the commission. Thereafter, the commission shall meet regularly once each six months and at other times as called by the chairperson. The chairperson may call special meetings at any time and shall call a special meeting when requested by two or more members of the commission. [1989 c.926 §§11, 12]

Note: See note under 469.228.

469.244 Staff; records. (1) The Executive Department, upon request of the commission, shall provide an administrator and other staff for project oversight and the day-to-day operation of the Oil Heat Commission, including scheduling meetings, providing public notice of meetings and other commission activities and keeping records of commission activities.

(2) The commission shall pay to the Executive Department such amount for staff provided under subsection (1) of this section as the Executive Department determines is adequate to pay for the staff provided.

(3) The commission shall keep accurate books, records and accounts of all its dealings, which shall be open to inspection and audit by the Secretary of State. [1989 c.926 §§16, 25]

Note: See note under 469.228.

469.246 Powers of commission. The commission may: The commission may:

(1) Provide funds or grants for scientific research to discover and develop the commercial value of heating oil.

(2) Disseminate reliable information founded upon the research undertaken under this Act showing the value of heating oil for any purpose for which heating oil may be found useful and profitable.

(3) Study state and federal legislation, with respect to matters concerning the effect on the oil heat industry, and represent and protect the interests of the oil heat industry with respect to any legislation or proposed legislation or executive action which may affect that industry.

(4) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by ORS 469.228 to 469.298.

(5) Enter into contracts which it considers appropriate to the carrying out of the purposes of the commission as authorized by ORS 469.228 to 469.298.

(6) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the commission as authorized by ORS 469.228 to 469.298.

(7) Cooperate with any local, state or national organization or agency engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs.

(8) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency considered by the commission to be beneficial to the heating oil industry of this state and expend funds in connection therewith, provided that such program is compatible with the powers conferred by ORS 469.228 to 469.298.

(9) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment provided for in ORS 469.254.

(10) Enter into contracts for advertising oil heat and for developing new markets through such advertising.

(11) Accept grants, donations or gifts, from any source for expenditures for any purposes consistent with the powers conferred on the commission. [1989 c.926 §§13, 18; 1991 c.67 §135]

Note See note under 469.228.

469.248 Rules. The Oil Heat Commission shall adopt rules to carry out the provisions of ORS 469.228 to 469.298. The rules shall include but need not be limited to:

(1) Procedures for processing remedial action claims that assure speedy processing and payment of claims by the commission.

(2) Procedures for determining the commission's level of involvement in responding to a release in coordination with the Department of Environmental Quality and in compliance with applicable department rules. [1989 c.926 §39; 1991 c.67 §136]

Note: See note under 469.228.

469.250 Duties of director to provide advice and consultation related to remedial action, energy conservation and education. (1) The Director of the Department

of Environmental Quality shall provide advice and consultation to the commission to clarify or carry out the purposes of ORS 469.228 to 469.298 related to remedial action.

(2) The Director of the Department of Energy shall provide advice and consultation to the commission to clarify or carry out the purposes of ORS 469.228 to 459.298 related to energy conservation and education. [1989 c.926 §§7, 8; 1991 c.67 §137]

Note: See note under 469.228.

469.252 Duties of the Department of General Services and other agencies. (1) Upon request by the commission, the Department of General Services may:

(a) Purchase or otherwise provide for the acquisition or furnishing of supplies, materials, equipment and services other than personal required by the commission and for the furnishing of professional services rendered by independent contractors with this state to the commission under ORS 279.545 to 279.748.

(b) Provide for the furnishing of printing and multiple duplication work to the commission under ORS 282.010 to 282.050, except that printing and binding which advertises or promotes products, agricultural or manufactured, shall not be considered state printing.

(c) Provide for the furnishing of services relating to the disposition of surplus, obsolete or unused supplies, materials and equipment to the commission under ORS 279.828.

(d) Provide for the furnishing of central telephone service and central mail or messenger services to the commission under ORS 283.140.

(e) Provide for the furnishing of central repair and maintenance services to the commission under ORS 283.150.

(f) Provide for the furnishing of clerical and stenographic pool services to the commission under ORS 283.160.

(g) Provide for the furnishing of motor vehicles for use by members, officers and employees of the commission under ORS 283.305 to 283.350.

(2) The commission shall pay to the Department of General Services such amount for services performed by the department under subsection (1) of this section as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(3) Upon request by the commission, the Executive Department may design and supervise the installation of an accounting system for the commission. The commission shall pay to the Executive Department such amount for services performed by the de-

partment under this subsection as the department determines is adequate to reimburse it for the costs necessary to perform such services.

(4) Upon requisition by the commission, any state agency or officer may furnish services, facilities and materials to the commission under ORS 283.110. [1989 c.926 §§14, 15]

Note: See note under 469.228.

(Assessments)

469.254 Collection of assessments from oil marketers; amount. (1) The commission may collect an assessment, the amount of which the commission shall determine, from each oil marketer based upon the gross revenue derived from the business of being an oil marketer. No assessment shall apply to any gross revenues derived prior to the date the commission order assessing such assessment was made.

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed one and one-quarter percent of the gross revenue derived from the business of being an oil marketer, excluding gross revenue derived from equipment sales or service or other unrelated products or services.

(3) The amount of the assessment provided for in subsection (1) of this section shall be determined so that the amount of revenues collected will not substantially exceed the amount of the estimated expenditures stated in the final budget prepared by the commission.

(4) Moneys collected under this section shall be deposited in the Heating Oil Education and Conservation Account established under ORS 469.267. [1989 c.926 §19]

Note: See note under 469.228.

469.256 Additional assessment; amount. (1) In addition to any other assessment collected by the commission, the commission may collect an assessment of which the commission shall determine the amount assessed each oil marketer based upon the gross revenue derived from the business of being an oil marketer, excluding gross revenue derived from equipment sales or service or other unrelated products or services. No assessment shall apply to any gross revenues derived prior to the date the commission order assessing such assessment was made.

(2) The amount of the assessment provided for in subsection (1) of this section shall not exceed one and one-quarter percent of the gross revenue derived from the business of being an oil marketer.

(3) Moneys collected under this section shall be deposited in the Heating Oil Remedial Action Account established under ORS 469.269. [1989 c.926 §29]

Note: See note under 469.228.

Note: Section 30, chapter 926, Oregon Laws 1989, provides:

Sec. 30. Notwithstanding any provision of section 29 of this Act [469.256], for the first year the commission collects the assessment under section 29 of this Act, the assessment shall be one and one-quarter percent of the gross revenue derived from the business of being an oil marketer. [1989 c.926 §30]

469.258 Reports by oil marketers. (1) Each oil marketer shall make reports to the commission on forms prescribed by the commission.

(2) No oil marketer shall fail to make the report or shall make the report falsely.

(3) The commission shall fix dates upon which reports shall be made by all oil marketers. Upon such dates, all assessment moneys shall be turned over to the commission which shall make suitable records thereof. [1989 c.926 §20; 1991 c.641 §6]

Note: See note under 469.228.

469.259 Failure to file report or pay assessment. (1) If any oil marketer fails or refuses to file any report required by ORS 469.258 and fails or refuses to pay the assessment due under ORS 469.254 and 469.256, the commission may estimate the oil marketer's gross revenue and make a demand for the assessments due.

(2) If an oil marketer fails to pay the assessment required under ORS 469.254 and 469.256, the commission may add the cost of collection to the penalty for nonpayment or late payment imposed under ORS 469.290 and 469.292. [1991 c.641 §2]

469.260 Records of persons required to pay assessments; rules; inspections and audits. (1) Each person required to pay an assessment under ORS 469.228 to 469.298 shall keep accurate records sufficient to enable the commission to determine by inspection and audit the accuracy of assessments paid or due to the commission and of reports made or due to the commission.

(2) The commission may adopt rules establishing what records oil marketers shall keep to comply with subsection (1) of this section.

(3) The commission, or any person authorized by the commission, may inspect and audit the records referred to in subsection (1) of this section for the purpose referred to in subsection (1) of this section.

(4) No person shall refuse to permit an inspection and audit under subsection (3) of

this section during business hours. [1989 c.926 §21; 1991 c.67 §138]

Note: See note under 469.228.

469.262 Cancellation of delinquent assessment. (1) The commission, by order, may cancel an assessment which has been delinquent for five years or more, if it determines that:

(a) The amount of the assessment is less than \$1 and that further collection effort or expense does not justify the collection thereof; or

(b) The assessment is wholly uncollectible.

(2) The order shall contain adequate information as to why the assessment cannot be collected. [1989 c.926 §24]

Note: See note under 469.228.

(Finances)

469.267 Heating Oil Education and Conservation Account. (1) The Heating Oil Education and Conservation Account is established separate and distinct from the General Fund in the State Treasury.

(2) All moneys collected under ORS 469.254 shall be deposited in the State Treasury and credited to the Heating Oil Education and Conservation Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are continuously appropriated to the commission to be used for the following purposes:

(a) To pay the expenses of the commission; and

(b) For funding programs related to oil heating and energy conservation as set forth in ORS 469.230 (1) to (6).

(5) The commission by rule shall establish a maximum dollar limit for the account for which assessments may be collected taking into consideration the purposes of the account under subsection (4) of this section. [1989 c.926 §26]

Note: See note under 469.228.

469.269 Heating Oil Remedial Action Account. (1) The Heating Oil Remedial Action Account is established separate and distinct from the General Fund in the State Treasury.

(2) The assessments collected under ORS 469.256 shall be deposited into the State Treasury and credited to the Heating Oil Remedial Action Account.

(3) The State Treasurer may invest and reinvest moneys in the account in the manner provided by law.

(4) The moneys in the account are appropriated continuously to the commission to be used as provided in subsection (5) of this section.

(5) Moneys in the account may be used by the commission for the following purposes:

(a) Payment of remedial action costs; and

(b) Payment of the costs of administering the account.

(6) The commission by rule shall establish a maximum dollar limit for the fund for which assessments may be collected taking into account the purposes of the account under subsection (5) of this section. [1989 c.926 §27]

Note: See note under 469.228.

469.270 Powers of commission in administering accounts. In administering the Heating Oil Remedial Action Account or the Heating Oil Education and Conservation Account, the commission may:

(1) Determine, pay and reject claims for remedial action costs.

(2) Disseminate reliable information about avoiding and responding to releases of heating oil from heating oil tanks.

(3) Enter into contracts which it considers appropriate to administer the accounts, including entering into contracts with adjusters to adjust claims for remedial action costs.

(4) Appoint subordinate officers and employees of the commission and prescribe their duties and fix their compensation.

(5) Cooperate with any local, state or national organization or agencies, whether created by law or voluntary, engaged in work or activities similar to that of the commission and enter into contracts with such organizations or agencies for carrying on joint programs.

(6) Act jointly and in cooperation with the Federal Government or any agency thereof in the administration of any program of the government or a governmental agency considered by the commission to relate to administration of the fund and expend funds in connection therewith, provided that such program is compatible with the powers conferred by ORS 469.228 to 469.298.

(7) Prosecute, in the name of the State of Oregon, any suit or action for the collection of the assessment provided for in ORS 469.256. [1989 c.926 §28; 1991 c.67 §139]

Note: See note under 469.228.

(Remedial Action Costs)

469.274 Claims for remedial action costs. (1) Any person or the Department of Environmental Quality who incurs any remedial action costs may give written notice of claim to the commission within 20 days after the remedial action costs are incurred or as soon thereafter as is reasonably possible.

(2) A person who is responsible for remedial action but who is unable to pay in advance the remedial action costs may apply to the commission for certification that the remedial action costs incurred qualify for reimbursement under ORS 469.278. The commission shall pay for such costs upon completion of the remedial action and compliance with the requirements of ORS 469.276.

(3) The commission, upon receipt of a notice of claim, will furnish to the claimant a form for filing a proof of the remedial action costs incurred.

