Chapter 465 — Hazardous Waste and Hazardous Materials I

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REDUCTION OF USE OF TOXIC SUBSTANCES AND HAZARDOUS WASTE GENERATION

BULK PETROLEUM PRODUCT WITHDRAWAL REGULATION

REMOVAL OR REMEDIAL ACTION

(Generally)

REDUCTION OF USE OF TOXIC SUBSTANCES AND HAZARDOUS WASTE GENERATION

465.003 Definitions for ORS 465.003 to 465.034. As used in ORS 465.003 to 465.034:

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

(2) “Conditionally exempt generator” means a generator who generates less than 2.2 pounds of acute hazardous waste as defined by 40 C.F.R. 261, or who generates less than 220 pounds of hazardous waste in one calendar month.

(3) “Department” means the Department of Environmental Quality.

(4) “Director” means the Director of the Department of Environmental Quality.

(5) “Facility” means all buildings, equipment, structures and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person or by any person who controls, is controlled by or under common control with any person.

(6) “Fully regulated generator” means a generator who generates 2.2 pounds or more of acute hazardous waste as defined by 40 C.F.R. 261, or 2,200 pounds or more of hazardous waste in one calendar month.

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

(8) “Hazardous waste” has the meaning given that term in ORS 466.005.

(9) “Large user” means a facility required to report under section 313 of Title III of the Superfund Amendments and

Reauthorization Act of 1986 (P.L. 99-499).

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

(11) “Small-quantity generator” means a generator who generates between 220 and 2,200 pounds of hazardous waste in one calendar month.

(12) “Toxic substance” or “toxics” means any substance in a gaseous, liquid or solid state listed pursuant to Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, or any substance added by the commission under ORS 465.009. “Toxic substance” does not include a substance used as a pesticide or herbicide in routine commercial agricultural applications.

(13)(a) “Toxics use reduction” means in-plant changes in production or other processes or operations, products or raw materials that reduce, avoid or eliminate the use or production of toxic substances without creating substantial new risks to public health, safety and the environment, through the application of any of the following techniques:

(A) Input substitution, which refers to replacing a toxic substance or raw material used in a production or other process or operation with a nontoxic or less toxic substance;

(B) Product reformulation, which refers to substituting for an existing end product, an end product which is nontoxic or less toxic upon use, release or disposal;

(C) Production or other process or operation redesign or modifications;

(D) Production or other process or operation modernization, which refers to upgrading or replacing existing equipment and methods with other equipment and methods;

(E) Improved operation and maintenance controls of production or other process or operation equipment and methods, which refers to modifying or adding to existing equipment or methods including, but not limited to, techniques such as improved housekeeping practices, system adjustments, product and process inspections or production or other process or operation control equipment or methods; or

(F) Recycling, reuse or extended use of toxics by using equipment or methods that become an integral part of the production or other process or operation of concern, including but not limited to filtration and other methods.

(b) “Toxics use reduction” includes proportionate changes in the usage of a particular toxic substance by any of the methods set forth in paragraph (a) of this subsection as the usage of that toxic substance changes as a result of production changes or other business changes.

(14) “Toxics use” means use or production of a toxic substance.

(15) “Toxics user” means a large user, a fully regulated generator or a small-quantity generator.

(16)(a) “Waste reduction” means any recycling or other activity applied after hazardous waste is generated that is consistent with the general goal of reducing present and future threats to public health, safety and the environment and that results in:

(A) The reduction of total volume or quantity of hazardous waste generated that would otherwise be treated, stored or disposed of;

(B) The reduction of toxicity of hazardous waste that would otherwise be treated, stored or disposed of; or

(C) Both the reduction of total volume or quantity and the reduction of toxicity of hazardous waste.

(b) “Waste reduction” includes proportionate changes in the total volume, quantity or toxicity of a particular hazardous waste in accordance with paragraph (a) of this subsection as the generation of that waste changes as a result of production changes or other business changes.

(c) “Waste reduction” may include either on-site or off-site treatment where such treatment can be shown to confer a higher degree of protection of the public health, safety and the environment than other technically and economically practicable waste reduction alternatives. [1989 c.833 §2]

465.006 Policy. (1) In the interest of protecting the public health, safety and the environment, the Legislative Assembly declares that it is the policy of the State of Oregon to encourage reduction in the use of toxic substances and to reduce the generation of hazardous waste whenever technically and economically practicable, without shifting risks from one part of a process, environmental media or product to another. Priority shall be given to methods that reduce the amount of toxics used and, where that is not technically and economically practicable, methods that reduce the generation of hazardous waste.

(2) The Legislative Assembly finds that the best means to achieve the policy set forth in subsection (1) of this section is by:

(a) Providing toxics users and generators with technical assistance;

(b) Requiring toxics users to engage in comprehensive planning and develop measurable performance goals; and

(c) Monitoring the use of toxic substances and the generation of hazardous waste. [1989 c.833 §3]

465.009 Exemption of substance or waste by rule. The Environmental Quality Commission by rule may add or remove any toxic substance or hazardous waste from the provisions of ORS 465.003 to 465.034. [1989 c.833 §4]

465.010 [Amended by 1971 c.743 §371; repealed by 1989 c.846 §15]

465.012 Technical assistance to users and generators; priority; restrictions on enforcement resulting from technical assistance. (1) The Department of Environmental Quality shall provide technical assistance to toxics users and conditionally exempt generators. In identifying the users and generators to which the department shall give priority in providing technical

assistance, the department shall consider at least the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

(c) The toxics related exposures and risks posed to public health, safety and the environment.

(2) In providing technical assistance, the department shall give priority to assisting toxics users and conditionally exempt generators in developing and implementing an adequate toxics use reduction and hazardous waste reduction plan as established under ORS 465.015. The assistance may include but need not be limited to:

(a) Information clearinghouse activities;

(b) Telephone hotline assistance;

(c) Toxics use reduction and hazardous waste reduction training workshops;

(d) Establishing a technical publications library;

(e) The development of a system to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures;

(f) The development of a recognition program to publicly acknowledge toxics users and conditionally exempt generators who develop and implement successful toxics use reduction and hazardous waste reduction plans; and

(g) Direct on-site assistance to toxics users and conditionally exempt generators in developing the plans.

(3) The department shall:

(a) Coordinate its technical assistance efforts with industry trade associations and local colleges and universities as appropriate.

(b) Follow up with toxics users who receive technical assistance to determine whether the user or generator implemented a toxics use reduction and hazardous waste reduction plan.

(c) Coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles.

(4) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The Environmental Quality Commission may develop rules to carry out the intent of this subsection. [1989 c.833 §5; 2001 c.924 §9]

465.015 Guidelines for reduction plans; toxics use reduction and waste reduction opportunities; annual progress reports; modification of plans; exemptions. (1) Not later than September 1, 1990, the Environmental Quality Commission shall establish guidelines for toxics use reduction and hazardous waste reduction plans. At a minimum, the guidelines shall include:

(a) A written policy articulating upper management and corporate support for the toxics use reduction and hazardous waste reduction plan and a commitment to implement plan goals.

