

Chapter 466

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Hazardous Waste and Hazardous Materials II

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HAZARDOUS WASTE AND HAZARDOUS MATERIALS II

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**STORAGE, TREATMENT AND
DISPOSAL OF HAZARDOUS WASTE
AND PCB****(General Provisions)**

466.005 Definitions for ORS 453.635 and 466.005 to 466.385. As used in ORS 453.635 and 466.005 to 466.385 and 466.890, unless the context requires otherwise:

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

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

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

(4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that the hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468B.005.

(5) "Facility" means all contiguous land, structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. "Facility" may consist of one or more treatment, storage or disposal operational units.

(6) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(7) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such

residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

(8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous waste is disposed.

(9) "Hazardous waste storage site" means the geographical site upon which hazardous waste is stored.

(10) "Hazardous waste treatment site" means the geographical site upon which or a facility in which hazardous waste is treated.

(11) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(12) "PCB" has the meaning given that term in ORS 466.505.

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

(14) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

(15) "Transporter" means any person engaged in the transportation of hazardous waste by any means.

(16) "Treat" or "treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amenable for re-

covery, amenable for storage, or reduced in volume. [Formerly 459.410; 1987 c.540 §4]

466.010 Purpose. (1)(a) The Legislative Assembly finds that it is in the interest of public health and safety and environment to protect Oregon citizens from the potential harmful effects of the transportation and treatment or disposal of hazardous waste and PCB within Oregon.

(b) Therefore, the Legislative Assembly declares that it is the purpose of ORS 466.005 to 466.385 and 466.890 to:

(A) Protect the public health and safety and environment of Oregon to the maximum extent possible;

(B) Exercise the maximum amount of control over actions within Oregon relating to hazardous waste and PCB transportation and treatment or disposal;

(C) Limit to the extent possible the treatment or disposal of hazardous waste and PCB in Oregon to materials originating in the states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930; and

(D) Limit to the extent possible the size of any hazardous waste or PCB treatment or disposal facility in Oregon to a size equal to the amount of waste and PCB originating in Oregon, Washington, Idaho and Alaska of the type handled by such a treatment or disposal facility.

(2) The Legislative Assembly further finds and declares that in the interest of public health and safety and to protect the environment, it is the policy of the State of Oregon to give priority in managing hazardous waste in Oregon to methods that reduce the quantity and toxicity of hazardous waste generated before using methods that reuse hazardous waste, recycle hazardous waste that cannot be reused, treat hazardous waste or dispose of hazardous waste by landfilling. [1985 c.670 §3; 1987 c.540 §4a; 1989 c.833 §95]

(Administration)

466.015 Powers and duties of department. The department shall:

(1) Provide for the administration, enforcement and implementation of ORS 466.005 to 466.385 and 466.890 and may perform all functions necessary:

(a) To insure the proper management of hazardous waste by generators;

(b) For the regulation of the operation and construction of hazardous waste treatment, storage and disposal sites; and

(c) For the permitting of hazardous waste treatment, storage and disposal sites in con-

sultation with the appropriate county governing body or city council.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 466.005 to 466.385 and 466.890.

(3) After notice and public hearing pursuant to ORS 183.310 to 183.550, declassify as hazardous waste those substances described in ORS 466.005 (7) which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly treated or decontaminated or contain a sufficiently low concentration of hazardous material so that such substances are no longer hazardous. [Formerly 459.430; 1987 c.540 §5]

466.020 Rules and orders. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders thereon, including but not limited to establishing minimum requirements for the treatment, storage and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage or disposal sites, and requirements and procedures for selection of such sites.

(2) Adopt rules and issue orders thereon relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of permits issued under ORS 466.005 to 466.385 and 466.890.

(3) Adopt rules and issue orders thereon to classify as hazardous waste those residues defined in ORS 466.005 (7)(b).

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazardous waste concerning type, amount and disposition of such hazardous waste and waste minimization activities. Rules may be adopted exempting certain classes of generators from such requirements.

(5) Adopt rules and issue orders relating to the transportation of hazardous waste by air or water.

(6) Adopt rules and issue orders relating to the production, marketing, distribution, transportation and burning of fuels containing or derived from hazardous waste.

(7) Adopt rules and issue orders relating to corrective action, including corrective action within the facility or beyond the facility boundary if necessary to protect public health or the environment, for all releases of hazardous waste or constituents of hazardous waste occurring from locations within the facility or originating within the facility

and releasing beyond the facility boundary, from any hazardous waste treatment, storage or disposal facility, regardless of the time the hazardous waste was placed in the facility.

(8) Adopt rules and issue orders relating to the restriction or prohibition of nonhazardous liquid waste in a hazardous waste disposal site.

(9) Adopt rules necessary to implement the certification requirements of ORS 466.357. [Formerly 459.440; 1987 c.540 §6; 1989 c.833 §112]

Note: See note under 466.355.

466.025 Duties of commission. In order to carry out the provisions of ORS 466.005 to 466.385 and 466.890, the commission shall:

(1) Limit the number of facilities disposing of or treating hazardous waste or PCB;

(2) Establish classes of hazardous waste or PCB that may be disposed of or treated;

(3) Designate the location of a facility designed to dispose of or treat hazardous waste or PCB; and

(4) Limit to the extent otherwise allowed by law, the hazardous waste or PCB accepted for treatment or disposal at a facility first to hazardous waste or PCB originating in Oregon, or if the capacity of the facility as established under ORS 466.055 allows, or it is necessary for the commission to receive and maintain state authorization of a hazardous waste regulatory program under P.L. 94-580 and P.L. 98-616, to states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930. [1985 c.670 §4]

466.030 Designation of classes of facilities subject to certain provisions. The Environmental Quality Commission may, by rule, designate classes of facilities designed to treat or dispose of hazardous waste or PCB that shall be subject to the provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.320. [1985 c.670 §8]

466.035 Commission authority to impose standards for hazardous waste or PCB at Oregon facility. The commission may impose specific standards for the range and type of hazardous waste or PCB treated or disposed of at a facility in order to protect the public health and safety and environment of Oregon. [1985 c.670 §9]

466.040 Application period for PCB or hazardous waste permit. Whenever the Environmental Quality Commission finds there is a need for an additional hazardous waste or PCB treatment or disposal facility according to the criteria established in ORS 466.055, the commission shall establish an application period during which persons may apply for a PCB disposal facility permit ac-

ording to the provisions of ORS 466.260 to 466.285 or a hazardous waste disposal facility permit under ORS 466.005 to 466.385 and 466.890. [1985 c.670 §10; 1987 c.540 §16]

466.045 Application form; contents; fees; renewal application. (1) Upon request, the department shall furnish an application form to any person interested in developing or constructing a hazardous waste or PCB treatment or disposal facility or a hazardous waste storage facility. Each such form shall contain:

(a) The name and address of the applicant.

(b) A statement of financial condition of the applicant, including assets, liabilities and net worth.

(c) The experience of the applicant in construction, management, supervision or development of hazardous waste or PCB treatment or disposal facilities and in the handling of such substances.

(2) The department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste or PCB treatment or disposal site and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a permit.

(3) If the application is for a new permit to operate a new hazardous waste or PCB treatment or disposal facility or a new hazardous waste storage facility, the application shall be accompanied by a fee in an amount sufficient to cover the department's costs in investigating and processing the application, but which shall not exceed \$70,000, which shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of issuing a permit for the treatment, storage or disposal facility. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant.

(4) If the application is for the renewal of an existing permit, the application shall be accompanied by a fee in an amount estimated by the department to be sufficient to cover the department's costs in investigating and processing the renewal application. If the department incurs expenses in excess of the estimated fee, the applicant shall pay the excess fees. Under no circumstances shall the renewal fee exceed a total of \$50,000. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant. Such fees shall be continuously appropriated to the department for payment of the department's administra-

tive expenses incurred in the process of renewing the permit for a treatment, storage or disposal facility. [1985 c.670 §11; 1987 c.540 §17]

466.050 Citizen advisory committees.

(1) To aid and advise the director and the commission in the selection of a hazardous waste or PCB treatment or disposal facility or the site of such facility, the director shall establish citizen advisory committees as the director considers necessary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director or a designee shall be a nonvoting member of each committee.

(2) The advisory committees appointed under subsection (1) of this section shall review applications during an application period established under ORS 466.040 and make recommendations on the applications to the commission. [1985 c.670 §12]

466.055 Criteria for new facility. Before issuing a permit for a new facility designed to dispose of or treat hazardous waste or PCB, the commission must find, on the basis of information submitted by the applicant, the department or any other interested party, that the proposed facility meets the following criteria:

(1) The proposed facility location:

(a) Is suitable for the type and amount of hazardous waste or PCB intended for treatment or disposal at the facility;

(b) Provides the maximum protection possible to the public health and safety and environment of Oregon from release of the hazardous waste or PCB stored, treated or disposed of at the facility; and

(c) Is situated sufficient distance from urban growth boundaries, as defined in ORS 197.295, to protect the public health and safety, accessible by transportation routes that minimize the threat to the public health and safety and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas.

(2) Subject to any applicable standards adopted under ORS 466.035, the design of the proposed facility:

(a) Allows for treatment or disposal of the range of hazardous waste or PCB as required by the commission; and

(b) Significantly adds to:

(A) The range of hazardous waste or PCB handled at a treatment or disposal facility currently permitted under ORS 466.005 to 466.385; or

(B) The type of technology employed at a treatment or disposal facility currently permitted under ORS 466.005 to 466.385.

(3) The proposed facility uses the best available technology for treating or disposing of hazardous waste or PCB as determined by the department or the United States Environmental Protection Agency.

(4) The need for the facility is demonstrated by:

(a) Lack of adequate current treatment or disposal capacity in Oregon, Washington, Idaho and Alaska to handle hazardous waste or PCB generated by Oregon companies;

(b) A finding that operation of the proposed facility would result in a higher level of protection of the public health and safety or environment; or

(c) Significantly lower treatment or disposal costs to Oregon companies.

(5) The proposed hazardous waste or PCB treatment or disposal facility has no major adverse effect on either:

(a) Public health and safety; or

(b) Environment of adjacent lands. [1985 c.670 §5; 1987 c.540 §18; 1989 c.833 §96]

466.060 Criteria to be met by owner and operator before issuance of permit.

(1) Before issuing a permit for a facility designed to treat or dispose of hazardous waste or PCB, the permit applicant must demonstrate, and the commission must find, that the owner and operator meet the following criteria:

(a) The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility; and

(b) The compliance history of the owner including any parent company of the owner and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466.005 to 466.385 and 466.890 or any condition imposed on the permittee by the commission.

(2) If requested by the permit applicant, information submitted as confidential under paragraph (a) of subsection (1) of this section shall be maintained confidential and exempt from public disclosure to the extent provided by Oregon law. [1985 c.670 §7; 1987 c.540 §19; 1989 c.833 §97]

466.065 Applicant for renewal to comply with ORS 466.055. As a condition to the issuance of a renewal permit under ORS 466.005 to 466.385 and 466.890, the commission may require the applicant to comply

with all or some of the criteria set forth in ORS 466.055. [1985 c.670 §6; 1987 c.540 §20]

(Hazardous Waste)

466.068 Technical assistance and information program for generators of hazardous waste. (1) The Department of Environmental Quality shall implement a technical assistance and information program for generators of hazardous waste who are or are likely to be classified as conditionally exempt generators. The program shall include but need not be limited to:

- (a) Direct, onsite assistance;
- (b) Coordination with industry trade associations;
- (c) Information clearinghouse activities; and
- (d) Publications and workshops directed at specific types of conditionally exempt generators.

(2) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The commission may develop rules to carry out the intent of this subsection. [1991 c.721 §5]

466.070 Standards for rules. (1) In adopting rules under ORS 466.020 regulating the disposal of hazardous wastes, including, but not limited to, rules for the operation and maintenance of hazardous waste disposal sites, the commission shall provide for the highest and best practicable disposal of the hazardous wastes in a manner that will minimize:

(a) The possibility of a dangerous uncontrolled reaction, the release of leachate, noxious gases or odors, fire, explosion or the discharge of the hazardous wastes; and

(b) The amount of land used for burial of the hazardous wastes.

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under ORS 466.020 and subsection (1) of this section and shall report its findings and recommendations to the commission. [Formerly 459.442]

466.075 Rules for generators of hazardous waste. (1) The commission may, by rule, require generators of hazardous waste to:

(a) Identify themselves to the department, list the location and general characteristics of their activity and name the hazardous waste generated;

(b) Keep records that accurately identify the quantities of such hazardous waste, the constituents thereof, the disposition of such waste and waste minimization activities;

(c) Furnish information on the chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such waste;

(d) Use a department approved manifest system to assure that all such hazardous waste generated is destined for treatment, storage or disposal in treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) which are operating pursuant to lawful authority;

(e) Submit reports to the department setting out quantities of hazardous waste generated during a given time period, the disposition of all such waste and waste minimization activities;

(f) Comply with specific waste management standards; and

(g) Minimize the amount or toxicity of hazardous waste generated.

(2) The generator of a hazardous waste shall be allowed to store a hazardous waste produced by that generator on the premises of that generator for a term not to exceed that set by rule without obtaining a hazardous waste storage site permit. This shall not relieve any generator from complying with any other rule or standard regarding storage of hazardous waste.

(3) The commission by rule may exempt certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the commission. Such an exemption can only be made if the commission finds that, because of the quantity, concentration, methods of handling or use of a hazardous waste, such a class or type of generator is not likely either:

(a) To cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(b) To pose a substantial present or potential threat to human health or the environment.

(4) The commission by rule may provide for a special permit for the treatment of hazardous waste on the premises of a generator. Such a special permit may be established only if such treatment has no major adverse impact on:

(a) Public health and safety; or

(b) The environment of adjacent lands. [Formerly 459.445; 1987 c.540 §7]

466.080 Rules for transportation of hazardous waste. In adopting rules governing transportation of any hazardous wastes for which a permit is required, the Public Utility Commission or the State Department of Agriculture must consult with and consider the recommendations of the department prior to the adoption of any such rules. Transporters shall be required to deliver hazardous wastes to a site named in the manifest provided for in ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890, or to an alternative site approved by the department. [Formerly 459.450; 1993 c.422 §22]

466.085 [Formerly 459.455; repealed by 1987 c.540 §53 (466.086 enacted in lieu of 466.085)]

466.086 Gaining federal authorization.

(1) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a hazardous waste regulatory program under the provisions of the Federal Resource Conservation and Recovery Act, P.L. 94-580 and the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616 as amended, and federal regulations and interpretive and guidance documents issued pursuant to the Federal Resource Conservation and Recovery Act.

(2) The commission may adopt, amend or repeal any rule or license and the commission or department may enter into any agreement necessary to implement this section. [1987 c.540 §54 (enacted in lieu of 466.085)]

466.090 Inspection and copying of records authorized; exceptions. (1) Except as provided in subsection (2) of this section, any information filed or submitted pursuant to ORS 466.005 to 466.385 and 466.890 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) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.005 to 466.385 and 466.890 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to other officers, employees or authorized representatives of the state concerned with carrying out ORS 466.005 to 466.385 and 466.890 or when relevant in any proceeding under ORS 466.005 to 466.385 and 466.890.

(3) Records, reports and information obtained or used by the department or the commission in administering the state hazardous waste program under ORS 466.005 to 466.385 and 466.890 shall be available to the United States Environmental Protection Agency and the federal Agency for Toxic Substances and Disease Registry, upon request. If the records, reports or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency and the Agency for Toxic Substances and Disease Registry for the requested records, reports or information. The federal agencies shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 459.460; 1987 c.540 §8]

466.095 Hazardous waste to be stored or treated at permitted site; exemptions.

(1) Except as provided in ORS 466.075 (2), no person shall:

(a) Store a hazardous waste anywhere in this state except at a permitted hazardous waste treatment, storage or disposal site;

(b) Establish, construct or operate a hazardous waste storage site in this state without obtaining a hazardous waste storage site permit issued pursuant to ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890; or

(c) Establish, construct or operate a hazardous waste treatment site in this state without obtaining a hazardous waste treatment site permit issued under ORS 466.005 to 466.385 and 466.890.

(2) The commission may exempt certain classes of hazardous waste storage or treatment sites from part or all of the permitting requirements for these sites. Such an exemption can only be made if the commission finds that, because of the quantity, concentration or type of waste or duration of storage, such a class of storage or treatment site is not likely to endanger the public health, welfare or safety or the environment.

(3) If the director finds an emergency condition to exist, the director may authorize the short-term storage or treatment of a hazardous waste anywhere in the state as long as such temporary storage or treatment shall not constitute a hazard to public health, welfare or safety or to the environment. [Formerly 459.505; 1987 c.540 §9; 1993 c.422 §23]

466.100 Disposal of waste restricted; permit required. (1) Except as provided in subsection (3) of this section, no person shall dispose of any hazardous waste anywhere in this state except at a hazardous waste disposal site permitted pursuant to ORS 466.110 to 466.170.

(2) No person shall establish, construct or operate a disposal site without a permit therefor issued pursuant to ORS 466.005 to 466.385 and 466.890.

