

Chapter 468

1999 EDITION

Environmental Quality Generally

GENERAL ADMINISTRATION

- 468.005 Definitions
- 468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses
- 468.015 Functions of commission
- 468.020 Rules and standards
- 468.030 Department of Environmental Quality
- 468.035 Functions of department
- 468.040 Director; salary
- 468.045 Functions of director; delegation
- 468.050 Deputy director
- 468.055 Contracts with Health Division
- 468.060 Enforcement of rules by health agencies
- 468.065 Issuance of permits; content; fees; use
- 468.067 Organizational standing to seek judicial review of final order in Title V permit proceeding
- 468.070 Denial, modification, suspension or revocation of permits
- 468.073 Expedited or enhanced regulatory process; payment; disposition of payments
- 468.075 Revolving fund; uses

UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT

- 468.076 Definitions for ORS 468.076 to 468.089
- 468.078 Action for pollution originating in Oregon
- 468.079 Action for pollution originating in reciprocating jurisdiction
- 468.080 Applicability of Oregon law
- 468.081 Rights of injured person
- 468.083 Right conferred under ORS 468.076 to 468.087 in addition to other rights

468.085 Sovereign immunity defense

468.087 Application and construction of ORS 468.076 to 468.087

468.089 Short title

#### ENFORCEMENT

468.090 Complaint procedure

468.095 Investigatory authority; entry on premises; status of records

468.100 Enforcement procedures; powers of regional authorities; status of procedures

468.110 Appeal; power of court to stay enforcement

468.115 Enforcement in cases of emergency

468.120 Public hearings; subpoenas, oaths, depositions

468.126 Advance notice

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties

468.135 Imposition of civil penalties

468.140 Civil penalties for specified violations

#### POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as “pollution control facilities”

468.155 Definitions for ORS 468.155 to 468.190

468.160 Policy

468.165 Application for certification of pollution control facilities; fees

468.167 Application for precertification

468.170 Action on application; rejection; appeal; issuance of certificate; certification

468.180 Conditions for issuance of certificate under ORS 468.170

468.185 Procedure to revoke certification; reinstatement

468.190 Allocation of costs to pollution control

#### STATE POLLUTION CONTROL BONDS

468.195 Issuance of bonds authorized; principal amount

468.215 Pollution Control Fund

- 468.220 Department to administer fund; uses; legislative approval of grants; administrative assessment
- 468.225 Investment of gross proceeds of agency bonds or other obligations
- 468.230 Pollution Control Sinking Fund; use; limitation
- 468.240 Remedy where default occurs on payment to state
- 468.245 Acceptance of federal funds
- 468.250 Participation in matching fund programs with federal government
- 468.253 Authority of director to act to benefit fund
- 468.255 Limit on grants and loans
- 468.260 Return of unexpended funds to state required; use of returned funds

#### COUNTY POLLUTION CONTROL FACILITIES

- 468.263 Definitions for ORS 468.263 to 468.272
- 468.264 Policy
- 468.265 Powers of county over pollution control facilities
- 468.266 Issuance of bonds
- 468.267 Security for bonds
- 468.268 Enforcement of bond obligation
- 468.269 Trustees; powers
- 468.270 Tax status of leasehold interest in facilities
- 468.271 Effect on procedure of awarding contracts; construction
- 468.272 Application of other laws relating to bonds

#### FINANCING TREATMENT WORKS

- 468.423 Definitions for ORS 468.423 to 468.440
- 468.425 Policy
- 468.427 Water Pollution Control Revolving Fund; sources
- 468.429 Uses of revolving fund
- 468.431 Water Pollution Control Administration Fund; sources; uses
- 468.433 Duties of department; public agency loan program

468.437 Loan applications; eligibility; waiver; default remedy

468.439 Borrowing authority of public agency

468.440 Loan terms and interest rates; considerations

#### RECLAIMED PLASTIC PRODUCT TAX CREDIT

468.451 Definitions for ORS 468.451 to 468.491

468.456 Policy

468.461 Application for certification of investment to collect, transport or process reclaimed plastic or manufacture reclaimed plastic product

468.466 Action on application; rejection; appeal; certification of investment

468.471 Preliminary certification of investment

468.476 Final certification

468.481 Revocation of certificate; consequences

468.486 Allocation of costs to collect, transport or process reclaimed plastic or manufacture reclaimed plastic product

468.491 Limit on costs certified by commission for tax credit

#### GREEN PERMITS

468.501 Definitions for ORS 468.501 to 468.521

468.503 Purpose of Green Permits

468.506 Commission rulemaking to carry out Green Permit program

468.508 Eligibility for Green Permit

468.511 Environmental laws not applicable to facility operating under Green Permit

468.513 Judicial review of agency decision on issuance of Green Permit

468.516 Termination of Green Permit

468.518 Application for permit or approval affected by termination of Green Permit

468.521 Recovery of costs of agency in developing, negotiating and publicizing Green Permit; disposition of moneys collected

#### ENVIRONMENTAL CRIMES

468.920 Definitions for ORS 468.922 to 468.956

- 468.922 Unlawful disposal, storage or treatment of hazardous waste in the second degree
- 468.926 Unlawful disposal, storage or treatment of hazardous waste in the first degree
- 468.929 Unlawful transport of hazardous waste in the second degree
- 468.931 Unlawful transport of hazardous waste in the first degree
- 468.933 Determination of number of punishable offenses under ORS 468.922, 468.926, 468.929 and 468.931
- 468.936 Unlawful air pollution in the second degree
- 468.939 Unlawful air pollution in the first degree
- 468.941 Determination of number of punishable offenses under ORS 468.936 or 468.939
- 468.943 Unlawful water pollution in the second degree
- 468.946 Unlawful water pollution in the first degree
- 468.949 Determination of number of punishable offenses under ORS 468.943 or 468.946
- 468.951 Environmental endangerment
- 468.953 Supplying false information to agency
- 468.956 Refusal to produce material subpoenaed by commission
- 468.959 Upset or bypass as affirmative defense
- 468.961 Approval of Attorney General or district attorney before bringing felony charge; guidelines for bringing felony charge; model guidelines
- 468.963 Environmental audit privilege; exceptions; burden of proving privilege; waiver; disclosure after in camera review

#### CIVIL PENALTIES

- 468.996 Civil penalty for intentional or reckless violation
- 468.997 Joinder of certain offenses

#### CROSS-REFERENCES

Administrative procedures, 183.310 to 183.550

Air pollution generally, Ch. 468A

Air pollution, indoor, 433.502 to 433.526

Environmental laboratories, accreditation, 438.610

Forest practices to comply with pollution laws, 527.724

Health hazard annexation or district formation, facilities and services, boundaries, 431.705 to 431.760

In-stream water right applications, 537.336

Notice to Department of Environmental Quality by Health Division if water sampling detects certain contaminants, 448.150

Recycling, Ch. 459A

Solid waste, Ch. 459

Tributyltin, brochure, 634.525

Volunteering assistance or advice related to cleanup of hazardous material, liability limitation, 30.490 to 30.497

Water pollution generally, Ch. 468B

468.020

Housing cost impact statement required for certain rules, 183.530

468.030

Hydroelectric power development, policy, effect of projects, 543.015, 543.017, 543.255, 543.257

468.035

Cleanup of chemicals at alleged site of illegal drug manufacturing, 475.405 to 475.495

468.045

Geothermal well drilling applications, 522.065, 522.125

468.090

Alternative enforcement proceeding for water quality violations, 468B.032

468.160

Tax relief, 307.405, 314.255, 315.304

468.165

Tax credit for corporations owning pollution control facilities, 315.304

468.195 to 468.260

Certification to Oregon Department of Administrative Services of bonded debt service amounts, 291.445

## GENERAL ADMINISTRATION

**468.005 Definitions.** As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, 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) "Order" has the same meaning as given in ORS 183.310.
- (5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.
- (6) "Rule" has the same meaning as given in ORS 183.310.
- (7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. [Formerly 449.001]

**468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses.**

- (1) There is created an Environmental Quality Commission. The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.562 and 171.565.
- (2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the duties of the member on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.
- (3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [Formerly 449.016]

**468.015 Functions of commission.** It is the function of the Environmental Quality Commission to establish the policies for the operation of the Department of Environmental Quality in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. In addition, the commission shall perform any other duty vested in it by law. [1973 c.835 s.4]

**468.020 Rules and standards.** (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449.173; 1977 c.38 s.1]

**468.030 Department of Environmental Quality.** There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality. The department shall consist of the Director of the Department of Environmental Quality and all personnel employed in the department. [Formerly 449.032]

**468.035 Functions of department.** (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, 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 control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists and consultants, purchase materials and supplies, and enter into

contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the federal government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the Health Division to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.120 and 624.310 to 624.440; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State Forestry Department from independently receiving moneys from a public or private agency for the purposes of preventing or controlling air or water pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under ORS chapter 279 for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative Services, when administering the establishment of such a contract on behalf of the Department of Environmental Quality under ORS 279.712, shall subtract from the amount of any bid or proposal the hazardous waste management fees and solid waste fees that would be required by law to be paid to the department for waste that would be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable preprocurement estimates of the amount of waste that would be disposed of under the contract and that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under ORS 279.067 or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or

projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by ORS chapter 279 that do not require the solicitation of bids or proposals. [Formerly 449.082; 1983 c.740 s.181; 1987 c.734 s.11; 1995 c.536 s.1; 1999 c.740 s.6; 1999 c.849 s.102]

**Note:** The amendments to 468.035 by section 103, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 104, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

**468.035.** (1) Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, 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 control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the federal government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(o) Shall coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) Nothing in this section shall affect the authority of the Health Division to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.120 and 624.310 to 624.440; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

(3) Nothing in this section shall prevent the State Department of Agriculture or the State Forestry Department from independently receiving moneys from a public or private agency for the purposes of preventing or controlling air or water pollution resulting from agricultural or silvicultural activities or soil erosion, or for research related to such purposes.

(4)(a) In awarding a public contract under ORS chapter 279 for a removal or remedial action pursuant to ORS 465.200 to 465.510, 465.517 to 465.548 and 465.992, a corrective action or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093, 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative Services, when administering the establishment of such a contract on behalf of the Department of Environmental Quality under ORS 279.712, shall subtract from the amount of any bid or proposal the hazardous waste management fees and solid waste fees that would be required by law to be paid to the department for waste that would be disposed of at a solid waste disposal site or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be subtracted shall be established on the basis of reasonable preprocurement estimates of the amount of waste that would be disposed of under the contract and that would be subject to those fees.

(b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates of amounts of waste that would be disposed of in projects of this character is technically challenging and requires the application of professional discretion. Therefore, no award of a contract under this subsection shall be subject to challenge, under ORS 279.067 or otherwise, on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

(c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the establishment, by or on behalf of the department, of master contracts by which the department engages the services of a contractor over a period of time for the purpose of issuing work orders for the performance of environmental activities on a project or projects for which the amounts of waste to be disposed of were not reasonably identified at the inception of the master contracts. However, the department shall require any contractor under a master contract to apply the subtraction for fees under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection. Nothing in this subsection shall be construed to prohibit the department or the Oregon Department of Administrative Services from establishing contracts pursuant to this section through contracting procedures authorized by ORS chapter 279 that do not require the solicitation of bids or proposals.

**468.040 Director; salary.** The Environmental Quality Commission shall appoint a director who shall hold office at the pleasure of the commission. The salary of the Director of the Department of Environmental Quality shall be fixed by the commission unless otherwise provided by law. [Formerly 449.026]

**468.045 Functions of director; delegation.** (1) Subject to policy direction by the Environmental Quality Commission, the Director of the Department of Environmental Quality shall:

(a) Be administrative head of the Department of Environmental Quality;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign, and coordinate personnel of the department;

(c) Administer and enforce the laws of the state concerning environmental quality; and

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning environmental quality.

(2) In addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any of the employees of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of any such person so acting in the director's name and by the authority of the director shall be considered to be an official act of the director. [Formerly 449.028]

**468.050 Deputy director.** (1) With the approval of the commission, the director may appoint a deputy director in the unclassified service who shall serve at the pleasure of the director. The deputy director shall have full authority to

act for the director, subject to directions of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(2) The deputy director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by the deputy director in the performance of the official duties of the deputy director. [1973 c.291 s.2]

**Note:** 468.050 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468.055 Contracts with Health Division.** In addition to the authority granted under ORS 190.003 to 190.125, when authorized by the Environmental Quality Commission and the Health Division, the Director of the Department of Environmental Quality and the Assistant Director for Health may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employees by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest. [Formerly 449.062]

**468.060 Enforcement of rules by health agencies.** On its own motion after public hearing, the Environmental Quality Commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes. [Formerly 449.064]

**468.065 Issuance of permits; content; fees; use.** Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall be made in a form prescribed by the Department of Environmental Quality. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the Environmental Quality Commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) By rule and after hearing, the commission may establish a schedule of fees for permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315, the fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of carrying out applicable requirements of Title V, of issuing or denying the requested permit, and of an inspection program to determine compliance or noncompliance with the permit. The fee shall accompany the application for the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on an annual basis.

(3) An applicant for certification of a project under ORS 468B.040 or 468B.045, and any person submitting a notice of intent to seek reauthorization, a preliminary application or an application for reauthorization of a water right for a hydroelectric project under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the commission and department related to the review and decision of the Director of the Department of Environmental Quality and commission. These expenses may include legal expenses, expenses incurred in evaluating the project, issuing or denying certification and expenses of commissioning an independent study by a contractor of any aspect of the proposed project. These expenses shall not include the costs incurred in defending a decision of either the director or the commission against appeals or legal challenges. The department shall bill applicants for costs incurred on a monthly basis, and shall provide a biennial report describing how the moneys were spent. An applicant may arrange with the department to pay the fee on a quarterly basis. The department shall not charge a fee under the fee authority in this subsection if the holder is being charged a fee under ORS 543.088, 543.090 or 543A.405. In no event shall the department assess fees under this section and under ORS 543A.405 for performance of the same work.

(4) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(5) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature

or common description of the pollutant, contaminant or waste and such other information as the department may require.

(6) Any fee collected under this section or ORS 468A.315 shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The federal operating permit program shall include a commensurate amount of the fee for any permit issued under this section for which the department incurs costs associated with the requirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal operating permit program in any biennium that exceed the legislatively approved budget, including amounts authorized by the Emergency Board for the federal operating permit program for such biennium, shall be credited toward the federal operating permit program budget for the following biennium. The fees collected under this section or ORS 468A.315 by a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

(7) As used in this section, "Title V" has the meaning given in ORS 468A.300. [Formerly 449.733; 1975 c.445 s.7; 1983 c.144 s.2; 1983 c.740 s.182; 1989 c.199 s.1; 1989 c.833 s.77; 1991 c.723 s.1; 1991 c.752 s.15; 1993 c.790 s.2; 1997 c.449 s.40b; 1999 c.873 s.12]

**468.067 Organizational standing to seek judicial review of final order in Title V permit proceeding.** (1)

Notwithstanding ORS 183.480 and 183.484, an association or organization has standing to seek judicial review of any final order, as defined in ORS 183.310, of the Department of Environmental Quality or of the Environmental Quality Commission that relates to a proceeding described in subsection (2) of this section if:

- (a) One or more members of the association or organization is adversely affected or aggrieved by the order;
- (b) The interests that the association or organization seeks to protect are germane to the purpose of the association or organization; and
- (c) The nature of the claim and the relief requested do not require that the members of the association or organization who are adversely affected or aggrieved by the order participate in the judicial review proceedings.