(4) According to the provisions of ORS 316.746, payments by the commission for remedial action costs shall be subtracted from the federal taxable income in the computation of state taxable income of the person who is responsible for the remedial action. [1989 c.926 §§31, 32; 1991 c.641 §7]

Note: See notes under 316.746 and 469.228.

469.276 Time for filing proof of claim; failure to file. (1) Written proof of the remedial action costs must be filed with the commission within 90 days after the date the remedial action costs are incurred. Failure to furnish proof within the time required shall not invalidate or reduce any claim if it was not reasonably possible to give proof within such time, provided proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(2) No person shall willfully conceal or misrepresent any material fact or circumstances concerning a claim for or proof of remedial action costs.

(3) A violation of subsection (2) of this section shall be a basis for a rejection of a claim for remedial action costs. [1989 c.926 §33]

Note: See note under 469.228.

469.278 Time for payment of claims. (1) Subject to ORS 469.286, claims for remedial action costs payable from the Heating Oil Remedial Action Account shall be determined and shall be paid, in full or in part, or rejected within 60 days of receipt of due written proof of remedial action costs.

(2) The commission may extend by up to 30 days the time provided in subsection (1)

for determining, paying or rejecting claims by giving notice of the extension to the person seeking the remedial action costs. [1989 c.926 §34]

Note: See note under 469.228.

469.280 Demand for hearing; contents; time for filing. Any person who has complied with ORS 469.276, but has received less than the full amount of the claim for reasons other than provided in ORS 469.286, may seek up to the full amount of the claim by filing a demand for a hearing with the commission. The demand shall identify the name and address of the claimant, the date proof of the remedial action costs was filed and the date of the determination paying the claim, in full or in part, or rejecting the claim. The demand for a hearing must be filed within 30 days of the determination paying the claim, in full or in part, or rejecting the claim. [1989 c.926 §35]

Note: See note under 469.228.

469.282 Hearing; final order. (1) If timely demand for a hearing is filed, the commission shall hold a hearing on the order as provided by ORS 183.310 to 183.550. In the absence of a timely demand for a hearing, no person shall be entitled to judicial review of the determination.

(2) After the hearing, the commission shall enter a final order vacating, modifying or affirming the determination. [1989 c.926 §36]

Note: See note under 469.228.

469.284 Judicial review. A person aggrieved by an order of the commission which has been the subject of a timely application for hearing before the commission shall be entitled to judicial review of the order under ORS 183.310 to 183.550. [1989 c.926 §37]

Note: See note under 469.228.

469.286 Effect of insufficient money to pay claims; partial payment. Notwithstanding any other provision of ORS 469.228 to 469.298, the commission has no obligation to pay any claims for remedial action costs if the moneys in the account are insufficient to pay all of the claims for remedial action costs for which forms of written proof have been filed, but which have not yet been determined, paid or rejected. The commission may adopt rules providing for the partial payment of claims for remedial action costs whenever the moneys within the account are insufficient. [1989 c.926 §38; 1991 c.67 §140]

Note: See note under 469.228.

(Enforcement)

469.290 Fine for failure to pay assessment. If any oil marketer fails to pay the assessments required by ORS 469.254, 469.256 and 469.259 within 60 days of the time set by

the commission, the oil marketer shall pay an additional fine equal to twice the amount of the assessment. [1989 c.926 §23; 1991 c.641 §8]

Note: See note under 469.228.

469.292 Penalty for late payment. Any person who delays transmittal of funds 10 calendar days beyond the time set by the commission shall pay five percent of the amount due then and one percent of the amount due for each month of delay thereafter. [1989 c.926 §22; 1991 c.641 §9]

Note: See note under 469.228.

(Miscellaneous)

469.296 Administration and enforcement of ORS 469.228 to 469.298. Except as otherwise provided in ORS 469.228 to 469.298, ORS 291.026, 291.202 to 291.222, 291.232 to 291.260, 291.322 to 291.336, 292.210 to 292.250, 293.260 to 293.280, 293.295 to 293.346 and 293.590 to 293.640 do not apply to the commission or to the administration and enforcement of ORS 469.228 to 469.298. [1989 c.926 §17]

Note: See note under 469.228.

469.298 Short title. ORS 469.228 to 469.298 may be cited as the Oil Heat Commission Act. [1989 c.926 §2]

Note: See note under 469.228.

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions. As used in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, unless the context requires otherwise:

(1) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(2) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect a thermal power plant to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(4) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines

and any associated waste heat combined cycle generators.

(5) "Construction" means onsite work and construction, the cost of which exceeds \$250,000, excluding exploratory work.

(6) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(7) "Department" means the Department of Energy created under ORS 469.030.

(8) "Director" means the Director of the Department of Energy.

(9) "Electric utility" means individuals, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy. "Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.

(10) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of 25,000 kilowatts or more, including but not limited to thermal power, hydropower, geothermal power produced from a single energy generation area, or combustion turbine power plant.

(b) A nuclear installation as defined in this section.

(c) A high voltage transmission line of more than 10 miles in length with a capacity of 230,000 volts or more to be constructed in more than one political subdivision in this state; but excluding:

(A) Lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity of 230,000 volts or more; and

(B) Lines of 69,000 volts or more that are rebuilt and upgraded to 230,000 volts along the same right of way.

(d) A solar collecting facility using more than 100 acres of land, or providing 25,000 kilowatts or more of power.

(e) A pipeline that is:

(A) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas.

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(f) A synthetic fuel plant which converts a natural resource including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of 2×10^9 Btu of heat a day.

(g) An electric power generating plant using geothermal, solar or wind power, regardless of its size, if the operation of the plant would cause the total energy generated within an energy generation area of 25 megawatts or more.

(h) A storage facility for liquified natural gas constructed after September 29, 1991, that is designed to hold at least 70,000 gallons.

(11) "Energy generation area" means an area within which the effects of two or more small generating plants may accumulate so the small generating plants have effects of a magnitude similar to a single generating plant of 25 megawatts or more. An "energy generation area" for facilities using a geothermal resource and covered by a unit agreement, as provided in ORS 522.405 to 522.545 or by federal law, shall be defined in that unit agreement. If no such unit agreement exists, an energy generation area for facilities using a geothermal resource shall be the area that is within two miles, measured from the electrical generating equipment of the facility, of an existing or proposed geothermal electric power generating plant, not including the site of any other such plant not owned or controlled by the same person.

(12) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

(13) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement offsite, or causing radiation levels offsite, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property offsite.

(14) "Nominal electric generating capacity" means the nameplate rating of the electrical generator proposed to be included in an industrial or energy facility, except in the

case of a geothermal facility where the facility demonstrates to the council, through a power sales contract or other objective means, that the electrical generating capacity available for delivery at the point the facility is connected to the transmission system will be less than the nameplate rating.

(15) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(16) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; waste disposal facility for radioactive waste; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(17) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of 25,000 kilowatts or more, for generation and distribution of electricity, and associated transmission lines.

(18) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(19)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(20) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility. "Related or supporting facilities" does not include geothermal reservoirs, geothermal production, injection or monitoring wells or geothermal wellhead equipment or pumps.

(21) "Site" means any proposed location of an energy facility and related or supporting facilities.

(22) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state.

(23) "Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of 25,000 kilowatts or more, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies.

(24) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(25) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(26) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioactive waste from

that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1; 1991 c.480 §4]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. [Formerly 453.315]

(Siting)

469.320 Site certificate required; exceptions. (1) No energy facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, but no site certificate shall be required for an existing industrial or energy facility if the facility is merely modified to increase the electric capacity and not expanded. No energy facility shall be constructed or operate except in conformity with the requirements of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(2) Notwithstanding subsection (1) of this section, no site certificate shall be required for construction or expansion of any interstate natural gas pipeline authorized by and subject to the continuing regulation of the Federal Power Commission or successor agency.

(3) Notwithstanding subsection (1) of this section, no site certificate shall be required for a facility which generates electricity from heat produced as a by-product of the normal industrial processes at an existing industrial facility.

(4)(a) Notwithstanding subsection (1) of this section, no site certificate shall be required for an energy recovery energy facility that has a nominal electric generating capacity of less than 25,000 kilowatts.

(b) As used in this subsection, "energy recovery energy facility" means a facility that:

(A) Is designed to produce thermal energy for industrial use and electric energy; and

(B) Is designed to use straw, forest slash, wood waste, other farm or forest waste or solid waste as defined in ORS 459.005 as a fuel. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.s.1 c.6 §1; 1987 c.200 §5; 1991 c.480 §5]

469.330 Notice of intent to file application for site certificate; public notice.

(1) Each applicant for a site certificate shall file with the council a notice of intent to file an application for a site certificate. The notice of intent must describe the proposed site and facility with sufficient detail to enable the council to identify the proposed site and understand its proposed use.

(2) The council shall cause public notice to be given whenever a notice of intent is filed and provide a description of the proposed site in sufficient detail to inform the public of its location. [Formerly 453.335; 1977 c.794 §9; 1989 c.88 §1]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation.

(1) Applications for site certificates shall be made to the council on a form prescribed by the council and accompanied by the fee required by ORS 469.360. An application may be filed not sooner than 180 days after filing a notice of intent.

(2) Proposed use of a site within an area designated by the council pursuant to ORS 469.470 as suitable for location of a particular type of energy facility does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Health Division, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Transportation, the Department of Land Conservation and Development, the Economic Development Department and any city or county affected by the application. [Formerly 453.345; 1977 c.794 §10; 1989 c.88 §2]

469.360 Evaluation of site applications; costs; payment; effect of delinquency.

(1) The council shall evaluate each site certifi-

cate application. As part of its evaluation, the council may commission an independent study by an independent contractor, state agency or any other person, of any aspect of the proposed facility within its statutory authority to review.

(2) The council shall not compensate a state agency for expenses related to the agency's review of the notice of intent or application, or the agency's participation in a council proceeding.

(3)(a) Notwithstanding subsection (2) of this section, the council may enter into a contractual agreement with another state agency to perform specific studies necessary to complete the council's statutory evaluation of the application. Studies authorized by this section shall not include studies or issues that are within the contracting agency's scope of review of the notice of intent and application.

(b) The council may enter into a contract under subsection (1) of this section and paragraph (a) of this subsection after the council makes a determination that the council is unable to fully evaluate the application without assistance. The council shall compensate the independent contractor or state agency only to the extent the costs are related to the issue identified by the council.

(4) Subject to the provisions of ORS 469.441, the applicant shall pay all expenses incurred by the council and department related to the review and decision of the council. These expenses may include legal expenses, expenses incurred in processing and evaluating the application, issuing a final order or site certificate and expenses of commissioning an independent study by a contractor or state agency under subsection (1) and paragraph (a) of subsection (3) of this section.

(5) Every applicant for a site certificate shall submit the fee required under the fee schedule established under ORS 469.441 to the department at the same time as the application for a site certificate is filed with the council. To the extent possible, the full cost of the evaluation directed by the council shall be paid from the application fee paid under this section. However, if costs of the evaluation exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If the costs are less than the fee paid, the excess shall be refunded to the applicant.

(6) Any applicant who is delinquent in the payment of fees under subsection (5) of this section shall be subject to ORS 469.421 (8). [Formerly 453.355; 1987 c.450 §1; 1989 c.88 §3]

469.370 Hearings on site application; approval or rejection by council. (1) The council shall hold public hearings in the affected area and elsewhere, as it deems necessary, on the application for a site certificate. At the conclusion of its hearings the council shall either approve or reject the application. The council must make its decision by the affirmative vote of at least four members, approving or rejecting any application for a certificate.

(2) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.400 (1).