(3) The department may authorize disposal of specified hazardous wastes at specified solid waste disposal sites operating under department permit issued pursuant to ORS 459.205 to 459.385. Such authorization may be granted only under procedures approved by the commission, which shall include a determination by the department that such disposal will not pose a threat to public health, welfare or safety or to the environment. [Formerly 459.510; 1987 c.540 §21; 1993 c.560 §103]

466.105 Duties of permittee. Each hazardous waste storage or treatment site permittee shall be required to do the following as a condition to holding the permit:

(1) Maintain records of any hazardous waste identified pursuant to provisions of ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890 which is stored or treated at the site and the manner in which such waste was stored or treated, transported and disposed of.

(2) Report periodically to the department on types and volumes of wastes received, their manner of disposition and waste minimization activities for any hazardous waste generated on the premises.

(3) Participate in the manifest system designed by the department.

(4) Maintain current contingency plans to minimize damage from spillage, leakage, explosion, fire or other accidental or intentional event.

(5) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to protect the environment and the health, safety and welfare of the people of this state.

(6) Assure that all personnel who are employed by the permittee are trained in proper procedures for handling, transfer, transport, treatment and storage of hazardous waste including, but not limited to, familiarization with all contingency plans.

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

(8) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated.

(9) Maintain a cash bond or other equivalent financial assurance in the name of the

state in an amount estimated by the department to be sufficient to cover any costs of closing the site, including corrective actions, and monitoring it or providing for its security after closure and to secure performance of all permit requirements. The financial assurance shall remain available for the duration of the permit and until the site is closed, except to the extent it is released or modified by the department.

(10) Provide corrective action, including corrective action within the facility or beyond the facility boundary when determined by the department to be necessary to protect public health, welfare, safety or the environment, for all releases of hazardous wastes or constituents of hazardous waste, occurring from locations within the facility or originating within the facility and releasing beyond the facility boundary, regardless of the time the hazardous waste was placed at the facility. The department shall provide to the permittee a written directive for the necessary corrective action. [Formerly 459.517; 1987 c.540 §10; 1993 c.422 §24]

466.107 Action under ORS 466.105 against guarantor. (1) If a permittee is in bankruptcy, reorganization, or arrangement under the Federal Bankruptcy Code or if, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required under ORS 466.105 (5) and (9) may be asserted directly against the guarantor providing the evidence of financial responsibility. In an action under this section, the guarantor shall be entitled to all rights and defenses that would have been available to the permittee if the action had been brought against the permittee and that would have been available to the guarantor if the action had been brought against the guarantor by the permittee.

(2) The total liability of any guarantor shall be limited to the aggregate amount the guarantor has provided as evidence of financial responsibility to the permittee under ORS 466.105 (5) or (9). Nothing in this section shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to a permittee including, but not limited to, the liability of a guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(3) As used in this section, "guarantor" means any person other than the permittee, who provides evidence of financial responsibility for a permittee under ORS 466.105 (5) or (9). [1987 c.540 §3]

466.110 Application; form. (1) The department shall furnish an application form to anyone who wishes to operate a hazardous waste storage or treatment site.

(2) In addition to information requested on the application form, the department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste storage or treatment site and facilities to be operated in conjunction therewith and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license. [Formerly 459.535; 1987 c.540 §22]

466.115 Required application information. Permit applications submitted to the department for managing, operating, constructing, developing or establishing a hazardous waste disposal site must contain the following:

(1) The management program for the operation of the site, including the person to be responsible for the operation of the site and a resume of the qualifications of the person, the proposed method of disposal, the proposed method of pretreatment or decontamination upon the site, if any, and the proposed emergency measures to be provided at such site.

(2) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at such site.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the site and the waste treatment and water supply facilities, if any, to be used at such site.

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

(5) A preliminary geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the opinion of the geologist relating to possible sources of contamination of such water resources.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect. [Formerly 459.540; 1987 c.540 §23]

466.120 Required application information to operate site. Applications for a permit to operate a hazardous waste storage or treatment site shall include at a minimum:

(1) The name and address of the applicant and the exact location of the proposed storage or treatment site.

(2) Estimates with respect to compositions, quantities and concentrations of any hazardous waste identified under ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890, and the time, frequency or rate at which such hazardous waste may be received, stored, treated, transported or disposed.

(3) A description of the operational plan for the site, including handling methods, storage or treatment methods, hours and days of operation and a preliminary engineering sketch showing layout of the site, location of water supply and drainage facilities and traffic flow.

(4) A description of security measures at the site including, but not limited to, type, height and location of fencing, manner for controlling access to the site, alarm systems and warning signs.

(5) The name of any person who will be responsible for managing the operation of the site and a statement of the qualifications of such persons.

(6) The name of the liability insurance carrier who will provide coverage required in ORS 466.105. [Formerly 459.545; 1987 c.540 §24; 1993 c.422 §25]

466.125 Notice of hearings on applications. (1) Prior to holding hearings on a hazardous waste disposal site permit application, the commission shall cause notice to be given in the county or counties where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the approximate location of the site and the type and amount of materials intended for disposal at such site, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed site shall have opportunity to testify at the hearing. [Formerly 459.550; 1987 c.540 §25]

466.130 Public hearing in areas of proposed site required. The commission shall conduct a public hearing in the county or counties where a proposed hazardous waste disposal site is located and may conduct hearings at such other places as the department considers suitable. At the hearing the applicant may present the application

and the public may appear or be represented in support of or in opposition to the application. [Formerly 459.560]

466.135 Recommendations by state agencies on applications; effect. Upon receipt of an application for a hazardous waste disposal site permit, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commission, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the permit application should be granted. If the Health Division recommends against granting the permit, the commission must refuse to issue the permit. Recommendation from other agencies shall be considered as evidence in determining whether to grant the permit. [Formerly 459.570; 1987 c.540 §26]

466.140 Review of applications; issuance. (1) The department shall examine and review all hazardous waste disposal site permit applications submitted to it and make such investigations as it considers necessary, and make a recommendation to the commission as to whether to issue the permit.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the permit. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183.480. [Formerly 459.580; 1987 c.540 §27]

466.145 Review of treatment applications; issuance. (1) The department shall review and cause to be investigated all hazardous waste treatment site permit applications submitted to it.

(2) After reviewing and investigating the application, the department shall decide whether or not to issue the permit. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the department is subject to review by the commission under the provisions of ORS 183.310 to 183.550 governing contested cases. [Formerly 459.585; 1987 c.540 §28]

466.150 Permit requirements. Each hazardous waste disposal site permittee under ORS 466.005 to 466.385 and 466.890 shall be required to do the following as a condition to holding the permit:

(1) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 466.005 to 466.385 and 466.890 and the rules adopted thereunder.

(2) Commence operation, management or supervision of the hazardous waste disposal site on completion of the project and not to permanently discontinue such operation, management or supervision of the site without the approval of the department.

(3) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of this state.

(4) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(5) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated as a site.

(6) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site, including corrective actions, and monitoring it or providing for its security after closure, to secure performance of permit requirements and to provide for any remedial action by the state necessary to protect the public health, welfare and safety and the environment following site closure. The financial assurance shall remain on deposit for the duration of the permit and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(7) Report periodically on the volume of material received at the site, the fees collected therefor and waste minimization activities for any hazardous waste generated on the premises.

(8) Maintain other plans and exhibits and take other actions pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment. [Formerly 459.590; 1987 c.284 §1; 1987 c.540 §11]

Note: Section 5, chapter 284, Oregon Laws 1987, and section 55, chapter 540, Oregon Laws 1987, both provide:

Sec. 5. The requirements of ORS chapters 92, 195 and 197 and other state and local laws for the sale or deeding of land do not apply to:

(1) Any portion of a hazardous waste disposal site deeded to the state as a condition of issuance of a hazardous waste disposal site license under ORS 466.150 (1) (1985 Replacement Part) that the state deeds back to the licensee.

(2) Any real property deeded to the state as a condition of issuance of a PCB disposal facility license under ORS 466.320 (1) (1985 Replacement Part) that the state deeds back to the licensee. [1987 c.284 §5; 1987 c.540 §55]

466.155 Acquisition by condemnation. The commission may acquire real property

for the disposal of hazardous wastes by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35. [Formerly 459.595]

466.160 Site permit fees; disposition; withdrawal by permittee. (1) The hazardous waste treatment, storage or disposal site permit shall require a fee based either on the volume of material accepted at the site or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the site use period a sum sufficient to:

- (a) Secure performance of permit requirements;
- (b) Close the site;
- (c) Provide for any monitoring or security of the site after closure; and
- (d) Provide for any remedial action by the state necessary after closure to protect the public health, welfare and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the permittee together with the earnings thereon equals the amount of the financial assurance required under ORS 466.150 (6), the permittee shall be allowed to withdraw the financial assurance.

(3) If the site is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn. [Formerly 459.600; 1987 c.284 §3; 1987 c.540 §12]

466.165 Annual fees; use. (1) An annual fee may be required of every generator, air or water transporter and permittee under ORS 466.005 to 466.385 and 466.890. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466.195.

(2) A generator assessed an annual fee established under subsection (1) of this section shall pay only that part of the annual fee that exceeds the amount paid in the previous calendar year under ORS 465.375 (3). [Formerly 459.610; 1987 c.540 §29; 1991 c.721 §3]

466.170 Revocation of permit; judicial review. The commission may revoke any permit issued under ORS 466.005 to 466.385 and 466.890 after public hearing upon a finding that the permittee has violated any provision of ORS 466.005 to 466.385 and 466.890

or rules adopted pursuant thereto or any material condition of the permit, subject to review under ORS 183.310 to 183.550. [Formerly 459.620; 1987 c.540 §30]

466.175 Disposition of site or facility after revocation; acquisition of site by department. (1) If the commission revokes a permit under ORS 466.170, the commission may:

(a) Close an existing hazardous waste disposal site or facility; or

(b) Direct the department to acquire an existing facility or site for the disposal, storage or treatment of hazardous waste according to the provisions of subsection (2) of this section.

(2) The department may, upon direction of the commission and upon payment of just compensation, acquire and own an existing facility or site for use in the disposal, storage or treatment of hazardous waste. In order to secure such a site, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890, but not ORS 469.375 or 469.525, if it finds that such waiver or modification:

(a) Is necessary to make operation of the facility or site economically feasible; and

(b) Will not endanger the public health and safety or the environment. [Formerly 459.635; 1987 c.540 §31; 1993 c.422 §26; 1993 c.560 §104]

466.180 Department authority to limit storage, disposal or treatment. (1) The department may limit, prohibit or otherwise restrict the storage, treatment or disposal of any hazardous waste if appropriate to protect public health, welfare or safety or the environment or to prolong the useful life of a hazardous waste disposal site.

(2) The department shall monitor the origin and volume of hazardous waste received at a hazardous waste treatment or disposal site and may curtail or reduce the volume of the wastes that may be accepted for disposal as necessary to prolong the useful life of the site.

(3) The department may restrict or prohibit the disposal of nonhazardous liquid waste in a hazardous waste disposal site. [Formerly 459.640; 1987 c.540 §13]

466.185 Investigation upon complaint; hearings; orders. (1) The department shall investigate any complaint made to it by any person that the operation of any generator, air or water transporter or hazardous waste disposal, storage or treatment site is unsafe or that the operation is in violation of the provisions of ORS 466.005 to 466.385 and 466.890 or the rules adopted under ORS 466.005 to 466.385 and 466.890.

(2) If, after making an investigation under subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. A copy of the complaint shall be furnished by the department to the respondent. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review. [Formerly 459.650; 1987 c.540 §32]

466.190 Investigation upon motion of department; findings and orders. (1) Whenever the department believes that the operation of any hazardous waste generator, air or water transporter or disposal, storage or treatment site is unsafe, or in violation of ORS 466.005 to 466.385 and 466.890 or not in compliance with rules or orders, the department may, upon its own motion, investigate the operation of the site.

(2) The department may, after it has made an investigation under subsection (1) of this section, without notice and hearing, make such findings and orders as it considers necessary from the results of its investigation.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in operations conducted, practices utilized and operating procedures found to be in violation of ORS 466.005 to 466.385 and 466.890 or the rules adopted thereunder.

(b) Require compliance with the provisions of the permit.

(4) The department shall deliver a certified copy of all orders issued by it under subsection (2) of this section to the respondent or the respondent's duly authorized representative at the address furnished to the department in the permit application. The order shall take effect 20 days after the date of its issuance, unless the respondent re-

quests a hearing on the order before the commission before the 20-day period has expired. The request for a hearing shall be submitted in writing and shall include the reasons for requesting the hearing. At the conclusion of the hearing, the commission may affirm, modify or reverse the original order.

(5) All hearings before the commission shall be in compliance with applicable provisions of ORS 183.310 to 183.550. Judicial review of all orders entered after hearing or where no hearing is requested shall be in accordance with the applicable provisions of ORS 183.310 to 183.550 for judicial review of contested cases. [Formerly 459.660; 1987 c.540 §33]

466.195 Monitoring and surveillance program; inspection. (1) The department shall establish and operate a monitoring, inspection and surveillance program over all hazardous waste generators, air or water transporters and disposal, storage and treatment sites or may contract with any qualified public or private agency to do so.

(2) Any person who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous waste, shall upon request of any officer, employee or representative of the department, furnish information relating to such waste and permit such person at all reasonable times to have access to and to copy all records relating to such waste.

(3) For the purposes of enforcing the provisions of ORS 466.005 to 466.385, any officer, employee or representative of the department may:

(a) Enter at reasonable times any establishment or other place where hazardous waste is or has been generated, stored, treated, disposed of or transported from; and

(b) Inspect and obtain samples from any person of any such waste and samples of any containers or labeling for such waste. [Formerly 459.670; 1987 c.540 §14]

466.200 Procedure for emergencies. (1) Whenever, in the judgment of the department from the results of monitoring or surveillance of operation of any generator, air or water transporter or hazardous waste disposal, storage or treatment site, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare or safety or to the environment exists from the continued operation of the site, without hearing or prior notice, the department shall order the operation of the site halted by service of the order on the site superintendent.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the

equitable relief required to protect the public health, welfare or safety or the environment and may begin proceedings to revoke the permit if grounds for revocation exist. [Formerly 459.680; 1987 c.540 §34]

466.205 Liability for improper disposal of waste; costs; lien for department expenditures. (1) Any person owning a facility which generates, treats, stores or disposes of and any person having the care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted, who causes or permits any disposal of such waste or substance in violation of law or otherwise than as reasonably intended for normal use or handling of such waste or substance, including but not limited to accidental spills thereof, shall be liable for the damages to person or property, public or private, caused by such disposition.

(2) It shall be the obligation of such person to collect, remove or treat such waste or substance immediately, subject to such direction as the department may give.

(3) If such person fails to collect, remove or treat such waste or substance when under an obligation to do so as provided by subsection (2) of this section, the department is authorized to take such actions as are necessary to collect, remove or treat such waste or substance.

(4) The director shall keep a record of all necessary expenses incurred in carrying out any cleanup projects or activities authorized under subsection (3) of this section, including reasonable charges for services performed and equipment and materials utilized.

(5) Any person who fails to collect, remove or treat such waste or substance immediately, when under an obligation to do so as provided in subsection (2) of this section, shall be responsible for the necessary expenses incurred by the state in carrying out a cleanup project or activity authorized under subsections (3) and (4) of this section.

(6) If the amount of state-incurred expenses under subsections (3) and (4) of this section are not paid to the department within 15 days after receipt of notice that such expenses are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in any court of competent jurisdiction to recover the amount specified in the final order of the director.

(7) All expenditures covered by this section and all penalties and damages for which a person is liable to the state under this chapter and ORS chapter 465 shall constitute a lien upon any real and personal property owned by such person.

(8) The department shall file a claim of lien on real property to be charged with a lien under subsection (7) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (7) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to perform the cleanup or disposal, compliance and corrective action and pay penalties and damages as required.

(9) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(10) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under the provisions of this chapter. [Formerly 459.685; 1987 c.540 §15]

466.210 Actions or proceedings to enforce compliance. Whenever it appears to the department that any person is engaged or about to engage in any acts or practices which constitute a violation of ORS 466.005 to 466.385 and 466.890 or the rules and orders adopted thereunder or of the terms of the permit, without prior administrative hearing, the department may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [Formerly 459.690; 1987 c.540 §35]

466.215 Post-closure permit for disposal site; fee. (1) At the time a hazardous waste disposal site is closed, the person permitted under ORS 466.110 to 466.170 to operate the site, must obtain a post-closure permit from the department.

(2) A post-closure permit issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure permit the permittee must provide post-closure care which shall include at least the following:

(a) Monitoring and security of the hazardous waste disposal site; and

(b) Any remedial action necessary to protect the environment and the public health, welfare and safety.

(4) The commission may by rule establish a post-closure permit application fee. [Formerly 459.695; 1987 c.540 §36]

466.225 Monitoring site; access. (1) If the department determines that the presence of hazardous waste at a facility or site at which hazardous waste is or has been stored, treated or disposed of, or that the release of hazardous waste from a hazardous waste storage, treatment or disposal facility or site may present a substantial hazard to human health or the environment, the department may order the owner or operator of the facility or site to conduct any monitoring, testing, analysis and reporting as the department considers necessary to determine the nature and extent of the hazard.

(2) If a facility or site is not in operation at the time a determination is made under subsection (1) of this section and the department finds that the owner of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the facility or site and of its potential for release, the department may order the most recent previous owner or operator of the facility or site, who could most reasonably be expected to have such actual knowledge, to carry out the actions required in subsection (1) of this section.