(2) Subsection (1) of this section applies to a permit proceeding pursuant to Title V of the Clean Air Act, 42 U.S.C. 7661 to 7661f, as implemented under ORS chapter 468A. [1999 c.511 s.2]

**468.068** [1997 c.569 ss.3,4(2); renumbered 468B.047 in 1999]

**468.070 Denial, modification, suspension or revocation of permits.** (1) At any time, the Department of Environmental Quality may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:

- (a) A material misrepresentation or false statement in the application for the permit.
- (b) Failure to comply with the conditions of the permit.
- (c) Violation of any applicable provisions of ORS 466.605 to 466.680, 466.990 (3) and (4) and 466.995 (2) or ORS chapters 468, 468A and 468B.
- (d) Violation of any applicable rule, standard or order of the Environmental Quality Commission.

(2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that modification is necessary for the proper administration, implementation or enforcement of the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, 466.605 to 466.690 and ORS chapters 468, 468A and 468B.

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183.310 to 183.550. [1973 c.835 s.14; 1979 c.184 s.1; 1985 c.733 s.22; 1993 c.422 s.32]

**468.073 Expedited or enhanced regulatory process; payment; disposition of payments.** (1) The Department of Environmental Quality may enter into an agreement with any applicant, permittee or regulated entity setting a schedule of payments to the department for the purpose of enabling the department to expedite or enhance a regulatory process by contracting for services, hiring additional staff or covering costs of activities not otherwise provided during the

ordinary course of department business. The department may expend moneys received under the agreements for:

(a) Activities undertaken by the department under authority of any provision of ORS chapters 448, 453, 454, 459, 459A, 465, 466, 467, 468, 468A and 468B and ORS 475.405 to 475.495.

(b) Administering and reviewing activities described under subsection (3) of this section that are performed by a third party.

(2) Payments agreed to under subsection (1) of this section shall be for services voluntarily requested by the applicant, permittee or regulated entity. As part of the agreement, the department may waive all or part of any fee otherwise imposed for those services. The department shall not alter or establish processing priorities or schedules based upon an expectation of entering into an agreement under subsection (1) of this section.

(3) Not later than July 1, 1998, the department shall identify department activities or portions thereof suitable for contracting out to third parties. Failure of the department to identify a specific activity shall not prevent the expenditure of funds for that activity or for department administration and review of that activity under an agreement entered into pursuant to subsection (1) of this section.

(4) Any moneys received by the department under an agreement described under subsection (1) of this section shall not exceed the cost to the department of providing the service to the applicant, permittee or regulated entity.

(5) Any payments received under an agreement described under subsections (1) to (4) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality and are continuously appropriated for the purposes specified in the individual agreements. [1997 c.569 ss.2,4(1)]

**468.075 Revolving fund; uses.** (1) On written request of the Director of the Department of Environmental Quality or the authorized representative of the director, the Oregon Department of Administrative Services shall draw warrants on amounts appropriated to the Department of Environmental Quality for operating expenses for use by the department as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$10,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department to pay for travel expenses, or advances therefor, for employees of the department and for any consultants or advisers for whom payment of travel expenses is authorized by law or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the department and by the Oregon Department of Administrative Services. When such claims have been approved, a warrant covering them shall be drawn in favor of the department and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund. [Formerly 449.034; 1977 c.704 s.7]

## UNIFORM TRANSBOUNDARY POLLUTION RECIPROCAL ACCESS ACT

**468.076 Definitions for ORS 468.076 to 468.089.** As used in ORS 468.076 to 468.089:

(1) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(2) "Reciprocating jurisdiction" means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States of America or a province or territory of Canada, that has enacted an Act to provide substantially equivalent access to its courts and administrative agencies as provided in ORS 468.076 to 468.087. [1991 c.826 s.2]

**Note:** 468.076 to 468.089 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468.078 Action for pollution originating in Oregon.** Any person in a reciprocating jurisdiction may bring an action or other proceeding in Oregon for injury or threatened injury to property or person in the reciprocating jurisdiction caused by pollution originating, or that may originate, in Oregon. [1991 c.826 s.3]

**Note:** See note under 468.076.

**468.079 Action for pollution originating in reciprocating jurisdiction.** A person who suffers, or is threatened with, injury to the person or property in a reciprocating jurisdiction caused by pollution originating, or that may originate, in Oregon, has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in Oregon as if the injury or threatened injury occurred in Oregon. [1991 c.826 s.4]

**Note:** See note under 468.076.

**468.080 Applicability of Oregon law.** The law to be applied in an action or other proceeding brought under ORS 468.076 to 468.087, including what constitutes “pollution,” is the law of Oregon excluding Oregon's choice of law rules. Nothing in ORS 468.076 to 468.087 restricts the applicability of federal law in actions in which federal law is preemptive. Nothing in ORS 468.076 to 468.087 determines whether state law or federal law applies in any particular legal action. [1991 c.826 s.5]

**Note:** See note under 468.076.

**468.081 Rights of injured person.** ORS 468.076 to 468.087 do not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in Oregon. [1991 c.826 s.6]

**Note:** See note under 468.076.

**468.083 Right conferred under ORS 468.076 to 468.087 in addition to other rights.** The right provided in ORS 468.076 to 468.087 is in addition to, and not in derogation of, any other right. [1991 c.826 s.7]

**Note:** See note under 468.076.

**468.085 Sovereign immunity defense.** The defense of sovereign immunity is applicable in any action or other proceeding brought under ORS 468.076 to 468.087 only to the extent that it would apply to a person injured or threatened with injury in Oregon. [1991 c.826 s.8]

**Note:** See note under 468.076.

**468.087 Application and construction of ORS 468.076 to 468.087.** ORS 468.076 to 468.087 shall be applied and construed to carry out the general purpose of ORS 468.076 to 468.089 to make uniform the law with respect to the subject of ORS 468.076 to 468.089 among the jurisdictions enacting it. [1991 c.826 s.9]

**Note:** See note under 468.076.

**468.089 Short title.** ORS 468.076 to 468.087 shall be known and may be cited as the “Uniform Transboundary Pollution Reciprocal Access Act.” [1991 c.826 s.1]

**Note:** See note under 468.076.

## ENFORCEMENT

**468.090 Complaint procedure.** (1) In case any written substantiated complaint is filed with the Department of Environmental Quality which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the Environmental Quality Commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS 183.310 to 183.550 for a contested case and in ORS 468B.032. [Formerly 449.815;

**468.095 Investigatory authority; entry on premises; status of records.** (1) The Department of Environmental Quality shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or noncompliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The Environmental Quality Commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the Director of the Department of Environmental Quality as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B 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, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 s.1]

**468.100 Enforcement procedures; powers of regional authorities; status of procedures.** (1) Whenever the Environmental Quality Commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468A.105 may exercise the same functions as are vested in the commission by this section insofar as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 s.2; 1979 c.284 s.153]

**468.105** [Repealed by 1974 c.36 s.28]

**468.110 Appeal; power of court to stay enforcement.** Any person adversely affected or aggrieved by any order of the Environmental Quality Commission may appeal from such order in accordance with the provisions of ORS 183.310 to 183.550. However, notwithstanding ORS 183.480 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090]

**468.115 Enforcement in cases of emergency.** (1) Whenever it appears to the Department of Environmental Quality that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or

contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

**468.120 Public hearings; subpoenas, oaths, depositions.** (1) The Environmental Quality Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Department of Environmental Quality pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 449.048; 1989 c.980 s.14b]

**468.125** [Formerly 449.967; 1977 c.317 s.2; 1983 c.703 s.17; 1985 c.735 s.3; 1987 c.741 s.19; repealed by 1991 c.650 s.8 (468.126 enacted in lieu of 468.125)]

**468.126 Advance notice.** (1) No civil penalty prescribed under ORS 468.140 shall be imposed for a violation of an air, water or solid waste permit issued by the Department of Environmental Quality until the permittee has received five days' advance warning in writing from the department, specifying the violation and stating that a penalty will be imposed for the violation unless the permittee submits the following to the department in writing within five working days after receipt of the advance warning:

(a) A response certifying that the permitted facility is complying with applicable law;

(b) A proposal to bring the facility into compliance with applicable law that is acceptable to the department and that includes but is not limited to proposed compliance dates; or

(c) For a water quality permit violation, a request in writing to the department that the department follow the procedures prescribed under ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the notice.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional;

(b) The water or air violation would not normally occur for five consecutive days;

(c) The permittee has received prior advance warning of any violation of the permit within the 36 months immediately preceding the violation;

(d) The permittee is subject to the federal operating permit program under ORS 468A.300 to 468A.320 and violates any rule or standard adopted or permit or order issued under ORS chapter 468A and applicable to the permittee; or

(e) The requirement to provide such notice would disqualify a state program from federal approval or delegation. [1991 c.650 s.9 (enacted in lieu of 468.125); 1993 c.790 s.3; 1999 c.975 s.4]

**468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties.** (1) The Environmental Quality Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$10,000 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and

regional air quality control authorities shall consider the following factors:

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

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

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

(d) The gravity and magnitude of the violation.

(e) Whether the violation was repeated or continuous.

(f) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(g) The violator's cooperativeness and efforts to correct the violation.

(h) Any relevant rule of the commission.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the Department of Environmental Quality, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 s.3; 1987 c.266 s.2; 1991 c.650 s.4]

**468.135 Imposition of civil penalties.** (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in ORS 183.090.

(2) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973; 1989 c.706 s.17; 1991 c.650 s.6; 1991 c.734 s.37]

**468.140 Civil penalties for specified violations.** (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the Department of Environmental Quality or a regional air quality control authority.

(b) Any provision of ORS 164.785, 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapter 467 and ORS chapters 468, 468A and 468B.

(c) Any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapter 467 and ORS chapters 468, 468A and 468B.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.060.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468A.135.

(f) The financial assurance requirement under ORS 468B.480 and 468B.485 or any rule related to the financial assurance requirement under ORS 468B.480.

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, the following persons shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation:

(A) Any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state.

(B) Any person who violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B relating to air or water pollution.

(C) Any person who violates the provisions of a rule adopted or an order issued under ORS 459A.590.

(4) In addition to any other penalty provided by law, any person who violates the provisions of ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$500 for each day of violation.

(5) Subsection (1)(c) and (e) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. As used in this subsection, “open field burning” does not include propane flaming of mint stubble. [Formerly 449.993; 1975 c.559 s.14; 1977 c.511 s.5; 1979 c.353 s.1; 1987 c.513 s.1; 1989 c.268 s.4; 1989 c.1042 s.7; 1991 c.764 s.6; 1997 c.473 s.1]

## POLLUTION CONTROL FACILITIES TAX CREDIT

**468.150 Field sanitation and straw utilization and disposal methods as “pollution control facilities.”** After alternative methods for field sanitation and straw utilization and disposal are approved by the Department of Environmental Quality, “pollution control facility,” as defined in ORS 468.155, shall include such approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 s.15; 1999 c.59 s.136]

**Note:** 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468.155 Definitions for ORS 468.155 to 468.190.** (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, “pollution control facility” or “facility” means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the Department of Environmental Quality, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468B.005;

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the Environmental Quality Commission;

(D) The use of a material recovery process which obtains useful material from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005, or used oil as defined in ORS 459A.555; or

(E) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(2)(a) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes a nonpoint source pollution control facility.

(b) As used in this subsection, “nonpoint source pollution control facility” means a facility that the Environmental Quality Commission has identified by rule as reducing or controlling significant amounts of nonpoint source pollution.

(3) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” does not include:

(a) Air conditioners;

(b) Septic tanks or other facilities for human waste;

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

(d) Any distinct portion of a pollution control facility that makes an insignificant contribution to the principal or

sole purpose of the facility including the following specific items:

- (A) Office buildings and furnishings;
- (B) Parking lots and road improvements;
- (C) Landscaping;
- (D) External lighting;
- (E) Company or related signs; and
- (F) Automobiles;

(e) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility;

(f) Asbestos abatement; or

(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized releases, as defined by the commission. [Formerly 449.605; 1975 c.496 s.1; 1977 c.795 s.1; 1979 c.802 s.1; 1983 c.637 s.1; 1987 c.596 s.4; 1989 c.802 s.4; 1999 c.826 s.1]

**468.160 Policy.** In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of air, water and noise pollution and solid waste, hazardous wastes and used oil in this state by providing tax relief with respect to Oregon facilities constructed to accomplish such prevention, control and reduction. [Formerly 449.615; 1975 c.496 s.2; 1977 c.795 s.2; 1979 c.802 s.2]

**468.165 Application for certification of pollution control facilities; fees.** (1) Any person may apply to the Environmental Quality Commission for certification under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if:

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967.

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977.

(c) The solid waste facility was under construction on or after January 1, 1973, the hazardous waste or used oil facility was under construction on or after October 3, 1979, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and (2);

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by mechanical process or chemical process or through the production, processing including presegregation, or use of, materials which have useful chemical or physical properties and which may be used for the same or other purposes, or materials which may be used in the same kind of application as its prior use without change in identity;

(C) The end product of the utilization is an item of real economic value;

(D) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

(E) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and (2); and

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 466.005.

(2) The application shall be made in writing in a form prescribed by the Department of Environmental Quality and shall contain information on the actual cost of the facility, a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be served by the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

(3) The Director of the Department of Environmental Quality may require any further information the director considers necessary before a certificate is issued.

(4) The application shall be accompanied by a fee established under subsection (5) of this section. The fee may be refunded if the application for certification is rejected.

(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the department may require of applicants for certificates issued under ORS 468.167 and 468.170. Before the adoption or revision of any such fees the commission shall estimate the total cost of the program to the department. The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting the applications and shall be designed not to exceed the total cost estimated by the commission. Any excess fees shall be held by the department and shall be used by the commission to reduce any future fee increases. The fee may vary according to the size and complexity of the facility. The fees shall not be considered by the commission as part of the cost of the facility to be certified.

(6) The application shall be submitted after construction of the facility is substantially completed and the facility is placed in service and within two years after construction of the facility is substantially completed. Failure to file a timely application shall make the facility ineligible for tax credit certification. An application shall not be considered filed until it is complete and ready for processing. The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable. However, the period for filing an application shall not be extended to a date beyond December 31, 2003. [Formerly 449.625; 1974 c.37 s.2; 1975 c.496 s.3; 1977 c.795 s.3; 1979 c.802 s.3; 1981 c.359 s.1; 1983 c.637 s.2; 1989 c.802 s.5; 1995 c.746 s.2; 1999 c.826 s.2]

**468.167 Application for precertification.** (1) Any person proposing to apply for certification for tax relief under ORS 468.155 to 468.190 may apply, before the completion of a pollution control facility, for precertification of the facility with the Environmental Quality Commission.