(b) Plan scope and objectives, including the evaluation of technologies, procedures and personnel training programs to insure unnecessary toxic substances are not used and unnecessary waste is not generated. Specific reduction goals are not required but may be used as a tool for implementing a reduction plan.

(c) Internal analysis of toxic substance usage and hazardous waste streams, with periodic toxics use reduction and hazardous waste reduction assessments, to review individual processes or facilities and other activities where toxic substances are used and waste may be generated and identify opportunities to reduce or eliminate toxic substance usage and waste generation. Such assessments shall evaluate data on the types, amount and hazardous constituents of toxic substances used and waste generated, where and why those toxics were used and waste was generated within the production process or other operations, and potential toxics use reduction and hazardous waste reduction and recycling techniques applicable to those toxic substances and wastes.

(d) Employee awareness and training programs, to involve employees in toxics use reduction and hazardous waste reduction planning and implementation to the maximum extent feasible.

(e) Institutionalization of the plan to insure an ongoing effort as demonstrated by incorporation of the plan into management practices and procedures.

(f) Implementation of technically and economically practicable toxics use reduction and hazardous waste reduction options, including a plan for implementation. This shall include a description of options considered and an explanation of why options considered were not implemented. The plan shall distinguish between toxics use reduction options and waste reduction options, and the analysis of options considered shall demonstrate that toxics use reduction options were given priority wherever technically and economically practicable.

(2) A toxics user may identify and incorporate into the user’s plan and decision making process, the costs associated with the use of toxic chemicals and the generation of hazardous waste including management costs, liability, compliance and oversight costs.

(3) As part of each plan developed under ORS 465.018, a toxics user shall evaluate toxics use reduction and hazardous waste reduction opportunities in the following categories:

(a) Any toxic substance used in quantities in excess of 10,000 pounds a year;

(b) Any toxic substance used in quantities in excess of 1,000 pounds a year that constitutes 10 percent or more of the total toxic substances used; and

(c) For fully regulated generators, any waste representing 10 percent or more by weight of the cumulative waste stream generated per year.

(4) Each toxics user shall explain the rationale for each toxics use reduction and waste reduction opportunity. This rationale shall address any impediments to toxics use reduction and hazardous waste reduction, including but not limited to the following:

(a) The availability of technically practicable toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future.

(b) The economic practicability of available toxics use reduction and hazardous waste reduction methods, including any anticipated changes in the future. Examples of situations where toxics use reduction or hazardous waste reduction may not be economically practicable include but are not limited to:

(A) For valid reasons of prioritization, a particular company has chosen to first address other more serious toxics use reduction or hazardous waste reduction concerns;

(B) Necessary steps to reduce toxics use and hazardous waste are likely to have significant adverse impacts on product quality; or

(C) Legal or contractual obligations interfere with the necessary steps that would lead to toxics use reduction or hazardous waste reduction.

(5) All large users and large quantity generators shall complete annually a toxics use reduction and hazardous waste reduction progress report.

(6) An annual progress report shall:

(a) Analyze progress made, if any, in toxics use reduction and hazardous waste reduction; and

(b) Set forth amendments to the toxics use reduction and hazardous waste reduction plan and explain the need for the amendments.

(7) The commission by rule may provide for modifications for small-quantity generators related to the kind of information to be included in the plan.

(8) The commission shall specify by rule the criteria a toxics user or a large user shall meet to achieve and maintain an exemption from the requirements of subsections (1) to (6) of this section. The rule shall allow an exemption under the following circumstances:

(a) A toxics user has instituted an environmental management system that at a minimum complies with the intent of ORS 465.006; or

(b) A large user has:

(A) Implemented all technically and economically feasible toxics use reduction and waste reduction opportunities;

(B) Determined that further reductions could only be accomplished by producing less of the user’s product; and

(C) Developed and implemented an education program approved by the Department of Environmental Quality, designed to increase consumer demand for less toxic or nontoxic products.

(9) To maintain an exemption under subsection (8) of this section, the toxics user or large user shall comply with the requirements of subsection (10) of this section.

(10) The commission by rule shall determine the reporting requirements for users exempted under subsection (8) of this section. At a minimum, these requirements shall provide for obtaining toxics use data equivalent to that reported under ORS 465.024. [1989 c.833 §7; 1997 c.384 §1]

465.018 Time limitation for completion of plan; plan not public record; inspection of plan. (1) All large users and fully regulated generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1991, and all small-quantity generators shall complete a toxics use reduction and hazardous waste reduction plan on or before September 1, 1992. Upon completion of a plan, the user shall notify the Department of Environmental Quality in writing on a form supplied by the department.

(2) A facility required to complete a toxics use reduction and hazardous waste reduction plan under subsection (1) of this section may include as a preface to its initial plan:

(a) An explanation and documentation regarding toxics use reduction and hazardous waste reduction efforts completed or in progress before the first reporting date; and

(b) An explanation and documentation regarding impediments to toxics use reduction and hazardous waste reduction specific to the individual facility.

(3) The department shall consider information provided under subsection (2) of this section in any review of a facility plan under ORS 465.021.

(4) Except as provided in ORS 465.021, a toxics use reduction and hazardous waste reduction plan developed under this section shall be retained at the facility and is not a public record under ORS 192.410.

(5) For the purposes of this section and ORS 465.012 and 465.021, a toxics user shall permit the Director of the Department of Environmental Quality or any designated employee of the director to inspect the toxics use reduction and hazardous waste reduction plan.

(6) A facility shall determine whether it is required to complete a plan under subsection (1) of this section based on whether its toxics use or waste generation results in the facility meeting the definition of toxics user as defined in ORS 465.003 for the calendar year ending December 31 of the year immediately preceding the September 1 reporting deadline. [1989 c.833 §8]

465.020 [Amended by 1979 c.284 §151; repealed by 1989 c.846 §15]

465.021 Review of plans; determination of inadequacies; revised plan or progress report; log of inadequacy findings; public inspection of log. (1) The Department of Environmental Quality may review a plan or an annual progress report to determine whether the plan or progress report is adequate according to the guidelines established under ORS 465.015. If a toxics user fails to complete an adequate plan or annual progress report as required under ORS 465.015 and 465.018, the department may notify the user of the inadequacy, identifying the specific deficiencies. The department also may specify a reasonable time frame, of not less than 90 days, within which the user shall submit a modified plan or progress report addressing the specified deficiencies. The department also may make technical assistance available to aid the user in modifying its plan or progress report.

(2) If the department determines that a modified plan or progress report submitted pursuant to subsection (1) of this section is inadequate, the department may, within its discretion, either require further modification or issue an administrative order pursuant to subsection (3) of this section.