(3) Within 30 days after the department issues an order under subsection (1) or (2) of this section, the person to whom the order is issued shall submit to the department a proposal for carrying out the required monitoring, testing, analysis and reporting. The department may require the person to carry out the monitoring, testing, analysis and reporting described in the proposal and in any modifications to the proposal that the department considers necessary to determine the nature and extent of the hazard.

(4) If the department determines that an owner or operator is not able to conduct monitoring, testing, analysis or reporting required under subsection (1) or (2) of this section in a manner satisfactory to the department, or if the department considers any such action carried out by an owner or operator to be unsatisfactory, or if the owner or operator fails to comply with the order, or if the department initially cannot determine that there is an owner or operator able to conduct such monitoring, testing, analysis or reporting, the department may:

(a)(A) Conduct any monitoring, testing or analysis that the department considers reasonable to determine the nature and extent

of the hazard associated with the facility or site; or

(B) Authorize another state agency, local authority or person to conduct the necessary monitoring, testing or analysis; and

(b) Require, by order, the owner or operator to reimburse the department, state agency, local authority or person for the costs of conducting the monitoring, testing or analysis.

(5) The department may not require an owner or operator to reimburse the department for the costs of any action carried out by the department under subsection (4) of this section if the department's actions confirm the results of monitoring, testing, analyses or reporting conducted by an owner or operator under subsection (1) or (2) of this section.

(6) Any order issued under this section shall be subject to the provisions set forth in ORS 466.190 and 466.200.

(7) In order to carry out the provisions of this section, the owner or operator of the site or facility shall allow necessary access according to the requirements of ORS 466.195 to the department or any state agency, local authority or person conducting the monitoring, testing or analysis required under subsection (4)(a) of this section. [1987 c.540 §2]

(PCB Disposal Facilities)

466.250 Definition of "PCB disposal facility." As used in ORS 466.250, 466.255 (2) and (3) and 466.260 to 466.350, "PCB disposal facility" includes a facility for the treatment or disposal of PCB. [1985 c.670 §13]

466.255 Disposal of PCB restricted; permit required for PCB disposal facility. (1) No new PCB disposal facility shall be constructed on or after January 1, 1985, without first complying with ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

(2) No person shall treat or dispose of any PCB anywhere in this state except at a PCB disposal facility operating under a permit pursuant to ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

(3) No person shall establish, construct or operate a PCB disposal facility without a permit therefor issued under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. [1985 c.670 §§14,43; 1987 c.540 §37]

466.260 Duties of department. The department shall:

(1) Provide for the administration, enforcement and implementation of ORS

466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 and may perform all functions necessary:

(a) To regulate the operation and construction of a PCB disposal facility; and

(b) For the permitting of a PCB disposal facility in consultation with the appropriate county governing body or city council.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. [1985 c.670 §15; 1987 c.540 §38]

466.265 Rules for regulation of PCB disposal. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders, including but not limited to establishing minimum requirements for the disposal of PCB, minimum requirements for operation, maintenance, monitoring, reporting and supervision of disposal facilities, and requirements and procedures for selection of such facilities.

(2) Adopt rules and issue orders relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of permits issued under ORS 466.005 to 466.385. [1985 c.670 §16; 1987 c.158 §88; 1987 c.540 §39]

466.270 Criteria for rules; study of disposal methods. (1) In adopting rules under ORS 466.265 regulating the disposal of PCB including, but not limited to, rules for the operation and maintenance of a PCB disposal facility, the commission shall provide for the best practicable disposal of the PCB in a manner that will minimize the possibility of adverse effects on the public health and safety or environment.

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under subsection (1) of this section and ORS 466.265 and shall report its findings and recommendations to the commission. [1985 c.670 §17]

466.275 Permit application for PCB disposal facility. Permit applications submitted to the department for managing, operating, constructing, developing or establishing a PCB disposal facility must contain the following:

(1) The management program for the operation of the facility including the person to be responsible for the operation of the facility and a resume of the person's qualifications, the proposed method of disposal, the proposed method of pretreatment or decon-

tamination of the facility, if any, and the proposed emergency measures to be provided at the facility.

(2) A description of the size and type of facility to be constructed, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at the facility.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the disposal facility and the waste treatment and water supply facilities, if any, to be used at the facility.

(4) The exact location and place where the applicant proposes to operate and maintain the PCB disposal facility, including the legal description of the lands included within the facility.

(5) A geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the geologist's opinion relating to the potential of contamination of water resources including but not limited to possible sources of such contamination.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect. [1985 c.670 §18; 1987 c.540 §40]

466.280 Copies of application to be sent to affected state agencies. Upon receipt of an application for a PCB disposal facility permit, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commission, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond within the period specified by the department by making a written recommendation as to whether the permit application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the permit. [1985 c.670 §19; 1987 c.540 §41]

466.285 Notice of hearings on application. (1) Prior to holding hearings on a PCB disposal facility permit application, the commission shall cause notice to be given in the county or counties where the proposed facility is to be located in a manner reasonably calculated to notify interested and affected persons of the permit application.

(2) The notice shall contain information regarding the approximate location of the fa-

cility and the type and amount of PCB intended for disposal at the facility, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed PCB disposal facility shall have opportunity to testify at the hearing. [1985 c.670 §20; 1987 c.540 §42]

466.290 Public hearing in area of proposed facility required. The commission shall conduct a public hearing in the county or counties where a proposed PCB disposal facility is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1985 c.670 §21]

466.295 Examination of applications; recommendation to commission; decision as to issuance; notice to applicant. (1) At the close of the application period under ORS 466.040, the department shall examine and review all PCB disposal facility permit applications submitted to the commission and make such investigations as the department considers necessary, and make a recommendation to the commission as to whether to issue the permit.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the permit. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183.480. [1985 c.670 §22; 1987 c.540 §43]

466.300 Restrictions on commission authority to issue permit. The Environmental Quality Commission may not issue a permit under ORS 466.295 for any facility designed to dispose of PCB by incineration unless:

(1) The facility is also equipped to incinerate hazardous waste; and

(2) The applicant has received all federal and state licenses and permits required to operate a hazardous waste incinerator. [1985 c.670 §23; 1987 c.540 §44]

466.305 Investigation of complaints; hearing; order. (1) The department shall investigate any complaint made to it by any person that the operation of any PCB disposal facility is unsafe or that the operation is in violation of a condition of the operator's permit or any provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.340 or the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. Upon receiving

a complaint, the department shall furnish a copy of the complaint to the person holding the permit to operate the PCB disposal facility.

(2) If, after making an investigation under subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review. [1985 c.670 §24; 1987 c.540 §45]

466.310 Monitoring, inspection and surveillance program; access to facility and records. The department shall establish and operate a monitoring, inspection and surveillance program over all PCB disposal facilities or may contract with any qualified public or private agency other than the owner or permittee to do so. Owners and operators of a PCB disposal facility must allow necessary access to the PCB disposal facility and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1985 c.670 §25; 1987 c.540 §46]

466.315 Procedure for emergency. (1) Whenever, in the judgment of the department, there is reasonable cause to believe that a clear and immediate danger to the public health or safety or to the environment exists from the continued operation of the facility, without hearing or prior notice, the department shall order the operation of the facility halted by service of the order on the facility operator or an agent of the operator.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health or safety or the environment and may begin proceedings to revoke the permit if grounds for revocation exist. [1985 c.670 §26; 1987 c.540 §47]

466.320 Conditions for holding permit.

Each PCB disposal facility permittee under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 shall be required to do the following as a condition to holding the permit:

- (1) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved and the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.
- (2) Commence operation, management or supervision of the PCB disposal facility on completion of the project and not to permanently discontinue the operation, management or supervision of the facility without the approval of the department.
- (3) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to compensate for damage to the public health and safety and environment.
- (4) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.
- (5) Restore, to the extent reasonably practicable, the area of the facility to its original condition when use of the area is terminated as a facility.
- (6) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the facility and monitoring it or providing for its security after closure, to secure performance of permit requirements and to provide for any remedial action by the state necessary to protect the public health and safety and the environment following facility closure. The financial assurance shall remain on deposit for the duration of the permit and until the end of the post-closure period, except as the assurance may be released or modified by the department.
- (7) Report periodically to the department on the volume and types of PCB received at the facility, their manner of disposition and the fees collected therefor.
- (8) Maintain other plans and exhibits pertaining to the facility and its operation as determined by the department to be reasonably necessary to protect the public health or safety or the environment.
- (9) Maintain records of any PCB identified under provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 which is stored, treated or disposed of at the facility and the manner in which the PCB was stored, treated, trans-

ported or disposed of. The records shall be retained for the period of time determined by the commission.

(10) Assure that all personnel who are employed by the permittee are trained in proper procedures for handling, transfer, transport, treatment, disposal and storage of PCB including but not limited to familiarization with all contingency plans.

(11) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste. [1985 c.670 §27; 1987 c.284 §2; 1987 c.540 §48]

466.325 Annual fee. An annual fee may be required of every PCB disposal facility permittee under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. The fee shall be in an amount determined by the commission to be adequate to carry on the monitoring, inspection and surveillance program established under ORS 466.310 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466.310. [1985 c.670 §28; 1987 c.540 §49]

466.330 Acquisition by state of real property for disposal of PCB. The commission may acquire real property for the disposal of PCB by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35. [1985 c.670 §29]

466.335 Consequences of revocation.

(1) If the commission revokes a PCB disposal facility permit under ORS 466.170, the commission may:

- (a) Close the existing PCB disposal site or facility; or
- (b) Direct the department to acquire an existing facility or site for the disposal or treatment of PCB according to the provisions of subsection (2) of this section.

(2) The department may, upon direction from the commission and after payment of just compensation, acquire and own an existing facility for use in the disposal of PCB. In order to secure such a facility, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890, but not ORS 469.375 or 469.525, if the commission finds that waiver or modification:

- (a) Is necessary to make operation of the facility economically feasible; and
- (b) Will not endanger the public health and safety or the environment. [1985 c.670 §30; 1987 c.540 §50; 1993 c.422 §27; 1993 c.560 §105]

466.340 Restrictions on treatment or disposal of PCB at facility. (1) The department may limit, prohibit or otherwise re-

strict the treatment or disposal of PCB at a disposal facility if appropriate to protect public health and safety or the environment.

(2) The department shall monitor the origin and volume of PCB received at a disposal facility acquired and regulated under ORS 466.335, and may curtail or reduce the volume of the PCB that may be accepted for disposal as necessary to:

(a) Protect public health and safety or the environment; or

(b) Assure that the operation of the facility is economically feasible.

(3) The department shall not accept any PCB at a disposal facility owned by the state from a state that is not a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930. [1985 c.670 §31]

466.345 PCB facility permit fee. (1) The PCB disposal facility permit shall require a fee based either on the volume of PCB accepted at the facility or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the facility use period a sum sufficient to:

(a) Secure performance of permit requirements;

(b) Close the facility;

(c) Provide for any monitoring or security of the facility after closure; and

(d) Provide for any remedial action by the state necessary after closure to protect the public health and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the permittee together with the earnings thereon equals the amount of the financial assurance required under ORS 466.320, the permittee shall be allowed to withdraw the financial assurance.

(3) If the facility is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn. [1985 c.670 §32; 1987 c.284 §4; 1987 c.540 §51]

466.350 Post-closure permit; fee. (1) At the time a PCB disposal facility is closed, the person permitted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 to operate the facility must obtain a post-closure permit from the department.

(2) A post-closure permit issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure permit the permittee must provide post-closure care which shall include at least the following:

(a) Monitoring and security of the PCB disposal facility; and

(b) Any remedial action necessary to protect the public health and safety and environment.

(4) The commission may by rule establish a post-closure permit application fee. [1985 c.670 §33; 1987 c.540 §52]

466.355 Interstate cooperation regarding toxics use and hazardous waste reduction programs. (1) The Department of Environmental Quality shall work with representatives of the States of Washington, Idaho and Alaska to establish provisions in each state to assure that any generator disposing of hazardous waste or PCB at an Oregon hazardous waste or PCB disposal facility has implemented a toxics use reduction and hazardous waste reduction program substantially equivalent to any toxics use reduction and hazardous waste reduction program required of Oregon generators.

(2) The department shall report to the appropriate legislative interim committee on the department's progress in carrying out the purpose of subsection (1) of this section. [1989 c.833 §100]

466.357 Requirements for certain generators of hazardous waste. Any person operating a hazardous waste or PCB disposal facility pursuant to a permit issued under ORS 466.005 to 466.385 shall not accept hazardous waste or PCB from an Oregon generator unless the generator first certifies that the generator has implemented a toxics use reduction and hazardous waste reduction program as required under Oregon law, or with respect to an out-of-state generator, the generator has certified compliance with the waste minimization requirements of section 224(a) of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616. [1989 c.833 §99]

NOTICE OF ENVIRONMENTAL HAZARDS

466.360 Policy. (1) The Legislative Assembly finds that:

(a) Disposal sites exist on certain lots or parcels of real property within Oregon that may restrict future land development or constitute a potential hazard to the health, safety and welfare of Oregon's citizens, particularly if present or future owners use or modify the parcels without taking into consideration the use restrictions or environmental hazards posed by the former disposal activity.

(b) Permits, licenses and approvals that have been or may be granted by the Environmental Quality Commission, the Department of Environmental Quality or the Energy Facility Siting Council authorizing disposal of waste upon real property protect the health, safety and welfare of Oregon citizens only if adequate notice of post-closure use restrictions is given to future purchasers of the real property.

(c) Disposal sites created prior to regulation may be potentially hazardous if use restrictions are not imposed.

(d) Proper precautions and maintenance cannot be taken and continued unless the location of the disposal site, the nature and extent of its potential hazard and use restrictions are known to cities and counties and those who own and occupy the property.

(2) It is hereby declared to be the public policy of this state to give notice to local governments of potential hazardous disposal sites and to impose use restrictions on those sites. [1985 c.273 §2].

466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly. (1) The commission may establish by rule adopted under ORS 183.310 to 183.550:

(a) A list of sites for which environmental hazard notices must be given and use restrictions must be imposed. The list shall be consistent with the policy set forth in ORS 466.360 and may include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens:

(A) A land disposal site as defined by ORS 459.005;

(B) A hazardous waste disposal site as defined by ORS 466.005;

(C) A disposal site containing radioactive waste as defined by ORS 469.300; and

(D) A facility.

(b) The form and content of use restrictions to be imposed on the sites, which shall require at least that post-closure use of the site not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(A) Will not increase the potential hazard to human health or the environment; or

(B) Is necessary to reduce a threat to human health or the environment.

(c) The form and content of the environmental hazard notices to be filed with cities and counties.

(d) The circumstances allowing and procedures for removal or amendment of environmental hazard notices and use restrictions provided by the department.

(e) Any other provisions the commission considers necessary for the department to accomplish the purpose of ORS 466.360 to 466.385.

(2) Spills and releases cleaned up pursuant to ORS 466.205 and 468B.315 shall not be listed as sites to be regulated under subsection (1) of this section.

(3) Before hearings on and adoption of rules under subsection (1) of this section, the department shall notify each person who owns a disposal site or an owner or operator of a facility of the rulemaking proceedings.

(4) The department shall report to each Legislative Assembly on any site or facility for which environmental hazard notices and use restrictions have been amended or removed as provided by rule adopted under subsection (1)(d) of this section.

(5) The commission shall not list a site, spill or release under subsection (1) of this section, if the commission finds that within 90 days of receipt of notice under subsection (3) of this section, the owner cleaned up the site, spill or release so it is no longer a potential hazard to the health, safety and welfare of Oregon's citizens.

(6) As used in this section, "facility" has the meaning given in ORS 465.200. [1985 c.273 §3; 1987 c.735 §25; 1991 c.480 §10]

466.370 Notice to owner; hearing; filing of notice if no objection. (1) The department shall notify by certified mail any person who owns a lot or parcel upon which a disposal site listed under ORS 466.365 exists. The notice shall:

(a) Describe the disposal site and potentially hazardous environmental conditions;

(b) Describe the use restrictions that will be imposed;

(c) Explain that an environmental hazard notice will be sent to the appropriate city or county under ORS 466.375; and

(d) Advise the person of the procedure for requesting a hearing under subsection (2) of this section.

(2) If any person receiving notice under subsection (1) of this section objects to the use restrictions, the person may request a hearing before the commission. The request shall be in writing and must be submitted to the department within 20 days after the person receives the notice under subsection (1) of this section. The hearing shall be conducted according to the provisions for a con-

tested case hearing in ORS 183.413 to 183.497.

(3) If no hearing is requested within 20 days after receipt of the notice, the department shall file the environmental hazard notice with the appropriate city or county. [1985 c.273 §4]

466.375 Filing of notice; content of notice. The department shall file an environmental hazard notice with the city or county in which a site listed under ORS 466.365 (1) is located. The notice shall contain the following information:

(1) A description of the lot or parcel upon which the disposal site is located;

(2) The restrictions that apply to post-closure use of the property; and

(3) Information regarding the potential environment hazards posed by the disposal site to assist the city or county in complying with ORS 466.385. [1985 c.273 §5]

466.380 Interagency agreement for notices for radioactive waste disposal sites. The Department of Environmental Quality and the Department of Energy shall enter into an interagency agreement providing for the implementation of the provisions of ORS 466.360 to 466.385 relating to radioactive waste disposal sites. [1985 c.273 §6]

466.385 Amendment of comprehensive plan and land use regulations; model language; appeal of land use decision related to site requiring notice. (1) By the first periodic review after development of model language under subsection (2) of this section, the governing body of a city or county shall amend its comprehensive plan and land use regulations as provided in ORS 197.610 and 197.628 to 197.646 to establish and implement policies regarding potentially hazardous environmental conditions on sites listed under ORS 466.365. The land use regulations shall provide that:

(a) The city or county shall not approve any proposed use of a disposal site for which the city or county has received notice under ORS 466.370 until the Department of Environmental Quality has been notified and provided the city or county with comments on the proposed use; and

(b) Within 120 days of receipt of an environmental hazard notice from the Department of Environmental Quality, the city or county shall amend its zoning maps to identify the disposal site.