(2)(a) The application shall be made in writing in a form prescribed by the Department of Environmental Quality. The application shall contain the following information:

(A) A statement of the purpose of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate disposal of used oil served or to be served by the facility.

(B) A description of the materials for incorporation into the facility or incorporated into the facility, machinery and equipment to be made or made a part of the facility and the proposed or existing operational procedure of the facility.

(C) Any further information the Director of the Department of Environmental Quality considers necessary before precertification is issued.

(b) The application need not contain information on the actual cost of the facility or the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

(c) The application shall be accompanied by a fee as provided under ORS 468.165 (5). The fee may be refunded if the application for preliminary certification is rejected.

(3) If the commission determines that the person and the pollution control facility will be eligible for tax relief under ORS 307.405 or 315.304 if the facility is erected, constructed, reconstructed, added to, installed, improved or used in accordance with the application for precertification, the commission shall precertify the facility by approving the application.

(4) If the facility is erected, constructed, reconstructed, added to, installed, improved or used as proposed in the application for precertification, the commission's approval of the application shall be prima facie evidence that the facility is qualified for certification for tax relief under ORS 468.170. However, precertification shall not ensure that a facility erected, constructed, reconstructed, added to, installed, improved or used by the precertified person will receive certification under ORS 468.170 or tax relief under ORS 307.405 or 315.304.

(5) If the commission fails or refuses to precertify a person and facility, the person may appeal as provided in ORS 468.170 (3). [1995 c.746 s.6]

**468.170 Action on application; rejection; appeal; issuance of certificate; certification.** (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion of the actual cost certified shall not exceed the taxpayer's own cash investment in the facility or portion of the facility. Each certificate shall bear a separate serial number for each such facility.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the facility or a

lesser portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1);

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468, 468A and 468B and rules thereunder.

(b) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.

(d) A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405 and 315.304 if, on or before December 31, 2001, erection, construction or installation of the facility is completed, the facility is placed in service and the application for certification is filed with the commission under ORS 468.165.

(5) A person receiving a certificate under this section may take tax relief only under ORS 315.304, depending upon the tax status of the person's trade or business except that:

(a) A corporation organized under ORS chapter 65 or any subsequent transferee of the corporation shall take tax relief only under ORS 307.405; and

(b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62 relating to the incorporation of cooperative associations or the subsequent transferee of the corporation may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405. The corporation shall make the election at the time of applying for the certificate, except that a corporation receiving a certificate prior to December 31, 1995, may make the election at any time on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the corporation for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making the election shall be waived.

(B) In the case of a corporation making the election under subparagraph (A) of this paragraph, the election applies to:

(i) All existing or future facilities that are certified under this section, if the corporation claimed a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or

(ii) All future facilities that are certified under this section, if the corporation did not claim a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.

(6) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 315.304, based on that partner's pro rata share of the certified cost of the facility.

(7) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified under this section, except that if ad valorem tax relief is utilized by a corporation organized under ORS chapter 62 or 65 the facility shall be exempt from ad valorem taxation for a period of 20 consecutive years.

(8) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 315.304 (8) shall apply to any sale, exchange or other disposition of a certified portion of a facility. [Formerly 449.635; 1974 c.37 s.3; 1975 c.496 s.4;

1977 c.795 s.4; 1979 c.531 s.6; 1979 c.802 s.4; 1981 c.408 s.3; 1983 c.637 s.3; 1987 c.596 s.5; 1989 c.802 s.6; 1991 c.877 s.37; 1995 c.746 s.3; 1999 c.826 s.3]

**468.175** [1973 c.831 s.2; 1975 c.496 s.5; 1977 c.795 s.5; 1979 c.802 s.5; repealed by 1989 c.802 s.8]

**468.180 Conditions for issuance of certificate under ORS 468.170.** (1) No certification shall be issued by the Environmental Quality Commission pursuant to ORS 468.170 unless the facility, facilities or part thereof was erected, constructed or installed in accordance with the applicable provisions of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 465, 466 and 467 and ORS chapters 468, 468A and 468B and the applicable rules or standards adopted pursuant thereto.

(2) Nothing in this section is intended to apply to erection, construction or installation of pollution control facilities begun before October 5, 1973. [1973 c.831 s.3; 1975 c.496 s.6; 1977 c.795 s.6; 1979 c.802 s.6; 1989 c.802 s.7]

**468.185 Procedure to revoke certification; reinstatement.** (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Environmental Quality Commission may order the revocation of the certification issued under ORS 468.170 of any pollution control or solid waste, hazardous wastes or used oil facility, if it finds that:

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

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as specified in such certificate.

(2) As soon as the order of revocation under this section has become final, the commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405 and 315.304.

(4) Except as provided in subsection (5) of this section, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405 or 315.304 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.

(5) The commission may reinstate a tax credit certification revoked under subsection (1)(b) of this section if the commission finds the facility has been brought into compliance. If the commission reinstates certification under this subsection, the commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation as determined by the commission. [Formerly 449.645; 1975 c.496 s.7; 1977 c.795 s.7; 1979 c.802 s.7; 1987 c.596 s.6]

**468.187** [1981 c.710 s.2; repealed by 1984 c.1 s.18]

**468.190 Allocation of costs to pollution control.** (1) Subject to subsections (2), (3) and (4) of this section, in establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil for facilities qualifying for certification under ORS 468.170, the Environmental Quality Commission shall consider the following factors:

(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

(b) The estimated annual percent return on the investment in the facility.

(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

(e) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the commission shall issue an order denying certification.

(3) If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time the facility is used for prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the facility is used for any purpose.

(4) In the case of a business described in ORS 315.304 (4)(a)(C)(i), the Environmental Quality Commission shall consider the factors listed in subsection (1) of this section as if the person operating the facility or conducting the trade or business that utilizes property requiring such a facility were the applicant for the credit, regardless of whether the person is the lessee or lessor of the facility.

(5) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil. [Formerly 449.655; 1974 c.37 s.4; 1977 c.795 s.8; 1983 c.637 s.4; 1995 c.746 s.4; 1999 c.1101 s.2]

## STATE POLLUTION CONTROL BONDS

**468.195 Issuance of bonds authorized; principal amount.** In order to provide funds for the purposes specified in Article XI-H of the Oregon Constitution bonds may be issued in accordance with the provisions of ORS 286.031 to 286.061. The principal amount of the bonds outstanding at any one time, issued under authority of this section, shall not exceed \$260 million par value. [Formerly 449.672; 1981 c.312 s.1; 1981 c.660 s.42]

**468.200** [Formerly 449.675; repealed by 1981 c.660 s.18]

**468.205** [Formerly 449.677; repealed by 1981 c.660 s.18]

**468.210** [Formerly 449.680; 1975 c.462 s.14; repealed by 1981 c.660 s.18]

**468.215 Pollution Control Fund.** The money realized from the sale of each issue of bonds shall be credited to a special fund in the State Treasury, separate and distinct from the General Fund, to be designated the Pollution Control Fund; which fund is hereby appropriated for the purpose of carrying out the provisions of ORS 468.195 to 468.260. It shall not be used for any other purpose, except that this money, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.820, and the earnings from such investments inure to the Pollution Control Sinking Fund. [Formerly 449.682]

**468.220 Department to administer fund; uses; legislative approval of grants; administrative assessment.** (1) The Department of Environmental Quality shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468B.005.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468B.005 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(L) To provide funding for the Assessment Deferral Loan Program Revolving Fund established in ORS 454.436.

(m) To provide funding for the Orphan Site Account established in ORS 465.381 but only to the extent that the department reasonably estimates that debt service from bonds issued to finance such facilities or activities shall be fully paid from fees collected pursuant to ORS 453.402 (2)(c), under ORS 459.236 and under ORS 465.101 to 465.131 for the purpose of providing funds for the Orphan Site Account and other available funds, but not from repayments of financial assistance under ORS 465.265 to 465.310 or from moneys recovered from responsible parties.

(n) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of this state, or combination thereof, for facilities or activities related to removal or remedial action of hazardous substances.

(o) To provide funding for the Water Pollution Control Revolving Fund established under ORS 468.427, either as a grant or an advance. If the funding provided is an advance, the department shall establish the program described in ORS 468.433 (2) to pay the bonds that funded the advance.

(p) To fund loans to or buy debt obligations of a public agency, as defined in ORS 468.423, that finance the costs of treatment works, as defined in ORS 468.423, which are funded in part through the Water Pollution Control Revolving Fund.

(2) The facilities referred to in subsection (1)(a) to (c) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments and other fees.

(3) The facilities referred to subsection (1)(d), (f) and (g) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments and other fees.

(4) The real property and facilities that receive funding under subsection (1)(j), (k), (o) and (p) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the federal government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under subsection (1)(b) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior review of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section. [Formerly 449.685; 1977 c.95 s.8; 1977 c.704 s.9; 1979 c.773 s.9; 1981 c.312 s.2; 1985 c.670 s.42; 1987 c.695 s.10; 1989 c.833 ss.114,170; 1991 c.863 s.37; 1993 c.18 s.121; 1993 c.411 ss.3,4; 1995 c.79 s.276]

**468.225 Investment of gross proceeds of agency bonds or other obligations.** All amounts that are treated as gross proceeds of agency bonds or other obligations, if invested, shall be invested in compliance with section 148 of the Internal Revenue Code of 1986, and the amendments thereto in effect on October 23, 1999. [Formerly 449.687; 1999 c.59 s.137]

**468.230 Pollution Control Sinking Fund; use; limitation.** (1) The Environmental Quality Commission shall maintain, with the State Treasurer, a Pollution Control Sinking Fund, separate and distinct from the General Fund. The

Pollution Control Sinking Fund shall provide for the payment of the principal and interest upon bonds issued under authority of Article XI-H of the Constitution of Oregon and ORS 468.195 to 468.260 and administrative expenses incurred in issuing the bonds. Moneys of the sinking fund are hereby appropriated for such purpose. With the approval of the commission, the moneys in the Pollution Control Sinking Fund may be invested as provided by ORS 293.701 to 293.820, and earnings from such investment shall be credited to the Pollution Control Sinking Fund.

(2) The Pollution Control Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 291.445 and assessments collected under ORS 468.220 (8), moneys transferred from the Orphan Site Account under ORS 465.381 (6), moneys transferred from the Water Pollution Control Revolving Fund under ORS 468.429 (3), all moneys that the Legislative Assembly may provide in lieu of such taxes, all earnings on the Pollution Control Fund, Pollution Control Sinking Fund, and all other revenues derived from contracts, bonds, notes or other obligations, acquired, by the commission by purchase, loan or otherwise, as provided by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260.

(3) The Pollution Control Sinking Fund shall not be used for any purpose other than that for which the fund was created. Should a balance remain therein after the purposes for which the fund was created have been fulfilled or after a reserve sufficient to meet all existing obligations and liabilities of the fund has been set aside, the surplus remaining may be transferred to the Pollution Control Fund at the direction of the commission. [Formerly 449.690; 1981 c.312 s.3; 1989 c.833 s.115; 1991 c.220 s.13; 1993 c.411 s.5]

**468.235** [Formerly 449.692; repealed by 1991 c.220 s.15]

**468.240 Remedy where default occurs on payment to state.** If any municipal corporation, city or county defaults on payments due to the state under ORS 468.195 to 468.260, the state may withhold any amounts otherwise due to the corporation, city or county to apply to the indebtedness. [Formerly 449.694]

**468.245 Acceptance of federal funds.** The Environmental Quality Commission may accept assistance, grants and gifts, in the form of money, land, services or any other thing of value from the United States or any of its agencies, or from other persons subject to the terms and conditions thereof, regardless of any laws of this state in conflict with regulations of the federal government or restrictions and conditions of such other persons with respect thereto, for any of the purposes contemplated by Article XI-H of the Constitution of Oregon and by ORS 468.195 to 468.260. Unless enjoined by the terms and conditions of any such gift or grant, the commission may convert the same or any of them into money through sale or other disposal thereof. [Formerly 449.695]

**468.250 Participation in matching fund programs with federal government.** (1) The Environmental Quality Commission may participate on behalf of the State of Oregon in any grant program funded in part by an agency of the federal government if the implementation of the program requires matching funds of the state or its participation in administering the program. However, any grant advanced by the commission to an otherwise eligible applicant shall not exceed 30 percent of the total eligible costs of the project applied for, and further provided that the project shall not be less than 70 percent self-supporting and self-liquidating from those sources prescribed by Article XI-H of the Constitution of Oregon.

(2) Subject to conditions imposed on federally granted funds, a municipal corporation, city, county or agency of the State of Oregon, or combination thereof, who is eligible for federal funds for a project during its construction or becomes eligible for reimbursement for funds expended, if the project has been constructed and placed into operation, shall apply for and pay to the commission such funds so received, or otherwise made available to it, in such amounts as determined by the commission as just and necessary, from an agency of the federal government. These funds shall first be used to reimburse the State of Oregon for the portion of any grant that was advanced to the municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for construction of the project that exceeded the federal requirements for state matching funds and any remainder thereof shall be used to apply upon the retirement of any principal and interest indebtedness due and owing to the State of Oregon arising out of funds loaned for the project prior to federal funds becoming available.

(3) The refusal of a municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, to apply for federal funds in such amounts as determined by the commission as just and necessary for which it would otherwise be eligible, shall be sufficient grounds to terminate any further participation in construction of a facility by the commission.

(4) The municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, shall consent

to and request that funds made available to it by an agency of the federal government shall be paid directly to the commission if required to do so under subsection (2) of this section. [Formerly 449.697]

**468.253 Authority of director to act to benefit fund.** (1) Notwithstanding any other provision of law, if the Director of the Department of Environmental Quality finds that it will benefit the financial condition of the Pollution Control Sinking Fund, with the approval of the State Treasurer the director may:

(a) Sell bonds, notes, contracts or other obligations acquired by the Environmental Quality Commission by purchase, loan or otherwise from the proceeds of bonds issued under ORS 468.195 to 468.260, and pay costs associated with the sale from the proceeds of the sale.

(b) Pay to an obligor under such bonds, notes, contracts or other obligations such sums from the proceeds of a sale authorized by paragraph (a) of this subsection as the director determines, or hold or deposit such sums in trust for the benefit of such obligor under terms established by the director.

(2) Any proceeds of a sale authorized by subsection (1) of this section which remain after payments authorized by subsection (1) of this section shall be deposited in the Pollution Control Sinking Fund.