(3) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25,000 and 50,000 kilowatts; or

(C) To add generating capacity to an existing dam; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(4) The council shall reject an application for a site certificate for a hydroelectric project if the council finds the project does not comply with the standards set forth in ORS 469.371 or rules adopted by the council under ORS 469.371. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17]

469.371 Hydroelectric power projects; minimum standards; rules. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Energy Facility Siting Council relating to the development of hy-

droelectric power projects of 25 megawatts or more in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The council shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the council may allow mitigation if the council finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the council, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the council shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural and archaeological sites shall be maintained or enhanced. No activity may be approved which, in the judgment of the council, after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the council may consider mitigation if the council determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining

whether mitigation is acceptable the council shall consult with appropriate state, federal and local agencies.

(2) The council shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the council relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the council shall consult with the Water Resources Commission in order to coordinate rules adopted under this section with rules adopted by the Water Resources Commission under ORS 543.017. [1985 c.569 §5; 1991 c.480 §6]

469.372 Determination of impact of hydroelectric projects required; consolidated review. (1) Whenever the Energy Facility Siting Council receives an application for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the council or before the Water Resources Commission under ORS 537.140 to 537.320 or 543.010 to 543.620; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the council determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the council shall issue an order setting forth the council's determination that there are no cumulative effects and the council's decision that consolidated review is not required.

(3) If the council determines that pending applications or existing projects may have cumulative effects, the council shall conduct a consolidated review before issuing any site certificate for a hydroelectric project in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS 183.310 to 183.550 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the council or the Water Resources Commission and existing hydroelectric projects. In its final order on a site certificate, the council shall include its findings on cumulative impacts. The findings of the council under this section must be sufficient to support the council's decision to issue or deny a site certificate.

(4) The council shall not issue a site certificate for any application for a project in the same river basin filed after the council begins a consolidated review contested case hearing until the council issues final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section.

(6) The time limits for review of the applications provided by ORS 469.370 are not applicable to applications for site certificates subject to this section. [1985 c.569 §14; 1985 c.673 §196]

469.374 Rulemaking for consolidated review process. The Energy Facility Siting Council shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS 183.310 to 183.550 to implement the consolidated review process under ORS 469.372. Before adoption of the rules, the council shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation. [1985 c.569 §15]

469.375 Required findings for radioactive waste disposal facility certificate. The council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year flood plain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of Federal Government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name of the state has been provided in an amount determined by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.380 Conduct of hearings. (1) Any person may appear personally or by counsel to present testimony in any hearing before the council on any application for a site certificate.

(2) The council may, by proper order, permit any person to become a party in support of or in opposition to the application by intervention who appears to have an interest in the results of the hearing or who represents a public interest in such results. However, the request for intervention must be made before the final taking of evidence in the hearing.

(3) Any person authorized to intervene in the hearing on a site certificate may appeal the council's approval or rejection in the manner prescribed in ORS 469.400 (1). Such approval or rejection shall be deemed a final order for purposes of such appeal. [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2]

469.390 Waiting period for issuance of certificate; waiver. Except as provided in section 4, chapter 609, Oregon Laws 1971, and ORS 469.410, no site certificate shall be issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 until the entire review time prescribed by ORS 469.370 has been utilized, except that the council may waive the time requirement if, pursuant to ORS 469.470, area studies of the entire state for that type of energy facility have been completed or have been determined to be unnecessary. [Formerly 453.385]

469.400 Judicial review vested in Supreme Court; appeal; execution of site certificates; contents. (1) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate is conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days only following the date the approval or rejection is served. If the council does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the council delivered or mailed its approval or rejection in accordance with ORS 183.470. Upon approval and after expiration of the appeal period provided in this subsection, the site certificate with any conditions prescribed by the council shall be executed by the chairman of the council and by the applicant, except that the filing of the petition for review stays the construction of the energy facility until final decision by the Supreme Court. No bond or other undertaking shall be required to stay such construction. Except as otherwise provided in this subsection, the review by the Supreme Court shall be as provided in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review.

(2) The certificate shall authorize the applicant to construct and operate the proposed energy facility subject to the conditions set forth in such certificate.

(3) The site certificate shall contain conditions for the protection of the public health and safety and shall require both parties to abide by state law and rules of the council in effect on the date the site certificate is

executed, except that upon a clear showing that there is danger to the public health and safety that requires stricter laws or rules, the state may, subject to ORS 469.500, require compliance with such stricter laws or rules.

(4) The site certificate shall contain the applicant's warranties as to its abilities required under ORS 469.470 (3), its provisions as to protection of the public health and safety and as to time of completion of construction.

(5) Subject to the conditions set forth therein, any certificate signed by the chairman of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed energy facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the facility, subject only to condition of the site certificate. Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate.

(6) Where a site certificate authorizes the construction and operation of an energy facility within the boundaries of an incorporated city, the certificate shall be conditioned upon compliance with lawful ordinances in effect and enacted by the city on the date of filing of the notice of intent or the application, whichever is earlier. If a city subsequently adopts lawful ordinances that are stricter than any ordinance in effect on the date of filing of the notice of intent or the application, upon a clear showing that there is danger to the public health and safety the state may require compliance with such stricter ordinances. [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3]

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.501 to 192.505, 192.690, 469.010 to 469.225, 469.300 to 469.580, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Governor for:

(a) Any transmission lines for which application has been filed with the Federal Government and the Public Utility Commission of Oregon prior to July 2, 1975; and

(b) Any energy facility under construction on July 2, 1975.

(2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.421 (2) to (6), if applicable, and shall execute a site certificate in which the applicant agrees:

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930.

(3) Site certificates executed by the Governor under ORS 469.400 prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. [1975 c.606 §24; 1983 c.740 §184; 1989 c.88 §5]

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty.

(1) Every person filing notice of intent to file for a site certificate shall submit the fee required under the fee schedule established under ORS 469.441 for each site so indicated. If the person subsequently becomes an applicant for a site certificate, any of the fee remaining after a review of the notice of intent shall be credited against the amount otherwise due under ORS 469.360 (5). To the extent possible, the full cost of the evaluation directed by the council shall be paid from the application fee paid under this subsection. However, if costs of the evaluation exceed the fee, the applicant shall pay any excess costs shown in an itemized statement prepared by the council. In no event shall the council incur evaluation expenses in excess of 110 percent of the fee initially paid unless the council provides prior notification to the applicant and a detailed projected budget the council believes necessary to complete the project. If costs are less than the fee paid, the excess shall be refunded to the applicant. Subject to the provisions of ORS 469.441, the applicant shall pay all expenses including legal expenses incurred by the council and department to review a notice of intent. These expenses may include changes to the council's rules that are specifically required and related to the particular site certificate application. The expenses may also include studies by an independent contractor or state agency under ORS 469.360 (1) to (3), that the council considers necessary within its statutory authority to prepare for evaluating a site certificate application.

(2) Subject to the provisions of ORS 469.441, each holder of a certificate shall pay an annual fee, due every July 1 following issuance of a site certificate. For each fiscal year, upon approval of the department's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the director promptly shall enter an order establishing an annual fee based on the amount of revenues that the director estimates is needed to fund the cost of regulating the facility. In determining the cost of regulating the facility, the director shall include both the direct cost to be incurred by the council and the department to regulate the facility, and the general regulation costs to be incurred by the council and the department to regulate all certificated facilities that cannot be allocated to an individual, licensed facility. Not more than 20 percent of the annual fee charged each facility shall be for the recovery of these general regulation costs.

(3) Each holder of a site certificate executed after July 1 of any fiscal year shall pay a fee for the remaining portion of the year. The amount of the fee shall be set at the cost of regulating the facility during the remaining portion of the year determined in the same manner as the annual fee.

(4) When the actual costs of regulation incurred by the council and the department for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are less than the annual fees for that facility, the unexpended balance shall be refunded to the site certificate holder. When the actual regulation costs incurred by the council and the department for the year, including that portion of the general regulation costs that have been allocated to a particular facility, are projected to exceed the annual fee for that facility, the director may issue an order revising the annual fee.

(5) In addition to any other fees required by law, each energy resource supplier shall pay to the department annually its share of an assessment to fund the activities of the department, determined by the director in the following manner:

(a) Upon approval of the department's budget authorization by a regular session of the Legislative Assembly, the director shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the department, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the director shall enter an

order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the department, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium which order shall take into account any revisions to the department's biennial budget made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

(c) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.

(d) The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the department as follows:

(A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days following the close of the regular session of the Legislative Assembly; and

(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year.

(f) An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The

statement shall be in the form prescribed by the director and is subject to audit by the director. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the department from fulfilling its statutory responsibilities.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

(h) In determining the amount of revenues which must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the department, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS 469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(6)(a) In addition to any other fees required by law, each operator of a nuclear fueled thermal power plant or nuclear installation within this state shall pay to the

department annually on July 1, an assessment in an amount determined by the director to be necessary to fund the activities of the state and the counties associated with emergency preparedness for a nuclear fueled thermal power plant or nuclear installation. The assessment shall not exceed \$461,250 per year. Moneys collected as assessments under this subsection are continuously appropriated to the department for this purpose.

(b) The department shall maintain and shall cause other state agencies and counties to maintain time and billing records for the expenditure of any fees collected from an operator of a nuclear fueled thermal power plant under paragraph (a) of this subsection.

(7) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (2), (5) and (6) of this section.

(8)(a) All fees assessed by the director against holders of site certificates for facilities that have an installed capacity of 500 megawatts or greater may be paid in several installments, the schedule for which shall be negotiated between the director and the site certificate holder.

(b) Energy resource suppliers or applicants or holders of a site certificate who fail to pay a fee provided under subsections (1) to (6) of this section or the fees required under ORS 469.360 after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. Any payment made according to the terms of a schedule negotiated under paragraph (a) of this subsection shall not be considered past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The director shall be entitled to recover all costs and attorney fees connected with the action. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5; 1987 c.450 §2; 1989 c.88 §4]

469.430 Site inspections. The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the department to inspect, the site at any time. [Formerly 453.415]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS 183.310 to 183.550, a certificate may be revoked or suspended:

(1) For any breach of a warranty; or

(2) For failure to maintain safety standards or to comply with the terms or conditions of the certificate; or

(3) For violation of the provisions of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 or rules adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.425]

469.441 Justification of fees charged; judicial review. (1) All expenses incurred by the council and the department under ORS 469.360 (1) and 469.421 that are charged to or allocated to the fee paid by an applicant or the holder of a site certificate shall be necessary, just and reasonable. Upon request, the department or the council shall provide a detailed justification for all charges to the applicant or site certificate holder. Not later than January 1 of each odd-numbered year, the council by order shall establish a schedule of fees which those persons filing a notice of intent or an application for a site certificate must submit under ORS 469.360 and 469.421 at the time of filing the notice of intent or an application. The fee schedule shall be designed to recover the council's actual costs of evaluating the application subject to any applicable expenditure limitation in the council's budget. Fees shall be based upon actual, historical costs incurred by the council and department in reviewing similar site applications. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent is filed or for which an application for a site certificate is made, whether the application is for a new or existing facility and other appropriate variables having an effect on the expense of evaluation.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant or site certificate holder, the applicant or holder may seek judicial review for the amount of expenses charged or allocated in circuit court as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant or holder establishes that any of the charges or allocations are unnecessary or unreasonable, the council or the department shall refund the amount found to be unnecessary or unreasonable. The applicant or holder shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1989 c.88 §8]

HIGH VOLTAGE TRANSMISSION LINES

469.442 Procedure prior to construction of transmission line in excess of 230,000 volts. (1) Any person who proposes to construct a transmission line in excess of 230,000 volts capacity that is not otherwise under the jurisdiction of the Energy Facility Siting Council shall:

(a) Give public notice of the proposed action at least 18 months before beginning construction of the proposed high voltage transmission line. Notification shall be given:

(A) By publication once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the transmission line is to be constructed;

(B) To the governing bodies and planning directors of cities and counties which are within or partially within the project study area; and

(C) To state legislators whose districts are within or partially within the project study area.