(2) The Department of Environmental Quality and the Department of Land Conservation and Development shall:

(a) Develop model language for comprehensive plans and land use regulations for

use by cities and counties in complying with this section; and

(b) Provide technical assistance to cities and counties in complying with ORS 466.360 to 466.385.

(3) The Department of Environmental Quality may appeal to the Land Use Board of Appeals any final land use decision or limited land use decision made by a city or county regarding any proposed use of a disposal site that has been identified under its comprehensive plan and land use regulations pursuant to this section. [1985 c.273 §7; 1991 c.612 §22; 1991 c.817 §30]

PACIFIC STATES AGREEMENT ON RADIOACTIVE MATERIALS TRANSPORTATION MANAGEMENT

466.450 Pacific States Agreement on Radioactive Materials Transportation Management. The Pacific States Agreement on Radioactive Materials Transportation Management is enacted into law and entered into by the State of Oregon and entered into with all other jurisdictions lawfully joining the agreement in a form as provided for as follows:

ARTICLE I Policy and Purpose

The party states recognize that protection of the health and safety of citizens and the environment, and the most economical transportation of radioactive materials, can be accomplished through cooperation and coordination among neighboring states. It is the purpose of this agreement to establish a committee comprised of representatives from each party state to further cooperation between the states on emergency response and to coordinate activities by the states to eliminate unnecessary duplication of rules and regulations regarding the transportation and handling of radioactive material.

The party states intend that this agreement facilitate both interstate commerce and protection of public health and the environment. To accomplish this goal, the party states direct the committee to develop model regulatory standards for party states to act upon and direct the committee to coordinate decisions by party states relating to the routing and inspection of shipments of radioactive material.

ARTICLE II Definitions

As used in this agreement:

(1) "Carrier" includes common, private, and contract carriers.

(2) "Hazardous material" means a substance or material which has been deter-

mined by the United States Department of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

(3) "Radioactive material" has the meaning given that term in federal Department of Transportation regulations found in 49 C.F.R. Sec. 173, and includes, but is not limited to, high-level radioactive waste, low-level radioactive waste, and spent nuclear fuel, as defined in section 2 of the Nuclear Waste Policy Act of 1983 (96 Stat. 2202, 42 U.S.C.A. Sec. 10101).

(4) "Transportation" means the transport by any means of radioactive material destined for or derived from any location, and any loading, unloading, or storage incident to such transport. "Transportation" does not include permanent storage or disposal of the material.

ARTICLE III Regulatory Practices

(1) The party states agree to develop model standards, not in conflict with federal law or regulations, for carriers of radioactive material to provide information regarding:

(a) The amount and kind of material transported;

(b) The mode of transportation and, to the extent feasible, the route or routes and the time schedule;

(c) The carrier's compliance with local, state, and federal rules and regulations related to radioactive material transportation;

(d) The carrier's compliance with federal and state liability insurance requirements.

(2) Consistent with federal law or regulations pertaining to transportation of radioactive material, the party states also agree to:

(a) Develop model uniform procedures for issuing permits to carriers;

(b) Develop model uniform record keeping processes that allow access on demand by each state;

(c) Develop model uniform safety standards for carriers;

(d) Coordinate routing of shipments of radioactive materials;

(e) Develop a method for coordinating the party states' emergency response plans to provide for regional emergency response including:

(A) Systems for sharing information essential to radiation control efforts;

(B) Systems for sharing emergency response personnel; and

(C) A method to allocate costs and clarify liability when a party state or its officers request or render emergency response;

(f) Recommend parking requirements for motor vehicles transporting radioactive materials;

(g) Coordinate state inspections of carriers; and

(h) Develop other cooperative arrangements and agreements to enhance safety.

(3) The party states also agree to coordinate emergency response training and preparedness drills among the party states, Indian tribes, and affected political subdivisions of the party states, and, if possible, with federal agencies.

(4) The party states recognize that the transportation management of hazardous materials is similar in many respects to that of radioactive materials. The party states, therefore, agree to confer as to transportation management and emergency response for those items where similarities in management exist.

ARTICLE IV Pacific States Radioactive Materials Transportation Committee

(1) Each party state shall designate one official of that state to confer with appropriate legislative committees and with other officials of that state responsible for managing transportation of radioactive material and with affected Indian tribes and be responsible for administration of this agreement. The officials so designated shall together comprise the Pacific States Radioactive Materials Transportation Committee. The committee shall meet as required to consider and, where necessary, coordinate matters addressed in this agreement. The parties shall inform the committee of existing regulations concerning radioactive materials transportation management in their states, and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations.

(2) The committee may also engage in long-term planning to assure safe and economical management of radioactive material transportation on a continuing basis.

(3) To the extent practicable, the committee shall coordinate its activities with those of other organizations.

ARTICLE V Eligible Parties and Effective Date

(1) The states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming are eligible to become a party to this agreement. As to any eligible party, this agreement 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 agreement by enacting a statute repealing its approval.

(2) After the agreement has initially taken effect under subsection (1) of this article, any eligible party state may become a party to this agreement 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, 1988, whichever occurs first, unless the agreement has by then been enacted as a statute by that state.

ARTICLE VI Severability

If any provision of this agreement, or its application to any person or circumstance, is held to be invalid, all other provisions of this agreement, 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 agreement are severable. [1987 c.86 §1]

Note: 466.450 to 466.460 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 466 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

466.455 Governor to designate member. The Governor shall designate an official to serve as a member of the Pacific States Radioactive Materials Transportation Committee created under Article IV of the agreement set forth in ORS 466.450. [1987 c.86 §2]

Note: See note under 466.450.

466.460 Confederated Tribes of the Umatilla Indian Reservation to be consulted. (1) The State of Oregon recognizes:

(a) The Confederated Tribes of the Umatilla Indian Reservation have been granted a special status as an affected tribe under the Nuclear Waste Policy Act, Public Law 97-425; and

(b) A large majority of radioactive material transported to and from the Hanford Nuclear Reservation in the State of Washington, passes through the center of the Umatilla Tribe's reservation.

(2) Therefore, the official designated by the Governor under ORS 466.455 to represent the State of Oregon on the Pacific States Radioactive Materials Transportation Committee shall consult regularly with officials of the Confederated Tribes of the Umatilla Indian Reservation on transportation matters and shall consider, to the extent practicable, the suggestions of the Confederated Tribes

of the Umatilla Indian Reservation related to the development of model standards and procedures. [1987 c.86 §3]

Note: See note under 466.450.

USE OF PCB

466.505 Definitions for ORS 466.505 to 466.530. As used in ORS 466.505 to 466.530:

(1) "PCB" means the class of chlorinated biphenyl, terphenyl, higher polyphenyl, or mixtures of these compounds, produced by replacing two or more hydrogen atoms on the biphenyl, terphenyl, or higher polyphenyl molecule with chlorine atoms. "PCB" does not include chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds, that have functional groups attached other than chlorine unless that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures thereof of these compounds, is determined to be dangerous to the public health under ORS 466.525.

(2) "Ppm" means parts per million. [Formerly 466.900]

466.510 Sale of items containing concentrations of PCB prohibited; exceptions. (1) Except as provided in ORS 466.515, beginning January 1, 1980, a person shall not sell, manufacture for sale, or use in this state an item, product or material if the item, product or material contains a concentration of PCB equal to or greater than 100 ppm.

(2) The commission by rule may prescribe a lower maximum concentration of PCB for specific items, products or materials if it finds the 100 ppm concentration specified in subsection (1) of this section to be inadequate to protect the public health from the toxic dangers of the PCB contained in that item, product or material. However, an item, product or material for which a lower maximum concentration of PCB is prescribed by federal law, rule or regulation shall not be allowed a concentration of PCB higher than that federal maximum. [Formerly 468.903]

466.515 Electric transformers or capacitors exempted. Notwithstanding ORS 466.510:

(1) PCB or an item, product or material containing PCB may be sold for use or used in this state if it is used in a closed system as a dielectric fluid for an electric transformer or capacitor pursuant to rules of the commission to insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring

the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.906]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an

item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

466.540 [1987 c.539 §52; 1987 c.735 §1; 1989 c.171 §60; renumbered 465.200 in 1989]

466.547 [1987 c.735 §2; renumbered 465.205 in 1989]

466.550 [1987 c.735 §3; renumbered 465.210 in 1989]

466.553 [1987 c.735 §4; renumbered 465.400 in 1989]

466.555 [1987 c.735 §5; renumbered 465.420 in 1989]

466.557 [1987 c.735 §6; 1989 c.485 §1; renumbered 465.215 in 1989]

466.560 [1987 c.735 §7; 1989 c.485 §9; renumbered 465.220 in 1989]

466.563 [1987 c.735 §8; 1989 c.485 §10; renumbered 465.245 in 1989]

466.565 [1987 c.735 §9; renumbered 465.250 in 1989]

466.567 [1987 c.735 §10; renumbered 465.255 in 1989]

466.570 [1987 c.735 §11; renumbered 465.260 in 1989]

466.573 [1987 c.735 §12; renumbered 465.315 in 1989]

466.575 [1987 c.735 §13; renumbered 465.320 in 1989]

466.577 [1987 c.735 §14; renumbered 465.325 in 1989]

466.580 [1987 c.735 §15; renumbered 465.330 in 1989]

466.583 [1987 c.735 §16; renumbered 465.335 in 1989]

466.585 [1987 c.735 §17; renumbered 465.340 in 1989]

466.587 [1987 c.735 §18; 1989 c.485 §11; renumbered 465.375 in 1989]

466.590 [1987 c.735 §19; 1989 c.833 §§113,169; 1989 c.966 §53; renumbered 465.380 in 1989]

SPILL RESPONSE AND CLEANUP OF HAZARDOUS MATERIALS

466.605 Definitions for ORS 466.605 to 466.680. As used in ORS 466.605 to 466.680 and 466.880 (3) and (4):

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the department.

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 466.205, 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2) or 468B.320.

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

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

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

(7) "Hazardous material" means one of the following:

(a) A material designated by the commission under ORS 466.630.

(b) Hazardous waste as defined in ORS 466.005.

(c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

(d) Communicable disease agents as regulated by the Health Division under ORS chapter 431 and ORS 431.175, 433.010 to 433.045 and 433.106 to 433.990.

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

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

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the Federal Government and any agency thereof.

(10) "Reportable quantity" means one of the following:

(a) A quantity designated by the commission under ORS 466.625.

(b) The lesser of:

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.880 (1) and (2) and 466.890;

(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines; or

(E) If spilled on land, any quantity of oil over one barrel.

(c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

(11) "Respond" or "response" means:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(12) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.880 (1) and (2) or 466.890 or federal law or while being stored or used for its intended purpose.

(13) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state. [1985 c.733 §1; 1987 c.735 §26; 1989 c.6 §14; 1993 c.422 §28]

466.610 Department authority relating to cleanup of oil or hazardous material. Subject to policy direction by the commission, the department may:

(1) Conduct and prepare independently or in cooperation with others, studies, investigations, research and programs pertaining to the containment, collection, removal or cleanup of oil and hazardous material.

(2) Advise, consult, participate and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to responses, remedial actions or cleanup of oil and hazardous material and financing of cleanup costs, including radioactive waste, materials and substances otherwise subject to ORS chapters 453 and 469.

(3) Employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts with public and private parties necessary to carry out the provisions of ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2).

(4) Conduct and supervise educational programs about oil and hazardous material, including the preparation and distribution of information regarding the containment, collection, removal or cleanup of oil and hazardous material.

(5) Provide advisory technical consultation and services to units of local government and to state agencies.

(6) Develop and conduct demonstration programs in cooperation with units of local government.

(7) Perform all other acts necessary to carry out the duties, powers and responsibilities of the department under ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2). [1985 c.733 §2; 1993 c.422 §29]

466.615 Limit on commission and department authority over radioactive substances. Nothing in ORS 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (2) is intended to grant the Environmental Quality Commission or the Department of Environmental Quality authority over any radioactive substance regulated by the Health Division under ORS chapter 453, or any radioactive material or waste regulated by the Department of Energy or Energy Facility Siting Council under ORS chapter 469. [1985 c.733 §3; 1993 c.422 §30]

466.620 Emergency response plan. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan consistent with the plan adopted by the Interagency Hazard Communications Council pursuant to the provisions of ORS 453.317 (1) to (6), 453.510, 453.825 and 453.835, and after consultation with the Interagency Hazard Communications Council, the Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization. [1985 c.733 §4; 1989 c.833 §92]

466.625 Rulemaking. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules including but not limited to:

(1) Provisions to establish that quantity of oil or hazardous material spilled or released which shall be reported under ORS 466.635. The commission may determine that one single quantity shall be the reportable quantity for any oil or hazardous material, regardless of the medium into which the oil or hazardous material is spilled or released.

(2) Establishing procedures for the issuance, modification and termination of permits, orders, collection of recoverable costs and filing of notifications.

(3) Any other provision consistent with the provisions of ORS 401.025, 466.605 to 466.680, 466.880 (3) and (4), 466.995 (2) and 468.070 that the commission considers necessary to carry out ORS 401.025, 466.605 to 466.680, 466.880 (3) and (4), 466.995 (2) and 468.070. [1985 c.733 §5; 1993 c.422 §31]

466.630 Commission designation of substance as hazardous material. (1) By rule, the commission may designate as a

hazardous material any element, compound, mixture, solution or substance which when spilled or released into the air or into or on any land or waters of the state may present a substantial danger to the public health, safety, welfare or the environment.

(2) Before designating a substance as hazardous material, the commission must find that the hazardous material, because of its quantity, concentration or physical or chemical characteristics may pose a present or future hazard to human health, safety, welfare or the environment when spilled or released. [1985 c.733 §6]

466.635 Report of spill or release of reportable quantity of hazardous material. Any person owning or having control over any oil or hazardous material who has knowledge of a spill or release shall immediately notify the Office of Emergency Management of the Department of State Police as soon as that person knows the spill or release is a reportable quantity. [1985 c.733 §7]

466.640 Strict liability for spill or release; exceptions. Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by:

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

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

(3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent. [1985 c.733 §8]

466.645 Cleanup; failure to complete cleanup. (1) Any person liable for a spill or release or threatened spill or release under ORS 466.640 shall immediately clean up the spill or release under the direction of the department. Any person liable for a spill or release or a threatened spill or release shall immediately initiate cleanup, whether or not the department has directed the cleanup. The department may require the responsible person to undertake such investigations, monitoring, surveys, testing and other information gathering as the department considers necessary or appropriate to:

(a) Identify the existence and extent of the spill or release;

(b) Identify the source and nature of oil or hazardous material involved; and

(c) Evaluate the extent of danger to the public health, safety, welfare or the environment.

(2) If any person liable under ORS 466.640 does not immediately commence and promptly and adequately complete the cleanup, the department may clean up, or contract for the cleanup of the spill or release or the threatened spill or release.

(3) Whenever the department is authorized to act under subsection (2) of this section, the department directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the spill or release, the source and nature of oil or hazardous material involved and the extent of danger to the public health, safety, welfare or the environment. In addition, the department directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations it may deem appropriate to plan and direct clean up actions, to recover the costs thereof and legal costs and to enforce the provisions of ORS 466.605 to 466.680. [1985 c.733 §9; 1987 c.158 §89; 1991 c.650 §5]

466.650 [1985 c.733 §10; repealed by 1987 c.735 §27]

466.653 [1987 c.539 §42; repealed by 1989 c.833 §175]

466.655 [1985 c.733 §11; repealed by 1987 c.735 §27]

466.660 [1985 c.733 §12; 1987 c.158 §90; repealed by 1989 c.833 §175]

466.665 [1985 c.733 §13; 1987 c.158 §91; repealed by 1989 c.833 §175]

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys received by the Department of Environmental Quality for the purpose of oil or hazardous material emergency response or remedial action shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675. [1985 c.733 §14; 1989 c.833 §93; 1989 c.966 §54]

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the

Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Funding actions and activities authorized by ORS 466.645, 466.205, 468B.320 and 468B.330.