(3) An obligor under any bonds, notes, contracts or other obligations which are proposed to be sold by the director pursuant to subsection (1) of this section may waive its right to redeem such obligations prior to maturity, or otherwise renegotiate the terms of such obligations, if the obligor determines that so altering the terms of its obligation, together with payments to be received by the obligor under subsection (1)(b) of this section, will benefit the obligor. [1989 c.731 s.4]

**468.255 Limit on grants and loans.** Any funds advanced by the Environmental Quality Commission by grant shall not exceed 30 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes, and any obligation acquired by the commission by purchase, contract, loan, or otherwise, shall not exceed 100 percent of the total project costs for eligible projects or for facilities related to disposal of solid wastes. Combinations of funds granted and loaned by whatever means shall not total more than 100 percent of the eligible project costs. [Formerly 449.699; 1981 c.312 s.4]

**468.260 Return of unexpended funds to state required; use of returned funds.** Any proceeds unexpended after a project is constructed and inspected, and after records relating thereto are audited by the Environmental Quality Commission, shall be returned to the commission on behalf of the State of Oregon to apply upon the retirement of principal and interest indebtedness on obligations acquired by it from a municipal corporation, city, county or agency of the State of Oregon, or any combinations thereof. [Formerly 449.701]

## COUNTY POLLUTION CONTROL FACILITIES

**468.263 Definitions for ORS 468.263 to 468.272.** As used in ORS 468.263 to 468.272, unless the context requires otherwise:

(1) “Bonds” means revenue bonds or other types of obligations authorized by ORS 468.263 to 468.272.

(2) “Pollution control facilities” or “facilities” means any land, building or other improvement, appurtenance, fixture, item of machinery or equipment, and all other real and personal property, whether or not in existence or under construction at the time the bonds are issued, which are to be used in furtherance of the purpose of abating, controlling or preventing, altering, disposing or storing of solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom.

(3) “Governing body” means the county court or board of county commissioners. [1974 c.34 s.2]

**Note:** 468.263 to 468.272 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468.264 Policy.** The Legislative Assembly finds:

(1) That control of environmental damage and general health and welfare of the citizens of the State of Oregon is promoted by encouraging the installation of antipollution devices, equipment and facilities.

(2) That the methods of financing provided in ORS 468.263 to 468.272 will encourage such installation. [1974 c.34

s.1]

**Note:** See note under 468.263.

**468.265 Powers of county over pollution control facilities.** (1) In addition to any other powers which it may now have, each county shall have the following powers, together with all powers incidental thereto or necessary for the performance of the following:

(a) To acquire, whether by purchase, exchange, devise, gift or otherwise, establish, construct, improve, maintain, equip and furnish one or more pollution control facilities or any interest therein to be located, in whole or in part, within such municipality.

(b) To enter into a lease, sublease, lease-purchase, installment sale, sale, or agreement for any facility upon such terms and conditions as the governing body may deem advisable, provided the same shall at least fully cover all debt service requirements with respect to the facility and shall not conflict with the provisions of ORS 468.263 to 468.272.

(c) To sell, exchange, donate and convey to others any or all facilities upon such terms as the governing body may deem advisable, including the power to receive for any such sale the note or notes of the purchaser of the facilities or property whenever the governing body finds any such action to be in furtherance of the purposes of ORS 468.263 to 468.272.

(d) To issue revenue bonds for the purpose of carrying out any of its powers under ORS 468.263 to 468.272.

(e) Whenever the governing body finds such loans to be in the furtherance of the purposes of ORS 468.263 to 468.272 and subject always to the limitations contained in ORS 468.266, to make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of a facility and to charge and collect interest on such loans and pledge the proceeds thereof as security for the payment of the principal and interest of any bonds issued hereunder and any agreements made in connection therewith.

(f) To mortgage and pledge any or all facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues, proceeds and receipts or any portion thereof from a facility as security for the payment of the principal of and interest on any bonds so issued.

(g) To refund outstanding obligations incurred by an enterprise to finance the cost of a facility when the governing body finds that such refinancing is in the public interest.

(h) To pay compensation for professional services and other services as the governing body shall deem necessary to carry out the purposes of ORS 468.263 to 468.272.

(i) To acquire and hold obligations of any kind to carry out the purposes of ORS 468.263 to 468.272.

(j) To invest and reinvest funds under its control as the governing body shall direct.

(k) To enter into contracts and execute any agreements or instruments and to do any and all things necessary or appropriate to carry out the purposes of ORS 468.263 to 468.272.

(2) The county shall not have the power to operate any facility as a business other than as lessor or seller, nor shall it permit any funds derived from the sale of bonds to be used by any lessee or purchaser of a facility as working capital. [1974 c.34 s.3]

**Note:** See note under 468.263.

**468.266 Issuance of bonds.** (1) All principal of and interest on bonds issued pursuant to ORS 468.263 to 468.272 shall be payable solely out of the revenues, proceeds and receipts from the lease or sale of the property, loan repayments, or out of the proceeds of revenue bonds issued pursuant to ORS 468.263 to 468.272 as shall be specified in the proceedings of the governing body by which the issuance of bonds shall have been authorized. The principal and interest shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such limitation shall be plainly stated upon the face of each bond.

(2) The bonds:

(a) May be executed and delivered at any time and from time to time;

(b) May be in such form, denomination, tenor and maturity;

(c) May be in registered or bearer form either as to principal or interest or both, and may provide for conversion between registered and coupon bonds of varying denominations;

(d) May be payable in such installments and at such time or times not exceeding 40 years from the date thereof;

(e) May be payable at such place or places within or without this state;

(f) May bear interest at such rate or rates payable at such time or times and at such place or places;

- (g) May be redeemable prior to maturity with or without premium;
- (h) May be executed by such officers and in such manner;
- (i) May contain such provisions not inconsistent with ORS 468.263 to 468.272;

as shall be specified in the proceedings of the governing body by which issuance of the bonds shall have been authorized.

(3) Bonds may be sold at public or private sale in such manner and from time to time as may be determined by the governing body to be most advantageous.

(4) Issuance by the county of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same purpose or any other purpose, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds.

(5) Any bonds of the county at any time outstanding may be refunded if permitted by the conditions of issuance, at any time and from time to time by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable at the same date or different dates or shall be due serially or otherwise.

(6) All bonds issued under ORS 468.263 to 468.272 and interest coupons attached thereto shall be construed to be negotiable instruments. [1974 c.34 s.4]

**Note:** See note under 468.263.

**468.267 Security for bonds.** The principal of and interest on any bonds shall be secured by a pledge of the revenues, proceeds and receipts or any portion thereof out of which the principal and interest are made payable, and may be secured by a mortgage covering all or any part of the facilities from which the revenues, proceeds or receipts so pledged may be derived, including any enlargements thereof and additions thereto, by a pledge or assignment of the lease to such facility or by such other security as may be deemed to be prescribed in the proceedings of the governing body and authorizing the issuance of bonds. The proceedings under which the bonds are authorized to be issued and any mortgage securing such bonds may contain any agreements and provisions respecting the maintenance of the facilities and properties covered thereby, the fixing and collection of rents for any portions thereof leased by the municipality to others, the fixing and collection of proceeds from the sale of any facilities and properties by the municipality to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, and such other provisions not inconsistent with ORS 468.263 to 468.272, all as the governing body shall deem advisable and not in conflict with the provisions of ORS 468.263 to 468.272. Each pledge, lease, sublease, agreement and mortgage made for the benefit or security of any of the bonds shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid. [1974 c.34 s.5]

**Note:** See note under 468.263.

**468.268 Enforcement of bond obligation.** (1) The proceedings authorizing any bonds and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by suit, mandamus or by the appointment of a receiver with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage by foreclosure of any mortgage or by any one or more remedies specified in the proceedings.

(2) Such proceedings or mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. [1974 c.34 s.6]

**Note:** See note under 468.263.

**468.269 Trustees; powers.** The proceedings authorizing the issuance of bonds may provide for the appointment of one or more trustees for the protection of the holders of the bonds, whether or not a mortgage is entered into as security for such bonds. A bank with trust powers or a trust company within or without the State of Oregon may be appointed as trustee and shall be located in the United States, and shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank, including the trustee, which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued under ORS 468.263 to 468.272 to the same extent as if it were not such trustee. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, or of any insurance policy or of any condemnation award shall be deposited with the trustee and applied as provided in the proceedings. [1974 c.34 s.7]

**Note:** See note under 468.263.

**468.270 Tax status of leasehold interest in facilities.** Nothing in ORS 468.263 to 468.272 is intended to exempt from taxation or assessment the leasehold interest of any lessee in any facility nor are ORS 468.263 to 468.272 intended to affect any exemption or credit from taxation which might otherwise be available to any lessee under the laws of the State of Oregon. Such leasehold interest is classified for purposes of taxation as having the same value as the fee interest in that property. [1974 c.34 s.8]

**Note:** See note under 468.263.

**468.271 Effect on procedure of awarding contracts; construction.** (1) The construction, reconstruction or improvement of any facilities shall be completed in the manner determined by the governing body and shall be free from any requirement of competitive bidding or any other restriction imposed on the procedure for award of contracts with public bodies.

(2) Nothing in ORS 468.263 to 468.272 is intended as a restriction or limitation upon any other powers which a county might otherwise have under the laws of this state, but shall be construed as cumulative.

(3) If any provision of ORS 468.263 to 468.272 or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of ORS 468.263 to 468.272 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 468.263 to 468.272 are declared to be severable. [1974 c.34 s.9]

**Note:** See note under 468.263.

**468.272 Application of other laws relating to bonds.** Any restrictions, limitations, conditions or procedures provided by other statutes relating to the issuance and sale of bonds or other obligations including, but not limited to, any restrictions, limitations, conditions or procedures set forth in ORS 288.320, do not apply to the issuance and sale of bonds authorized by ORS 468.263 to 468.272. [1974 c.34 s.10]

**Note:** See note under 468.263.

**468.275** [Formerly 449.760; 1983 c.333 s.1; renumbered 468A.005 in 1991]

**468.280** [Formerly 449.765; renumbered 468A.010 in 1991]

**468.285** [Formerly 449.770; renumbered 468A.015 in 1991]

**468.290** [Formerly 449.775; 1975 c.559 s.3; 1983 c.333 s.2; 1983 c.730 s.3; 1991 c.752 s.16; renumbered 468A.020 in 1991]

**468.295** [Formerly 449.785; renumbered 468A.025 in 1991]

**468.300** [Formerly 449.825; renumbered 468A.030 in 1991]

**468.305** [Formerly 449.782; renumbered 468A.035 in 1991]

**468.310** [Formerly 449.727; 1991 c.752 s.17; renumbered 468A.040 in 1991]

**468.315** [Formerly 449.731; 1991 c.752 s.18; renumbered 468A.045 in 1991]

**468.320** [Formerly 449.707; renumbered 468A.050 in 1991]

**468.325** [Formerly 449.712; 1985 c.275 s.1; renumbered 468A.055 in 1991]

**468.330** [Formerly 449.739; renumbered 468A.060 in 1991]

**468.335** [Formerly 449.722; renumbered 468A.065 in 1991]

**468.340** [Formerly 449.702; 1991 c.67 s.129; renumbered 468A.070 in 1991]

**468.345** [Formerly 449.810; renumbered 468A.075 in 1991]

**468.350** [1975 c.552 s.34; renumbered 468A.080 in 1991]

**468.355** [1981 c.765 s.2; renumbered 468A.085 in 1991]

**468.357** [1989 c.1070 s.9; renumbered 468A.775 in 1991]

**468.358** [1989 c.1070 s.12; renumbered 468A.780 in 1991]

**468.359** [1989 c.1070 s.11; renumbered 468A.785 in 1991]

**468.360** [Formerly 449.949; 1975 c.670 s.4; 1983 c.338 s.932; renumbered 468A.350 in 1991]

**468.365** [Formerly 449.951; renumbered 468A.355 in 1991]

**468.370** [Formerly 449.957; 1974 c.73 s.1; renumbered 468A.360 in 1991]

**468.375** [Formerly 449.953; 1974 c.73 s.2; 1975 c.535 s.2; 1977 c.298 s.3; 1983 c.196 s.1; 1985 c.16 s.466; 1989 c.171 s.62; renumbered 468A.365 in 1991]

**468.377** [1977 c.298 s.2; 1985 c.222 s.3; renumbered 468A.370 in 1991]

**468.380** [Formerly 449.963; renumbered 468A.375 in 1991]

**468.385** [Formerly 483.815; repealed by 1983 c.338 s.978]

**468.390** [1973 c.835 s.72; 1974 c.73 s.4; 1983 c.338 s.933; renumbered 468A.380 in 1991]

**468.395** [Formerly 449.955; 1983 c.338 s.934; renumbered 468A.385 in 1991]

**468.397** [1985 c.222 s.2; renumbered 468A.390 in 1991]

**468.400** [Formerly 449.959; 1983 c.338 s.935; 1991 c.331 s.68; renumbered 468A.395 in 1991]

**468.405** [Formerly 449.965; 1974 c.73 s.5; 1975 c.535 s.3; 1977 c.704 s.10; 1981 c.294 s.1; 1983 c.338 s.936; renumbered 468A.400 in 1991]

**468.410** [Formerly 449.747; renumbered 468A.405 in 1991]

**468.415** [Formerly 449.751; renumbered 468A.410 in 1991]

**468.420** [Formerly 449.753; renumbered 468A.455 in 1991]

## FINANCING TREATMENT WORKS

**468.423 Definitions for ORS 468.423 to 468.440.** As used in ORS 468.423 to 468.440:

(1) "Fund" means the Water Pollution Control Revolving Fund established under ORS 468.427.

(2) "Public agency" means any state agency, incorporated city, county, sanitary authority, federally recognized Indian tribal government, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities.

(3) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance, extension, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment, including but not limited to land used to store treated waste water in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the Environmental Quality Commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution. [1987 c.648 s.1; 1995 c.79 s.278; 1995 c.98 s.1]

**468.425 Policy.** It is declared to be the policy of this state:

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self-sufficiency by the use of fees paid by users of the treatment works;

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) To assist public agencies in meeting treatment works' construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan fund at interest rates that are less than or equal to market interest rates. [1987 c.648 s.2]

**468.427 Water Pollution Control Revolving Fund; sources.** (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the Department of Environmental Quality to be used for the purposes described in ORS 468.429.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the federal government under the federal Water Quality Act of 1987 (Public Law 100-4);

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund; and

(f) Amounts granted or advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1).

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Revolving Fund. [1987 c.648 s.3; 1993 c.411 s.6]

**468.429 Uses of revolving fund.** (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:

(a) To public agencies for the construction or replacement of treatment works.

(b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.

(c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the treatment works' debt obligations of public agencies if such debt was incurred after March 7, 1985.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works' construction or replacement if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public agency for this purpose.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund, to make transfers to the Water Pollution Control Administration Fund, or to pay other departmental costs including expenses of the program described in ORS 468.433 (2).