(3) If after having received a list of specified deficiencies from the department, a toxics user fails to develop an adequate plan or progress report within a time frame specified pursuant to subsection (1) or (2) of this section, the department may order such toxics user to submit an adequate plan or progress report within a reasonable time frame of not less than 90 days. If the toxics user fails to develop an adequate plan or progress report within the time frame specified, the department shall conduct a public hearing on the plan or progress report. Except as provided under ORS 465.031, in any hearing under this section the relevant plan or progress report shall be considered a public record as defined in ORS 192.410.

(4) In reviewing the adequacy of any plan or progress report, the department shall base its determination solely on whether the plan or progress report is complete and prepared in accordance with ORS 465.015.

(5) The department shall maintain a log of each plan or progress report it reviews, a list of all plans or progress reports that have been found inadequate under subsection (3) of this section and descriptions of corrective actions taken. This information shall be available to the public at the department's office. [1989 c.833 §9]

465.024 Report of quantities of toxics generated; narrative summary; inspection of progress report. (1) From each annual progress report, the toxics user shall report to the Department of Environmental Quality the quantities of toxics used that are within the categories set forth in ORS 465.015 (3).

(2) From each annual progress report, the toxics user shall report to the department the quantities of hazardous wastes generated that are within the categories set forth in ORS 465.015 (3).

(3) The report shall include a narrative summary explaining the data. The narrative summary may include:

(a) A description of progress made in reducing the use of the toxic substance or generation of hazardous waste; and

(b) A description of any impediments to reducing the use of the toxic substance or generation of hazardous waste.

(4) The Environmental Quality Commission, by rule, shall develop uniform reporting requirements for the data required under subsections (1) and (2) of this section.

(5) Except for the information reported to the department under this section, the annual progress report shall be retained at the facility and shall not be considered a public record under ORS 192.410. However, the user shall permit any officer, employee or representative of the department at all reasonable times to have access to the annual progress report. [1989 c.833 §10; 1997 c.384 §2]

465.027 Contract for assistance with higher education institution. Subject to available funding, the Department of Environmental Quality shall contract with an established institution of higher education to assist the department in carrying out the provisions of ORS 465.003 to 465.034. The assistance shall emphasize strategies to encourage toxics use reduction and hazardous waste reduction and shall provide assistance to facilities under ORS 465.003 to 465.034. The assistance may include but need not be limited to:

(1) Engineering internships;

(2) Engineering curriculum development;

(3) Applied toxics use reduction and hazardous waste reduction research; and

(4) Engineering assistance to users and generators. [1989 c.833 §12]

465.030 [Repealed by 1989 c.846 §15]

465.031 Classification of plan or progress report as confidential; trade secrets; restricted use of confidential information. (1) Upon a showing satisfactory to the Director of the Department of Environmental Quality by any person that a plan or annual progress report developed under ORS 465.015 or 465.018, or any portion thereof, if made public, would divulge methods, processes or other information entitled to protection as trade secrets, as defined under ORS 192.501, of such person, the director shall classify as confidential such plan or annual progress report, or portion thereof.

(2) To the extent that any plan or annual progress report under subsection (1) of this section, or any portion thereof, would otherwise qualify as a trade secret under ORS 192.501, no action taken by the director or any authorized employee of the department in inspecting or reviewing such information shall affect its status as a trade secret.

(3) Any information classified by the director as confidential under subsection (1) of this section shall not be made a part of any public record, used in any public hearing or disclosed to any party outside of the department unless a circuit court determines that evidence is necessary to the determination of an issue or issues being decided at the public hearing. [1989 c.833 §14]

465.034 Application of ORS 465.003 to 465.031. Notwithstanding any other provision of ORS 465.003 to 465.031, nothing in chapter 833, Oregon Laws 1989, shall be considered to apply to any hazardous wastes that become subject to regulation solely as a result of remedial activities taken in response to environmental contamination. [1989 c.833 §16]

Note: Legislative Counsel has substituted "chapter 833, Oregon Laws 1989," for the words "this Act" in section 16, chapter 833, Oregon Laws 1989, compiled as 465.034. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1989 Comparative Section Table located in Volume 18 of ORS.

465.037 Short title. ORS 465.003 to 465.034 shall be known as the Toxics Use Reduction and Hazardous Waste Reduction Act. [1989 c.833 §1]

465.040 [Amended by 1971 c.743 §372; repealed by 1989 c.846 §15]

465.050 [Amended by 1971 c.743 §373; repealed by 1989 c.846 §15]

465.060 [Repealed by 1989 c.846 §15]

465.070 [1989 Repealed by 1989 c.846 §15]

465.090 [Amended by 1971 c.743 §374; repealed by 1989 c.846 §15]

465.100 [1977 c.850 §2; 1985 c.728 §83; 1987 c.914 §26; renumbered 464.430 in 1987]

BULK PETROLEUM PRODUCT WITHDRAWAL REGULATION

465.101 Definitions for ORS 465.101 to 465.131. As used in ORS 465.101 to 465.131:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from which petroleum products are withdrawn from bulk and delivered into a cargo tank or barge used to transport those products.

(2) "Cargo tank" means an assembly used for transporting, hauling or delivering petroleum products and consisting of a tank having one or more compartments mounted on a wagon, truck, trailer, truck-trailer, railcar or wheels. "Cargo tank" does not include any assembly used for transporting, hauling or delivering petroleum products that holds less than 100 gallons in individual, separable containers.

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

(4) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state or any interstate body, any commercial entity and the federal government or any agency of the federal government.

(5) "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil and number 1 and number 2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing or fuel sold to vessels engaged in interstate or foreign commerce.

(6) "Withdrawal from bulk" means the removal of a petroleum product from a bulk facility for delivery directly into a cargo tank or a barge to be transported to another location other than another bulk facility for use or sale in this state. [1989 c.833 §139]

465.104 Fees for petroleum product delivery or withdrawals; exceptions; registration of facility operators. (1) Beginning September 1, 1989, the seller of a petroleum product withdrawn from a bulk facility, on withdrawal from bulk of the petroleum product, shall collect from the person who orders the withdrawal a petroleum products withdrawal delivery fee in the maximum amount of $10.

(2) Beginning September 1, 1989, any person who imports petroleum products in a cargo tank or a barge for delivery into a storage tank, other than a tank connected to a bulk facility, shall pay a petroleum products import delivery fee in the maximum amount of $10 to the Department of Revenue for each such delivery of petroleum products into a storage tank located in the state.

(3) Subsections (1) and (2) of this section do not apply to a delivery or import of petroleum products destined for export from this state if the petroleum products are in continuous movement to a destination outside the state.

(4) The seller of petroleum products withdrawn from a bulk facility and each person importing petroleum products shall remit the first payment on October 1, 1989. Beginning January 1, 1990, payment of the fee due shall be on a quarterly basis.