(2) Providing for the general administration of ORS 466.605 to 466.680 including the payment of personnel costs of the department or any other state agency related to the enforcement of ORS 466.605 to 466.680. [1985 c.733 §15; 1987 c.158 §92; 1989 c.833 §94]

466.680 Responsibility for expenses of cleanup; record; damages; order; appeal.

(1) If a person required to clean up oil or hazardous material under ORS 466.645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466.645.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466.645, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466.645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director. [1985 c.733 §16]

466.685 [1985 c.733 §19; repealed by 1987 c.735 §27]

466.690 [1985 c.733 §20; repealed by 1987 c.735 §27]

466.705 [1987 c.539 §2 (enacted in lieu of 468.901); 1989 c.926 §41; 1989 c.1071 §§20,25; repealed by 1991 c.863 §11 (466.706 enacted in lieu of 466.705)]

UNDERGROUND STORAGE TANKS

(General Provisions)

466.706 Definitions for ORS 466.706 to 466.845 and 466.895. As used in ORS 466.706 to 466.845 and 466.895:

- (1) "Commercial lending institution" means any bank, mortgage banking company, trust company, stock savings bank, savings and loan association, credit union, national banking association, federal savings and loan association, cooperative financial institution regulated by an agency of the Federal Government or this state or federal credit union maintaining an office in this state.
- (2) "Commission" means the Environmental Quality Commission.
- (3) "Corrective action" means remedial action taken to protect the present or future public health, safety, welfare or the environment from a release of a regulated substance. "Corrective action" includes but is not limited to:
 - (a) The prevention, elimination, removal, abatement, control, minimization, investigation, assessment, evaluation or monitoring of a hazard or potential hazard or threat, including migration of a regulated substance; or
 - (b) Transportation, storage, treatment or disposal of a regulated substance or contaminated material from a site.
- (4) "Decommission" means to remove from operation an underground storage tank, including temporary or permanent removal from operation, abandonment in place or removal from the ground.
- (5) "Department" means the Department of Environmental Quality.
- (6) "Facility" means any one or combination of underground storage tanks and underground pipes connected to the tanks, used to contain an accumulation of motor fuel, including gasoline or diesel oil, that are located at one contiguous geographical site.
- (7) "Fee" means a fixed charge or service charge.
- (8) "Guarantor" means any person other than the permittee who by guaranty, insurance, letter of credit or other acceptable device, provides financial responsibility for an underground storage tank as required under ORS 466.815.
- (9) "Heating oil tank" has the meaning given that term in ORS 469.228.
- (10) "Investigation" means monitoring, surveying, testing or other information gathering.
- (11) "Local unit of government" means a city, county, special service district, metropolitan service district created under ORS chapter 268 or a political subdivision of the state.
- (12) "Oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and a pressure of 14.7 pounds per square inch absolute.
- (13) "Owner" means the owner of an underground storage tank.
- (14) "Permittee" means the owner or a person designated by the owner who is in control of or has responsibility for the daily operation or maintenance of an underground storage tank under a permit issued pursuant to ORS 466.760.
- (15) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity or the Federal Government or any agency of the Federal Government.
- (16) "Regulated substance" means:
 - (a) Any substance listed by the United States Environmental Protection Agency in 40 CFR Table 302.4 pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (P.L. 96-510 and P.L. 98-80), but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101;
 - (b) Oil; or
 - (c) Any other substance designated by the commission under ORS 466.630.
- (17) "Release" means the discharge, deposit, injection, dumping, spilling, emitting, leaking or placing of a regulated substance from an underground storage tank into the air or into or on land or the waters of the state, other than as authorized by a permit issued under state or federal law.
- (18) "Stage I vapor collection system" means a system where gasoline vapors are forced from a tank into a vapor-tight holding system or vapor control system through direct displacement by the gasoline being loaded.
- (19) "Stage II vapor collection system" means a system where at least 90 percent, by weight, of the gasoline vapors that are

displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system.

(20) "Underground storage tank" means any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground.

(21) "Waters of the state" has the meaning given that term in ORS 468B.005. [1991 c.863 §12 (enacted in lieu of 466.705)]

466.710 Application of ORS 466.706 to 466.845 and 466.895. ORS 466.706 to 466.845 and 466.895 shall not apply to a:

(1) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated:

(a) Under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671);

(b) Under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001); or

(c) As an intrastate pipeline facility under state laws comparable to the provisions of law referred to in paragraph (a) or (b) of this subsection.

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor. As used in this subsection, "underground area" includes but is not limited to a basement, cellar, mine, drift, shaft or tunnel.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [Formerly 468.911; 1987 c.539 §18]

466.715 Legislative findings. (1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, welfare and the environment are stored in underground tanks in this state; and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the environment and may pose dangers to the public health, safety, welfare and the environment.

(2) Therefore, the Legislative Assembly declares:

(a) It is the public policy of this state to protect the public health, safety, welfare and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(b) It is the purpose of ORS 466.706 to 466.845 and 466.895 to enable the Environmental Quality Commission to adopt a state-wide program for the prevention and reporting of releases and for taking corrective action to protect the public and the environment from releases from underground storage tanks. [1987 c.539 §4 (enacted in lieu of 468.902); 1989 c.1071 §§21,26]

(Administration)

466.720 Statewide underground storage tank program; federal authorization.

(1) The Environmental Quality Commission shall adopt a state-wide underground storage tank program. Except as otherwise provided in ORS 466.706 to 466.845 and 466.895, the statewide program shall establish uniform procedures and standards to protect the public health, safety, welfare and the environment from the consequences of a release from an underground storage tank.

(2) The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P.L. 98-616, Section 205 of the federal Solid Waste Disposal Act, P.L. 96-482 as amended and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended, P.L. 98-616 and P.L. 96-482. The commission may adopt, amend or repeal any rule necessary to implement ORS 466.706 to 466.845 and 466.895. [Subsection (1) enacted as 1987 c.539 §6; subsection (2) formerly 468.913]

466.725 Limitation on local government regulation. (1) Except as provided in ORS 466.730, a local unit of government may not enact or enforce any ordinance, rule or regulation relating to the matters encompassed by the state program established under ORS 466.720.

(2) Any ordinance, rule or regulation enacted by a local unit of government of this state that encompasses the same matters as

the state program shall be unenforceable, except for an ordinance, rule or regulation:

(a) That requires an owner or permittee to report a release to the local unit of government; or

(b) Adopted by a local unit of government operating an underground storage tank program pursuant to a contract entered into according to the provisions of ORS 466.730. [1987 c.539 §8 (enacted in lieu of 468.904)]

Note: Section 2, chapter 651, Oregon Laws 1993, provides:

Sec. 2. On or before January 1, 1994, the Department of Environmental Quality shall develop and submit to cities and counties model ordinances compatible with state regulations that are designed to insure proper storage and treatment of petroleum contaminated soils. The model ordinances shall include a range of regulatory methods and levels of regulation and shall address:

- (1) Location of soil pile and treatment area;
- (2) Quantity of soil to be treated;
- (3) Protection of noncontaminated soils, ground water or surface water;
- (4) Control of surface water runoff from or surface water running into the treatment area;
- (5) Appropriate site security to prevent unauthorized site entry; and
- (6) Appropriate time frame for treatment of contaminated soils. [1993 c.651 §2]

466.727 Prohibition on local government tax, fee or surcharge. (1) A local unit of government may not impose any tax, fee or surcharge on soil generated as a result of remedial action or replacement of leaking underground storage tanks if financial assistance from the Underground Storage Tank Compliance and Corrective Action Fund has been provided for the remedial action or tank replacement.

(2) Nothing in this section shall be construed to prevent a local unit of government that owns, leases or operates a site for the disposal, transfer, recovery or treatment of solid waste from charging a fee for disposal or treatment of soil at such site. [1993 c.661 §4]

466.730 Delegation of program administration to state agency or local government by agreement. (1) The commission may authorize the department to enter into a contract or agreement with an agency of this state or a local unit of government to administer all or part of the underground storage tank program.

(2) Any agency of this state or any local unit of government that seeks to administer an underground storage tank program under this section shall submit to the department a description of the program the agency or local unit of government proposes to administer in lieu of all or part of the state program. The program description shall include at least the following:

(a) A description in narrative form of the scope, structure, coverage and procedures of the proposed program.

(b) A description, including organization charts, of the organization and structure of the contracting state agency or local unit of government that will have responsibility for administering the program, including:

(A) The number of employees, occupation and general duties of each employee who will carry out the activities of the contract.

(B) An itemized estimate of the cost of establishing and administering the program, including the cost of personnel listed in subparagraph (A) of this paragraph and administrative and technical support.

(C) An itemization of the source and amount of funding available to the contracting state agency or local unit of government to meet the costs listed in subparagraph (B) of this paragraph, including any restrictions or limitations upon this funding.

(D) A description of applicable procedures, including permit procedures.

(E) Copies of the permit form, application form and reporting form the state agency or local unit of government intends to use in the program.

(F) A complete description of the methods to be used to assure compliance and for enforcement of the program.

(G) A description of the procedures to be used to coordinate information with the department, including the frequency of reporting and report content.

(H) A description of the procedures the state agency or local unit of government will use to comply with trade secret laws under ORS 466.800.

(3) Any program approved by the department under this section shall at all times be conducted in accordance with the requirements of ORS 466.706 to 466.845 and 466.895.

(4) An agency or local unit of government shall exercise the functions relating to underground storage tanks authorized under a contract or agreement entered into under this section according to the authority vested in the commission and the department under ORS 466.706 to 466.845 and 466.895 insofar as such authority is applicable to the performance under the contract or agreement. The agency or local unit of government shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. [1987 c.539 §9]

466.735 Cooperation with Department of Consumer and Business Services and State Fire Marshal. Nothing in ORS 466.706 to 466.845 and 466.895 is intended to

interfere with, limit or abridge the authority of the Department of Consumer and Business Services or the State Fire Marshal, or any other state agency or local unit of government relating to combustion and explosion hazards, hazard communications or land use. The complementary relationship between the protection of the public safety from combustion and explosion hazards, and protection of the public health, safety, welfare and the environment from releases of regulated substances from underground storage tanks is recognized. Therefore, the department shall work cooperatively with the Department of Consumer and Business Services, the State Fire Marshal and local units of government in developing the rules and procedures necessary to carry out the provisions of ORS 466.706 to 466.845 and 466.895. [1987 c.539 §10]

466.740 Noncomplying installation prohibited. No person shall install an underground storage tank for the purpose of storing regulated substances unless the tank complies with the standards adopted under ORS 466.746 and any other rule adopted under ORS 466.706 to 466.845 and 466.895. [1987 c.539 §11]

466.745 [1987 c.539 §13 (enacted in lieu of 468.908); 1989 c.1071 §§22, 27, 43a, 43b, 29a; repealed by 1991 c.863 §13 (466.746 enacted in lieu of 466.745)]

466.746 Commission rules; considerations. (1) The commission may establish by rule:

- (a) Performance standards, consistent with standards adopted by the Federal Government, for leak detection systems, inventory control, tank testing or comparable systems or programs designed to detect or identify releases in a manner consistent with the protection of public health, safety, welfare or the environment;
- (b) Requirements for maintaining records and submitting information to the department in conjunction with a leak detection or identification system or program used for each underground storage tank;
- (c) Performance standards for underground storage tanks including but not limited to design, retrofitting, construction, installation, release detection and material compatibility;
- (d) Requirements for the temporary or permanent decommissioning of an underground storage tank;
- (e) Requirements for reporting a release from an underground storage tank;
- (f) Requirements for a permit issued under ORS 466.760;
- (g) Procedures that distributors of regulated substances and sellers of underground

storage tanks must follow to satisfy the requirements of ORS 466.760;

(h) Acceptable methods by which an owner or permittee may demonstrate financial responsibility for responding to the liability imposed under ORS 466.815;

(i) Procedures for the disbursement of moneys collected under ORS 466.795;

(j) Requirements for reporting corrective action taken in response to a release;

(k) Requirements for taking corrective action in response to a release;

(L) Requirements for soil assessment and tank tightness tests which shall not be more stringent soil assessment and tank tightness testing requirements than required by the Federal Government;

(m) Provisions necessary to carry out the underground storage tank loan guarantee program authorized by section 4, chapter 1071, Oregon Laws 1989; and

(n) Any other rule necessary to carry out the provisions of ORS 466.706 to 466.845 and 466.895.

(2) So long as requirements are administered uniformly within each area or region of the state, the commission may adopt different requirements for different areas or regions of the state if the commission finds either of the following:

(a) More stringent rules or standards are necessary:

(A) To protect specific waters of the state, a sole source or sensitive aquifer or any other sensitive environmental amenity; or

(B) Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

(b) Less stringent rules or standards are:

(A) Warranted by physical conditions or economic hardship;

(B) Consistent with the protection of the public health, safety, welfare or the environment; and

(C) Not less stringent than minimum federal requirements.

(3) The rules adopted by the commission under subsection (1) of this section may distinguish between types, classes and ages of underground storage tanks. In making such distinctions, the commission may consider the following factors:

- (a) Location of the tanks;
- (b) Soil and climate conditions;
- (c) Uses of the tanks;
- (d) History of maintenance;

- (e) Age of the tanks;
- (f) Current industry recommended practices;
- (g) National consensus codes;
- (h) Hydrogeology;
- (i) Water table;
- (j) Size of the tanks;
- (k) Quantity of regulated substances periodically deposited in or dispensed from the tank;
- (L) The technical ability of the owner or permittee; and
- (m) The compatibility of the regulated substance and the materials of which the tank is fabricated.

(4) In adopting rules under subsection (1) of this section, the commission shall consider all relevant federal standards and regulations on underground storage tanks. If the commission adopts any standard or rule that is different than a federal standard or regulation on the same subject, the report submitted to the commission by the department at the time the commission adopts the standard or rule shall indicate clearly the deviation from the federal standard or regulation and the reasons for the deviation. [1991 c.863 §14 (enacted in lieu of 466.745)]

(Licenses; Permits)

466.750 License procedure for persons servicing underground tanks. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, to protect the public from unlawful underground tank installation and retrofit procedures, to assure the highest degree of leak prevention from underground storage tanks and to insure the appropriate cleanup of oil spills and releases, the commission may adopt a program to regulate persons providing underground storage tank installation and removal, retrofit, testing, inspection and remedial action services.

(2) As part of the program established under subsection (1) of this section, the commission also may regulate persons who provide remedial action on heating oil tanks covered under ORS 469.228 to 469.298 and 469.991. As used in this section, "remedial action" has the meaning given that term in ORS 469.228.

(3) The program established under subsection (1) of this section may include a procedure to license persons who demonstrate, to the satisfaction of the department, the ability to service underground storage tanks and heating oil tanks. This demonstration of ability may consist of written or field exam-

inations. The commission may establish different types of licenses for different types of demonstrations, including but not limited to:

- (a) Installation, removal, retrofit and inspection of underground storage tanks;
- (b) Tank integrity testing;
- (c) Installation of leak detection systems;
- (d) Cleanup of soil contamination resulting from spills or releases of oil from underground storage tanks; and
- (e) Cleanup of soil contamination resulting from the release of heating oil from heating oil tanks under ORS 469.228 to 469.298 and 469.991.

(4) The program adopted under subsection (1) of this section may allow the department after opportunity for hearing under the provisions of ORS 183.310 to 183.550, to revoke a license of any person offering underground storage tank or heating oil tank services who commits fraud or deceit in obtaining a license or who demonstrates negligence or incompetence in performing underground tank services.

(5) The program adopted under subsection (1) of this section shall:

(a) Provide that no person may offer to perform or perform services for which a license is required under the program without such license.

(b) Establish a schedule of fees for licensing under the program. The fees shall be in an amount sufficient to cover the costs of the department in administering the program.

(6) The following persons shall apply for an underground storage tank permit from the department:

(a) An owner of an underground storage tank currently in operation;

(b) An owner of an underground storage tank taken out of operation between January 1, 1974, and the operative date of this section; and

(c) An owner of an underground storage tank that was taken out of operation before January 1, 1974, but that still contains a regulated substance. [1987 c.539 §§14, 15; 1989 c.926 §42]

466.760 When permit required; who required to sign application. (1) No person shall install, bring into operation, operate or decommission an underground storage tank without first obtaining a permit from the department.

(2) No person shall deposit a regulated substance into an underground storage tank unless the tank is operating under a permit issued by the department.

(3) Any person who assumes ownership of an underground storage tank from a previous permittee must complete and return to the department an application for a new permit before the person begins operation of the underground storage tank under the new ownership.

(4) Any person who deposits a regulated substance into an underground storage tank or sells an underground storage tank shall notify the owner or operator of the tank of the permit requirements of this section.

(5) The following persons must sign an application for a permit submitted to the department under this section or ORS 466.750 (6):

(a) The owner of an underground storage tank storing a regulated substance;

(b) The owner of the real property in which an underground storage tank is located; and

(c) The proposed permittee, if a person other than the owner of the underground storage tank or the owner of the real property. [1987 c.539 §16; 1989 c.926 §43; 1989 c.1071 §§23,28]

466.765 Duty of owner or permittee of underground storage tank. In addition to any other duty imposed by law and pursuant to rules adopted under ORS 466.706 to 466.845 and 466.895, the owner or the permittee of an underground storage tank shall:

(1) Prevent releases;

(2) Install, operate and maintain underground storage tanks and leak detection devices and develop and maintain records in connection therewith in accordance with standards adopted and permits issued under ORS 466.706 to 466.845 and 466.895;

(3) Furnish information to the department relating to underground storage tanks, including information about tank equipment and regulated substances stored in the tanks;

(4) Promptly report releases;

(5) Conduct monitoring and testing as required by rules adopted under ORS 466.746 and permits issued under ORS 466.760;

(6) Permit department employees or a duly authorized and identified representative of the department at all reasonable times to have access to and to copy all records relating to underground storage tanks;

(7) Pay all costs of investigating, preventing, reporting and stopping a release;

(8) Decommission tanks, as required by rules adopted under ORS 466.746 and permits issued under ORS 466.760;

(9) Pay all fees;

(10) Conduct any corrective action required under ORS 466.810; and

(11) Perform any other requirement adopted under ORS 465.200, 466.706 to 466.845, 466.895 and 478.308. [1987 c.539 §20 (enacted in lieu of 468.905)]

466.770 Corrective action required on contaminated site. (1) If any owner or permittee of a contaminated site fails without sufficient cause to conduct corrective action under ORS 466.765, the department may undertake any investigation or corrective action with respect to the contamination on the site.