(b) Provide an opportunity for public comment on the proposed transmission line and conduct public meetings to review the proposal.

(c) Provide written notice to property owners within proposed final route or routes as soon as practicable after such routes have been identified.

(d) Respond specifically and in writing to local concerns and recommendations regarding the proposed transmission line.

(2) Subsection (1) of this section shall not apply to a person who proposes to construct transmission lines entirely within 500 feet of an existing corridor occupied by transmission lines with a capacity in excess of 230,000 volts. [1987 c.200 §2]

469.445 Review committee on transmission lines; report; costs. (1) The director shall establish a committee to include state and local representatives and citizens to coordinate public review of a proposed construction of a high voltage transmission line under ORS 469.442 when requested to do so by ordinance or resolution of the governing body of any affected jurisdiction.

(2) At the conclusion of the public review, the committee shall make a summary report including public concerns and recommendations concerning the proposed transmission line to the Governor.

(3) The cost of conducting the review shall be negotiated between the Department of Energy and the project sponsor and shall be paid by the project sponsor. [1987 c.200 §3]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council consisting of seven public members, who shall be appointed by the Governor, subject to confir-

mation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an employee, director or retired employee or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in any corporation or utility operating or interested in establishing an energy facility in this state or in any manufacturer of related equipment.

(4) No member shall for two years after the expiration of the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435]

469.460 Officers; meetings; compensation and expenses. (1) The council shall annually elect from among its members a chairman and vice chairman with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairman of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties. The council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) After public hearings, designate areas within this state that are suitable or unsuit-

able for use as sites for nuclear-fueled and fossil-fueled thermal power plants with nominal electric generating capacity of more than 200,000 kilowatts and designate each additional type of energy facility for which the council determines such designations are necessary.

(3) Establish standards and promulgate rules that applicants for site certificates must meet including, but not limited to, standards of financial ability and qualifications as to ability to construct and operate the energy facility to which the site certificate applies and prescribe the form.

(4) By rule, define the size of an energy generating area for each type of energy resource.

(5) Conduct public hearings on the proposed location of any site after application is filed therefor.

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in establishing standards for site selection.

(7) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(8) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.455; 1991 c.480 §7]

469.480 County advisory groups; special advisory groups; compensation and expenses; Electric and Magnetic Field Committee. (1) The council shall designate the governing body of the city or county or counties as a special advisory group in any city or county or counties wherein a proposed site is located upon filing of a site application therefor.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employees, members of any advisory committee appointed under subsection (1) of

this section shall receive no compensation but may receive their actual and necessary travel and other expenses incurred in the performance of their official duties.

(4) The council by rule shall form an Electric and Magnetic Field Committee which shall meet at the call of the council chair. The committee shall include representatives of the public, utilities, manufacturers and state agencies. The committee shall monitor information being developed on electric and magnetic fields and report the committee's findings to the council. The council shall report the findings of the Electric and Magnetic Field Committee to the Energy Policy Review Committee and the Legislative Assembly. [Formerly 453.475; 1991 c.491 §1]

(Rules; Standards)

469.490 Adoption of rules. All rules adopted by the council pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.550. [Formerly 453.495]

469.500 Adoption of safety standards.

(1) The council shall adopt safety standards promulgated as rules for the operation of all thermal power plants and nuclear installations. Such standards shall include but need not be limited to:

(a) Emission standards at the lowest practicable limits, taking into account the state of technology and the economics of improvements in relation to the benefits to public health and safety;

(b) All necessary safety devices and procedures; and

(c) The accumulation, storage, disposal and transportation of wastes including nuclear wastes.

(2) The council shall establish programs for monitoring the environmental and ecological effects of the construction and operation of thermal power plants and nuclear installations to assure continued compliance with the terms and conditions of the certificate and the safety standards adopted under subsection (1) of this section.

(3) The director shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to standards established by the council. The council and director shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(4) The monitoring program may be conducted in cooperation with any federally op-

erated program if the information available therefrom is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the director.

(5) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear-fueled thermal power plant or nuclear installation. [Formerly 453.505]

469.510 Considerations in adoption of siting, construction and operation rules. In performing its duties and exercising its powers under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, the council shall set standards and promulgate rules for the siting, construction and operation of thermal plants and nuclear installations which shall take into account the following:

(1) The health, safety and welfare of the public.

(2) The effects of chemical, waste heat, moisture and radioactive discharge or other impact on the environment and associated natural resources and physical processes, including humans, air, water, fish and wildlife.

(3) Rules and regulations of the federal Nuclear Regulatory Commission, the Environmental Protection Agency, the Federal Department of Transportation and the Federal Energy Administration or their successors.

(4) Land and water use characteristics of any site, including but not limited to the aesthetics of the site and the environment and the impact on present and future use of adjacent areas.

(5) Present and future industrial, commercial and residential power needs by classes and amount for each class.

(6) Beneficial use of waste water developed by a thermal power plant.

(7) The regulations, if any, of cities or counties relating to the installations of thermal power plants or nuclear installations within their respective borders.

(8) Ability of the affected area to absorb the industrial and population growth resulting from operation of the facility. [Formerly 453.515; 1977 c.794 §15]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development.

(1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the department promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy

facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

(Plant Operations; Radioactive Wastes)

469.525 Radioactive waste disposal facilities prohibited; exceptions. Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the Health Division.

(3) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety. [Formerly 459.630; 1979 c.283 §2; 1981 c.587 §2]

469.530 Review and approval of security programs. The council and the director shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 §3; 1989 c.6 §1]

469.533 Department of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the Department of Energy in cooperation with the Health Division and the Emergency Management Division shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation. [Formerly 453.765; 1983 c.586 §43]

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the department under ORS 469.533. The department shall review the county procedures to determine whether they are compatible with the rules of the department. [1983 c.586 §46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the director limit the travel on such roads to such extent as the director deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 §47]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the Department of Energy which explains rules or procedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs; transport and disposal of radioactive materials. (1) In instances where the director determines either from the monitoring or surveillance of the director that there is danger of violation of a safety standard adopted under ORS 469.500 from the continued operation of a plant or installation, the director may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards.

(3) The director may order compliance or impose other safety conditions on the transport or disposal of radioactive materials or wastes if the director believes that ORS 469.300 to 469.621 and 469.930 or rules adopted pursuant thereto are being violated or are in danger of being violated. [Formerly 453.545; 1989 c.6 §2]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the director from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the director shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director based upon monitoring or surveillance

by the director, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation or storage of radioactive material located at a nuclear-fueled thermal power plant or a nuclear installation, the director shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570.

(3)(a) If the director believes there is a clear and immediate danger to public health or safety, the director shall halt the transportation or disposal of radioactive material or waste.

(b) The director shall serve an order to halt the transportation or disposal of radioactive material on the person responsible for the transport or disposal. The order may be served without prior hearing or notice.

(c) Within 24 hours after the director serves an order under paragraph (b) of this subsection, the director shall petition the appropriate circuit court for relief under ORS 469.570.

(4) The Governor, in the absence of the director, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 §16; 1989 c.6 §3]

469.553 Active uranium mill or mill tailings disposal facility site certification required; procedure for review; fees. (1) Any person desiring to construct or operate an active uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.380, 469.390 and 469.400, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.421 in connection with site certificates applied for or issued under this section. [1979 c.283 §7; 1987 c.633 §1]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the

protection of the public health and safety and the environment.. [1979 c.283 §8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor; exception for inactive or abandoned site. (1) Notwithstanding the authority of the Health Division pursuant to ORS 453.605 to 453.745 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604, and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS 183.310 to 183.550 and may receive and disburse funds in connection with the implementation and administration of this section.

(2) The Energy Facility Siting Council and the Department of Energy may enter into and carry out cooperative agreements and arrangements with any agency of the Federal Government implementing the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. section 9601 et seq., to clean up wastes and contaminated material, including overburden, created by uranium mining before June 29, 1989. Any such project need not obtain a site certificate from the council, but shall nevertheless comply with all applicable, relevant or appropriate state standards including but not limited to those set forth in ORS 469.375 and rules adopted by the council and other state agencies to implement such standards.

(3) The Governor may do any and all things necessary to implement the requirements of the federal Acts referred to in subsections (1) and (2) of this section.

(4) Notwithstanding ORS 469.553, after June 25, 1979, no site certificate is required for the cleanup and disposal of an inactive or abandoned uranium mill tailings site as authorized under subsection (1) of this section and Title I of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604. [1979 c.283 §9; 1987 c.633 §2; 1989 c.496 §1]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.501 to 192.505, any information filed or submitted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.565 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employee of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employee is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the director.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [1981 c.866 §§3, 4]

469.567 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.565, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.565 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [1981 c.866 §5]

(Enforcement)

469.570 Court orders for enforcement. Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 or with a site certificate issued pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.575]

(Natural Gas Storage)

469.580 Use of underground reservoir for natural gas storage requires certificate. Any person desiring to condemn or utilize an underground reservoir for the purpose of storage of natural gas pursuant to ORS 520.340, 520.350 and 772.610 to 772.625 shall file with the council a site certificate application. [1977 c.296 §13]

(Siting of Nuclear-fueled Thermal Power Plants)

469.590 Definitions for ORS 469.590 to 469.595. As used in ORS 469.590 to 469.595:

(1) "High-level radioactive waste" means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) "Spent nuclear fuel" means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c.1 §2]

469.593 Findings. The people of this state find that if no permanent repository for high-level radioactive waste is provided by the Federal Government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c.1 §1]

469.594 No storage of high-level radioactive waste after expiration of license; exception; implementation agreements. (1) Notwithstanding ORS 469.300 (26), no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materials are removed from the site for permanent storage.

(3) The department and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Department of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 §2; 1991 c.480 §11]

469.595 Condition to site certificate for nuclear-fueled thermal power plant. Before issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the Federal Government. The repository must provide for the terminal disposition of such waste, with or without provision for retrieval for reprocessing. [1981 c.1 §3]

469.597 Election procedure; elector approval required. (1) Notwithstanding the provisions of ORS 469.370, if the council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the electors of this state for their approval or rejection at the next available statewide general election. The procedures for submitting a proposal to the electors under this section shall conform, as nearly as possible to those for state measures, including but not

limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the electors of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 §§4, 5]

469.599 Public Utility Commission's duty. The Public Utility Commission shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.450 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

469.601 Effect of ORS 469.595 on applications and applicants. ORS 469.595 does not prohibit:

(1) The council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

(Transportation of Radioactive Material)

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 §2]

469.605 Permit to transport required; application; delegation of authority to issue permits. (1) No person shall ship or transport radioactive material identified by the council by rule as posing a significant hazard to public health and safety or the environment if improperly transported into or within the State of Oregon without first obtaining a permit from the department.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the director and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the director to evaluate the application.

(4) The director shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the department of performing the duties of the department under ORS 469.550 (3), 469.570, 469.603 to 469.621 and 469.992. Fees collected under this subsection shall be deposited in the Energy Department Account established under ORS 469.120.

(5) The director shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.603 to 469.621 and if the proposed route complies with federal law as provided in ORS 469.606.