(3) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall transfer from the Water Pollution Control Revolving Fund to the Pollution Control Sinking Fund amounts sufficient to pay the bonds that funded the advance. [1987 c.648 s.4; 1993 c.411 s.7; 1995 c.79 s.279]

**468.430** [1983 c.218 s.1; repealed by 1985 c.222 s.6]

**468.431 Water Pollution Control Administration Fund; sources; uses.** (1) The Water Pollution Control Administration Fund is established separate and distinct from the General Fund in the State Treasury. Moneys in the Water Pollution Control Administration Fund are appropriated continuously to the Department of Environmental Quality to be used for the payment of costs of administering the Water Pollution Control Revolving Fund, including all costs of staffing for the program described in ORS 468.433 (2) and all costs of making loans from the Water Pollution Control Revolving Fund and collecting loan payments.

(2) The Water Pollution Control Administration Fund shall consist of:

(a) Any administrative fee levied by the department in conjunction with administration of the Water Pollution Control Revolving Fund.

(b) Any transfers to the Water Pollution Control Administration Fund from the Water Pollution Control Revolving Fund.

(c) Any loans made from the Water Pollution Control Revolving Fund.

(d) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of administering the Water Pollution Control Revolving Fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Administration Fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the Water Pollution Control Administration Fund. [1993 c.411 s.2; 1995 c.79 s.280]

**468.433 Duties of department; public agency loan program.** (1) In administering the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall:

(a) Allocate funds for loans in accordance with procedures adopted by rule by the Environmental Quality Commission.

(b) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(c) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants.  
(d) Seek to maximize the ability of the Water Pollution Control Revolving Fund to operate on a self-sustaining basis and maintain a perpetual source of treatment works financing.

(2) If amounts are advanced to the Water Pollution Control Revolving Fund from the Pollution Control Fund under ORS 468.220 (1), the department shall develop and administer a program designed to loan amounts in the Water Pollution Control Revolving Fund to public agencies, so the loan repayments are sufficient to pay the bonds that funded the advance, and to further the policies established in ORS 468.425. In connection with the program, the department may:

(a) Establish one or more accounts in the Water Pollution Control Revolving Fund, make covenants for the benefit of bondowners regarding the deposit of amounts into those accounts and the use of amounts in those accounts and pledge or reserve all or a portion of the amounts in the Water Pollution Control Revolving Fund to pay bonds issued to fund advances to the Water Pollution Control Revolving Fund under ORS 468.220 (1).

(b) Establish requirements for loans made from the Water Pollution Control Revolving Fund to assure that:

(A) Adequate funds are available in the Water Pollution Control Revolving Fund to permit payment of bonds that funded advances to the Water Pollution Control Revolving Fund; and

(B) Adequate funds will be available in the Water Pollution Control Administration Fund to pay for costs of the program and costs of operating the Water Pollution Control Revolving Fund.

(c) Exercise any remedies available to the department in connection with defaults on loans of advanced funds to public agencies.

(d) Take any other action reasonably necessary to develop the program and provide for the payment of bonds issued to fund advances to the Water Pollution Control Revolving Fund.

(3) The department may make loans to finance treatment works that are funded in part from advances or grants to the Water Pollution Control Revolving Fund, and in part from funds available under ORS 468.220 (1). These loans may have a blended interest rate that reflects their different sources of funding, and repayments of these loans may be allocated proportionally between the Water Pollution Control Revolving Fund and the Pollution Control Sinking Fund. [1987 c.648 s.5; 1993 c.411 s.8; 1995 c.79 s.281]

**468.435** [1983 c.218 s.2; repealed by 1985 c.222 s.6]

**468.437 Loan applications; eligibility; waiver; default remedy.** (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the Department of Environmental Quality on the form provided by the department. The department may require an opinion from the State of Oregon bond counsel that the applicant has the legal authority to borrow from the Water Pollution Control Revolving Fund. If a public agency relies on borrowing authority granted by charter or law other than ORS 468.439, then with the consent of the department and notwithstanding any limitation or requirement of the charter or law, the public agency may borrow directly from the Water Pollution Control Revolving Fund without publishing a notice of sale, providing an official statement or following any other procedures designed to provide notice or information to potential lenders. The requirements of ORS 288.845 shall not apply to revenue bonds that are sold to the department.

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the payments and deposited into the fund. If the department finds that the loan to the public agency is otherwise adequately secured, the department may waive this right in the loan agreement or other loan documentation. [1987 c.648 s.6; 1989 c.560 s.3]

**468.439 Borrowing authority of public agency.** Notwithstanding any limitation contained in any other provision of law or local charter, a public agency may:

(1) Borrow money from the Water Pollution Control Revolving Fund through the Department of Environmental Quality;

(2) Enter into loan agreements and make related agreements with the department in which the public agency agrees to repay the borrowed money in accordance with the terms of the loan agreement;

(3) Covenant with the department regarding the operation of treatment works and the imposition and collection of rates, fees and charges for the treatment works;

(4) Pledge all or part of the revenues of the treatment works to pay the amount due under the loan agreement and

notes in accordance with ORS 288.594; and

(5) Provide any additional security and exercise any powers permitted to an issuer of revenue bonds under ORS 288.825. [1989 c.560 s.2; 1993 c.411 s.9]

**468.440 Loan terms and interest rates; considerations.** (1) The Environmental Quality Commission shall establish by rule policies for establishing loan terms and interest rates for loans made from the Water Pollution Control Revolving Fund that assure that the objectives of ORS 468.423 to 468.440 are met and that adequate funds are maintained in the Water Pollution Control Revolving Fund to meet future needs. In establishing the policy, the commission shall take into consideration at least the following factors:

- (a) The capability of the project to enhance or protect water quality.
- (b) The ability of a public agency to repay a loan.
- (c) Current market rates of interest.
- (d) The size of the community or district to be served by the treatment works.
- (e) The type of project financed.
- (f) The ability of the applicant to borrow elsewhere.
- (g) Whether advances have been made to the Water Pollution Control Revolving Fund from the Pollution Control Fund that must be repaid to the Pollution Control Sinking Fund.

(2) The commission may establish an interest rate ranging from zero to the market rate. The term of a loan may be for any period not to exceed 20 years.

(3) The commission may adopt rules to implement the program to loan amounts in the Water Pollution Control Revolving Fund to public agencies as set forth under ORS 468.433 (2).

(4) The commission shall adopt by rule any procedures or standards necessary to carry out the provisions of ORS 468.423 to 468.440. [1987 c.648 s.7; 1993 c.411 s.10; 1995 c.79 s.282]

**468.450** [Formerly 449.840; repealed by 1991 c.920 s.24]

## RECLAIMED PLASTIC PRODUCT TAX CREDIT

**468.451 Definitions for ORS 468.451 to 468.491.** As used in ORS 468.451 to 468.491:

(1) “Investment” means the amount of money a person invests to acquire or construct equipment, personal property or machinery necessary to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product.

(2) “Qualifying business” means a business in Oregon that collects, transports, processes, reclaims plastic or manufactures a reclaimed plastic product.

(3) “Reclaimed plastic” means plastic from industrial consumers, commercial users or post-consumer waste. “Reclaimed plastic” includes shredded plastics, regrind, pellets or any similar product manufactured from Oregon industrial consumer, commercial user or post-consumer waste that is sold for the purpose of making an end product out of reclaimed plastic and is intended to be used to manufacture a nonmedical or nonfood plastic product.

(4) “Reclaimed plastic product” means a plastic product for which the majority of the plastic used in the product is reclaimed plastic. [Formerly 468.925]

**468.453** [1977 c.650 s.3; 1979 c.181 s.1; renumbered 468A.550 in 1991]

**468.455** [Formerly 449.930; 1975 c.559 s.4; 1977 c.650 s.4; 1979 c.181 s.2; repealed by 1991 c.920 s.24]

**468.456 Policy.** In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of solid waste in this state by providing tax relief to Oregon businesses that make investments in order to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product. [Formerly 468.930]

**468.458** [1975 c.559 s.2; repealed by 1991 c.920 s.24]

**468.460** [Formerly 449.933; 1975 c.559 s.5; 1977 c.650 s.5; 1979 c.181 s.3; 1991 c.920 s.19; renumbered 468A.595 in 1991]

**468.461 Application for certification of investment to collect, transport or process reclaimed plastic or manufacture reclaimed plastic product.** (1) Any person may apply to the Environmental Quality Commission for certification under ORS 468.466 of an investment made by the person in Oregon to allow the person to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product.

(2) The application shall be made in writing in a form prescribed by the Department of Environmental Quality and shall contain information on the actual investment including a description of the materials incorporated therein, all machinery, personal property and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the proposed use of the reclaimed plastic product and the portion of the actual cost properly allocable to collecting, transporting or processing reclaimed plastic or to the process of manufacturing such reclaimed plastic product as set forth in ORS 468.486.

(3) The Director of the Department of Environmental Quality may require any further information the director considers necessary before a certificate is issued.

(4) The application shall be accompanied by a fee established under subsection (5) of this section. The fee may be refunded if the application for certification is rejected.

(5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the department may require of applicants for certificates issued under ORS 468.466. Before the adoption or revision of any such fees the commission shall estimate the total cost of the program to the department. The fees shall be based on the anticipated cost of filing, investigating, granting and rejecting the applications and shall be designed not to exceed the total cost estimated by the commission. Any excess fees shall be held by the department and shall be used by the commission to reduce any future fee increases. The fee may vary according to the size and complexity of the investment. The fees shall not be considered by the commission as part of the cost of the investment to be certified.

(6) Any application for certification must be made after the equipment, personal property or machinery necessary to collect, transport or process reclaimed plastic or manufacture a reclaimed plastic product is acquired or constructed and on or before December 31, 2001. Failure to file a timely application shall make the investment cost ineligible for tax credit certification. An application shall not be considered filed until it is complete and ready for processing. The commission may grant an extension of time to file an application for circumstances beyond the control of the applicant that would make a timely filing unreasonable. However, the period for filing an application shall not be extended to a date beyond December 31, 2001. [Formerly 468.935; 1995 c.746 s.8]

**468.465** [Formerly 449.935; 1975 c.559 s.6; repealed by 1991 c.920 s.24]

**468.466 Action on application; rejection; appeal; certification of investment.** (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.461. The action of the commission shall include certification of the actual cost of the investment and the portion of the actual cost properly allocable to collecting, transporting or processing reclaimed plastic or to the manufacture of a reclaimed plastic product as set forth in ORS 468.486. Each certificate shall bear a separate serial number for each such facility.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the investment or a lesser portion of the actual cost properly allocable to collecting, transporting or processing reclaimed plastic or to the manufacture of a reclaimed plastic product than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application. Failure of the commission to act constitutes approval of the application.

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the investment, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to collecting, transporting or processing reclaimed plastic or to the manufacture of a reclaimed plastic product, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify an investment, for which an application has been made under ORS 468.461, if the commission finds that the investment was made in accordance with the requirements of ORS 468.461 and 468.471.

(b) No determination of the proportion of the actual cost of the investment to be certified shall be made until receipt of the application.

(5) A person receiving a certificate under this section may take tax relief only under ORS 315.324, depending upon the tax status of the person's trade or business.

(6) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 315.324, based on that partner's pro rata share of the certified cost of the investment.

(7) Certification under this section of an investment qualifying under ORS 468.461 shall be granted for a period of five consecutive years which five-year period shall begin with the tax year of the person in which the investment is certified under this section. [Formerly 468.940]

**468.470** [Formerly 449.937; 1974 c.40 s.1; 1975 c.559 s.7; 1977 c.650 s.6; 1979 c.181 s.4; repealed by 1991 c.920 s.24]

**468.471 Preliminary certification of investment.** (1) Any person proposing to apply for certification of an investment under ORS 468.461, before making the investment, shall file a request for preliminary certification with the Department of Environmental Quality. The request shall be in a form prescribed by the department. For investments made, the Environmental Quality Commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such investment would otherwise qualify for tax credit certification pursuant to ORS 468.451 to 468.491.

(2) Within 30 days of the receipt of a request for preliminary certification, the department may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the department may request corrections and revisions to the plans and specifications. The department may also require any other information necessary to determine whether the proposed investment is in accordance with the provisions of ORS chapters 459 and 459A and ORS chapters 468, 468A and 468B and applicable rules and standards adopted pursuant thereto.

(3) If the department determines that the proposed investment is in accordance with the provisions of ORS chapters 459 and 459A and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall issue a preliminary certificate approving the investment. If the department determines that the investment does not comply with the provisions of ORS chapters 459 and 459A and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, the commission shall issue an order denying certification.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the department fails to issue a preliminary certificate of approval and the commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(5) Within 20 days from the date of mailing of the order, any person against whom an order is directed pursuant to subsection (3) of this section may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550. [Formerly 468.945]

**468.472** [1975 c.559 s.9; repealed by 1991 c.920 s.24]

**468.474** [1975 c.559 s.10; repealed by 1991 c.920 s.24]

**468.475** [Formerly 449.939; 1975 c.559 s.11; 1977 c.650 s.8; 1979 c.181 s.5; repealed by 1991 c.920 s.24]

**468.476 Final certification.** Except if the Environmental Quality Commission, under ORS 468.471 (1), waives the requirement for preliminary certification, no final certification shall be issued by the commission under ORS 468.466 unless the investment was made in accordance with the requirements of ORS 468.471 and in accordance with the applicable provisions of ORS chapters 459 and 459A and ORS chapters 468, 468A and 468B and the applicable rules or standards adopted pursuant thereto. [Formerly 468.950]

**468.480** [Formerly 449.941; 1975 c.559 s.12; 1977 c.650 s.10; 1979 c.181 s.6; repealed by 1991 c.920 s.24]

**468.481 Revocation of certificate; consequences.** (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Environmental Quality Commission may order the revocation of the certification issued under

ORS 468.466 of any investment, if it finds that:

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

(b) The holder of the certificate has failed substantially to operate the qualifying business as specified in such certificate.

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

(3) If the certification of an investment is ordered revoked pursuant to subsection (1)(a) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 315.324.

(4) If the certification of an investment is ordered revoked pursuant to subsection (1)(b) of this section, the certificate holder shall be denied any further relief provided under ORS 315.324 in connection with such investment, as the case may be, from and after the date that the order of revocation becomes final. [Formerly 468.955]

**468.485** [Formerly 449.943; 1974 c.36 s.15; 1975 c.559 s.13; repealed by 1977 c.650 s.11]

**468.486 Allocation of costs to collect, transport or process reclaimed plastic or manufacture reclaimed plastic product.** (1) In establishing the portion of costs properly allocable to the investment costs incurred to allow a person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product qualifying for certification under ORS 468.466, the Environmental Quality Commission shall consider the following factors:

(a) If applicable, the extent to which the collection, transportation, processing or manufacturing process for which the investment is made is used to convert reclaimed plastic into a salable or usable commodity.

(b) Any other factors which are relevant in establishing the portion of the actual cost of the investment except return on the investment properly allocable to the process that allows a person to collect, transport or process reclaimed plastic or to manufacture a reclaimed plastic product.

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent the commission shall issue an order denying certification.