(2) The department shall keep a record of all expenses incurred in carrying out any corrective action authorized under subsection (1) of this section, including charges for services performed and the state's equipment and materials utilized.

(3) Any owner or permittee of a contaminated site who fails without sufficient cause to conduct corrective action as required by an order of the department under ORS 466.810 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department in carrying out the necessary corrective action.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the actions authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of corrective action costs incurred by the department and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

(6) Subsection (5) of this section shall not apply if the department and the responsible person are negotiating or have entered into a settlement agreement, except that if the responsible person fails to pay the corrective action costs as provided in the negotiated settlement the director may request the At-

torney General to take action as set forth in subsection (5) of this section.

(7) All moneys received by the department under this section shall be paid into the fund established in ORS 466.791.

(8) As used in this section:

(a) "Contamination" means any abandoning, spilling, releasing, leaking, disposing, discharging, depositing, emitting, pumping, pouring, emptying, injecting, escaping, leaching, placing or dumping of a regulated substance from an underground storage tank into the air or on any lands or waters of the state, so that such regulated substance may enter the environment, be emitted into the air or discharged into any waters. Such contamination authorized by and in compliance with a permit issued under ORS chapter 454, 459, 468, 468A, 468B, 469, ORS 466.005 to 466.385 or federal law shall not be considered as contamination under ORS 465.200, 466.706 to 466.845, 466.895 and 478.308.

(b) "Site" means any area or land. [1987 c.539 §24; 1993 c.560 §106]

466.775 Grounds for refusal, modification, suspension or revocation of permit.

(1) The department may refuse to issue, modify, suspend, revoke or refuse to renew a permit if the department finds:

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

(b) Failure to comply with the conditions of the permit; or

(c) Violation of any applicable provision of ORS 466.706 to 466.845 and 466.895, any applicable rule or standard adopted under ORS 466.706 to 466.845 and 466.895 or an order issued under ORS 466.706 to 466.845 and 466.895.

(2) The department may modify a permit issued under ORS 466.760 if the department finds, after notice and opportunity for hearing, that modification is necessary to protect the public health, safety, welfare or the environment.

(3) The department shall modify, suspend, revoke or refuse to issue or renew a permit according to the provisions of ORS 183.310 to 183.550 for a contested case proceeding. [1987 c.539 §21]

466.780 Variance upon petition. (1) Upon petition by the owner and the permittee of an underground storage tank, the commission may grant a variance from the requirements of any rule or standard adopted under ORS 466.746 if the commission finds:

(a) The alternative proposed by the petitioner provides protection to the public health, safety, welfare and the environment,

equal to or greater than the rule or standard; and

(b) The alternative proposal is at least as stringent as any applicable federal requirements.

(2) The commission may grant a variance under subsection (1) of this section only if the commission finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the petitioner; or

(b) Special physical conditions or other circumstances render strict compliance unreasonable, burdensome or impracticable.

(3) The commission may delegate the authority to grant a variance to the department.

(4) Within 15 days after the department denies a petition for a variance, the petitioner may file with the commission a request for review by the commission. The commission shall review the petition for variance and the reasons for the department's denial of the petition within 150 days after the commission receives a request for review. The commission may approve or deny the variance or allow a variance on terms different than the terms proposed by the petitioner. If the commission fails to act on a denied petition within the 150-day period the variance shall be considered approved by the commission. [1987 c.539 §22]

(Finance)

466.785 Fees. (1) Fees may be required of every permittee of an underground storage tank. Fees shall be in an amount determined by the commission to be adequate to carry on the duties of the department or the duties of a state agency or local unit of government that has contracted with the department under ORS 466.730. Such fees shall not exceed \$35 per tank per year.

(2) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department to carry out the provisions of ORS 466.706 to 466.845 and 466.895. [1987 c.539 §§23,50; 1989 c.833 §157; 1989 c.935 §1; 1989 c.1071 §§44,45; 1993 c.525 §§1,2,3]

466.790 [1987 c.539 §26; 1989 c.1071 §§24,29,30,46,47,48; repealed by 1991 c.863 §15 (466.791 enacted in lieu of 466.790)]

466.791 Underground Storage Tank Compliance and Corrective Action Fund; sources; uses. (1) The Underground Storage Tank Compliance and Corrective Action Fund is established separate and distinct

from the General Fund in the State Treasury.

(2) The following moneys, as they pertain to an underground storage tank, shall be deposited into the State Treasury and credited to the Underground Storage Tank Compliance and Corrective Action Fund:

(a) Moneys recovered or otherwise received from responsible parties for corrective action;

(b) Moneys allocated to the fund from the Executive Department Economic Development Fund;

(c) As permitted by federal court decisions, federal statutory requirements and administrative decisions, funds made available from multidistrict litigation - 150 oil overcharge settlement moneys or surplus stripper well oil overcharge settlement moneys; and

(d) Any penalty, fine or damages recovered under ORS 466.770.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Compliance and Corrective Action Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Compliance and Corrective Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Compliance and Corrective Action Fund may be used by the department for the following purposes:

(a) Supporting the loan guarantee program established pursuant to section 4, chapter 1071, Oregon Laws 1989;

(b) Repaying moneys advanced under ORS 293.205 to 293.225 to allow the department to begin operating the grant and loan programs established pursuant to section 4, chapter 1071, Oregon Laws 1989, or servicing any debt incurred by the fund;

(c) Administration of the underground storage tank program;

(d) Funding the interest rate subsidies established under section 6a, chapter 863, Oregon Laws 1991;

(e) Funding the underground storage tank insurance premium copayment program established under sections 38 to 46, chapter 863, Oregon Laws 1991; and

(f) Funding of the grants established under section 6, chapter 863, Oregon Laws 1991. [1991 c.863 §16 (enacted in lieu of 466.790); 1993 c.18 §120; 1993 c.661 §5]

466.795 Underground Storage Tank Insurance Fund. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in

the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Moneys transferred by the department from the Underground Storage Tank Compliance and Corrective Action Fund established under ORS 466.791 shall be credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Funding of the underground storage tank insurance premium copayments established under sections 38 to 46, chapter 863, Oregon Laws 1991; and

(b) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to five percent of the premium collected. [1987 c.539 §28; 1989 c.833 §158; 1989 c.935 §2, 3; 1991 c.863 §47]

Note: Section 5, chapter 935, Oregon Laws 1989, provides:

Sec. 5. If the Supreme Court declares that section 147, chapter 833, Oregon Laws 1989 (Enrolled House Bill 3515) [453.408 (1)], imposes a tax or excise levied on, with respect to or measured by the extractions, production, storage, use, sale, distribution or receipt of oil or natural gas or levied on the ownership of oil or natural gas, that is subject to the provisions of section 2, Article VIII, or section 3a, Article IX of the Oregon Constitution, section 4 of this Act [465.127] is repealed and ORS 466.795, as amended by section 3 of this Act, is further amended to read:

466.795. (1) The Underground Storage Tank Insurance Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purpose of satisfying the financial responsibility requirements of ORS 466.815.

(2) Fees received by the department pursuant to subsection (6) of this section, shall be deposited into the State Treasury and credited to the Underground Storage Tank Insurance Fund.

(3) The State Treasurer may invest and reinvest moneys in the Underground Storage Tank Insurance Fund in the manner provided by law.

(4) The moneys in the Underground Storage Tank Insurance Fund are appropriated continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Underground Storage Tank Insurance Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Compensation to the department or any other person, for taking corrective actions; and

(b) Compensation to a third party for bodily injury and property damage caused by a release; and

(c) Payment of the department's costs in administering the Underground Storage Tank Insurance Fund, which shall be limited to 15 percent of the premium collected.

(6) The commission may establish an annual financial responsibility fee to be collected from an owner or permittee of an underground storage tank. The fee shall be in an amount determined by the commission to be adequate to meet the financial responsibility requirements established under ORS 466.815 and any applicable federal law.

(7) Before the effective date of any regulations relating to financial responsibility adopted by the United States Environmental Protection Act pursuant to P.L. 98-616 and P.L. 99-499, the department shall formulate a plan of action to be followed if it becomes necessary for the Underground Storage Tank Insurance Fund to become operative in order to satisfy the financial responsibility requirements of ORS 466.815. In formulating the plan of action, the department shall consult with the Director of the Department of Consumer and Business Services, owners and permittees of underground storage tanks and any other interested party. The plan of action must be reviewed by the Legislative Assembly or the Emergency Board before implementation.

466.800 Records as public records; exceptions. (1) Except as provided in subsection (2) of this section, any records, reports or information obtained from any persons under ORS 466.765 and 466.805 shall be made available for public inspection and copying during the regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.706 to 466.845 and 466.895 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.501 to 192.505, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employee or authorized representative of the state concerned with carrying out ORS 466.706 to 466.845 and 466.895 or when relevant in any proceeding under ORS 466.706 to 466.845 and 466.895.

(3) Any record, report or information obtained or used by the department or the commission in administering the statewide underground storage tank program under ORS 466.706 to 466.845 and 466.895 shall be available to the United States Environmental Protection Agency upon request. If the record, report or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental

Protection Agency for the requested record, report or information. The federal agency shall treat the record, report or information subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 468.910]

(Enforcement)

466.805 Site inspection; subpoena or warrant. (1) In order to determine compliance with the provisions of ORS 466.706 to 466.845 and 466.895 and rules adopted under ORS 466.706 to 466.845 and 466.895 and to enforce the provisions of ORS 466.706 to 466.845 and 466.895, any employees of or an authorized and identified representative of the department may:

(a) Enter at reasonable times any establishment or site where an underground storage tank is located;

(b) Inspect and obtain samples of a regulated substance contained in an underground storage tank; and

(c) Conduct an investigation of an underground storage tank, associated equipment, contents or the soil, air or waters of the state surrounding an underground storage tank.

(2) If any person refuses to comply with subsection (1) of this section, the department or a duly authorized and identified representative of the department may obtain a warrant or subpoena to allow such entry, inspection, sampling or copying. [1987 c.539 §30 (enacted in lieu of 468.907)]

466.810 Investigation on noncompliance; findings and orders; declassification; hearings; other remedies. (1) Whenever the department has reasonable cause to believe that an underground storage tank or the operation of an underground storage tank violates ORS 466.706 to 466.845 and 466.895 or fails to comply with a rule, order or permit issued under ORS 466.706 to 466.845 and 466.895, the department may investigate the underground storage tank.

(2) After the department investigates an underground storage tank under subsection (1) of this section, the department may, without notice or hearing, make such findings and issue such orders as it considers necessary to protect the public health, safety, welfare or the environment.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in the operation, practices or operating procedures found to be in violation of ORS 466.706 to 466.845 and 466.895 or the rules adopted under ORS 466.706 to 466.845 and 466.895;

(b) Require the owner or operator to comply with the provisions of a permit;

(c) Require compliance with a schedule established in the order; and

(d) Require any other actions considered necessary by the department.

(4) After the department issues an order under subsection (2) of this section, the department may decommission the underground storage tank or contract with another person to decommission the underground storage tank.

(5) The department shall serve a certified copy of any order issued by it under subsection (2) of this section to the permittee or the permittee's duly authorized representative at the address furnished to the department in the permit application or other address as the department knows to be used by the permittee. The order shall take effect 20 days after the date of its issuance, unless the permittee requests a hearing on the order before the commission. The request for a hearing shall be submitted in writing within 20 days after the department issues the order.

(6) All hearings before the commission or its hearing officer shall be conducted according to applicable provisions of ORS 183.310 to 183.550 for contested cases.

(7) Whenever it appears to the department that any person is engaged or about to engage in any act or practice that constitutes a violation of ORS 466.706 to 466.845 and 466.895 or the rules and orders adopted under ORS 466.706 to 466.845 and 466.895 or of the terms of any permit issued under ORS 466.706 to 466.845 and 466.895, the department, without prior administrative hearing, may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [1987 c.539 §32]

466.815 Financial responsibility of owner or permittee. (1) The commission may by rule require an owner or permittee to demonstrate and maintain financial responsibility for:

(a) Taking corrective action;

(b) Compensating a third party for bodily injury and property damage caused by a release; and

(c) Compensating the department, or any other person, for expenses incurred by the department or any other person in taking corrective action.

(2) The financial responsibility requirements established by subsection (1) of this section may be satisfied by insurance, guarantee by third party, surety bond, letter of credit or qualification as a self-insurer or

any combination of these methods. In adopting rules under subsection (1) of this section, the commission may specify policy or other contractual terms, conditions or defenses necessary or unacceptable to establish evidence of financial responsibility.

(3) If an owner or permittee is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over either an owner or a permittee likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor. In the case of action under paragraph (b) of subsection (1) of this section, the guarantor is entitled to invoke all rights and defenses that would have been available to the owner or permittee if the action had been brought against the owner or permittee by the claimant and all rights and defenses that would have been available to the guarantor if the action had been brought against the guarantor by the owner or permittee.

(4) The total liability of a guarantor shall be limited to the aggregate amount the guarantor provided as evidence of financial responsibility to the owner or permittee under subsection (2) of this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or other applicable law.

(5) Corrective action and compensation programs financed by a fee paid by owners and permittees and administered by the department may be used to satisfy all or part of the financial responsibility requirements of this section.

(6) No rule requiring an owner or permittee to demonstrate and maintain financial responsibility shall be adopted by the commission before review by the appropriate legislative committee as determined by the President of the Senate and the Speaker of the House of Representatives. [1987 c.539 §27]

466.820 Reimbursement to department; procedure for collection; treble damages. (1) The owner and the permittee of an underground storage tank found to be in violation of any provision of ORS 466.706 to 466.845 and 466.895, shall reimburse the department for all costs reasonably incurred by the department, excluding administrative

costs, in the investigation of a leak from an underground storage tank. Department costs may include investigation, design engineering, inspection and legal costs necessary to correct the leak.

(2) Payment of costs to the department under subsection (1) of this section shall be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order.

(3) If such costs are not paid by the owner or the permittee of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of ORS 465.200, 466.706 to 466.845, 466.895 and 478.308, the commission or the court may award damages in the amount equal to three times the amount of all expenses incurred by the department in investigating the violation.

(5) Moneys reimbursed shall be deposited to the State Treasury to the credit of an account of the department and are continuously appropriated to the department for the purposes of administering ORS 465.200, 466.706 to 466.845, 466.895 and 478.308. [1987 c.539 §34 (enacted in lieu of 468.914)]

466.825 Strict liability of owner or permittee. The owner and permittee of an underground storage tank found to be the source of a release shall be strictly liable to any owner or permittee of a nonleaking underground storage tank in the vicinity, for all costs reasonably incurred by such nonleaking underground storage tank owner or permittee in determining which tank was the source of the release. [1987 c.539 §35]

466.830 Halting tank operation upon clear and immediate danger. (1) Whenever, in the judgment of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, safety or the environment exists from the continued operation of an underground storage tank, the department may, without hearing or prior notice, order the operation of the underground storage tank or site halted by service of an order on the owner or permittee of the underground storage tank or site.

(2) Within 24 hours after the order is served under subsection (1) of this section, the department shall appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, safety, welfare or the environment. [1987 c.539 §36]

466.835 Compliance and correction costs as lien; enforcement. (1) All compliance and corrective action costs, penalties and damages for which a person is liable to the state under ORS 466.706 to 466.845 and 466.895 shall constitute a lien upon any real and personal property owned by the person.

(2) The department shall file a claim of lien on real property to be charged with a lien under subsection (1) of this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under subsection (1) of this section with the Secretary of State. The lien shall attach and become enforceable on the date of the filing. The lien claim shall contain:

- (a) A statement of the demand;
- (b) The name of the person against whose property the lien attaches;
- (c) A description of the property charged with the lien sufficient for identification; and
- (d) A statement of the failure of the person to conduct compliance and corrective actions as required.

(3) A lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which a person is liable under the provisions of ORS 466.706 to 466.845 and 466.895. [1987 c.539 §37]

(Financial Assistance Programs)

466.840 Legislative findings. The Legislative Assembly finds that:

(1) The upgrading of underground storage tanks and the improving of such tanks and associated equipment are necessary to protect the public health and safety and the environment.

(2) The costs of upgrading leaking underground storage tanks, purchasing improved equipment and cleaning up the contamination caused by leaking underground storage tanks, including the costs of disposal, remediation or other treatment of soil contaminated as a result of leaking underground storage tanks, exceed the financial capacity

of many owners and operators of underground storage tanks.

(3) The availability of motor vehicle fuel is necessary to create and retain employment and to encourage tourism in Oregon.