(6) The director may delegate the authority to issue permits for the transportation of radioactive material to the Public Utility Commission of Oregon. In exercising such authority, the Public Utility Commission of Oregon shall comply with the applicable provisions of ORS 469.603 to 469.621 and rules adopted by the director or the Energy Facility Siting Council under ORS 469.603 to 469.621. Permits issued by the Public Utility Commission under this subsection shall be enforced according to the provisions of ORS 767.457. The director also may delegate other authority granted under ORS 469.605 to 469.621 to other state agencies if the delegation will maintain or enhance the quality of the transportation safety program. [1981 c.707 §5; 1989 c.6 §4; 1991 c.233 §3]

469.606 Determination of best and safest route. (1) Upon receipt of an application required under ORS 469.605 for which radioactive material is proposed to be transported by highway, the department shall confer with the following persons to determine whether the proposed route is safe, and complies with applicable routing requirements of the United States Department of Transportation and the United States Nuclear Regulatory Commission:

(a) The Public Utility Commission, or a designee of the Public Utility Commission;

(b) The Energy Facility Siting Council, or a designee of the Energy Facility Siting Council; and

(c) The Oregon Transportation Commission, or a designee of the Oregon Transportation Commission.

(2) If, after consultation with the persons set forth in subsection (1) of this section, a determination is made that the proposed route is not the best and safest route for transporting the material, the director shall deny the application except as provided in subsection (3) of this section.

(3) If the applicant is prohibited by a statute, rule or other action of an adjacent state or a political subdivision in an adjacent state from using the route that complies with federal law, the director:

(a) Shall petition the United States Department of Transportation for an administrative determination of preemption of the ban, pursuant to section 13 of the Hazardous Materials Transportation Uniform Safety Act of 1990, P.L. 101-615.

(b) May issue a permit as provided under ORS 469.605 (5) with conditions necessary to assure safe transport over a route available to the applicant, until the United States Department of Transportation determines whether the prohibition by the other state or political subdivision is preempted. [1991 c.233 §2]

469.607 Authority of council. (1) After consultation with the Public Utility Commission of Oregon and other appropriate state, local and federal agencies, the council by rule:

(a) May fix requirements for notification, record keeping, reporting, packaging and emergency response;

(b) May designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) May establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.603 to 469.621 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions

of ORS 183.310 to 183.550. [1981 c.707 §6; 1989 c.6 §5]

469.609 Annual report to state agencies and local governments on shipment of radioactive wastes. Annually, the director shall report to interested state agencies and all local government agencies trained under ORS 469.611 on shipment of radioactive material made during the preceding year. The director's report shall include:

(1) The type and quantity of material transported;

(2) Any mode of transportation used;

(3) The route or routes taken; and

(4) Any other information at the discretion of the director. [1981 c.707 §8; 1989 c.6 §6]

469.611 Emergency preparedness and response program; radiation emergency response team; training. Notwithstanding ORS chapter 401:

(1) The director shall coordinate emergency preparedness and response with appropriate agencies of government at the local, state and national levels to assure that the response to a radioactive material transportation accident is swift and appropriate to minimize damage to any person, property or wildlife. This program shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Health Division shall maintain a trained and equipped radiation emergency response team available at all times for dispatch to any radiological emergency. Before arrival of the Health Division at the scene of a radiological accident, the director may designate other technical advisors to work with the local response agencies.

(4) The Health Division shall assist the director to insure that all emergency services organizations along major transport routes for radioactive materials are offered training and retraining in the proper procedures for identifying and dealing with a radiological accident pending the arrival of persons with technical expertise. The Health Division shall report annually to the director on training of emergency response personnel. [1981 c.707 §9; 1983 c.586 §44; 1989 c.6 §7]

469.613 Records; inspection. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any informa-

tion as the council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the director. Any requirement imposed by the council under this subsection shall be consistent with regulations of the United States Department of Transportation and the United States Nuclear Regulatory Commission.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.550, 469.570, 469.603 to 469.621 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each highway route controlled shipment prior to or upon entry of the shipment into this state or at the point of origin for the transportation of highway route controlled shipments within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a radioactive placard as specified by federal regulations. [1981 c.707 §10; 1989 c.6 §8]

469.615 Indemnity for claims against state insurance coverage certification; reimbursement for costs incurred in nuclear incident. (1) A person transporting radioactive materials in this state shall indemnify the State of Oregon and its political subdivisions and agents for any claims arising from the release of radioactive material during that transportation and pay for the cost of response to an accident involving the radioactive material.

(2) With respect to radioactive materials, the director shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605.

(3) A person who owns, designs or maintains facilities, structures, vehicles or equipment used for handling, transportation, shipment, storage or disposal of nuclear material shall reimburse the state for all expenses reasonably incurred by the state or a political subdivision of the state, in protecting the public health and safety and the environment from a nuclear incident or the imminent danger of a nuclear incident caused by the person's acts or omissions. These expenses include but need not be limited to, costs incurred for precautionary

evacuations, emergency response measures and decontamination or other clean-up measures. As used in this subsection "nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(4) Nothing in subsection (3) of this section shall affect any provision of subsection (1) or (2) of this section. [1981 c.707 §11; 1987 c.705 §9; 1989 c.6 §9]

469.617 Report to legislature; content.

The director shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the department in administering ORS 469.550, 469.570; 469.603 to 469.621 and 469.992; and

(4) Such recommendations for additional legislation as the council considers necessary and appropriate. [1981 c.707 §12; 1989 c.6 §10]

469.619 Department to make federal regulations available. The department shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.550, 469.570, 469.603 to 469.621 and 469.992. [1981 c.707 §14; 1989 c.6 §11]

469.621 Advisory committee. The director may establish a committee of local officials and interested citizens to advise the council on radioactive materials transportation issues from a local perspective. [1981 c.707 §7]

**RESIDENTIAL ENERGY
CONSERVATION ACT**

(Investor-owned Utilities)

469.631 Definitions for ORS 469.631 to 469.645. As used in ORS 469.631 to 469.645:

(1) "Cash payment" means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and

loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Commission" means the Public Utility Commission of Oregon.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) " Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. " Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. " Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) " Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(10) "Investor-owned utility" means an electric or gas utility regulated by the commission as a public utility under ORS chapter 757.

(11) "Residential customer" means a dwelling owner or tenant who, either directly or indirectly, pays a share of the cost for service billed by an investor-owned utility for electric or natural gas service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §2; 1989 c.233 §1; 1989 c.648 §66]

469.633 Investor-owned utility program. Each investor-owned utility shall have an approved residential energy conservation program that, to the commission's satisfaction:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures approved by the commission to a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The minimum financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an

energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. Unless the commission approves higher levels of assistance, the financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms approved by the commission:

(i) A principal amount of up to \$5,000;

(ii) For an electric utility, an interest rate that does not exceed six and one-half percent annually or, for a gas utility, an annual interest rate 10 percentage points lower than the rate published by the Federal Housing Administration for Title I property improvement loans (24 C.F.R. § 201.4 (a)) on the date of the loan application, but not lower than six and one-half percent or higher than 12 percent; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.641 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350.

(b) That an otherwise eligible dwelling owner may obtain up to \$5,000 in loans or \$350 in cash payments for each dwelling.

(c) That there may be up to two loans or cash payments provided for each dwelling.

(d) That a dwelling owner who acquires a dwelling for which a previous loan was obtained under this section and ORS 469.631 may obtain a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.631 to 469.645; and

(B) There remain cost-effective energy conservation measures to be undertaken with regard to the dwelling.

(e) If the commission so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling.

(f) If the investor-owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the investor-owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The investor-owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) For an electric utility, provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space heating potential.

(6) Provides that the investor-owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.631 to 469.645 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §3; 1985 c.745 §6; 1989 c.233 §2; 1991 c.67 §141; 1991 c.78 §1]

469.635 Alternative program of investor-owned utilities. (1) An investor-owned utility may meet the program submission requirements of ORS 469.633 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 889, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.633.

(2) An investor-owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the investor-owned utility offers another financing program determined by the commission to meet or exceed the

program required in ORS 469.633 (3). A program shall be considered to meet or exceed the program required in ORS 469.633 (3) if it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.633 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.633 (3)(a)(B).

(3) An investor-owned utility that has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that is determined by the commission to meet or exceed the requirements in ORS 469.633 and 469.641 shall not be required to submit a separate program. However, the provisions of ORS 469.637, 469.639, 469.643 and 469.645 nevertheless shall be applicable.

(4) In addition to the residential energy conservation program required in ORS 469.633, an investor-owned utility may offer other energy conservation programs if the commission determines the programs will promote cost-effective energy conservation. [1981 c.778 §7; 1991 c.78 §2]

469.636 Additional financing program by investor-owned utility for rental dwelling. In addition to the residential energy conservation program approved under ORS 469.633, an investor-owned utility may offer an additional financing program for energy conservation measures for a dwelling owner who rents the dwelling to a tenant whose dwelling unit receives energy for space heating from the investor-owned utility. The financing program may consist, at a minimum, of either of the following:

(1) Offering low-interest loans to fund the entire cost of installed energy conservation measures up to \$5,000 per dwelling unit. In addition to the loan subsidy provided under ORS 469.633 (3), the loan shall be further subsidized by applying the present value to the public utility of the tax credit received under ORS 469.185 to 469.225. Any portion of the present value of the tax credit shall accrue to the dwelling owner rather than to the investor-owned utility.

(2) Offering cash payments in addition to the cash payments required in ORS 469.633

(3). The additional cash payment shall be equal to the present value of the tax credit received under ORS 469.185 to 469.225. [1985 c.745 §11; 1989 c.765 §9]

469.637 Energy conservation part of utility service of investor-owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the investor-owned utility. [1981 c.778 §4]

469.639 Billing for energy conservation measures. (1) Except as provided in subsection (2) of this section, the commission may require as part of an investor-owned utility residential energy conservation program that, for dwelling owners with approved credit, the utility add to the periodic utility bill for the owner-occupied dwelling for which energy conservation measures have been provided pursuant to ORS 469.631 to 469.645 an amount agreed to between the dwelling owner and the investor-owned utility.

(2) The commission shall allow an investor-owned utility to charge or bill a dwelling owner separately from the periodic utility bill for energy conservation measures provided pursuant to ORS 469.631 to 469.645 if that utility wishes to do so. [1981 c.778 §5]

469.641 Conditions for cash payments to dwelling owner by investor-owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, an investor-owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981; and

(2) The measures will not be paid for with other investor-owned utility grants or loans. [1981 c.778 §6; 1991 c.877 §39]

469.643 Formula for customer charges. The commission shall adopt by rule a formula under which the investor-owned utility shall charge all customers to recover:

(1) The cost to the investor-owned utility of the services required to be provided under ORS 469.633; and

(2) Any bad debts, including casualty losses, attributable to dwelling owner default on a loan for energy conservation measures. [1981 c.778 §8]

469.645 Implementation of program by investor-owned utility. After the commission has approved the residential energy conservation program of an investor-owned utility required by ORS 469.633, the investor-owned utility promptly shall implement that program. [1981 c.778 §9]

(Publicly Owned Utilities)

469.649 Definitions for ORS 469.649 to 469.659. As used in ORS 469.649 to 469.659:

(1) "Cash payment" means a payment made by the publicly owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Director" means the Director of the Oregon Department of Energy.

(5) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(6) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the publicly owned utility.

(7) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and

energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(8) "Energy conservation measures" means measures that include the installation of items and the items installed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(9) "Publicly owned utility" means a utility that:

(a) Is owned or operated in whole or in part, by a municipality, cooperative association or people's utility district; and

(b) Distributes electricity.

(10) "Residential customer" means a dwelling owner or tenant who is billed by a publicly owned utility for electric service received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §10; 1989 c.648 §67]

469.651 Publicly owned utility program. Within 30 days after November 1, 1981, each publicly owned utility shall submit to the director a residential energy conservation program that:

(1) Makes available to all residential customers of the utility information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the publicly owned utility or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling.