(5) Each operator of a bulk facility and each person who imports petroleum products shall register with the Department of Revenue by August 1, 1989, or 30 days prior to operating a bulk facility or importing a cargo tank of petroleum products, whichever comes first. [1989 c.833 §140]

465.106 Amount of fee to be set by State Fire Marshal. The State Fire Marshal shall establish by rule the amount of the fee required under ORS 465.104 necessary to provide funding for the state's oil, hazardous material and hazardous substance emergency response program, as described in ORS 465.127. [1993 c.707 §3]

465.110 [Amended by 1953 c.540 §5; 1967 c.470 §62; 1969 c.684 §16; 1983 c.470 §6; repealed by 1989 c.846 §15]

465.111 Department of Revenue to collect fee; exemption from fee of protected petroleum products. (1) The Department of Revenue shall collect the fee imposed under ORS 465.104.

(2) Any petroleum product which the Constitution or laws of the United States prohibit the state from taxing is exempt from the fee imposed under ORS 465.104. [1989 c.833 §142]

465.114 Extension of time for paying fee; interest on extended payment. The Department of Revenue for good cause may extend, for not to exceed one month, the time for payment of the fee due under ORS 465.101 to 465.131. The extension may be granted at any time if a written request is filed with the department within or prior to the period for which the extension may be granted. If the time for payment is extended at the request of a person, interest at the rate established under ORS 305.220, for each month, or fraction of a month, from the time the payment was originally due to the time payment is actually made, shall be added and paid. [1989 c.833 §143]

465.117 Records of petroleum products transactions; inspection by Department of Revenue. (1) Each operator of a bulk facility and each person who imports petroleum products into this state shall keep at the person's registered place of business complete and accurate records of any petroleum products sold, purchased by or brought in or caused to be brought in to the place of business.

(2) The Department of Revenue, upon oral or written reasonable notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as it may deem necessary in carrying out the provisions of ORS 465.101 to 465.131. [1989 c.833 §144]

465.120 [Amended by 1979 c.284 §152; repealed by 1989 c.846 §15]

465.121 Rules. The Department of Revenue is authorized to establish those rules and procedures for the implementation and enforcement of ORS 465.101 to 465.131 that are consistent with its provisions and are considered necessary and appropriate. [1989 c.833 §145]

465.124 Application of ORS chapters 305 and 314 to fee collection. The provisions of ORS chapters 305 and 314 as to liens, delinquencies, claims for refund, issuance of refunds, conferences, appeals to the Oregon Tax Court, stay of collection pending appeal, cancellation, waiver, reduction or compromise of fees, penalties or interest, subpoenaing and examining witnesses and books and papers, and the issuance of warrants and the procedures relating thereto, shall apply to the collection of fees, penalties and interest by the Department of Revenue under ORS 465.101 to 465.131, except where the context requires otherwise. [1989 c.833 §146; 1995 c.650 §61]

465.127 Disposition of fees; administrative expenses; other uses. All moneys received by the Department of Revenue under ORS 465.101 to 465.131 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administration expenses incurred by the department in the administration of ORS 465.101 to 465.131 and of refunds or credits arising from erroneous overpayments, the balance of the money shall be credited to the appropriate accounts as approved by the Legislative Assembly to carry out the state's oil, hazardous material and hazardous substance emergency response program as it relates to the maintenance, operation and use of the public highways, roads, streets and roadside rest areas in this state as allowed by section 3a, Article IX of the Oregon Constitution. [1989 c.833 §147; 1989 c.935 §4; 1993 c.707 §1]

465.130 [Repealed by 1989 c.846 §15]

465.131 Fee imposed by ORS 465.104 in addition to fees established by local government. The fee imposed by ORS 465.104 is in addition to all other state, county or municipal fees on a petroleum product. [1989 c.833 §148]

465.140 [Amended by 1989 c.846 §12; renumbered 105.570 in 1989]

465.150 [Amended by 1953 c.540 §5; repealed by 1989 c.846 §15]

465.155 [1953 c.540 §4; repealed by 1989 c.846 §15]

465.160 [Repealed by 1989 c.846 §15]

465.170 [Repealed by 1989 c.846 §15]

465.180 [Repealed by 1989 c.846 §15]

REMOVAL OR REMEDIAL ACTION

(Generally)

465.200 Definitions for ORS 465.200 to 465.510. As used in ORS 465.200 to 465.510 and 465.900:

(1) "Claim" means a demand in writing for a sum certain.

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

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

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

(5) "Dry Cleaner Environmental Response Account" means the account created under ORS 465.510.

(6) "Dry cleaning facility" means any active or inactive facility located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than a:

(a) Facility located on a United States military base;

(b) Uniform service or linen supply facility;

(c) Prison or other penal institution; or

(d) Facility engaged in dry cleaning operations only as a dry store and selling less than $50,000 per year of dry cleaning services.

(7) "Dry cleaning operator" means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of. If a dry cleaning facility is operated without a business license, both the dry cleaning owner and any person directing the operations shall be considered the dry cleaning operator and shall be jointly and severally liable for the fees and duties imposed on dry cleaning operators.

(8) "Dry cleaning owner" means a person who owns or owned the real property underlying a dry cleaning facility.

(9) "Dry cleaning solvent" means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade.

(10) "Dry store" means a facility that does not include machinery using dry cleaning solvents, including but not limited to a pickup store, dropoff store, call station, agency for dry cleaning, press shop, and pickup and delivery service not otherwise operated by a dry cleaning facility.

(11) "Environment" includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(12) "Facility" means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(13) "Fund" means the Hazardous Substance Remedial Action Fund established by ORS 465.381.

(14) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 465.200 to 465.510 and 465.900.

(15) "Hazardous substance" means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 465.400.

(16) "Inactive dry cleaning facility" means property formerly used, but not currently used, for providing dry cleaning services.

(17) "Natural resources" includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(18) "Oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds

per square inch absolute.

(19) “Owner or operator” means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. “Owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(20) “Person” means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government including any agency thereof.

(21) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person’s employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

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

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(23) “Remedial action costs” means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(24) “Removal” means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, that may otherwise result from a release or threat of release. “Removal” also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

(25) “Retail sale or transfer” means a transfer of title or possession, exchange or barter, conditional or otherwise, for a purpose other than resale in the ordinary course of business.

(26) “Transport” means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, the term “transport” shall include any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(27) “Underground storage tank” has the meaning given that term in ORS 466.706.

(28) “Waters of the state” has the meaning given that term in ORS 468B.005. [Formerly 466.540; 1995 c.427 §1]

Note: The amendments to 465.200 by section 19, chapter 495, Oregon Laws 2001, become operative January 1, 2006. See section 21, chapter 495, Oregon Laws 2001. The text that is operative on and after January 1, 2006, is set forth for the user’s convenience.

465.200. As used in ORS 465.200 to 465.510 and 465.900:

(1) “Claim” means a demand in writing for a sum certain.

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

(3) “Department” means the Department of Environmental Quality.

(4) “Director” means the Director of the Department of Environmental Quality.

(5) “Dry cleaning facility” means any active or inactive facility located in this state that is or was engaged in dry cleaning apparel and household fabrics for the general public, and dry stores, other than a:

(a) Facility located on a United States military base;

(b) Uniform service or linen supply facility;

(c) Prison or other penal institution; or

(d) Facility engaged in dry cleaning operations only as a dry store and selling less than $50,000 per year of dry cleaning services.