(4) It is the intent and policy of the Legislative Assembly to:

(a) Insure the funding and support of remedial action and replacement of leaking underground storage tanks and associated equipment, while allowing the owners and operators to continue to operate their businesses in Oregon; and

(b) In order to insure such funding and support, prevent a local unit of government from imposing taxes, fees or surcharges on soil generated as a result of remedial action or replacement of leaking underground storage tanks. [1993 c.661 §2]

466.845 Commission authority to accept and expend moneys received for financial assistance programs. (1) The Environmental Quality Commission may accept and expend moneys from any public or private source, including the Federal Government, made available for the purpose of carrying out financial assistance programs for owners and operators of storage tanks containing motor vehicle fuel.

(2) All moneys and the proceeds of all moneys received by the Environmental Quality Commission under this section shall be deposited in the Underground Storage Tank Compliance and Corrective Action Fund to be used for the purposes for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1993 c.661 §3]

Note: Sections 5 to 10, 19a, 38 to 44, 46 and 62, chapter 863, Oregon Laws 1991, provide:

Sec. 5. (1) Beginning October 1, 1991, the department shall conduct a financial assistance program as described in sections 6 and 6a, chapter 863, Oregon Laws 1991, for the purpose of upgrading or replacing underground storage tanks and piping, conducting corrective action or installing stage I and II vapor collection system underground piping, hoses and nozzles at an underground storage tank facility holding an accumulation of motor fuel for resale, for projects whose construction started on or after December 22, 1988.

(2) Not later than April 1, 1994, an applicant for financial assistance shall submit either an application for financial assistance or a letter of intent to apply for financial assistance to bring the applicant's underground storage tank facility into compliance with all applicable technical and financial responsibility requirements on or before December 31, 1996. The letter of intent shall include but need not be limited to a proposed construction schedule and general description of the scope of work to be performed with the financial assistance received.

(3) Not later than October 1, 1994, a person submitting an application or a letter of intent to apply for financial assistance under subsection (2) of this section shall sign a consent agreement to bring the applicant's

underground storage tank into compliance with all applicable technical and financial responsibility requirements on or before December 31, 1996. In the consent agreement, the department may require the applicant to conduct daily inventory control and reconciliation, investigate a suspected release, report a confirmed release within 24 hours, determine whether an imminent hazard exists through adequate investigation and testing and conduct other reasonable tank management activities that do not require capital investment.

(4) Except for the requirements set forth in subsection (7) of this section, an applicant for financial assistance or a person who submits a letter of intent to apply for financial assistance shall not be subject to enforcement action under ORS 466.706 to 466.845 and 466.895 if the applicant is making a good faith effort to:

(a) Bring the applicant's underground storage tank facility into compliance with all technical and financial responsibility requirements on or before December 31, 1996; or

(b) Permanently close the underground storage tank facility in accordance with applicable underground storage tank requirements on or before December 31, 1996.

(5) In order to manage the funds available in the Underground Storage Tank Compliance and Corrective Action Fund, and to process the projected number of financial assistance applications, the department may establish a schedule for starting construction of the projects applying for financial assistance under sections 6 and 6a, chapter 863, Oregon Laws 1991. If the department finds it is necessary to adjust an applicant's schedule, the department shall consult with the applicant in establishing the new schedule. The applicant's financial assistance from the department or insurance benefits available from the department shall not be adversely affected by a schedule change imposed by the department.

(6) Any person who does not submit a financial assistance application or a letter of intent to apply for financial assistance shall comply with all applicable technical and financial responsibility requirements. A person who receives financial assistance shall comply with all applicable technical and financial responsibility requirements within 60 days after completing the upgrade or replacement project.

(7) An applicant for financial assistance shall:

(a) Hold a valid underground storage tank permit for the facility for which the applicant is requesting the assistance;

(b) Pay all annual underground storage tank compliance fees, including any fees currently due;

(c) Take appropriate corrective action in accordance with rules of the Environmental Quality Commission in the event of an imminent hazard involving ground water contamination or a threat of fire and explosion from a spill or release of petroleum; and

(d) If the applicant closes an underground storage tank facility, conduct closure operations in accordance with requirements established by rule by the Environmental Quality Commission. [1991 c.863 §5; 1993 c.661 §6]

Sec. 6. (1) Beginning October 1, 1991, any person who owns or is responsible for an underground storage tank holding an accumulation of motor fuel for resale may be eligible for the financial assistance established under subsections (2) to (4) of this section for construction started after December 22, 1988. The financial assistance may be used to upgrade an underground storage tank, replace an underground storage tank, conduct corrective action or install stage I and II vapor collection system underground piping, hoses and nozzles in conformity with applicable state and federal underground storage tank, air quality and corrective action

rules at an underground storage tank facility. If a person owns or is responsible for more than one underground storage tank facility, the person is eligible for all applicable financial assistance for each facility.

(2) Any person owning or responsible for 100 or more tanks, and meeting the financial need criteria established by the Environmental Quality Commission by rule under section 7, chapter 863, Oregon Laws 1991, may be eligible for a loan at a five percent interest rate on the first \$100,000 of eligible project costs.

(3) Any person owning or responsible for 99 or fewer tanks, and meeting the financial need criteria established by the Environmental Quality Commission by rule under section 7, chapter 863, Oregon Laws 1991, may be eligible for an underground storage tank pollution prevention grant of 50 percent not to exceed \$50,000 and a loan at an interest rate of three percent on the first \$100,000 of eligible project costs.

(4) Any person owning or responsible for 12 or fewer tanks, and meeting the financial need criteria established by the Environmental Quality Commission by rule under section 7, chapter 863, Oregon Laws 1991, and the criteria in subsection (5) of this section, may be eligible for an underground storage tank essential services grant of 75 percent not to exceed \$75,000 and a loan at an interest rate of one and one-half percent on the first \$100,000 of eligible project costs.

(5) In addition to meeting the financial need criteria, an applicant for an underground storage tank essential services grant also shall meet all of the following criteria:

(a) The applicant's facility must be either:

(A) The only facility in a city listed in the Oregon Blue Book; or

(B) The only facility within nine miles from the next retail gas sales facility.

(b) The applicant must enter into an agreement with the Department of Environmental Quality providing that, subject to paragraph (c) of this subsection, the underground storage tank essential services grant will be reimbursed in full if the property or business reselling motor vehicle fuel is sold within five years after the applicant receives the grant with the purpose of closing the facility. The department may secure the agreement by placing a lien upon property owned by the applicant where the underground storage tank is located. The property lien agreement shall become a lien upon the property where the underground storage tank is located on the date the property lien agreement is recorded in the mortgage records of the county in which the property is located.

(c) If the applicant sells the property and the purchaser assumes the obligations of the agreement made under paragraph (b) of this subsection with the purpose of keeping the facility open, the applicant shall not be required to reimburse the underground storage tank essential services grant. The purchaser shall be obligated under the lien only for a five-year period from the time of the initial underground storage tank essential services grant.

(6) Any person not applying to a commercial lending institution for a loan to perform underground storage tank work under section 6a, chapter 863, Oregon Laws 1991, and this section, may apply directly to the department for a grant under subsections (3) and (4) of this section.

(7) The department may not approve any application for the financial assistance programs established by subsections (2) to (4) of this section received after December 31, 1996.

(8) The interest rate subsidies established under subsections (2) to (4) of this section shall be payable in the manner provided in section 6a, chapter 863, Oregon Laws 1991. [1991 c.863 §6; 1993 c.661 §7]

Sec. 6a. (1) Beginning October 1, 1991, the department shall conduct a program of financial assistance that allows commercial lending institutions to offer low-interest, fixed-rate loans as described in subsection (2) of this section to persons owning or responsible for underground storage tanks holding an accumulation of motor fuel for resale.

(2) The amount of finance charge charged, including interest on the loan and interest on any loan fee, by a commercial lending institution may be at a rate of:

(a) Seven and one-half percent for a loan to any person owning or responsible for underground storage tanks holding an accumulation of motor fuel;

(b) Five percent for loans qualifying under section 6 (2), chapter 863, Oregon Laws 1991;

(c) Three percent for loans qualifying under section 6 (3), chapter 863, Oregon Laws 1991; or

(d) One and one-half percent for loans qualifying under section 6 (4), chapter 863, Oregon Laws 1991.

(3) The department shall reimburse the commercial lending institution for the difference between the amount of finance charge that would have been charged, including interest on the loan and interest on any loan fee, and an annual rate that is the lesser of the following:

(a) The annual rate charged by the commercial lending institution for nonsubsidized loans made under like terms and conditions at the time the loan is made; or

(b) The upper limit established by rule of the Environmental Quality Commission.

(4) In order for the loan to be eligible for the reduced interest rates allowed under this section, the loan shall:

(a) Be made to a person who is upgrading or replacing an underground storage tank, conducting corrective action or installing stage I and II vapor collection system underground piping, hoses or nozzles at an underground storage tank facility holding an accumulation of motor fuel for resale;

(b) Be made after December 22, 1988, and before December 31, 1996;

(c) Have a term not to exceed 20 years; and

(d) Be only on the first \$100,000 of eligible project expenses.

(5) Before approving any application for financial assistance under section 6, 38, 39 or 40, chapter 863, Oregon Laws 1991, the department shall determine whether sufficient moneys are projected to be in the Underground Storage Tank Compliance and Corrective Action Fund to pay all obligations and debt service to all parties, including obligations to commercial lending institutions for the loan guarantees and reduced interest rates on loans made by commercial lending institutions, on all applications approved to date, and the obligations and debt service of the application being considered for approval. If the department projects that funds will be insufficient to service new obligations or debt service, the department shall suspend approval of the financial assistance application until additional revenue becomes available. When additional revenue becomes available, applications denied approval due to insufficient funds shall be processed according to the chronological order in which the applications were suspended for insufficient funds.

(6) Within 30 days after the end of each calendar quarter, a commercial lending institution shall submit an invoice to the Department of Environmental Quality for the difference in the amount of the finance charge as set forth in subsections (2) and (3) of this section. The department shall pay any invoice received under this section only from moneys in the Underground

Storage Tank Compliance and Corrective Action Fund established under ORS 466.791.

(7) If for any reason funds in the Underground Storage Tank Compliance and Corrective Action Fund are not sufficient to make the payments described in subsection (6) of this section for a loan, the interest rate on that loan shall be considered increased to the rate described in subsection (3)(a) of this section, effective on the date the funds first ceased to be available.

(8) As used in this section, "commercial lending institution," "facility," "corrective action," "stage I vapor collection system," "stage II vapor collection system" and "underground storage tank" have the meaning given those terms ORS 466.706. [1991 c.863 §6; 1993 c.661 §8]

Sec. 7. (1) The Environmental Quality Commission shall adopt rules to implement the financial assistance programs established by sections 6 and 6a, chapter 863, Oregon Laws 1991. In adopting the rules, the commission shall consider the recommendations of the Underground Storage Tank Financial Assistance Advisory Committee established in subsection (2) of this section.

(2) Before August 1, 1991, the Director of the Department of Environmental Quality shall appoint an Underground Storage Tank Financial Assistance Advisory Committee. The advisory committee shall consist of a representative from each of the following organizations or areas of interest:

- (a) Oregon petroleum marketers;
- (b) Petroleum suppliers;
- (c) Oregon gasoline dealers;
- (d) Agricultural cooperatives;
- (e) Oregon commercial lending institutions;
- (f) A service provider currently licensed by the Department of Environmental Quality;
- (g) An underground storage tank equipment manufacturer or distributor; and
- (h) Two members of the general public, one of whom shall serve as chair of the advisory committee.

(3) The Underground Storage Tank Financial Assistance Advisory Committee shall advise the department and commission on matters relating to the implementation of the financial assistance programs under ORS 466.706 to 466.845 and 466.895, including but not limited to:

- (a) Adoption of administrative rules to implement the financial assistance programs set forth in ORS 466.706 to 466.845;
- (b) Financial needs criteria for the variable interest rate loans and underground storage tank pollution and essential service grants;
- (c) Financial information forms;
- (d) Methods to contain costs of the financial assistance programs to provide maximum benefits to the greatest number of applicants;
- (e) Methods to promote and advertise the financial assistance programs to potential applicants; and
- (f) The readability and understandability of application forms and instructional materials to be used by potential underground storage tank financial assistance applicants.

(4) Members appointed to the advisory committee shall serve for a period of two years. The director may discontinue the committee after December 31, 1996.

(5) Members of the advisory committee are not eligible for compensation, but members may be reimbursed for necessary expenses under ORS 292.495 from moneys available in the Underground Storage Tank Compliance and Corrective Action Fund. [1991 c.863 §7; 1993 c.661 §9]

Sec. 8. In establishing financial need criteria, the commission shall consider the most recent published financial statistics by Robert Morris Associates for Gasoline Service Station Retailers. The commission and the Underground Storage Tank Financial Assistance Advisory Committee also may seek advice from the Economic Development Department, the federal Small Business Administration and other qualified businesses, organizations and agencies. [1991 c.863 §8]

Sec. 9. (1) An applicant applying for financial assistance under sections 4 to 6, chapter 1071, Oregon Laws 1989, and sections 6 and 6a of this 1991 Act shall provide the commercial lending institution with copies of the applicant's two most recent financial statements, if the applicant is a corporation, or if the applicant is a sole proprietor or partnership, the two most recent personal financial statements and federal income tax returns. For a corporation, the financial needs test shall be made on the parent company and any wholly owned subsidiaries. An applicant shall provide any financial information requested by a commercial lending institution necessary to determine financial need as established under sections 7 and 8 of this 1991 Act. The department may specify the forms on which financial information must be provided to the department or commercial lending institutions.

(2) Upon determining that an applicant meets the criteria established under sections 7 and 8 of this 1991 Act and is eligible for financial assistance under sections 4 to 6, chapter 1071, Oregon Laws 1989, and sections 6 and 6a of this 1991 Act, the commercial lending institution shall submit its decision to the department for approval.

(3) An applicant applying for financial assistance under section 6 (6) of this 1991 Act shall provide the information described in subsection (1) of this section to the Department of Environmental Quality. [1991 c.863 §9]

Sec. 10. The Environmental Quality Commission shall adopt rules to insure that money disbursed from the Underground Storage Tank Compliance and Corrective Action Fund for an underground storage tank pollution prevention or essential service grant is used only to pay for equipment, labor and services to upgrade or replace underground storage tanks, conduct corrective action or install stage I and II vapor collection system underground piping, hoses and nozzles. [1991 c.863 §10]

Sec. 19a. The Environmental Quality Commission shall report to the Emergency Board the amount of moneys necessary to provide funding to the Underground Storage Tank Compliance and Corrective Action Fund. [1991 c.863 §19a; 1993 c.18 §178]

Sec. 38. Any applicant with 100 or more underground storage tanks holding motor fuel for resale who meets the financial needs test for a five percent interest rate subsidy established by section 6, chapter 863, Oregon Laws 1991, also shall be eligible for an annual underground storage tank insurance premium copayment according to the following schedule:

(1) An annual 50 percent copayment not to exceed \$2,000 per year between October 1, 1991, and December 31, 1995, for an applicant starting an underground storage tank upgrade or replacement project after December 22, 1988, and completing the project before December 31, 1993.

(2) An annual 40 percent copayment not to exceed \$1,600 per year between January 1, 1994, and December 31, 1995, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1994.

(3) An annual 30 percent copayment not to exceed \$1,200 per year between January 1, 1995, and December 31, 1995, for an applicant completing an underground

storage tank upgrade or replacement project in the calendar year 1995. [1991 c.863 §38; 1993 c.661 §10]

Sec. 39. Any applicant with 99 or fewer underground storage tanks holding motor fuel for resale who meets the financial needs test for an underground storage tank pollution prevention grant established under section 6, chapter 863, Oregon Laws 1991, also shall be eligible for an annual underground storage tank insurance premium copayment according to the following schedule:

(1) An annual 75 percent copayment not to exceed \$3,000 per year between October 1, 1991, and December 31, 1996, for an applicant starting an underground storage tank upgrade or replacement project after December 22, 1988, and completing the project before December 31, 1993.

(2) An annual 65 percent copayment not to exceed \$2,600 per year between January 1, 1994, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1994.

(3) An annual 55 percent copayment not to exceed \$2,200 per year between January 1, 1995, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1995.

(4) An annual 45 percent copayment not to exceed \$2,200 per year between January 1, 1996, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1996. [1991 c.863 §39; 1993 c.661 §11]

Sec. 40. Any applicant with 12 or fewer underground storage tanks holding motor fuel for resale who meets the financial needs test for an underground storage tank essential services grant established under section 6, chapter 863, Oregon Laws 1991, also shall be eligible for an annual underground storage tank insurance premium copayment according to the following schedule:

(1) An annual 90 percent copayment not to exceed \$3,600 per year between October 1, 1993, and December 31, 1996, for an applicant starting an underground storage tank upgrade or replacement project after December 22, 1988, and completing the project before December 31, 1993.

(2) An annual 85 percent copayment not to exceed \$3,400 per year between January 1, 1994, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1994.

(3) An annual 80 percent copayment not to exceed \$3,200 per year between January 1, 1995, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1995.

(4) An annual 75 percent copayment not to exceed \$3,000 per year between January 1, 1996, and December 31, 1996, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1996.

(5) An annual 50 percent copayment not to exceed \$2,000 per year between January 1, 1997, and December 31, 1997, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1996.