(3) Provides financing for cost-effective energy conservation measures at the request of a dwelling owner who occupies the dwelling as a residential customer or rents the dwelling to a tenant who is a residential customer. The financing program shall give the dwelling owner a choice between a cash payment and a loan. The dwelling owner may not receive both a cash payment and a loan. Completion of an energy audit of the dwelling offered under the program required by this section or described in ORS 469.685 shall be a condition of eligibility for either a cash payment or a loan. The financing program shall provide:

(a) The following minimum levels of assistance:

(A) A loan for a dwelling owner with approved credit upon the following terms:

(i) A principal amount of up to \$4,000; or

(ii) An interest rate that does not exceed six and one-half percent annually; and

(iii) A reasonable repayment period that does not exceed 10 years; and

(B) A cash payment to a dwelling owner eligible under ORS 469.657 for the lesser of:

(i) Twenty-five percent of the cost of the energy conservation measures provided in the dwelling; or

(ii) \$350;

(b) That an otherwise eligible dwelling owner may obtain up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(c) That there may be up to \$4,000 in loans or \$350 in cash payments for each dwelling;

(d) That a change in ownership of a dwelling shall not prevent the new dwelling owner from obtaining a loan or a cash payment for energy conservation measures for the newly acquired dwelling under circumstances including, but not necessarily limited to, when:

(A) The new dwelling owner chooses the same financing option chosen by the previous dwelling owner who obtained financing under ORS 469.649 to 469.659; and

(B) The amount of the financing is within the limit for that dwelling prescribed in paragraph (c) of this subsection;

(e) If the publicly owned utility so determines, that energy conservation measures for any of the following building and improvement activities may not be financed under the financing program:

(A) Construction of a new dwelling; or

(B) If the construction increases or otherwise changes the living space in the dwelling:

(i) An addition or substantial alteration; or

(ii) Remodeling; and

(f) If the publicly owned utility so determines, that no cash payment shall be allowed or paid for the cost of energy conservation measures provided more than one year before the date of the application for payment.

(4) Provides for verification through a reasonable number of inspections that energy conservation measures financed by the publicly owned utility are installed. The verification provisions of the residential energy conservation program shall further provide that:

(a) An installation shall be performed in such a workmanlike manner and with such materials as to satisfy prevailing industry standards; and

(b) The publicly owned utility shall provide a post-installation inspection upon the dwelling owner's request.

(5) Provides, upon the dwelling owner's request, information relevant to the specific site of a dwelling with access to:

(a) Water resources that have hydroelectric potential;

(b) Wind, which means the natural movement of air at an annual average speed of at least eight miles an hour; or

(c) A resource area known to have geothermal space-heating potential.

(6) Provides that the publicly owned utility will mail to a dwelling owner an offer to provide energy conservation measures in accordance with ORS 469.649 to 469.659 when a tenant who is the residential customer:

(a) Requests that the offer be mailed to the dwelling owner; and

(b) Furnishes the dwelling owner's name and address with the request. [1981 c.778 §11]

469.653 Alternative program of publicly owned utility. (1) A publicly owned utility may meet the program submission requirements of ORS 469.651 by submitting only the portions of its residential energy conservation program that are added to or revised in its program approved under section 4, chapter 887, Oregon Laws 1977, in order to make that earlier program fulfill the requirements of ORS 469.651.

(2) A publicly owned utility shall offer a dwelling owner a financing program for cost-effective energy conservation measures that includes the option of a cash payment or a loan unless the publicly owned utility offers another financing program that meets or exceeds the program required in ORS 469.651 (3). A program shall be considered to meet or exceed the program required in ORS

469.651 (3) when it includes a financial incentive to the residential customer with a present value on November 1, 1981, that is equal to or greater than the present value of the larger of:

(a) The loan subsidy pursuant to ORS 469.651 (3)(a)(A); or

(b) The cash payment pursuant to ORS 469.651 (3)(a)(B).

(3) A publicly owned utility whose governing body has adopted an approved residential energy conservation services program under the National Energy Conservation Policy Act (Public Law 95-619, as amended on November 1, 1981) or signed an energy conservation agreement with the Bonneville Power Administration of the United States Department of Energy for a residential weatherization program under section 6(a) of the Pacific Northwest Electric Power Planning and Conservation Act (Public Law 96-501, as adopted December 5, 1980) that meets or exceeds the requirements of ORS 469.651 and 469.657 shall not be required to submit a separate program. However, the provisions of ORS 469.655 and 469.659 nevertheless shall be applicable. [1981 c.778 §14]

469.655 Energy conservation as part of utility service of publicly owned utility. The provision of energy conservation measures to a dwelling shall be considered part of the utility service rendered by the publicly owned utility. [1981 c.778 §12]

469.657 Conditions for cash payments to dwelling owner by publicly owned utility. Except as provided in section 31, chapter 778, Oregon Laws 1981, a publicly owned utility shall not make a cash payment to a dwelling owner for energy conservation measures unless:

(1) The measures were provided in the dwelling on or after November 1, 1981.

(2) The measures will not be paid for with other publicly owned utility grants or loans. [1981 c.778 §13; 1991 c.877 §40]

469.659 Implementation by publicly owned utility. After the publicly owned utility has submitted to the director the residential energy conservation program required by ORS 469.651, the publicly owned utility promptly shall implement that program. [1981 c.778 §15]

(Oil Dealers)

469.673 Definitions for ORS 469.673 to 469.683. As used in ORS 469.673 to 469.683:

(1) "Cash payment" means a payment made by the department to the dwelling owner or to the contractor on behalf of the

dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Department" means the Oregon Department of Energy.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from a fuel oil dealer.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(9) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows, and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(10) "Fuel oil dealer" means a person, association, corporation or other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(11) "Residential customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service received at the dwelling.

(12) "Space heating" means the heating of living space within a dwelling.

(13) "Tenant" means a tenant as defined in ORS 90.100 or any other tenant. [1981 c.778 §16; 1987 c.749 §8; 1989 c.648 §68]

469.675 Oil dealer program. Within 30 days after November 1, 1981, each fuel oil dealer shall submit for the director's approval a residential energy conservation program that, to the director's satisfaction:

(1) Makes available to all residential customers of the fuel oil dealer information about:

(a) Energy conservation measures; and

(b) Energy conservation measure financing available to dwelling owners.

(2) Provides within 60 days of a request by a residential customer of the fuel oil dealer or a dwelling owner, assistance and technical advice concerning various methods of saving energy in that customer's or dwelling owner's dwelling including, but not limited to, an energy audit of the customer's or dwelling owner's dwelling. [1981 c.778 §17]

469.677 Contracts for information, assistance and technical advice; standards for energy audits. (1) The director shall contract and a fuel oil dealer may rely upon the director to contract for the information,

assistance and technical advice required to be provided by a fuel oil dealer under ORS 469.675.

(2) The director shall adopt standards for energy audits required under ORS 469.675 by rule in accordance with the rulemaking provisions of ORS 183.310 to 183.550. [1981 c.778 §18]

469.679 Implementation by fuel dealer. After the director has approved the residential energy conservation program of a fuel oil dealer required by ORS 469.675, the fuel oil dealer promptly shall implement that program. [1981 c.778 §19]

469.681 Petroleum supplier assessment; computation; effect of failure to pay; interest. (1) Each petroleum supplier shall pay to the department annually, beginning with the fiscal year beginning July 1, 1981, its share of an assessment to fund the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(2) The amount of the assessment required by subsection (1) of this section shall be determined by the director in a manner consistent with the method prescribed in ORS 469.421. The aggregate amount of the assessment shall not exceed \$400,000. In making this assessment, the director shall exclude all gallons of distillate fuel oil sold by petroleum suppliers that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(3) If any petroleum supplier fails to pay any amount assessed to it under this section within 30 days after the payment is due, the Attorney General, on behalf of the department, may institute a proceeding in the circuit court to collect the amount due.

(4) Interest on delinquent assessments shall be added to and paid at the rate of one and one-half percent of the payment due per month or fraction of a month from the date the payment was due to the date of payment.

(5) The assessment required by subsection (1) of this section is in addition to any assessment required by ORS 469.421 (5), and any other fee or assessment required by law.

(6) As used in this section, "petroleum supplier" means a petroleum refiner in this state or any person engaged in the wholesale distribution of distillate fuel oil in the State of Oregon. [1981 c.778 §23; 1983 c.273 §3; 1987 c.450 §3; 1989 c.88 §6]

469.683 Oil-Heated Dwellings Energy Audit Account. (1) There is established, separate and distinct from the General Fund,

the Oil-Heated Dwellings Energy Audit Account. Moneys deposited in the account under subsections (2) to (5) of this section shall be used to pay the cost of the information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(2) The department shall pay into the State Treasury all assessment moneys received by the department under ORS 469.681 during the preceding calendar month. The State Treasurer shall deposit the moneys to the credit of the Oil-Heated Dwellings Energy Audit Account.

(3) The moneys in the Oil-Heated Dwellings Energy Audit Account are continuously appropriated to the department for the purpose of paying the cost of information, assistance and technical advice required of fuel oil dealers under ORS 469.675 for which the director contracts under ORS 469.677.

(4) Notwithstanding ORS 293.140, any interest attributable to moneys in the Oil-Heated Dwellings Energy Audit Account shall accrue to that account.

(5) The department shall keep a record of all moneys deposited in the Oil-Heated Dwellings Energy Audit Account. [1981 c.778 §§24, 25; 1989 c.966 §55]

(Miscellaneous)

469.685 Use of earlier energy audit. A dwelling owner served by an investor-owned utility, as defined in ORS 469.631, or a publicly owned utility, as defined in ORS 469.649, who applies for financing under the provisions of ORS 316.744, 317.386, 318.090 and 469.631 to 469.687, may use without obtaining a new energy audit an energy audit obtained from an energy supplier under chapter 887, Oregon Laws 1977, or a public utility under chapter 889, Oregon Laws 1977, before November 1, 1981. [1981 c.778 §30]

469.687 Title for ORS 469.631 to 469.687. ORS 316.744, 317.386, 318.090 and 469.631 to 469.687 shall be known as the Oregon Residential Energy Conservation Act. [1981 c.778 §1]

ENERGY CONSERVATION PROGRAMS

(Single Family Residence)

469.700 Energy efficiency ratings; public information; "single family residence" defined. (1) On or before January 1, 1978, the Energy Conservation Board, after public hearing, shall adopt a recommended voluntary energy efficiency rating system for single family residences and provide the Department of Energy with a copy thereof.

(2) The rating system shall provide a single numerical value or other simple concise means to measure the energy efficiency of any single family residence, taking into account factors including, but not limited to, the heat loss characteristics of ceilings, walls, floors, windows, doors and heating ducts.

(3) Upon adoption of the rating system under subsections (1) and (2) of this section, the Department of Energy shall publicize the availability of the system, and encourage its voluntary use in real estate transactions.

(4) As used in subsections (1) to (3) of this section, "single family residence" means a structure designed as a residence for one family and sharing no common wall with another residence of any type. [1977 c.413 §§1, 2, 3]

(Low Interest Loans)

469.710 Definitions for ORS 469.710 to 469.720. As used in ORS 469.710 to 469.720 and in section 28, chapter 894, Oregon Laws 1981, unless the context requires otherwise:

(1) "Annual rate" means the yearly interest rate specified on the note, and is not the annual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(4) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a manufactured dwelling as defined in ORS 446.003, a floating home as defined in ORS 830.700 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(5) "Dwelling owner" means the person who has legal title to a dwelling, including the mortgagor under a duly recorded mort-

gage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for purchase of real property.

(6) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

(c) An estimate of the cost of the energy conservation measures that includes:

(A) Labor for the installation of items designed to improve the space heating and energy utilization efficiency of the dwelling; and

(B) The items installed; and

(d) A preliminary assessment, including feasibility and a range of costs, of the potential and opportunity for installation of:

(A) Passive solar space heating and solar domestic water heating in the dwelling; and

(B) Solar swimming pool heating, if applicable.