(6) “Dry cleaning operator” means a person who has, or had, a business license to operate a dry cleaning facility or a business operation that a dry cleaning facility is a part of. If a dry cleaning facility is operated without a business license, both the dry cleaning owner and any person directing the operations shall be considered the dry cleaning operator and shall be jointly and severally liable for the fees and duties imposed on dry cleaning operators.

(7) “Dry cleaning owner” means a person who owns or owned the real property underlying a dry cleaning facility.

(8) “Dry cleaning solvent” means any nonaqueous solvent for use in the cleaning of garments or other fabrics at a dry cleaning facility, including but not limited to perchloroethylene and petroleum based solvents and the products into which dry cleaning solvents degrade.

(9) “Dry store” means a facility that does not include machinery using dry cleaning solvents, including but not limited to a pickup store, dropoff store, call station, agency for dry cleaning, press shop, and pickup and delivery service not otherwise operated by a dry cleaning facility.

(10) “Environment” includes the waters of the state, any drinking water supply, any land surface and subsurface strata and ambient air.

(11) “Facility” means any building, structure, installation, equipment, pipe or pipeline including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, above ground tank, underground storage tank, motor vehicle, rolling stock, aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

(12) “Fund” means the Hazardous Substance Remedial Action Fund established by ORS 465.381.

(13) “Guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under ORS 465.200 to 465.510 and 465.900.

(14) “Hazardous substance” means:

(a) Hazardous waste as defined in ORS 466.005.

(b) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499.

(c) Oil.

(d) Any substance designated by the commission under ORS 465.400.

(15) “Inactive dry cleaning facility” means property formerly used, but not currently used, for providing dry cleaning services.

(16) “Natural resources” includes but is not limited to land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies and any other resource owned, managed, held in trust or otherwise controlled by the State of Oregon or a political subdivision of the state.

(17) “Oil” includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse and any other petroleum-related product, or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

(18) “Owner or operator” means any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. “Owner or operator” does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

(19) “Person” means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the federal government including any agency thereof.

(20) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

(a) Any release that results in exposure to a person solely within a workplace, with respect to a claim that the person may assert against the person’s employer under ORS chapter 656;

(b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

(c) Any release of source, by-product or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of ORS 465.260 or any other removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and

(d) The normal application of fertilizer.

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

(a) Such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative drinking and household water supplies, and any monitoring reasonably required to assure that the actions protect the public health, safety, welfare and the environment.

(b) Offsite transport and offsite storage, treatment, destruction or secure disposition of hazardous substances and associated, contaminated materials.

(c) Such actions as may be necessary to monitor, assess, evaluate or investigate a release or threat of release.

(22) “Remedial action costs” means reasonable costs which are attributable to or associated with a removal or remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(23) “Removal” means the cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary taken in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety, welfare or to the environment, that may otherwise result from a release or threat of release. “Removal” also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

(24) “Retail sale or transfer” means a transfer of title or possession, exchange or barter, conditional or otherwise, for a purpose other than resale in the ordinary course of business.

(25) “Transport” means the movement of a hazardous substance by any mode, including pipeline and in the case of a hazardous substance that has been accepted for transportation by a common or contract carrier, the term “transport” shall include any stoppage in transit that is temporary, incidental to the transportation movement, and at the ordinary operating convenience of a common or contract carrier, and any such stoppage shall be considered as a continuity of movement and not as the storage of a hazardous substance.

(26) “Underground storage tank” has the meaning given that term in ORS 466.706.

(27) “Waters of the state” has the meaning given that term in ORS 468B.005.

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

(a) The release of a hazardous substance into the environment may present an imminent and substantial threat to the public health, safety, welfare and the environment; and

(b) The threats posed by the release of a hazardous substance can be minimized by prompt identification of facilities and implementation of removal or remedial action.

(2) Therefore, the Legislative Assembly declares that:

(a) It is in the interest of the public health, safety, welfare and the environment to provide the means to minimize the hazards of and damages from facilities.

(b) It is the purpose of ORS 465.200 to 465.510 and 465.900 to:

(A) Protect the public health, safety, welfare and the environment; and

(B) Provide sufficient and reliable funding for the Department of Environmental Quality to expediently and effectively authorize, require or undertake removal or remedial action to abate hazards to the public health, safety, welfare and the environment. [Formerly 466.547]

465.210 Authority of department for removal or remedial action. (1) In addition to any other authority granted by law, the Department of Environmental Quality may:

(a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal or remedial action and to carry out the provisions of ORS 465.200 to 465.510 and 465.900; and

(b) Recover the state’s remedial action costs.

(2) The Environmental Quality Commission and the department may participate in or conduct activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L. 96-510 and P.L. 99-499, and the corrective action provisions of Subtitle I of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616. Such participation may include, but need not be limited to, entering into a cooperative agreement with the United States Environmental Protection Agency.

(3) Nothing in ORS 465.200 to 465.510 and 465.900 shall restrict the State of Oregon from participating in or conducting activities pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, P.L.

96-510 and P.L. 99-499. [Formerly 466.550]

465.215 List of facilities with confirmed release. (1) For the purposes of providing public information, the Director of the Department of Environmental Quality shall develop and maintain a list of all facilities with a confirmed release as defined by the Environmental Quality Commission under ORS 465.405.

(2) The director shall make the list available for the public at the offices of the Department of Environmental Quality.

(3) The list shall include but need not be limited to the following items, if known:

(a) A general description of the facility;

(b) Address or location;

(c) Time period during which a release occurred;

(d) Name of the current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(e) Type and quantity of a hazardous substance released at the facility;

(f) Manner of release of the hazardous substance;

(g) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(h) Status of removal or remedial actions at the facility; and

(i) Other items the director determines necessary.

(4) At least 60 days before a facility is added to the list the director shall notify by certified mail or personal service the owner and operator, if known, of all or any part of the facility that is to be included in the list. The notice shall inform the owner and operator that the owner and operator may comment on the decision of the director to add the facility to the list within 45 days of receiving the notice. The decision of the director to add a facility to the list is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550. [Formerly 466.557]

465.220 Comprehensive statewide identification program; notice. (1) The Department of Environmental Quality shall develop and implement a comprehensive statewide program to identify any release or threat of release from a facility that may require remedial action.

(2) The department shall notify all daily and weekly newspapers of general circulation in the state and all broadcast media of the program developed under subsection (1) of this section. The notice shall include information about how the public may provide information on a release or threat of release from a facility.

(3) In developing the program under subsection (1) of this section, the department shall examine, at a minimum, any industrial or commercial activity that historically has been a major source in this state of releases of hazardous substances.

(4) The department shall include information about the implementation and progress of the program developed under subsection (1) of this section in the report required under ORS 465.235. [Formerly 466.560]

465.225 Inventory of facilities needing environmental controls; preliminary assessment; notice to operator; criteria for adding facilities to inventory. (1) For the purpose of providing public information, the Director of the Department of Environmental Quality shall develop and maintain an inventory of all facilities for which:

(a) A confirmed release is documented by the department; and

(b) The director determines that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment.