(6) An annual 25 percent copayment not to exceed \$1,000 per year between January 1, 1998, and December 31, 1998, for an applicant completing an underground storage tank upgrade or replacement project in the calendar year 1996. [1991 c.863 §40; 1993 c.661 §12]

Sec. 41. If a person owns or is responsible for more than one underground storage tank facility, the person is eligible for all applicable insurance premium copayments for each facility location. [1991 c.863 §41]

Sec. 42. A copayment shall be made only for insurance policies that satisfy in form and substance the required underground storage tank financial responsibility requirement for corrective action and third party liability established by rule by the Environmental Quality Commission. [1991 c.863 §42]

Sec. 43. When applying for a copayment, the agent, producing agent or company shall designate to whom payment shall be made on forms provided by the Department of Environmental Quality. The agent, producing agent or company shall certify that the insured has paid the remaining insurance premium copayment for the policy term. [1991 c.863 §43]

Sec. 43a. (1) Each person providing insurance under ORS 735.300 to 735.365 or 735.400 to 735.495 for which a copayment may be made under section 43 of this 1991 Act shall file for informational purposes, in the manner and according to the requirements established by the Director of the Department of Consumer and Business Services, the person's:

(a) Minimum rates and deductibles; and

(b) Policy forms, including the legal defense provisions of the policies.

(2) Beginning January 1, 1992, and each July 1 and January 1 thereafter until July 1, 1996, the Department of Consumer and Business Services shall provide to the Department of Environmental Quality:

(a) The following information relating to each insurer authorized under the Insurance Code to transact insurance in this state:

(A) Minimum rates and deductibles; and

(B) Policy forms, including the legal defense provisions of the policies.

(b) The information provided to the Department of Consumer and Business Services under subsection (1) of this section.

(3) The Department of Insurance and Finance also shall furnish to the Department of Environmental Quality financial information with respect to the insurers and other persons about whom the information is provided under subsection (2) of this section. [1991 c.863 §43a]

Sec. 44. The Department of Environmental Quality shall pay insurance premium copayments from moneys available in the Underground Storage Tank Insurance Fund established under ORS 466.795. [1991 c.863 §44]

Sec. 46. The department may transfer funds from the Underground Storage Tank Compliance and Corrective Action Fund established under section 16 of this 1991 Act [466.791] to the Underground Storage Tank Insurance Fund established under ORS 466.795 in order to make the underground storage tank insurance premium copayments authorized by sections 38 to 46 of this 1991 Act. [1991 c.863 §46]

Sec. 62. Beginning January 1, 1993, and biennially thereafter for the duration of the financial assistance programs established under this Act, the Department of Environmental Quality shall report to the Legislative Assembly:

(1) The status of the financial assistance programs under sections 4 to 6, chapter 1071, Oregon Laws 1989, and sections 6, 6a, 38, 39 and 40 of this Act;

(2) Any substantive changes to the federal underground storage tank program under the Federal Resource Conservation and Recovery Act, P.L. 94-580, as amended;

(3) Oregon's proposed response to substantive changes to the federal underground storage tank program; and

(4) The financial capacity of the Underground Storage Tank Compliance and Corrective Action Fund to meet its obligations and debt service for applications

approved under sections 4 to 6, chapter 1071, Oregon Laws 1989, and sections 6, 6a, 38, 39 and 40 of this Act. The report shall specifically discuss the fund's capacity to meet its obligations and debt service to commercial lending institutions for guaranteed or reduced interest rate loans. [1991 c.863 §62]

OREGON HANFORD WASTE BOARD

Note: Sections 1 to 8 and 10 to 16, chapter 514, Oregon Laws 1987, provide:

Sec. 1. (1) The Legislative Assembly finds and declares that Oregon is not assured that the United States Department of Energy will:

(a) Consider the unique features of Oregon and the needs of the people of Oregon when assessing Hanford, Washington, as a potentially suitable location for the long-term disposal of high-level radioactive waste; or

(b) Insure adequate opportunity for public participation in the assessment process.

(2) Over the past 45 years, the United States has developed and produced nuclear weapons at Hanford, Washington, and during this period large quantities of radioactive hazardous and chemical wastes have accumulated at the Hanford Nuclear Reservation, and the waste sites pose an immediate and serious long-term threat to the environment and to public health and safety.

(3) Therefore, the Legislative Assembly declares that it is in the best interests of the State of Oregon to establish an Oregon Hanford Waste Board to serve as a focus for the State of Oregon in the development of a state policy to be presented to the Federal Government, to insure a maximum of public participation in the assessment and cleanup process. [1987 c.514 §1; 1991 c.562 §3]

Sec. 2. Nothing in sections 1 to 16 of this Act shall be interpreted by the Federal Government or the United States Department of Energy as an expression by the people of Oregon to accept Hanford, Washington, as the site for the long-term disposal of high-level radioactive waste. [1987 c.514 §2]

Sec. 3. As used in sections 1 to 16 of this Act:

(1) "Board" means the Oregon Hanford Waste Board.

(2) "High-level radioactive waste" means fuel or fission products from a commercial nuclear reactor after irradiation that is packaged and prepared for disposal.

(3) "United States Department of Energy" means the federal Department of Energy established under 42 U.S.C.A. 7131 or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste. [1987 c.514 §3]

Sec. 4. There is created an Oregon Hanford Waste Board which shall consist of the following members:

(1) The Director of the Oregon Department of Energy or designee;

(2) The Water Resources Director or designee;

(3) A representative of the Governor;

(4) One member representing the Confederated Tribes of the Umatilla Indian Reservation;

(5) Ten members of the public, appointed by the Governor, one of whom shall be a representative of a local emergency response organization in eastern Oregon and one of whom shall serve as chairperson; and

(6) Three members of the Senate, appointed by the President of the Senate, and three members of the House of Representatives, appointed by the Speaker of the House of Representatives who shall serve as advisory members without vote. [1987 c.514 §4; 1991 c.562 §1]

Sec. 5. (1) Each member of the Oregon Hanford Waste Board shall serve at the pleasure of the appointing authority. For purposes of this subsection, for those members of the board selected by the public advisory committee, the appointing authority shall be the public advisory committee.

(2) Each public member of the board shall receive compensation and expenses as provided in ORS 292.495. Each legislative member shall receive compensation and expenses as provided in ORS 171.072.

(3) The board shall be under the supervision of the chairperson. [1987 c.514 §5]

Sec. 6. The Oregon Hanford Waste Board:

(1) Shall serve as the focal point for all policy discussions within the state government concerning the disposal of high-level radioactive waste in the northwest region.

(2) Shall recommend a state policy to the Governor and to the Legislative Assembly.

(3) After consultation with the Governor, may make policy recommendations on other issues related to the United States Hanford Reservation at Richland, Washington, including but not limited to defense wastes, disposal and treatment of chemical waste and plutonium production. [1987 c.514 §6]

Sec. 7. In carrying out its purpose as set forth in section 6, chapter 514, Oregon Laws 1987, the Oregon Hanford Waste Board shall:

(1) Serve as the initial agency in this state to be contacted by the United States Department of Energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste and other issues related to the United States Hanford Reservation.

(2) Serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the Federal Government on any matter related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation. Notification of proposed plans includes notification of proposals to conduct field work, onsite evaluation or onsite testing.

(3) Disseminate or arrange with the United States Department of Energy or other federal agency to disseminate the information received under subsection (2) of this section to appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups who have requested in writing to receive this information.

(4) Recommend to the Governor and Legislative Assembly appropriate responses to contacts under subsection (1) of this section and information received under subsection (2) of this section if a response is appropriate. The board shall consult with the appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups in preparing this response.

(5) Promote and coordinate educational programs which provide information on the nature of high-level radioactive waste, the long-term disposal of this waste, the activities of the board, the activities of the United States Department of Energy and any other federal agency related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation and the opportunities of the public to participate in procedures and decisions related to this waste.

(6) Review any application to the United States Department of Energy or other federal agency by a state agency, local government or regional planning commission for funds for any program related to the

long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation. If the board finds that the application is not consistent with the state's policy related to such issue or that the application is not in the best interest of the state, the board shall forward its findings to the Governor and the appropriate legislative committee. If the board finds that the application of a state agency is not consistent with the state's policy related to long-term disposal of high-level radioactive waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the Governor and legislative committee shall include a recommendation that the Governor act to stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(7) Monitor activity in Congress and the Federal Government related to the long-term disposal of high-level radioactive waste and other issues related to the United States Hanford Reservation.

(8) If appropriate, advise the Governor and the Legislative Assembly to request the Attorney General to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste or other issues related to the United States Hanford Reservation.

(9) Coordinate with appropriate counterparts and agencies in the State of Washington. [1987 c.514 §7; 1991 c.562 §4]

Sec. 8. The chairperson of the Oregon Hanford Waste Board shall:

(1) Supervise the day-to-day functions of the board;

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

(3) Request technical assistance from any other state agency. [1987 c.514 §8]

Sec. 10. (1) If the United States Department of Energy selects Hanford, Washington, as the site for the construction of a repository for the long-term disposal of high-level radioactive waste, the Oregon Hanford Waste Board shall review the selected site and the site plan prepared by the United States Department of Energy. In conducting its review the board shall:

(a) Include a full scientific review of the adequacy of the selected site and of the site plan;

(b) Use recognized experts;

(c) Conduct one or more public hearings on the site plan;

(d) Make available to the public arguments and evidence for and against the site plan; and

(e) Solicit comments from appropriate state agencies, local governments, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the Hanford site and the site plan.

(2) After completing the review under subsection (1) of this section, the board shall submit a recommendation to the Speaker of the House of Representatives, the President of the Senate and the Governor on whether the state should accept the Hanford site. [1987 c.514 §10]

Sec. 11. (1) In addition to any other duty prescribed by law and subject to the policy direction of the board, a lead agency designated by the Governor shall negotiate written agreements and modifications to those agreements, with the United States Department of Energy or any other federal agency or state on any matter related to the long-term disposal of high-level radioactive waste.

(2) Any agreement or modification to an agreement negotiated by the agency designated by the Governor under subsection (1) of this section shall be consistent with the policy expressed by the Governor and the Legislative Assembly as developed by the Oregon Hanford Waste Board.

(3) The Oregon Hanford Waste Board shall make recommendations to the agency designated by the Governor under subsection (1) of this section concerning the terms of agreements or modifications to agreements negotiated under subsection (1) of this section or other issues related to the United States Hanford Reservation. [1987 c.514 §11; 1991 c.562 §5]

Sec. 12. The Oregon Hanford Waste Board shall implement agreements, modifications and technical revisions approved by the agency designated by the Governor under section 11 of this Act. In implementing these agreements, modifications and revisions, the board may solicit the views of any appropriate state agency, local government, regional planning commission, American Indian tribal governing body, the general public and interested citizen groups. [1987 c.514 §12]

Sec. 13. The Oregon Hanford Waste Board may accept moneys from the United States Department of Energy, other federal agencies, the State of Washington and from gifts and grants received from any other person. Such moneys are continuously appropriated to the board for the purpose of carrying out the provisions of this Act. The board shall establish by rule a method for disbursing such funds as necessary to carry out the provisions of sections 1 to 16, chapter 514, Oregon Laws 1987, including but not limited to awarding contracts for studies pertaining to the long-term disposal of radioactive waste or other issues related to the United States Hanford Reservation. Any disbursement of funds by the board or the lead agency shall be consistent with the policy established by the board under section 6, chapter 514, Oregon Laws 1987. [1987 c.514 §13; 1991 c.562 §6]

Sec. 14. The Oregon Hanford Waste Board may establish any advisory and technical committee it considers necessary. Members of any advisory or technical committee established under this section may receive reimbursement for travel expenses incurred in the performance of their duties in accordance with ORS 292.495. [1987 c.514 §14; 1991 c.562 §2]

Sec. 15. All departments, agencies and officers of this state and its political subdivisions shall cooperate with the Oregon Hanford Waste Board in carrying out any of its activities under sections 1 to 16 of this Act and, at the request of the chairperson, provide technical assistance to the board. [1987 c.514 §15]

Sec. 16. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Oregon Hanford Waste Board shall adopt rules and standards to carry out the requirements of sections 1 to 16 of this Act. [1987 c.514 §16]

FEDERAL SITE SELECTION

Note: Sections 1 and 2, chapter 13, Oregon Laws 1987, provide:

Sec. 1. The Legislative Assembly and the people of the State of Oregon find that:

(1) In order to solve the problem of high-level radioactive waste disposal, Congress established a process for selecting two sites for the safe, permanent and regionally equitable disposal of such waste.

(2) The process of selecting three sites as final candidates, including the Hanford reservation in the State of Washington, for a first high-level nuclear waste repository by the United States Department of Energy violated the intent and the mandate of Congress.

(3) The United States Department of Energy has prematurely deferred consideration of numerous poten-

tial sites and disposal media that its own research indicates are more appropriate, safer and less expensive.

(4) Placement of a repository at Hanford without methodical and independently verified scientific evaluation threatens the health and safety of the people and the environment of this state.

(5) The selection process is flawed and not credible because it did not include independent experts in the selection of the sites and in the review of the selected sites, as recommended by the National Academy of Sciences.

(6) By postponing indefinitely all site specific work for an eastern repository, the United States Department of Energy has not complied with the intent of Congress expressed in the Nuclear Waste Policy Act, Public Law 97-425, and the fundamental compromise which enabled its enactment. [1987 c.13 §1]

Sec. 2. In order to achieve complete compliance with federal law and protect the health, safety and welfare of the people of the State of Oregon, the Legislative Assembly, other statewide officials and state agencies shall use all legal means necessary to:

(1) Suspend the preliminary site selection process for a high-level nuclear waste repository, including the process of site characterization, until there is compliance with the intent of the Nuclear Waste Policy Act;

(2) Reverse the Secretary of Energy's decision to postpone indefinitely all site specific work on locating and developing an eastern repository for high-level nuclear waste;

(3) Insist that the United States Department of Energy's site selection process, when resumed, considers all acceptable geologic media and results in safe, scientifically justified and regionally and geographically equitable high-level nuclear waste disposal;

(4) Demand that federal budget actions fully and completely follow the intent of the Nuclear Waste Policy Act;

(5) Continue to pursue alliances with other states and interested parties, particularly with Pacific Northwest Governors, legislatures and other parties, affected by the site selection process and transportation of high-level nuclear waste; and

(6) Assure that Oregon, because of its close geographic and geologic proximity to the proposed Hanford site, be accorded the same status under federal law as a state in which a high-level nuclear repository is proposed to be located. [1987 c.13 §2]

CIVIL PENALTIES

466.880 Civil penalties generally. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed \$10,000 for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.680, or any rule or order entered or adopted under ORS 466.605 to 466.680, may incur a civil penalty

not to exceed \$10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be imposed in the manner provided by ORS 468.135, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670. [Formerly 459.995; (3) and (4) enacted by 1985 c.733 §17; 1987 c.266 §1; 1991 c.734 §35]

466.890 Civil penalties for damage to wildlife resulting from contamination of food or water supply. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(b) Each mountain sheep or mountain goat, \$3,500.

(c) Each elk, \$750.

(d) Each silver gray squirrel, \$10.

(e) Each game bird other than wild turkey, \$10.

(f) Each wild turkey, \$50.

(g) Each game fish other than salmon or steelhead trout, \$5.

(h) Each salmon or steelhead trout, \$125.

(i) Each fur-bearing mammal other than bobcat or fisher, \$50.

(j) Each bobcat or fisher, \$350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law. [1985 c.685 §2]

466.895 Civil penalties for violations of underground storage tank regulations.

(1) Any person who violates any provision of ORS 466.706 to 466.845 and this section, a rule adopted under ORS 466.706 to 466.845 and this section or the terms or conditions of any order or permit issued by the depart-

ment under ORS 466.706 to 466.845 and this section shall be subject to a civil penalty not to exceed \$10,000 per violation per day of violation.

(2) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(3) The department may levy a civil penalty up to \$100 for each day a fee due and owing under ORS 466.785 and 466.795 is unpaid. A penalty collected under this subsection shall be placed in the State Treasury to the credit of an account of the department.

(4) The civil penalties authorized under this section shall be imposed in the manner provided by ORS 468.135 except that a penalty collected under subsection (1) of this section shall be deposited to the fund established in ORS 466.791. [1987 c.539 §39; 1989 c.171 §61; 1991 c.734 §36]

466.900 [1987 c.735 §23; renumbered 465.900 in 1989]

CRIMINAL PENALTIES

466.995 Criminal penalties. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified

in ORS 459.005 to 459.105, 459.205 to 459.385, 466.005 to 466.385 or 466.890.

(2) Violation of a provision of ORS 466.605 to 466.680 or of any rule or order entered or adopted under ORS 466.605 to 466.680 is punishable, upon conviction, by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

(3) Any person who knowingly violates any provision of ORS 466.706 to 466.845 and 466.895 or the rules adopted under ORS 466.706 to 466.845 and 466.895 shall be subject to a criminal penalty not to exceed \$10,000 or imprisonment for not more than one year or both. Each day of violation shall be deemed a separate offense.

(4) Any person who knowingly violates any provision of ORS 465.200 to 465.455 or any rule or order adopted or issued under ORS 465.200 to 465.455 shall, upon conviction, be subject to a criminal penalty not to exceed \$10,000 or imprisonment for not more than one year, or both. Each day of violation shall be deemed a separate offense. [Formerly 459.992; (3) enacted by 1985 c.733 §18; 1987 c.158 §93; subsection (4) enacted as 1987 c.539 §38; subsection (5) enacted as 1987 c.735 §24; 1993 c.422 §18]