(7) "Energy conservation measures" means measures that include the installation of items and the items installed that are primarily designed to improve the space heating and energy utilization efficiency of a dwelling. These items include, but are not limited to, caulking, weatherstripping and other infiltration preventative materials, ceiling and wall insulation, crawl space insulation, vapor barrier materials, timed thermostats, insulation of heating ducts, hot water pipes and water heaters in unheated spaces, storm doors and windows, double glazed windows and dehumidifiers. "Energy conservation measures" does not include the dwelling owner's own labor.

(8) "Finance charge" means the total of all interest, loan fees and other charges related to the cost of obtaining credit and includes any interest on any loan fees financed by the lending institution.

(9) "Fuel oil dealer" means a person, association, corporation or any other form of organization that supplies fuel oil at retail for the space heating of dwellings.

(10) "Residential fuel oil customer" means a dwelling owner or tenant who is billed by a fuel oil dealer for fuel oil service for space heating received at the dwelling.

(11) "Space heating" means the heating of living space within a dwelling.

(12) "Wood heating resident" means a person whose primary space heating is pro-

vided by the combustion of wood. [1981 c.894 §22; 1987 c.749 §5; 1989 c.648 §69]

469.715 Low interest loans for cost-effective energy conservation; rate. (1) Dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents, shall be eligible for low-interest loans for cost-effective energy conservation measures through commercial lending institutions.

(2) The annual rate shall not exceed six and one-half percent annually for loans provided by commercial lending institutions to dwelling owners who are or who rent to residential fuel oil customers, or who are or who rent to wood heating residents for the purpose of financing energy conservation measures pursuant to ORS 469.710 to 469.720. [1981 c.894 §§23, 24; 1987 c.749 §6]

469.717 When installation to be completed. (1) Installation of the energy conservation measures must be completed within 90 days after receipt of loan funds. The Department of Energy may provide an inspection at the owner's request.

(2) Notwithstanding the provisions of subsection (1) of this section, the Department of Energy may inspect installation of energy conservation measures to verify that all loan or other state subsidy funds have been used for energy conservation measures recommended in the audit, that installation has been performed in a workmanlike manner and that materials used satisfy prevailing industry standards. If requested to do so by the department, the dwelling owner shall provide the department with copies of receipts and any other documents verifying the cost of energy conservation measures. [1987 c.749 §3]

469.719 Eligibility of lender for tax credit not affected by owner's failure. Eligibility of the lender for any tax credit under section 28, chapter 894, Oregon Laws 1981, shall not be affected by any dwelling owner's failure to use the loan for qualifying energy conservation measures. [1987 c.749 §4]

469.720 Energy audit required; permission to inspect required; owner not to receive other incentives. (1) A dwelling owner who is or who rents to a residential fuel oil customer or who is or who rents to a wood heating resident, may not apply for low-interest financing under ORS 469.710 to 469.720 unless:

(a) The dwelling owner, customer or resident has first requested and obtained an energy audit from a fuel oil dealer, a publicly owned utility or an investor-owned utility or from a person under contract with the Oregon Department of Energy under ORS 316.744, 317.111, 317.386, 318.090 and 469.631 to 469.687;

(b) The dwelling owner first submits to the Department of Energy written permission to inspect the installations to verify that installation of energy conservation measures has been made;

(c) The dwelling owner presents to the lending institution a copy of the energy audit together with certification that the dwelling in question receives space heating from fuel oil or wood and a copy of the written permission to inspect submitted to the Department of Energy under paragraph (b) of this subsection; and

(d) The dwelling owner does not receive any other state incentives for that part of the cost of the energy conservation measures to be financed by the loan.

(2) Any dwelling owner applying for low-interest financing under ORS 469.710 to 469.720 who is or who rents to a residential fuel oil customer, or who is or who rents to a wood heating resident, may use without obtaining a new energy audit any assistance and technical advice obtained from an energy supplier before November 1, 1981, under chapter 887, Oregon Laws 1977, or from a public utility under chapter 889, Oregon Laws 1977, including an estimate of cost for installation of weatherization materials. [1981 c.894 §§25, 26; 1987 c.749 §7]

(Public Buildings)

469.730 Declaration of purpose. It is the purpose of ORS 469.730 to 469.745 to promote voluntary measures to conserve energy in public buildings or groups of buildings constructed prior to January 1, 1978, through the adoption of energy conservation standards. [1977 c.853 §1]

469.735 Definitions for ORS 469.730 to 469.745. As used in ORS 469.730 to 469.745, unless the context requires otherwise:

(1) "Administrator" means the State Building Code Administrator.

(2) "Public building" means any publicly or privately owned building constructed prior to January 1, 1978, including the outdoor areas adjacent thereto, which:

(a) Is open to and frequented by the public; or

(b) Serves as a place of employment. [1977 c.853 §2; 1987 c.414 §154]

469.740 Energy conservation standards for public buildings; bases. In accordance with ORS 183.310 to 183.550 and after consultation with the Energy Conservation Board and the Department of Energy, the administrator shall adopt rules establishing energy conservation standards for public buildings. The standards shall provide means

of measuring and reducing total energy consumption and shall take into account:

(1) The climatic conditions of the areas in which particular buildings are located; and

(2) The three basic systems comprising any functioning building, which are:

(a) Energized systems such as those required for heating, cooling, lighting, ventilation, conveyance and business equipment operation.

(b) Nonenergized systems such as floors, ceilings, walls, roof and windows.

(c) Human systems such as maintenance, operating and management personnel, tenants and other users. [1977 c.853 §3; 1987 c.414 §154a]

469.745 Voluntary compliance program. To provide the public with a guide for energy conservation, the Director of the Department of Energy shall adopt a program for voluntary compliance by the public with the standard adopted by the administrator under ORS 469.740. [1977 c.853 §4; 1987 c.414 §155]

469.750 State purchase of alternative fuels. (1) Any state agency, board, commission, department or division that is authorized to purchase or otherwise acquire fuel for the systems providing heating, air conditioning, lighting and the supply of domestic hot water for public buildings and grounds may enter into long-term contracts for the purchase of alternative fuels. Such contracts may be for terms not longer than 20 years.

(2) As used in this section:

(a) "Alternative fuels" includes all fuels other than petroleum, natural gas, coal and products derived therefrom. The term includes, but is not limited to, solid wastes or fuels derived from solid wastes.

(b) "Public buildings and grounds" has the meaning given that term in ORS 276.210. [1981 c.386 §6]

Note: 469.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(State Agency Projects)

469.752 Definitions. As used in ORS 469.752 to 469.756, unless the context requires otherwise:

(1) "Department" means the Department of Energy.

(2) "Project" means a plan of a state agency to improve the efficiency of energy use. "Project" does not include a plan of a state agency to improve the efficiency of energy use in a state rented facility if the pay-

back period for the project exceeds the term of the current state lease for that facility.

(3) "State agency" has the meaning given that term in ORS 278.005. [1991 c.487 §1]

Note: 469.752 to 469.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.754 Authority of state agencies to establish projects; use of savings. (1) State agencies are authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate and finance projects at state owned or state rented facilities. In developing such projects, state agencies shall offer a right of first refusal of two months to each local utility providing utility service to the agency to jointly develop, finance, operate and otherwise act together in the development and operation of such projects.

(2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings, as defined by the department by rule under ORS 469.756:

(A) A state agency's budget shall not be cut because of savings due to the project; and

(B) A state agency shall retain 50 percent of the net savings to the state agency after any project debt service.

(b) Savings from a project shall be deposited in a revolving fund administered by the state agency.

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

(b) High-tech improvements, such as the purchase or installation of new desk-top or lap-top computers or the linkage of computers into systems or networks; or

(c) Infrastructure improvements.

(4) The moneys credited to the revolving fund may be invested and reinvested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or other earnings on moneys in the revolving fund shall be credited to the revolving fund.

(5) The remaining 50 percent of net savings to the state agency after any project debt service shall be deposited in the General Fund. [1991 c.487 §2]

Note: See note under 469.752.

469.756 Rules; technical assistance; evaluations. The department in consultation with other state agencies and utilities shall adopt rules, guidelines and procedures that

are necessary to establish savings for projects and to implement other provisions of ORS 469.752 to 469.756, including, but not limited to, rules prescribing the procedures to be followed by an agency in negotiating with local utilities to develop agreements suitable for the joint development of projects, and procedures to determine which local utility, if any, shall be chosen to jointly develop the project. The department may enter into agreements under ORS chapter 190 with state agencies to provide technical assistance in selecting appropriate projects and to evaluate and determine energy and cost savings. [1991 c.487 §3]

Note: See note under 469.752.

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

469.800 Oregon participation in Pacific Northwest Electric Power and Conservation Planning Council. The State of Oregon agrees to participate in the formation of the Pacific Northwest Electric Power and Conservation Planning Council pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980, Public Law 96-501. Participation of the State of Oregon in the council is essential to assure adequate representation for the citizens of Oregon in decision making to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the Pacific Northwest region of an efficient and adequate power supply and to fulfill the other purposes stated in section 2 of Public Law 96-501. [1981 c.49 §1]

469.805 State members of council; confirmation; qualifications. The Governor, subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution, shall appoint two persons to serve as members of the council for terms of three years. The Governor, in making the appointments, shall consider but is not limited to:

(1) Prior experience, training and education as related to the duties and functions of the council and the priorities contained in section 4 of Public Law 96-501.

(2) General knowledge of the concerns, conditions and problems of the physical, social and economic environment of the State of Oregon.

(3) The need for diversity of experience and education related to the functions and duties of the council and priorities of Public Law 96-501. [1981 c.49 §2]

469.810 Conflicts of interest prohibited. (1) A council member, or member of the

council member's household, as defined in ORS 244.020, shall not own or have any beneficial interest in any stock or indebtedness of any utility or direct service industry.

(2) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of any utility or direct service industry.

(3) A council member, or a member of a council member's household, as defined in ORS 244.020, shall not be a director, officer, agent or employee of or hold any proprietary interest in any consulting firm which does business with any utility or direct service industry.

(4) A council member, or a member of the council member's household, as defined in ORS 244.020, shall not receive any compensation from any utility or direct service industry arising out of the member's business, trade or profession.

(5) A council member shall be considered a public official and be subject to the provisions of ORS chapter 244, including the reporting requirements thereof.

(6) A council member shall be a citizen of the United States and have been a resident of the State of Oregon for one year preceding appointment.

(7) A council member shall not hold any other elected or appointed public lucrative office or be principally engaged in any other business or vocation.

(8) As used in this section:

(a) "Beneficial interest" does not include an interest in a pension fund, a mutual fund or an insurance fund.

(b) "Consulting firm" means any corporation, partnership or sole proprietorship whose principal business is providing personal services.

(c) "Utility or direct service industry" means a utility or direct service industry customer that purchases electrical energy directly from the Bonneville Power Administration. [1981 c.49 §3; 1987 c.566 §23]

469.815 Status of members; duties; attendance at public meetings; technical assistance. (1) Persons appointed by the Governor and confirmed by the Senate to serve as council members shall be considered to be full-time state public officials. Council members shall perform the duties of members of the council as specified in Public Law 96-501, consistently with the priorities contained in section 4 thereof and as otherwise provided in state law.

(2) If public meetings are held in the State of Oregon, pursuant to section 4(g)(1)

of Public Law 96-501, council members must either attend the meeting or otherwise become familiar with the nature and content of the meeting.

(3) A council member may request, and state agencies shall provide, technical assistance to assist the council member in performing the council member's duties. [1981 c.49 §4]

469.820 Term; reappointment; vacancy. (1) Each council member shall serve a term ending January 15 of the third year following appointment. A council member, except upon removal as provided in ORS 469.830 (2), continues to serve as a member of the council until a successor is appointed and confirmed.

(2) A council member is eligible for reappointment, subject to Senate confirmation, but no member shall serve more than three consecutive terms. A council member who serves 18 months or more of a term shall be considered to have served a full term. However, with respect to the initial term consisting of two years, a council member who serves 12 months or more shall be considered to have served a full term.