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the collection, transportation or processing of reclaimed plastic or to the manufacture of a reclaimed plastic product. [Formerly 468.960]

**468.490** [1977 c.650 s.9; repealed by 1991 c.920 s.24]

**468.491 Limit on costs certified by commission for tax credit.** (1) The total of all costs of investments that receive a preliminary certification from the Environmental Quality Commission for tax credits in any calendar year shall not exceed \$1,500,000. If the applications exceed the \$1,500,000 limit, the commission, in the commission's discretion, shall determine the dollar amount certified for any investments and the priority between applications for certification based upon the criteria contained in ORS 468.451 to 458.491.

(2) Not less than \$500,000 of the \$1,500,000 annual certification limit shall be allocated to investments having a certified cost of \$100,000 or less for any qualifying business.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any investments shall not exceed \$500,000. However, if the applications certified in any calendar year do not total \$1,000,000, the commission may increase the certified costs above the \$500,000 maximum for previously certified investments. The increases shall be allocated according to the commission's determination of how the previously certified investments meet the criteria of ORS 468.451 to 468.491. The increased allocation to previously certified investments under this subsection shall not include any of the \$500,000 reserved under subsection (2) of this section. [Formerly 468.965]

**468.495** [1977 c.650 s.7; repealed by 1991 c.920 s.24]

**468.500** [Formerly 449.850; renumbered 468A.100 in 1991]

## GREEN PERMITS

**468.501 Definitions for ORS 468.501 to 468.521.** As used in ORS 468.501 to 468.521:

(1) “Agency” means either the Department of Environmental Quality or the Lane Regional Air Pollution Authority created pursuant to ORS 468A.010 to 468A.180, or both, as the context requires.

(2) “Commission” means the Environmental Quality Commission.

(3) “Environmental laws” means ORS 454.605 to 454.755, 459.005 to 459.153, 459.705 to 459.790, 459.992, 459.995, 465.003 to 465.034 and 466.005 to 466.385 and ORS chapters 468, 468A and 468B and rules adopted thereunder. “Environmental laws” does not include any provision of Oregon Revised Statutes or of any municipal ordinance or enactment that regulates the selection of a location for a new facility.

(4) “Facility” means any site or contiguous sites, any manufacturing operation or contiguous operations, or any business or municipal activity regulated under any provision of the environmental laws.

(5) “Green Permit” means a permit that provides administrative benefits or reduces regulatory requirements to facilities that meet criteria established by the Environmental Quality Commission.

(6) “Sponsor” means a person, group or association that submits a proposal under the Green Permit program. [1997 c.553 s.2]

**Note:** 468.501 to 468.521 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**468.503 Purpose of Green Permits.** The purpose of ORS 468.501 to 468.521 is to authorize:

(1) The issuance of Green Permits to persons regulated under the environmental laws of the State of Oregon.

(2) The Environmental Quality Commission to develop Green Permit criteria that will result in the use of innovative environmental approaches or strategies not otherwise recognized or allowed under existing regulations, to achieve environmental results that are significantly better than otherwise required by law.

(3) An agency to provide or, where necessary, to seek exemptions or waivers from regulatory requirements as considered necessary to implement the provisions of ORS 468.501 to 468.521.

(4) An agency to encourage applications for Green Permits that promote pollution prevention, source reduction, more efficient use of natural resources, improvements in technology or practices, utilization of environmental management systems and creation of public and private entity partnerships that can achieve environmental results that are significantly better overall than otherwise required by law. [1997 c.553 s.1]

**Note:** See note under 468.501.

**468.505** [Formerly 449.855; renumbered 468A.105 in 1991]

**468.506 Commission rulemaking to carry out Green Permit program.** The Environmental Quality Commission shall establish by rule criteria for Green Permits and procedures for the application, review and public participation in the process of issuance of the permits. In establishing the criteria for Green Permits, the commission:

(1) Shall consider the objectives set forth in ORS 468.503;

(2) May establish classes or categories of Green Permits as the commission considers appropriate; and

(3) May limit the number and duration of such permits issued by the agencies for the purpose of evaluating the effectiveness of the Green Permit program. [1997 c.553 s.3]

**Note:** See note under 468.501.

**468.508 Eligibility for Green Permit.** Any person owning or operating a facility or contiguous facilities subject to regulation under the environmental laws may act as a sponsor and propose a Green Permit. [1997 c.553 s.4]

**Note:** See note under 468.501.

**468.510** [Formerly 449.857; renumbered 468A.110 in 1991]

**468.511 Environmental laws not applicable to facility operating under Green Permit.** Notwithstanding any other provision of law, any requirement under the environmental laws, except those required by treaty or interstate compact or by a federal law, that is contrary to the terms and provisions of a Green Permit shall not apply to a facility

operating under a Green Permit. Any prior conflicting permit condition shall be revised by the agency that has jurisdiction over the Green Permit. Except as specifically revised in a Green Permit, any existing environmental permit or requirement shall remain in effect, notwithstanding issuance of a Green Permit. [1997 c.553 s.5]

**Note:** See note under 468.501.

**468.513 Judicial review of agency decision on issuance of Green Permit.** The decision of an agency to refuse to issue a Green Permit is not subject to judicial review. The decision of an agency to issue a Green Permit may be appealed in accordance with the provisions of ORS 183.484 pertaining to review of an order in other than a contested case. [1997 c.553 s.6]

**Note:** See note under 468.501.

**468.515** [Formerly 449.870; renumbered 468A.115 in 1991]

**468.516 Termination of Green Permit.** If a sponsor operating a facility under a Green Permit fails to perform any term or condition in the Green Permit, the agency may, after written notice to the permittee, terminate the Green Permit in whole or in part. The permittee may appeal the agency's decision to terminate a Green Permit to the Environmental Quality Commission. The commission's decision on appeal shall be an order in other than a contested case. [1997 c.553 s.7]

**Note:** See note under 468.501.

**468.518 Application for permit or approval affected by termination of Green Permit.** After an agency issues a notice of termination of a Green Permit in the manner provided in ORS 468.516, the operator of the facility shall have 30 days to apply for any permit or approval affected by the termination of all or a portion of the Green Permit. An application filed during the 30-day period shall be considered a timely application for renewal of a permit under the terms of the applicable law. The terms and conditions of the Green Permit shall continue in effect until a final permit or approval is issued or denied. In order to achieve an orderly transition and compliance with the environmental laws, the agency may issue an order establishing conditions for the interim operation of the facility. [1997 c.553 s.8]

**Note:** See note under 468.501.

**468.520** [Formerly 449.865; 1991 c.890 s.1; renumbered 468A.120 in 1991]

**468.521 Recovery of costs of agency in developing, negotiating and publicizing Green Permit; disposition of moneys collected.** The agency shall recover the costs of the agency in developing, negotiating and publicizing a Green Permit in the following manner:

(1) The sponsor shall fully reimburse the agency for the agency's direct and indirect costs of conducting the review, negotiating the relevant permit revisions, responding to public comment, monitoring the provisions in the Green Permit and environmental outcomes resulting from the Green Permit and publicizing and conducting the public hearings.

(2) The agency shall appropriately document the direct and indirect costs of the agency and collect payment for such costs from the sponsor. The agency shall collect a deposit from the sponsor, against which the agency shall bill until the deposit is depleted. When the deposit is depleted, the agency shall collect an additional deposit. The initial deposit shall accompany the sponsor's initial Green Permit proposal and shall be in the amount of \$5,000. The agency shall deliver to the sponsor an accounting of all charges and the amount of the deposit remaining at the closure of each month's accounting records.

(3) All moneys collected by the Department of Environmental Quality pursuant to this section shall be deposited into the General Fund of the State Treasury to an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the Department of Environmental Quality for the payment of expenses of the Department of Environmental Quality in carrying out the provisions of ORS 468.501 to 468.521. The Director of the Department of Environmental Quality shall keep a record of all moneys deposited into the State Treasury pursuant to this section and shall indicate by special cumulative accounts the source from which moneys are derived and the individual activity against which each withdrawal is charged. The fees collected under this section by the Lane

Regional Air Pollution Authority shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are the funds collected by the Department of Environmental Quality under this section. [1997 c.553 s.9]

**Note:** See note under 468.501.

**Note:** Section 11, chapter 553, Oregon Laws 1997, provides:

**Sec. 11.** An agency shall not issue a Green Permit after December 31, 2003. [1997 c.553 s.11; 1999 c.828 s.1]

**468.525** [Formerly 449.867; 1991 c.890 s.2; renumbered 468A.125 in 1991]

**468.530** [Formerly 449.885; 1983 c.233 s.1; renumbered 468A.130 in 1991]

**468.535** [1973 c.835 s.99; 1987 c.660 s.28; 1987 c.741 s.20; renumbered 468A.135 in 1991]

**468.540** [Formerly 449.910; renumbered 468A.140 in 1991]

**468.545** [Formerly 449.863; renumbered 468A.145 in 1991]

**468.550** [Formerly 449.890; renumbered 468A.150 in 1991]

**468.555** [Formerly 449.883; 1991 c.752 s.19; renumbered 468A.155 in 1991]

**468.560** [Formerly 449.900; renumbered 468A.160 in 1991]

**468.565** [Formerly 449.905; renumbered 468A.165 in 1991]

**468.570** [Formerly 449.915; renumbered 468A.170 in 1991]

**468.575** [Formerly 449.920; renumbered 468A.175 in 1991]

**468.580** [Formerly 449.923; renumbered 468A.180 in 1991]

**468.600** [1975 c.366 s.1; renumbered 468A.650 in 1991]

**468.605** [1975 c.366 s.2; 1977 c.18 s.1; 1977 c.206 s.1; 1983 c.148 s.1; renumbered 468A.655 in 1991]

**468.610** [1977 c.206 s.4; renumbered 468A.660 in 1991]

**468.612** [1989 c.903 s.2; renumbered 468A.625 in 1991]

**468.614** [1989 c.903 s.3; renumbered 468A.630 in 1991]

**468.615** [1977 c.206 s.2; repealed by 1987 c.414 s.172]

**468.616** [1989 c.903 s.4; renumbered 468A.635 in 1991]

**468.618** [1989 c.903 s.5; renumbered 468A.640 in 1991]

**468.620** [1977 c.206 s.3; repealed by 1987 c.414 s.172]

**468.621** [1989 c.903 s.6; renumbered 468A.645 in 1991]

**468.630** [1983 c.333 s.4; renumbered 468A.460 in 1991]  
**468.635** [1983 c.333 s.8; renumbered 468A.465 in 1991]  
**468.640** [1983 c.333 s.7; renumbered 468A.470 in 1991]  
**468.645** [1983 c.333 s.9; repealed by 1991 c.752 s.28]  
**468.650** [1983 c.333 s.10; 1991 c.752 s.19a; renumbered 468A.475 in 1991]  
**468.655** [1983 c.333 ss.5,6; 1991 c.752 s.20; renumbered 468A.480 in 1991]  
**468.659** [1989 c.917 s.2; 1993 c.742 s.106; repealed by 1997 c.82 s.7]  
**468.660** [1989 c.917 s.1; repealed by 1997 c.82 s.7]  
**468.661** [1989 c.917 s.20; 1991 c.67 s.131; repealed by 1997 c.82 s.7]  
**468.662** [1989 c.917 s.3; repealed by 1997 c.82 s.7]  
**468.663** [1989 c.917 s.25; 1993 c.742 s.107; repealed by 1997 c.82 s.7]  
**468.664** [1989 c.917 s.4; 1993 c.742 s.108; repealed by 1997 c.82 s.7]  
**468.665** [1989 c.917 s.15; 1993 c.742 s.109; repealed by 1997 c.82 s.7]  
**468.666** [1989 c.917 s.5; repealed by 1997 c.82 s.7]  
**468.667** [1989 c.917 s.8; repealed by 1997 c.82 s.7]  
**468.668** [1989 c.917 s.9; 1991 c.67 s.132; 1993 c.736 s.55; repealed by 1997 c.82 s.7]  
**468.669** [1989 c.917 s.11; repealed by 1997 c.82 s.7]  
**468.670** [1989 c.917 s.13; repealed by 1997 c.82 s.7]  
**468.671** [1989 c.917 s.16; repealed by 1997 c.82 s.7]  
**468.672** [1989 c.917 s.18; repealed by 1997 c.82 s.7]  
**468.673** [1989 c.917 s.21; repealed by 1997 c.82 s.7]  
**468.674** [1989 c.917 s.24; repealed by 1997 c.82 s.7]  
**468.675** [1989 c.917 s.6; repealed by 1993 c.742 s.105]  
**468.676** [1989 c.917 s.7; repealed by 1993 c.742 s.105]  
**468.677** [1989 c.917 s.10; repealed by 1993 c.742 s.105]  
**468.678** [1989 c.917 s.12; repealed by 1993 c.742 s.105]  
**468.679** [1989 c.917 s.14; repealed by 1993 c.742 s.105]

**468.680** [1989 c.917 s.17; repealed by 1993 c.742 s.105]  
**468.681** [1989 c.917 s.19; repealed by 1993 c.742 s.105]  
**468.682** [1989 c.917 s.22; repealed by 1993 c.742 s.105]  
**468.683** [1989 c.917 s.23; repealed by 1993 c.742 s.105]  
**468.685** [1989 c.917 s.26; repealed by 1995 c.79 s.283]  
**468.686** [1989 c.847 s.2; renumbered 468B.200 in 1991]  
**468.687** [1989 c.847 s.3; renumbered 468B.205 in 1991]  
**468.688** [1989 c.847 s.4; renumbered 468B.210 in 1991]  
**468.689** [1989 c.847 s.5; renumbered 468B.215 in 1991]  
**468.690** [1989 c.847 s.6; renumbered 468B.220 in 1991]  
**468.691** [1989 c.833 s.17; renumbered 468B.150 in 1991]  
**468.692** [1989 c.833 s.18; renumbered 468B.155 in 1991]  
**468.693** [1989 c.833 s.19; 1991 c.67 s.133; renumbered 468B.160 in 1991]  
**468.694** [1989 c.833 s.25; renumbered 468B.165 in 1991]  
**468.695** [1989 c.833 s.27; renumbered 468B.170 in 1991]  
**468.696** [1989 c.833 ss.31,33; renumbered 468B.175 in 1991]  
**468.698** [1989 c.833 ss.36,37; renumbered 468B.180 in 1991]  
**468.699** [1989 c.833 s.29; renumbered 468B.185 in 1991]  
**468.700** [Formerly 449.075; renumbered 468B.005 in 1991]  
**468.705** [Formerly 449.070; renumbered 468B.010 in 1991]  
**468.710** [Formerly 449.077; renumbered 468B.015 in 1991]  
**468.715** [Formerly 449.095; renumbered 468B.020 in 1991]  
**468.720** [Formerly 449.079; renumbered 468B.025 in 1991]  
**468.725** [Formerly 449.081; renumbered 468B.030 in 1991]  
**468.730** [1973 c.92 s.3; renumbered 468B.035 in 1991]  
**468.732** [1985 c.569 s.7; renumbered 468B.040 in 1991]  
**468.734** [1985 c.569 s.8; renumbered 468B.045 in 1991]