(2) The determination that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed under subsection (1) of this section shall be based upon a preliminary assessment approved or conducted by the department.

(3) Before the department conducts a preliminary assessment, the director shall notify the owner and operator, if known, that the department is proceeding with a preliminary assessment and that the owner or operator may submit information to the department that would assist the department in conducting a complete and accurate preliminary assessment.

(4) At least 60 days before the director adds a facility to the inventory, the director shall notify by certified mail or personal service the owner and operator, if known, of all or any part of the facility that is to be included in the inventory. The decision of the director to add a facility to the inventory is not appealable to the Environmental Quality Commission or subject to judicial review under ORS 183.310 to 183.550.

(5) The notice provided under subsection (4) of this section shall include the preliminary assessment and shall inform the owner or operator that the owner or operator may comment on the information contained in the preliminary assessment within 45 days after receiving the notice. For good cause shown, the department may grant an extension of time to comment. The extension shall not exceed 45 additional days.

(6) The director shall consider relevant and appropriate information submitted by the owner or operator in making the final decision about whether to add a facility to the inventory.

(7) The director shall review the information submitted and add the facility to inventory if the director determines that a confirmed release has occurred and that additional investigation, removal, remedial action, long-term environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare or the environment. [1989 c.485 §3]

465.230 Removal of facilities from inventory; criteria. (1) According to rules adopted by the Environmental Quality Commission, the Director of the Department of Environmental Quality shall remove a facility from the list or inventory, or both, if the director determines:

(a) Actions taken at the facility have attained a degree of cleanup and control of further release that assures protection of present and future public health, safety, welfare and the environment;

(b) No further action is needed to assure protection of present and future public health, safety, welfare and the environment; or

(c) The facility satisfies other appropriate criteria for assuring protection of present and future public health, safety, welfare and the environment.

(2) The director shall not remove a facility if continuing environmental controls or institutional controls are needed to assure protection of present and future public health, safety, welfare and the environment, so long as such controls are related to removal or remedial action. [1989 c.485 §4]

465.235 Public inspection of inventory; information included in inventory; organization; report; action plan. (1) The Director of the Department of Environmental Quality shall make the inventory available to the public at the office of the Department of Environmental Quality.

(2) The inventory shall include but need not be limited to:

(a) The following information, if known:

(A) A general description of the facility;

(B) Address or location;

(C) Time period during which a release occurred;

(D) Name of current owner and operator and names of any past owners and operators during the time period of a release of a hazardous substance;

(E) Type and quantity of a hazardous substance released at the facility;

(F) Manner of release of the hazardous substance;

(G) Levels of a hazardous substance, if any, in ground water, surface water, air and soils at the facility;

(H) Hazard ranking and narrative information regarding threats to the environment and public health;

(I) Status of removal or remedial actions at the facility; and

(J) Other items the director determines necessary; and

(b) Information that indicates whether the remedial action at the facility will be funded primarily by:

(A) The department through the use of moneys in the Hazardous Substance Remedial Action Fund;

(B) An owner or operator or other person under an agreement, order or consent decree under ORS 465.200 to 465.510; or

(C) An owner or operator or other person under other state or federal authority.

(3) The department may organize the inventory into categories of facilities, including but not limited to the types of facilities listed in subsection (2) of this section.

(4) On or before January 15 of each year, the department shall submit the inventory and a report to the Governor, the Legislative Assembly and the Environmental Quality Commission. The annual report shall include a quantitative and narrative summary of the department's accomplishments during the previous fiscal year and the department's goals for the current fiscal year, including but not limited to each of the following areas:

(a) Facilities with a suspected release added to the department's database;

(b) Facilities with a confirmed release added to the department's list;

(c) Facilities added to and removed from the inventory;

(d) Removals initiated and completed;

(e) Preliminary assessments initiated and completed;

(f) Remedial investigations initiated and completed;

(g) Feasibility studies initiated and completed; and

(h) Remedial actions, including long-term environmental controls and institutional controls, initiated and completed.

(5) Beginning in 1991, and every fourth year thereafter, the report required under subsection (4) of this section shall include a four-year plan of action for those items under subsection (4)(e) to (h) of this section. The four-year plan shall include projections of funding and staffing levels necessary to implement the four-year plan. [1989 c.485 §5]

465.240 Inventory listing not prerequisite to other remedial action. Nothing in ORS 465.225 to 465.240, 465.405 and 465.410 or placement of a facility on the list under ORS 465.215 shall be construed to be a prerequisite to or otherwise affect the authority of the Director of the Department of Environmental Quality to undertake, order or authorize a removal or remedial action under ORS 465.200 to 465.510 and 465.900. [1989 c.485 §6]

465.245 Preliminary assessment of potential facility. When the Department of Environmental Quality receives information about a release or a threat of release from a potential facility, the department shall evaluate the information and document its conclusions and may approve or conduct a preliminary assessment. However, if the department determines there is a significant threat to present or future public health, safety, welfare or the environment, the department shall approve or conduct a preliminary assessment according to rules of the Environmental Quality Commission. The preliminary assessment

shall be conducted as expeditiously as possible within the budgetary constraints of the department. [Formerly 466.563]

465.250 Accessibility of information about hazardous substances; entering property or facility; confidentiality. (1) Any person who has or may have information, documents or records relevant to the identification, nature and volume of a hazardous substance generated, treated, stored, transported to, disposed of or released at a facility and the dates thereof, or to the identity or financial resources of a potentially responsible person, shall, upon request by the Department of Environmental Quality or its authorized representative, disclose or make available for inspection and copying such information, documents or records.

(2) Upon reasonable basis to believe that there may be a release of a hazardous substance at or upon any property or facility, the department or its authorized representative may enter any property or facility at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out removal or remedial action or any other action authorized by ORS 465.200 to 465.510 and 465.900.

(3) If any person refuses to provide information, documents, records or to allow entry under subsections (1) and (2) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry.

(4)(a) Except as provided in paragraphs (b) and (c) of this subsection, the department or its authorized representative shall, upon request by the current owner or operator of the facility or property, provide a portion of any sample obtained from the property or facility to the owner or operator.

(b) The department may decline to give a portion of any sample to the owner or operator if, in the judgment of the department or its authorized representative, apportioning a sample:

(A) May alter the physical or chemical properties of the sample such that the portion of the sample retained by the department would not be representative of the material sampled; or

(B) Would not provide adequate volume to perform the laboratory analysis.

(c) Nothing in this subsection shall prevent or unreasonably hinder or delay the department or its authorized representative in obtaining a sample at any facility or property.

(5) Persons subject to the requirements of this section may make a claim of confidentiality regarding any information, documents or records, in accordance with ORS 466.090. [Formerly 466.565]

465.255 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions. (1) The following persons shall be strictly liable for those remedial action costs incurred by the state or any other person that are attributable to or associated with a facility and for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in the release.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or removal or remedial action at a facility.