(3) Within 30 days of the creation of a vacancy in the position of a council member, the Governor shall appoint a person to serve the succeeding term or the remainder of the unexpired term. However, the Governor need not appoint a person to serve the remainder of the unexpired term if the vacancy occurs within 30 days or less of the expiration of the term. [1981 c.49 §5]

469.825 Prohibited activities of members. (1) A person who has been a council member shall not engage in any of the activities prohibited by ORS 469.810 (2) and (3), within one year after ceasing to be a council member.

(2) A person who has been a council member shall not appear as a representative of any party on any matter before the council within three years after ceasing to be a council member.

(3) A person who has been a council member shall not represent, aid, counsel, consult or advise for financial gain any person on any matter before the council within three years after ceasing to be a council member.

(4) A person who has been a council member shall not appear for financial gain as a representative of or aid, counsel or advise any party before the council or the Bonneville Power Administration or communicate with the council or the Bonneville Power Administration with the intent to influence the outcome of any decision on any matter in which the council member was

substantially and personally involved while on the council.

(5) Notwithstanding the status of council members as state officers, the provisions of 18 U.S.C. 207 relating to post-employment activities shall be considered to be state law in so far as they do not conflict therewith, applicable to council members appointed pursuant to ORS 469.800 to 469.845 and 469.990 (3), regardless of the salary paid to the council members.

(6) Subsections (2) to (5) of this section shall not apply to any appearance, attendance, communication or other action on behalf of the State of Oregon; nor shall subsections (2) to (5) of this section apply to an appearance or communication made in response to a subpoena. [1981 c.49 §6]

469.830 Removal of members; grounds; procedure. (1) Council members shall serve at the pleasure of the Governor, except as provided in subsection (2) of this section.

(2) The Governor shall remove a council member for the following causes:

(a) Failure to attend three consecutive council meetings except for good cause.

(b) Conviction of a felony.

(c) Violation of ORS chapter 244.

(d) Violation of ORS 469.810.

(3) Before removal of a council member by the Governor, the council member shall be given a written statement of the reasons for removal and, upon request by the member, an opportunity to be heard publicly on such reasons before the Governor. A copy of the statement of reasons and a transcript of the record of the hearing shall be filed with the Secretary of State. [1981 c.49 §7]

469.835 Salary of members; staff. (1) Each council member shall receive a salary not to exceed the salary of a member of the Public Utility Commission, or the maximum salary authorized under section 4(a)(3) of Public Law 96-501.

(2) Each council member is entitled to appoint one secretarial staff assistant who shall be in the unclassified service. [1981 c.49 §8; 1989 c.171 §64]

469.840 Northwest Regional Power and Conservation Account; uses. (1) There is established a Northwest Regional Power and Conservation Account. Moneys received pursuant to Public Law 96-501 shall be placed in the account.

(2) The account created by subsection (1) of this section is continuously appropriated for disbursement to state agencies, including but not limited to the Public Utility Commission, the Department of Energy, the State

Department of Fish and Wildlife and the Water Resources Department to carry out the purposes of Public Law 96-501, subject to legislative approval or limitation by law or Emergency Board action. [1981 c.49 §9; 1987 c.158 §99]

469.845 Annual report to Governor and legislature. Council members shall prepare a report which shall be presented to the Governor and to the President of the Senate and the Speaker of the House of Representatives of the Legislative Assembly on October 1 of each year. The report shall include a review of the council's actions during the prior year. [1981 c.49 §10]

COMMERCIAL ENERGY CONSERVATION SERVICES PROGRAM

469.860 Definitions for ORS 469.860 to 469.900. (1) As used in ORS 469.865 to 469.875, 469.900 (1) and (2) and subsection (2) of this section:

(a) "Commercial building" means a public building as defined in ORS 456.746.

(b) "Commission" means the Public Utility Commission.

(c) "Conservation services" means providing energy audits or technical assistance for energy conservation measures as part of a program approved under ORS 469.860 to 469.900.

(d) "Electric utility" means a public utility, as defined in ORS 757.005, which produces, transmits, delivers or furnishes electric power and is regulated by the commission under ORS chapter 757.

(e) "Energy conservation measure" means a measure primarily designed to improve the efficiency of energy use in a commercial building. "Energy conservation measures" include, but are not limited to, improved operation and maintenance measures, energy use analysis procedures, lighting system improvements, heating, ventilating and air conditioning system modifications, furnace and boiler efficiency improvements, automatic control systems including wide dead band thermostats, heat recovery devices, infiltration controls, envelope weatherization, solar water heaters and water heating heat pumps.

(2) As used in ORS 469.865 and 469.900 (2), "gas utility" means a public utility, as defined in ORS 757.005, which delivers or furnishes natural gas to customers for heat, light or power.

(3) As used in ORS 469.880 to 469.895 and 469.900 (3):

(a) "Commercial building" means a public building as defined in ORS 455.560.

(b) "Conservation services" has the meaning given in subsection (1) of this section.

(c) "Energy conservation measure" has the meaning given in subsection (1) of this section.

(d) "Publicly owned utility" means an electric utility owned or operated, in whole or in part, by a municipality, cooperative association or people's utility district. [1981 c.708 §§1, 7, 13]

Note: 469.860 (1) and (2) and 469.863 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.863 Gas utility to adopt commercial energy audit program. (1) Within 365 days after November 1, 1981, the commission shall adopt rules governing energy conservation programs provided by gas utilities under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building.

(2) Within 180 days after the effective date of the rules adopted by the commission under subsection (1) of this section, each gas utility shall present for the commission's approval a commercial energy audit program which shall, to the commission's satisfaction:

(a) Make information about energy conservation measures available to any commercial building customer of the gas utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the gas utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the recommended energy conservation measure; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section. [1981 c.708 §8]

Note: See note under 469.860.

469.865 Electric utility to adopt commercial energy conservation services program. (1) Within 180 days after the adoption of the rules by the commission under section 2, chapter 708, Oregon Laws 1981, each electric utility shall present for the commission's approval a commercial energy conservation services program which shall, to the commission's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the electric utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the electric utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the electric utility. [1981 c.708 §3]

469.870 Application of ORS 469.865, 469.870 and 469.900 (1) to electric utility. ORS 469.865, 469.900 (1) and this section shall not apply to an electric utility if the commission determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections. [1981 c.708 §4]

469.875 Fee for gas utility audit. The commission shall determine whether the gas utility may charge a reasonable fee to the customer for the energy audit service and, if so, the fee amount. [1981 c.708 §9]

469.878 Conservation or alternative fuels program. An investor-owned utility may offer cash payments to assist the utility's commercial and industrial customers in purchasing cost-effective conservation measures or alternative fuel fleet vehicle or facilities necessary to operate alternative fuel fleet vehicles including but not limited to an alternative fuel fleet vehicle refueling station. The utility may pay the customer the present value to the utility of the tax credit to which the customer would be entitled under ORS 469.185 to 469.225. [1991 c.711 §6]

469.880 Energy audit program. Each publicly owned utility serving Oregon shall, either independently or as part of an association, provide an energy audit program for its commercial customers. The director shall adopt rules governing the commercial energy audit program established under this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. [1981 c.708 §14; 1987 c.158 §100]

469.885 Publicly owned utility to adopt commercial energy audit program; fee. (1) Within 180 days after the adoption of rules by the director under ORS 469.880, each publicly owned utility shall present for the director's approval a commercial energy audit program which shall, to the director's satisfaction:

(a) Make information about energy conservation available to any commercial building customer of the publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section;

(c) Provide to any commercial building customer of the publicly owned utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of the energy conservation measures; and

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§15, 16]

469.890 Publicly owned utility to adopt commercial energy conservation program; fee. (1) Within 365 days after November 1, 1981, the director shall adopt rules governing energy conservation programs prescribed by ORS 469.895, 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the director, each covered publicly owned utility shall present for the director's approval a commercial energy conservation services program which shall, to the director's satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee

for the energy audit and, if so, the fee amount. [1981 c.708 §§18, 19]

469.895 Application of ORS 469.890 to 469.900 to publicly owned utility. (1) ORS 469.890, 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890, 469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890, 469.900 (3) and this section shall not apply to a covered publicly owned utility if the director determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the director shall publish a list identifying each covered publicly owned utility to which ORS 469.890, 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 §17]

469.900 Duty of commission to avoid conflict with federal requirements. (1) The commission shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commission shall insure that each gas utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The director shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and energy conservation in commercial buildings. [1981 c.708 §§5, 10, 20]

Note: 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Man-

agement. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

ARTICLE I Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II Definitions

As used in this compact:

(1) "Facility" means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Arti-

cle VI, facilities located in any party state may accept low-level waste generated outside of any of the party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

- (a) The generator's name and address;
- (b) A description of the contents of the low-level waste container;
- (c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and
- (d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V Northwest Low-Level Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if

consent is given by Congress. As provided in Public Law 96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c.497 §1]

469.935 State appointee subject to Senate confirmation. The Oregon appointee to the Northwest Low-Level Waste Compact Committee shall be subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution. [1981 c.497 §3]

Note: 469.935 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 §1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a person who discloses confidential informa-

tion in violation of ORS 469.090, willfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Willful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine or not more than \$10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is punishable, upon conviction, by a fine of not more than \$1,000 for each offense.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 §20; subsection (3) enacted as 1981 c.49 §11]

469.991 Penalties for violation of ORS 469.228 to 469.298. (1) Violation of any provision of ORS 469.228 to 469.298 is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for not more than 90 days, or both.

(2) District and justice courts shall have concurrent jurisdiction with circuit courts in all prosecutions under ORS 469.228 to 469.298. [1989 c.926 §40; 1991 c.67 §142]

Note: 469.991 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.992 Civil penalties. (1) The director or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.621 and 469.930, for violations of rules adopted under ORS 469.300 to 469.621 and 469.930, or for violation of any site certificate issued under ORS 469.300 to 469.601. A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.621 may be assessed by the circuit court upon complaint of any person injured by the violation. [Formerly 453.994; 1977 c.794 §17; 1981 c.707 §13; 1983 c.273 §4; 1987 c.158 §101; 1989 c.6 §12; 1991 c.480 §8]

Note: Sections 17 and 18, chapter 653, Oregon Laws 1991, including amendments by section 8, chapter 480, Oregon Laws 1991, provide:

469.992. (1) The director or the Energy Facility Siting Council may impose civil penalties for violation of ORS 469.300 to 469.621 and 469.930, for violations of rules adopted under ORS 469.300 to 469.621 and 469.930, or for violation of any site certificate issued under ORS 469.300 to 469.601. A civil penalty in an amount of not more than \$25,000 per day for each day of violation may be assessed.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the director or the Energy Facility Siting Council for a willful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.603 to 469.621 or section 14 of this 1991 Act may be assessed by the circuit court upon complaint of any person injured by the violation. [1991 c.653 §17]

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

469.994 Civil penalty when contractor certificate revoked. (1) The Director of the Department of Energy may impose a civil penalty against a contractor if a contractor certificate is revoked under ORS 469.180. The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 to purchasers of the system for which a contractor's certificate has been revoked.

(2) The Department of Energy may not collect any of the amount of a civil penalty imposed under subsection (1) of this section from a purchaser of the system for which the final certificate has been revoked. However, the Department of Revenue shall proceed under ORS 469.180 (3) to collect taxes not paid by a taxpayer if the tax credit is ordered forfeited because of that taxpayer's fraud or misrepresentation under ORS 469.180 (1)(a).

(3) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(4) A penalty recovered under this section shall be paid into the State Treasury and credited to the General Fund and is available for general governmental expenses. [1981 c.894 §8; 1983 c.346 §5; 1989 c.706 §18; 1989 c.880 §13a; 1991 c.734 §38]