**468.735** [Formerly 449.086; 1985 c.673 s.178; renumbered 468B.048 in 1991]

**468.740** [Formerly 449.083; 1989 c.847 s.7; renumbered 468B.050 in 1991]

**468.742** [Formerly 454.415; 1979 c.98 s.1; 1991 c.735 s.27; renumbered 468B.055 in 1991]

**468.745** [Formerly 449.103; 1979 c.584 s.1; renumbered 468B.060 in 1991]

**468.750** [Formerly 449.111; 1975 c.172 s.1; renumbered 468B.065 in 1991]

**468.755** [Formerly 449.113; renumbered 468B.070 in 1991]

**468.760** [Formerly 449.137; repealed by 1991 c.764 s.8]

**468.765** [Formerly 449.140; renumbered 468B.075 in 1991]

**468.770** [Formerly 449.150; renumbered 468B.080 in 1991]

**468.775** [Formerly 449.109; 1983 c.338 s.937; renumbered 468B.085 in 1991]

**468.777** [1979 c.617 s.2; renumbered 468B.090 in 1991]

**468.778** [1983 c.257 s.2; renumbered 468B.095 in 1991]

**468.780** [Formerly 449.155; 1989 c.1082 s.4; 1991 c.606 s.1; 1991 c.651 s.3; renumbered 468B.300 in 1991]

**468.785** [Formerly 449.157; renumbered 468B.305 in 1991]

**468.790** [Formerly 449.159; renumbered 468B.310 in 1991]

**468.795** [Formerly 449.161; renumbered 468B.315 in 1991]

**468.800** [Formerly 449.163; renumbered 468B.320 in 1991]

**468.802** [1977 c.222 ss.2,3; renumbered 468B.325 in 1991]

**468.805** [Formerly 449.165; renumbered 468B.330 in 1991]

**468.810** [Formerly 449.167; 1977 c.704 s.11; repealed by 1985 c.733 s.23]

**468.815** [Formerly 449.175; renumbered 468B.335 in 1991]

**468.817** [1989 c.859 ss.3,5; renumbered 468B.450 in 1991]

**468.819** [1989 c.859 s.4; renumbered 468B.455 in 1991]

**468.821** [1989 c.859 s.2; renumbered 468B.460 in 1991]

**468.823** [1989 c.1042 s.2; renumbered 468B.475 in 1991]

**468.825** [1989 c.1042 s.3; renumbered 468B.480 in 1991]

**468.827** [1989 c.1042 s.4; renumbered 468B.485 in 1991]

**468.829** [1989 c.1042 s.5; renumbered 468B.490 in 1991]

**468.831** [1989 c.1082 ss.2,5; renumbered 468B.495 in 1991]

**468.833** [1989 c.1082 s.3; renumbered 468B.500 in 1991]

**468.850** [1977 c.483 s.2; renumbered 459A.555 in 1993]

**468.853** [1977 c.483 s.3; renumbered 459A.560 in 1993]

**468.856** [1977 c.483 s.4; renumbered 459A.565 in 1993]

**468.859** [1977 c.483 s.5; renumbered 459A.570 in 1993]

**468.862** [1977 c.483 s.6; renumbered 459A.575 in 1993]

**468.865** [1977 c.483 s.7; renumbered 459A.580 in 1993]

**468.868** [1977 c.483 s.8; renumbered 459A.585 in 1993]

**468.869** [1989 c.268 s.2; renumbered 459A.590 in 1993]

**468.870** [1989 c.268 s.3; renumbered 459A.595 in 1993]

**468.871** [1977 c.483 s.1; renumbered 459A.599 in 1993]

**468.875** [1987 c.741 s.2; renumbered 468A.700 in 1991]

**468.877** [1987 c.741 s.3; renumbered 468A.705 in 1991]

**468.879** [1987 c.741 s.5; renumbered 468A.710 in 1991]

**468.881** [1987 c.741 s.6; renumbered 468A.715 in 1991]

**468.883** [1987 c.741 s.7; renumbered 468A.720 in 1991]

**468.885** [1987 c.741 ss.8,17; renumbered 468A.725 in 1991]

**468.887** [1987 c.741 s.9; renumbered 468A.730 in 1991]

**468.889** [1987 c.741 s.10; renumbered 468A.735 in 1991]

**468.891** [1987 c.741 s.11; renumbered 468A.740 in 1991]

**468.893** [1987 c.741 s.12; 1991 c.650 s.7; renumbered 468A.745 in 1991]

**468.895** [1987 c.741 s.13; 1989 c.171 s.63; renumbered 468A.750 in 1991]

**468.897** [1987 c.741 s.14; renumbered 468A.755 in 1991]

**468.899** [1987 c.741 s.16; renumbered 468A.760 in 1991]

**468.900** [1977 c.867 s.23; 1983 c.740 s.183; renumbered 466.505]

**468.901** [1985 c.737 s.2; repealed by 1987 c.539 s.1 (466.705 enacted in lieu of 468.901)]

**468.902** [1985 c.737 s.3; repealed by 1987 c.539 s.3 (466.715 enacted in lieu of 468.902)]

**468.903** [1977 c.867 s.24; renumbered 466.510]

**468.904** [1985 c.737 s.4; repealed by 1987 c.539 s.7 (466.725 enacted in lieu of 468.904)]

**468.905** [1985 c.737 s.5; repealed by 1987 c.539 s.19 (466.765 enacted in lieu of 468.905)]

**468.906** [1977 c.867 s.25; renumbered 466.515]

**468.907** [1985 c.737 s.6; repealed by 1987 c.539 s.29 (466.805 enacted in lieu of 468.907)]

**468.908** [1985 c.737 s.7; repealed by 1987 c.539 s.12 (466.745 enacted in lieu of 468.908)]

**468.909** [1977 c.867 s.26; renumbered 466.520]

**468.910** [1985 c.737 s.8; 1987 c. 539 s.31; renumbered 466.800 in 1987]

**468.911** [1985 c.737 s.9; 1987 c.539 s.18; renumbered 466.710 in 1987]

**468.912** [1977 c.867 s.27; renumbered 466.525]

**468.913** [1985 c.737 s.10; 1987 c.539 s.40; renumbered 466.720 (2) in 1987]

**468.914** [1985 c.737 s.11; repealed by 1987 c.539 s.33; 466.820 enacted in lieu of 468.914]

**468.915** [1977 c.867 s.28; repealed by 1979 c.32 s.1]

**468.916** [1985 c.737 s.12; repealed by 1987 c.539 s.45]

**468.917** [1985 c.737 s.13; repealed by 1987 c.539 s.45]

**468.918** [1977 c.867 s.29; repealed by 1979 c.32 s.1]

## ENVIRONMENTAL CRIMES

**468.920 Definitions for ORS 468.922 to 468.956.** For purposes of ORS 468.922 to 468.956:

(1) “Knowingly”:

(a) Has the meaning given that term in ORS 161.085; or

(b) Means a person acts with a conscious purpose to avoid knowledge of a conduct or a circumstance in violation of ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825.

(2) “Substantial harm to human health or the environment” means:

(a) Physical injury, as defined in ORS 161.015, to a human being or demonstrable substantial risk of serious physical injury, as defined in ORS 161.015, to a human being; or

(b) Substantial damage to wildlife, flora, aquatic or marine life, to habitat or to livestock or agricultural crops.

(3) Except as provided in ORS 161.155 or 161.450, an individual is not criminally liable solely because of the individual's status in a business, organization or other public or private entity nor is knowledge possessed by an individual other than the defendant attributable to the defendant.

(4) Nothing in this section is intended to amend or modify ORS 161.150, 161.155, 161.160, 161.165, 161.170, 161.175, 161.450 or 161.455. [1993 c.422 s.16]

**468.921** [1977 c.867 s.30; renumbered 466.530]

**468.922 Unlawful disposal, storage or treatment of hazardous waste in the second degree.** (1) A person commits the crime of unlawful disposal, storage or treatment of hazardous waste in the second degree if the person, in violation of ORS 466.095 or 466.100 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.095 or 466.100, knowingly treats, stores or disposes of hazardous waste.

(2)(a) Subject to ORS 153.022, unlawful disposal, storage or treatment of hazardous waste in the second degree is a Class B misdemeanor.

(b) Notwithstanding ORS 161.635, in addition to any term of imprisonment that the court may impose under paragraph (a) of this subsection, the court may impose a fine of up to \$10,000. [1993 c.422 s.4; 1999 c.1051 s.305]

**468.925** [1985 c.684 s.3; 1989 c.958 s.1; renumbered 468.451 in 1993]

**468.926 Unlawful disposal, storage or treatment of hazardous waste in the first degree.** (1) A person commits the crime of unlawful disposal, storage or treatment of hazardous waste in the first degree if the person, in violation of ORS 466.095 or 466.100 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.095 or 466.100, knowingly disposes of, stores or treats hazardous waste and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful disposal, storage or treatment of hazardous waste in the first degree is a Class B felony.

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful disposal, storage or treatment of hazardous waste in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding \$200,000 in addition to any other sentence imposed under subsection (2) of this section. [1993 c.422 s.2]

**468.929 Unlawful transport of hazardous waste in the second degree.** (1) A person commits the crime of unlawful transport of hazardous waste in the second degree if the person, in violation of ORS 466.080, 824.090 or 825.258 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.080, 824.090 or 825.258, knowingly transports hazardous waste.

(2)(a) Subject to ORS 153.022, unlawful transport of hazardous waste in the second degree is a Class B misdemeanor.

(b) Notwithstanding ORS 161.635, in addition to any term of imprisonment that the court may impose under paragraph (a) of this subsection, the court may impose a fine of up to \$10,000. [1993 c.422 s.5; 1999 c.1051 s.306]

**468.930** [1985 c.684 s.2; 1989 c.958 s.2; renumbered 468.456 in 1993]

**468.931 Unlawful transport of hazardous waste in the first degree.** (1) A person commits the crime of unlawful transport of hazardous waste in the first degree if the person, in violation of ORS 466.080, 824.090 or 825.258 or any rule, standard, license, permit or order adopted or issued under ORS 466.020, 466.080, 824.090 or 825.258, knowingly transports hazardous waste, and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful transport of hazardous waste in the first degree is a Class B felony.

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful transport of hazardous waste in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding \$200,000 in addition to any other sentence imposed under subsection (2) of this section. [1993 c.422 s.3]

**468.933 Determination of number of punishable offenses under ORS 468.922, 468.926, 468.929 and 468.931.** Notwithstanding ORS 161.067, each day on which a violation occurs or continues under ORS 468.922, 468.926, 468.929 or 468.931 is a separately punishable offense. [1993 c.422 s.6]

**468.935** [1985 c.684 s.4; 1989 c.958 s.3; renumbered 468.461 in 1993]

**468.936 Unlawful air pollution in the second degree.** (1) A person commits the crime of unlawful air pollution in

the second degree if the person knowingly violates any applicable requirement of ORS chapter 468A or a permit, rule or order adopted or issued under ORS chapter 468A.

(2) Notwithstanding ORS 161.515 and subject to ORS 153.022, unlawful air pollution in the second degree is a criminal offense punishable solely by a fine of up to \$10,000. [1993 c.422 s.8; 1999 c.1051 s.307]

**468.939 Unlawful air pollution in the first degree.** (1) A person commits the crime of unlawful air pollution in the first degree if the person, in violation of ORS chapter 468A or any rule, permit, order or any applicable requirement adopted or issued under ORS chapter 468A, knowingly discharges, emits or allows to be discharged or emitted any air contaminant into the outdoor atmosphere, and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful air pollution in the first degree is a Class B felony.

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful air pollution in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding \$200,000 in addition to any other sentence imposed under subsection (2) of this section. [1993 c.422 s.7]

**468.940** [1985 c.684 s.5; 1989 c.958 s.4; 1991 c.877 s.38; renumbered 468.466 in 1993]

**468.941 Determination of number of punishable offenses under ORS 468.936 or 468.939.** Notwithstanding ORS 161.067, each day on which a violation occurs or continues under ORS 468.936 or 468.939 is a separately punishable offense. [1993 c.422 s.9]

**468.943 Unlawful water pollution in the second degree.** (1) A person commits the offense of unlawful water pollution in the second degree if the person with criminal negligence violates ORS chapter 468B or any rule, standard, license, permit or order adopted or issued under ORS chapter 468B.

(2) Subject to ORS 153.022, unlawful water pollution in the second degree is punishable by a fine of up to \$25,000 or imprisonment for not more than one year, or both. [1993 c.422 s.11; 1999 c.1051 s.308]

**468.945** [1985 c.684 s.6; 1989 c.958 s.5; renumbered 468.471 in 1993]

**468.946 Unlawful water pollution in the first degree.** (1) A person commits the crime of unlawful water pollution in the first degree if the person, in violation of ORS chapter 468B or any rule, standard, license, permit or order adopted or issued under ORS chapter 468B, knowingly discharges, places or causes to be placed any waste into the waters of the state or in a location where the waste is likely to escape or be carried into the waters of the state and:

(a) As a result, recklessly causes substantial harm to human health or the environment; or

(b) Knowingly disregards the law in committing the violation.

(2) Unlawful water pollution in the first degree is a Class B felony.

(3) Notwithstanding ORS 161.625 and subsection (2) of this section, upon a second conviction for unlawful water pollution in the first degree within a five-year period, the court may require the defendant to pay an amount, fixed by the court, not exceeding \$200,000 in addition to any other sentence imposed under subsection (2) of this section. [1993 c.422 s.10]

**468.949 Determination of number of punishable offenses under ORS 468.943 or 468.946.** Notwithstanding ORS 161.067, each day on which a violation occurs or continues under ORS 468.943 or 468.946 is a separately punishable offense. [1993 c.422 s.12]

**468.950** [1985 c.684 s.7; 1989 c.958 s.6; renumbered 468.476 in 1993]

**468.951 Environmental endangerment.** (1) A person commits the crime of environmental endangerment if the person:

(a) Knowingly commits the crime of unlawful disposal, storage or treatment of hazardous waste in the first degree, unlawful transport of hazardous waste in the first degree, unlawful air pollution in the first degree or unlawful water pollution in the first degree; and

(b) As a result, places another person in imminent danger of death or causes serious physical injury.

(2) Environmental endangerment is a felony punishable:

(a) If the defendant is an individual and notwithstanding ORS 161.625, by imprisonment of not more than 15 years, a fine of not more than \$1,000,000, or both.

(b) If the defendant is other than an individual and notwithstanding ORS 161.625, by a fine of not more than \$2,000,000.

(c) Notwithstanding ORS 161.625, in the case of a second or subsequent conviction under this section, by imprisonment of not more than 30 years, a fine of not more than \$5,000,000, or both.