(2) Except as provided in subsection (1)(c) to (e) of this section and subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a release, and who did not know and reasonably should not have known of the release when the person first became the owner or operator.

(b) Any owner or operator if the release at the facility was caused solely by one or a combination of the following:

(A) An act of God. “Act of God” means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, “contractual relationship” includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section, the following persons shall not be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, or for damages for injury to or destruction of any natural resources caused by a release:

(a) A unit of state or local government that acquired ownership or control of a facility in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a facility by inheritance or bequest.

(c) Any fiduciary exempted from liability in accordance with rules adopted by the Environmental Quality Commission under ORS 465.440.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the release and then failed to promptly notify the Department of Environmental Quality and exercise due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under ORS 465.200 to 465.510 and 465.900.

(c) Nothing in ORS 465.200 to 465.510 and 465.900 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover remedial action costs or to seek any other relief related to a release.

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 465.200 to 465.510 and 465.900 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted under ORS 465.400 or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any release of a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under ORS 465.200 to 465.510 and 465.900 for costs or damages as a result of actions taken in response to an emergency created by the release of a hazardous substance generated by or from a facility owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, willful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [Formerly 466.567; 1991 c.680 §9; 1991 c.692 §1]

465.257 Right of contribution from other person liable for remedial action costs; allocation of orphan share. (1) Any person who is liable or potentially liable under ORS 465.255 may seek contribution from any other person who is liable or potentially liable under ORS 465.255. When such a claim for contribution is at trial and the court determines that apportionment of recoverable costs among the liable parties is appropriate, the share of the remedial action costs that is to be borne by each party shall be determined by the court, using such equitable factors as the court deems appropriate, including but not limited to the following:

(a) The amount of hazardous substances contributed to the facility;

(b) The degree of toxicity or hazard posed by the hazardous substances to public health, safety and welfare, and to the environment;

(c) The degree of involvement in the release of the hazardous substance by the liable persons;

(d) The relative culpability or negligence of the liable persons;

(e) The degree of cooperation by the liable persons with the government or with persons who have a financial interest in the facility;

(f) The extent of the participation by the liable person in response actions at the facility;

(g) The length of time the facility was owned or operated by the liable person during the time the release occurred;

(h) Whether the acts or omissions that resulted in a release were in material compliance with applicable laws, standards, regulations, licenses or permits;

(i) The economic benefit derived from the facility or from the acts or omissions that resulted in a release;

(j) The circumstances and conditions involved in the facility's conveyance, including the price paid and any discounts

granted; and

(k) The quality of evidence concerning liability and equitable shares.

(2) At the time of trial, if a person who is otherwise liable under ORS 465.255 is no longer subject to a judgment due to bankruptcy, dissolution or death (an orphan share), the court may, in its discretion, allocate that person's equitable share to the other liable persons in proportion to their equitable shares or on any other equitable basis taking into consideration any relationship between the orphan share's liable person and each other liable person. [1995 c.662 §5]

Note: 465.257 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 465 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

465.260 Removal or remedial action; reimbursement of costs; liability; damages. (1) The Director of the Department of Environmental Quality may undertake any removal or remedial action necessary to protect the public health, safety, welfare and the environment.

(2) The director may authorize any person to carry out any removal or remedial action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete removal or remedial action properly and in a timely manner.

(3) Nothing in ORS 465.200 to 465.510 and 465.900 shall prevent the director from taking any emergency removal or remedial action necessary to protect public health, safety, welfare or the environment.

(4) The director may require a person liable under ORS 465.255 to conduct any removal or remedial action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the removal or remedial action the person must take.

(5) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the facility is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (4) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(6) Notwithstanding any provision of ORS 183.310 to 183.550, and except as provided in subsection (7) of this section, any order issued by the director under subsection (4) of this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(7)(a) Any person who receives and complies with the terms of an order issued under subsection (4) of this section may, within 60 days after completion of the required action, petition the director for reimbursement from the fund for the reasonable costs of such action.

(b) If the director refuses to grant all or part of the reimbursement, the petitioner may, within 30 days of receipt of the director's refusal, file an action against the director seeking reimbursement from the fund in the circuit court of the county in which the facility is located or in the Circuit Court of Marion County. To obtain reimbursement, the petitioner must establish by a preponderance of the evidence that the petitioner is not liable under ORS 465.255 and that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by the relevant order. A petitioner who is liable under ORS 465.255 may also recover reasonable remedial action costs to the extent that the petitioner can demonstrate that the director's decision in selecting the removal or remedial action ordered was arbitrary and capricious or otherwise not in accordance with law.

(8) If any person who is liable under ORS 465.255 fails without sufficient cause to conduct a removal or remedial action as required by an order of the director, the person shall be liable to the department for the state's remedial action costs and for punitive damages not to exceed three times the amount of the state's remedial action costs.

(9) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [Formerly 466.570]

465.265 "Person" defined for ORS 465.265 to 465.310. As used in ORS 465.265 to 465.310, "person" includes but need not be limited to a person liable under ORS 465.255. Except as provided in ORS 465.275 (2), "person" does not include the state or any state agency or the federal government or any agency of the federal government. [1989 c.833 §103]

465.270 Legislative findings and intent. (1) The Legislative Assembly finds that:

(a) The costs of cleanup may result in economic hardship or bankruptcy for individuals and businesses that are otherwise financially viable;

(b) These persons may be willing to clean up their sites and pay the associated costs; however, financial assistance from private lenders may not be available to pay for the cleanup; and

(c) It is in the interest of the public health, safety, welfare and the environment to establish a program of financial assistance for cleanups, to help individuals and businesses maintain financial viability, increasing the share of cleanup costs paid by responsible persons and ultimately decreasing amounts paid from state funds.

(2) Therefore, the Legislative Assembly declares that it is the intent of ORS 465.265 to 465.310:

(a) To assure that moneys for financial assistance are available on a continuing basis consistent with the length and terms

provided by the financial assistance agreements; and

(b) To provide authority to the Department of Environmental Quality to develop and implement innovative approaches to financial assistance for cleanups conducted under ORS 465.200 to 465.510 or, at the discretion of the department, under other applicable authorities. [1989 c.833 §102]

465.275 Remedial action and financial assistance program; contracts for implementation. (1) The Department of Environmental Quality may conduct:

(a) A financial assistance program, including but not limited to loan guarantees, to assist persons in financing the cost of remedial action.

(b) Activities necessary to carry out the purpose of ORS 465.381, 468.220, 468.230 and 465.265 to 465.310, including but not limited to entering into contracts or agreements, making and guaranteeing loans, taking security and instituting appropriate actions to enforce agreements made under ORS 465.285.