(3) As used in this section, "serious physical injury" has the meaning given in ORS 161.015. [1993 c.422 s.13]

**468.953 Supplying false information to agency.** (1) A person commits the crime of supplying false information to any agency if the person:

(a) Makes any false material statement, representation or certification knowing it to be false, in any application, notice, plan, record, report or other document required by any provision of ORS chapter 465, 466, 468, 468A or 468B or any rule adopted pursuant to ORS chapter 465, 466, 468, 468A or 468B;

(b) Omits any material or required information, knowing it to be required, from any document described in paragraph (a) of this subsection; or

(c) Alters, conceals or fails to file or maintain any document described in paragraph (a) of this subsection in knowing violation of any provision of ORS chapter 465, 466, 468, 468A or 468B or any rule adopted pursuant to ORS chapter 465, 466, 468, 468A or 468B.

(2) Supplying false information is a Class C felony. [1993 c.422 s.14]

**468.955** [1985 c.684 s.8; 1987 c.158 s.95; 1989 c.958 s.7; renumbered 468.481 in 1993]

**468.956 Refusal to produce material subpoenaed by commission.** Refusal, without good cause, to produce books, papers or information subpoenaed by the Environmental Quality Commission, the Department of Environmental Quality or the regional air quality control authority or any report required by law or by the commission, the department or a regional authority pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is a Class A misdemeanor. [1993 c.422 s.15]

**468.959 Upset or bypass as affirmative defense.** (1) It is an affirmative defense to any offense under ORS 468.922 to 468.946 that the alleged violation was the result of an upset or bypass.

(2) For purposes of this section:

(a) "Bypass" means the temporary discharge of waste or an air contaminant in violation of ORS chapter 465, 466, 468, 468A or 468B or any rule adopted or order or permit issued thereunder, under circumstances in which the defendant reasonably believed that the discharge was necessary to prevent loss of life, personal injury or severe property damage, or to minimize environmental harm.

(b) "Upset" includes an exceptional and unexpected occurrence in which there is unintentional and temporary violation of the requirements of ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825 or of any rule adopted or permit or order issued under ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B, or 825 because of factors beyond the reasonable control of the regulated person or entity. "Upset" does not include a violation caused by:

(A) Operational error;

(B) Improperly designed facilities;

(C) Lack of preventive maintenance; or

(D) Careless or improper operation.

(3) To establish the affirmative defense of upset or bypass, the defendant must prove the occurrence of an upset or bypass and that the defendant:

(a) Reported the upset or bypass to the Department of Environmental Quality or other appropriate agency within 24 hours or as required by statute, rule, permit or order, whichever is sooner, and, if the original notice was oral, delivered written notice to the Department of Environmental Quality or other agency with regulatory jurisdiction within four calendar days;

(b) Submitted complete documentation of the upset or bypass to the Department of Environmental Quality or other agency with regulatory jurisdiction as required by statute, rule, order or permit; and

- (c) Took appropriate corrective action, including action to minimize damage, as soon as reasonably possible.
- (4) It is an affirmative defense to an offense under ORS 468.922 to 468.946 that the defendant:
  - (a) Did not cause or create the condition or occurrence that constitutes the offense;
  - (b) Reported the condition or occurrence to the Department of Environmental Quality or other agency with regulatory jurisdiction as soon as practicable after the defendant discovered it; and
  - (c) Took reasonable steps to correct the violation. [1993 c.422 s.17]

**468.960** [1985 c.684 s.9; 1989 c.958 s.8; renumbered 468.486 in 1993]

**468.961 Approval of Attorney General or district attorney before bringing felony charge; guidelines for bringing felony charge; model guidelines.** (1) Except in exigent circumstances, no person shall be charged with a felony under ORS 468.922 to 468.956 without the personal approval of the district attorney of the county or the Attorney General of the State of Oregon.

(2) In order to promote consistency in bringing criminal prosecutions under ORS 468.922 to 468.956, the district attorney of each county shall adopt written guidelines for filing felony criminal charges under ORS 468.922 to 468.956. The written guidelines, at a minimum, shall require the district attorney to consider and apply the following factors in determining whether to file criminal charges:

- (a) The complexity and clarity of the statute or regulation violated;
- (b) The extent to which the person was or should have been aware of the requirement violated;
- (c) The existence and effectiveness of the person's program to promote compliance with environmental regulations;
- (d) The magnitude and probability of the actual or potential harm to humans or to the environment;
- (e) The need for public sanctions to protect human health and the environment or to deter others from committing similar violations;
- (f) The person's history of repeated violations of environmental laws after having been given notice of those violations;
- (g) The person's false statements, concealment of misconduct or tampering with monitoring or pollution control equipment;
- (h) The person's cooperation with regulatory authorities, including voluntary disclosure and prompt subsequent efforts to comply with applicable regulations and to remedy harm caused by the violation;
- (i) The appropriate regulatory agency's current and past policy and practice regarding the enforcement of the applicable environmental law; and
- (j) The person's good faith effort to comply with the law to the extent practicable.

(3) In order to promote consistency and uniformity in prosecutorial policies, the Attorney General, in consultation with the Oregon District Attorneys' Association, and after appropriate opportunity for public comment, shall adopt model guidelines for prosecution of environmental crimes. The Attorney General's model guidelines shall provide for consideration and application of the factors described in subsection (2) of this section. A district attorney may fulfill the district attorney's responsibility under subsection (2) of this section by adopting the Attorney General's model guidelines.

(4) Prior to or in conjunction with the filing of felony charges under ORS 468.922 to 468.956, the district attorney or the Attorney General shall file a certification with the court that the guidelines described in subsections (2) and (3) of this section have been applied and that, in the opinion of the district attorney or Attorney General, as the case may be, the criminal charges are being filed in accordance with the guidelines. [1993 c.422 s.19]

**Note:** Legislative Counsel has substituted "ORS 468.922 to 468.956" for the words "this 1993 Act" in sections 19 and 20, chapter 422, Oregon Laws 1993, compiled as 468.961 and 468.963. Other ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 18 of ORS.

**468.963 Environmental audit privilege; exceptions; burden of proving privilege; waiver; disclosure after in camera review.** (1) In order to encourage owners and operators of facilities and persons conducting other activities regulated under ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or the federal, regional or local counterpart or extension of such statutes, both to conduct voluntary internal environmental audits of their compliance programs and management systems and to assess and improve compliance with such statutes, an environmental audit privilege is recognized to protect the confidentiality of communications relating to such voluntary

internal environmental audits.

(2) An Environmental Audit Report shall be privileged and shall not be admissible as evidence in any legal action in any civil, criminal or administrative proceeding, except as provided in subsections (3) and (4) of this section.

(3)(a) The privilege described in subsection (2) of this section does not apply to the extent that it is waived expressly or by implication by the owner or operator of a facility or persons conducting an activity that prepared or caused to be prepared the Environmental Audit Report. The release of an Environmental Audit Report by the owner or operator of a facility to any party or to any public body for purposes of negotiating, arranging or facilitating the sale, lease or financing of a property or a facility, or a portion of a property or facility:

(A) Is not a waiver of the privilege; and

(B) Does not create a right for a public body to require the release of an Environmental Audit Report.

(b) In a civil or administrative proceeding, a court of record, after in camera review consistent with the Oregon Rules of Civil Procedure, shall require disclosure of material for which the privilege described in subsection (2) of this section is asserted, if such court determines that:

(A) The privilege is asserted for a fraudulent purpose;

(B) The material is not subject to the privilege; or

(C) Even if subject to the privilege, the material shows evidence of noncompliance with ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or with the federal, regional or local counterpart or extension of such statutes, appropriate efforts to achieve compliance with which were not promptly initiated and pursued with reasonable diligence.

(c) In a criminal proceeding, a court of record, after in camera review as described in subsection (4) of this section, shall require disclosure of material for which the privilege described in subsection (2) of this section is asserted, if the court determines that:

(A) The privilege is asserted for a fraudulent purpose;

(B) The material is not subject to the privilege;

(C) Even if subject to the privilege, the material shows evidence of noncompliance with ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or with the federal, regional or local counterpart or extension of such statutes, appropriate efforts to achieve compliance with which were not promptly initiated and pursued with reasonable diligence; or

(D) The material contains evidence relevant to commission of an offense under ORS 468.922 to 468.956, the district attorney or Attorney General has a compelling need for the information, the information is not otherwise available and the district attorney or Attorney General is unable to obtain the substantial equivalent of the information by any means without incurring unreasonable cost and delay.

(d) A party asserting the environmental audit privilege described in subsection (2) of this section has the burden of proving the privilege, including, if there is evidence of noncompliance with ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or the federal, regional or local counterpart or extension of such statutes, proof that appropriate efforts to achieve compliance were promptly initiated and pursued with reasonable diligence. A party seeking disclosure under subsection (3)(b)(A) of this section has the burden of proving that the privilege is asserted for a fraudulent purpose. A district attorney or the Attorney General seeking disclosure under subsection (3)(c)(D) of this section has the burden of proving the conditions for disclosure set forth in subsection (3)(c)(D) of this section.

(4)(a) A district attorney or the Attorney General, having probable cause to believe an offense has been committed under ORS 468.922 to 468.956 based upon information obtained from a source independent of an Environmental Audit Report, may obtain an Environmental Audit Report for which a privilege is asserted under subsection (2) of this section pursuant to search warrant, criminal subpoena or discovery as allowed by ORS 135.835. The district attorney or Attorney General shall immediately place the report under seal and shall not review or disclose its contents.

(b) Within 30 days of the district attorney's or Attorney General's obtaining an Environmental Audit Report, the owner or operator who prepared or caused to be prepared the report may file with the appropriate court a petition requesting an in camera hearing on whether the Environmental Audit Report or portions thereof are privileged under this section or subject to disclosure. Failure by the owner or operator to file such petition shall waive the privilege.

(c) Upon filing of such petition, the court shall issue an order scheduling an in camera hearing, within 45 days of the filing of the petition, to determine whether the Environmental Audit Report or portions thereof are privileged under this section or subject to disclosure. Such order further shall allow the district attorney or Attorney General to remove the seal from the report to review the report and shall place appropriate limitations on distribution and review of the report to protect against unnecessary disclosure. The district attorney or Attorney General may consult with enforcement agencies regarding the contents of the report as necessary to prepare for the in camera hearing. However,

the information used in preparation for the in camera hearing shall not be used in any investigation or in any proceeding against the defendant, and shall otherwise be kept confidential, unless and until such information is found by the court to be subject to disclosure.

(d) The parties may at any time stipulate to entry of an order directing that specific information contained in an Environmental Audit Report is or is not subject to the privilege provided under subsection (2) of this section.

(e) Upon making a determination under subsection (3)(b) or (c) of this section, the court may compel the disclosure only of those portions of an Environmental Audit Report relevant to issues in dispute in the proceeding.

(5) The privilege described in subsection (2) of this section shall not extend to:

(a) Documents, communications, data, reports or other information required to be collected, developed, maintained, reported or otherwise made available to a regulatory agency pursuant to ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or other federal, state or local law, ordinance, regulation, permit or order;

(b) Information obtained by observation, sampling or monitoring by any regulatory agency; or

(c) Information obtained from a source independent of the environmental audit.

(6) As used in this section:

(a) "Environmental audit" means a voluntary, internal and comprehensive evaluation of one or more facilities or an activity at one or more facilities regulated under ORS 824.050 to 824.110 or ORS chapter 465, 466, 468, 468A, 468B or 825, or the federal, regional or local counterpart or extension of such statutes, or of management systems related to such facility or activity, that is designed to identify and prevent noncompliance and to improve compliance with such statutes. An environmental audit may be conducted by the owner or operator, by the owner's or operator's employees or by independent contractors.

(b) "Environmental Audit Report" means a set of documents, each labeled "Environmental Audit Report: Privileged Document" and prepared as a result of an environmental audit. An Environmental Audit Report may include field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs and surveys, provided such supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An Environmental Audit Report, when completed, may have three components:

(A) An audit report prepared by the auditor, which may include the scope of the audit, the information gained in the audit, conclusions and recommendations, together with exhibits and appendices;

(B) Memoranda and documents analyzing portions or all of the audit report and potentially discussing implementation issues; and

(C) An implementation plan that addresses correcting past noncompliance, improving current compliance and preventing future noncompliance.

(7) Nothing in this section shall limit, waive or abrogate the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege. [1993 c.422 s.20; 1997 c.320 s.1]

**Note:** See note under 468.961.

**468.965** [1985 c.684 s.10; 1989 c.958 s.9; renumbered 468.491 in 1993]

**468.967** [1989 c.1072 s.1; renumbered 459A.775 in 1991]

**468.968** [1989 c.1072 ss.2,3,4; renumbered 459A.780 in 1991]

**468.969** [1989 c.1072 s.5; renumbered 459A.785 in 1991]

**468.970** [1987 c.695 s.1; 1989 c.958 s.9; renumbered 454.430 in 1989]

**468.973** [1987 c.695 s.2; renumbered 454.433 in 1989]

**468.975** [1987 c.695 ss.3,11; renumbered 454.436 in 1989]

**468.977** [1987 c.695 ss.4,5,8; renumbered 454.439 in 1989]

**468.980** [1987 c.695 s.6; renumbered 454.442 in 1989]

**468.983** [1987 c.695 s.7; renumbered 454.445 in 1989]

**468.990** [1973 c.835 s.28; subsection (5) formerly part of 448.990, enacted as 1973 c.835 s.177a; 1989 c.859 s.6; 1991 c.764 s.7; renumbered 468B.990 in 1991]

**468.992** [1973 c.835 s.26; repealed by 1993 c.422 s.35]

**468.995** [1973 c.835 s.27; subsection (6) enacted as 1975 c.366 s.3; 1983 c.338 s.938; 1991 c.920 s.20; renumbered 468A.990 in 1991]

## CIVIL PENALTIES

**468.996 Civil penalty for intentional or reckless violation.** (1) In addition to any other penalty provided by law, any person who intentionally or recklessly violates any provision of ORS 164.785, 459.205 to 459.426, 459.705 to 459.790, ORS chapters 465, 466 or 467 or 468, 468A and 468B or any rule or standard or order of the Environmental Quality Commission adopted or issued pursuant to ORS 459.205 to 459.426, 459.705 to 459.790, ORS chapters 465, 466 or 467 or 468, 468A and 468B, which results in or creates the imminent likelihood for an extreme hazard to the public health or which causes extensive damage to the environment shall incur a civil penalty not to exceed \$100,000. The Environmental Quality Commission shall adopt by rule a schedule and the criteria for determining the amount of a civil penalty that may be imposed for an extreme violation.

(2) As used in this section:

(a) “Intentionally” means conduct by a person with a conscious objective to cause the result of the conduct.

(b) “Recklessly” means conduct by a person who is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care a reasonable person would observe in that situation. [1991 c.650 s.2]

**468.997 Joinder of certain offenses.** Where any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B provides that each day of violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 or a section of ORS chapters 468, 468A and 468B constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or complaint, or information, in several counts. [Formerly 449.992]

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