(2) The department may enter into a contract or agreement for services to implement a financial assistance program with any person, including but not limited to a financial institution or a unit of local, state or federal government. The services may include but need not be limited to evaluating creditworthiness of applicants, preparing and marketing financial assistance packages and administering and servicing financial assistance agreements. [1989 c.833 §104]

465.280 Rules; insuring tax deductibility of interest on bonds. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.381, 468.220, 468.230 and 465.265 to 465.310 and to insure that interest on bonds issued under ORS 468.195 to be used for removal or remedial action of hazardous substances is not includable in gross income under the United States Internal Revenue Code. [1989 c.833 §105]

465.285 Requirements for financial assistance; contents of agreements. (1) The Department of Environmental Quality may provide financial assistance only to persons who meet all of the following eligibility requirements:

(a) The department has determined that removal or remedial action proposed by the applicant is necessary to protect the public health, safety and welfare or the environment.

(b) The applicant demonstrates to the department's satisfaction that the applicant either is unable to obtain financing for the removal or remedial action from other sources or that financing for the removal or remedial action is not available to the applicant at reasonable rates and terms.

(c) The applicant demonstrates to the department's satisfaction that there is a reasonable likelihood the applicant has the ability to repay.

(d) The applicant agrees to conduct the removal or remedial action according to an agreement with the department.

(e) Any other requirement the department considers necessary or appropriate.

(2) A financial assistance agreement shall include any provision the department considers necessary, but shall at least include the following provisions:

(a) Terms of the financial assistance; and

(b) A statement that moneys obligated by the department under the agreement are limited to moneys in the Hazardous Substance Remedial Action Fund expressly designated by the department for financial assistance purposes. [1989 c.833 §106]

465.290 Financial assistance agreement not General Fund obligation; cost estimates; security; recovery of costs; compromise of obligations. (1) The obligation of the Department of Environmental Quality to provide financial assistance or to advance money under a financial assistance agreement made under ORS 465.285 shall not constitute an obligation against the General Fund or any other state fund except against the Hazardous Substance Remedial Action Fund to the extent moneys in the Hazardous Substance Remedial Action Fund are expressly designated by the department for such financial assistance purposes.

(2) The department may provide a remedial action cost estimate for use by the department, a lender or a guarantor in determining the amount of financial assistance, evaluating the creditworthiness of a borrower, providing loan guarantees or as the department considers appropriate.

(3) When financial assistance is provided to a local governmental unit, the agreement may be secured as the department requires for adequate security.

(4) The department may take any action under ORS 465.260, 465.330 or 465.335 or other applicable authority to recover costs incurred or moneys advanced under a financial assistance agreement. Costs incurred or money advanced under a financial assistance agreement entered into under ORS 465.285 shall be remedial action costs. At the department's discretion, the department may file a claim of lien for such remedial action costs in accordance with the procedures set forth in ORS 465.335 (1), (2)(a) to (c), (3) and (4).

(5) The department may settle, compromise or release all or part of any obligation arising under a financial assistance agreement so long as the department's action is consistent with the purposes of ORS 465.265 to 465.310. [1989 c.833 §107]

465.295 Decision regarding financial assistance not subject to judicial review. Notwithstanding any provision of ORS 183.310 to 183.550, the decision of the Department of Environmental Quality to approve or deny financial assistance under

ORS 465.265 to 465.310 or the department's determination of the amount or use of a remedial action cost estimate under ORS 465.290 shall not be subject to appeal to the Environmental Quality Commission or subject to judicial review. [1989 c.833 §108]

465.300 Records and financial assistance applications exempt from disclosure as public record. Financial records and other information that are submitted to the Department of Environmental Quality as part of an application for financial assistance under ORS 465.265 to 465.310 shall be exempt from disclosure under ORS 192.410 to 192.505, unless the public interest requires disclosure in a particular instance. [1989 c.833 §109]

465.305 Application fees. The Environmental Quality Commission may establish by rule reasonable fees for applicants for financial assistance sufficient to pay for the costs of the Department of Environmental Quality of carrying out the provisions of ORS 465.265 to 465.310. [1989 c.833 §110]

465.310 Accounting procedure for financial assistance moneys. For the purposes of ORS 465.265 to 465.310, the Department of Environmental Quality may place moneys for the purpose of providing financial assistance in reserve status or subaccounts within the Hazardous Substance Remedial Action Fund. Moneys placed in reserve status or subaccounts under this section in connection with a financial assistance agreement shall not be subject to claims under ORS 465.260 or otherwise except as provided in the financial assistance agreement. [1989 c.833 §111]

465.315 Standards for degree of cleanup required; Hazard Index; risk protocol; hot spots of contamination; exemption. (1)(a) Any removal or remedial action performed under the provisions of ORS 465.200 to 465.510 and 465.900 shall attain a degree of cleanup of the hazardous substance and control of further release of the hazardous substance that assures protection of present and future public health, safety and welfare and of the environment.

(b) The Director of the Department of Environmental Quality shall select or approve remedial actions that are protective of human health and the environment. The protectiveness of a remedial action shall be determined based on application of both of the following:

(A) The acceptable risk level for exposures. For protection of humans, the acceptable risk level for exposure to individual carcinogens shall be a lifetime excess cancer risk of one per one million people exposed, and the acceptable risk level for exposure to noncarcinogens shall be the exposure that results in a Hazard Index number equal to or less than one. "Hazard Index number" means a number equal to the sum of the noncarcinogenic risks (hazard quotient) attributable to systemic toxicants with similar toxic endpoints. For protection of ecological receptors, if a release of hazardous substances causes or is reasonably likely to cause significant adverse impacts to the health or viability of a species listed as threatened or endangered pursuant to 16 U.S.C. 1531 et seq. or ORS 496.172, or a population of plants or animals in the locality of the facility, the acceptable risk level shall be the point before such significant adverse impacts occur.

(B) A risk assessment undertaken in accordance with the risk protocol established by the Environmental Quality Commission in accordance with subsection (2)(a) of this section.

(c) A remedial action may achieve protection of human health and the environment through:

(A) Treatment that eliminates or reduces the toxicity, mobility or volume of hazardous substances;

(B) Excavation and off-site disposal;

(C) Containment or other engineering controls;

(D) Institutional controls;

(E) Any other method of protection; or

(F) A combination of the above.

(d) The method of remediation appropriate for a specific facility shall be determined through an evaluation of remedial alternatives and a selection process to be established pursuant to rules adopted by the commission. The director shall select or approve a protective alternative that balances the following factors:

(A) The effectiveness of the remedy in achieving protection;

(B) The technical and practical implementability of the remedy;

(C) The long term reliability of the remedy;

(D) Any short term risk from implementing the remedy posed to the community, to those engaged in the implementation of the remedy and to the environment; and

(E) The reasonableness of the cost of the remedy. The cost of a remedial action shall not be considered reasonable if the costs are disproportionate to the benefits created through risk reduction or risk management. Subject to the preference for treatment of hot spots, where two or more remedial action alternatives are protective as provided in paragraph (b) of this subsection, the least expensive remedial action shall be preferred unless the additional cost of a more expensive alternative is justified by proportionately greater benefits within one or more of the factors set forth in subparagraphs (A) to (D) of this paragraph. The director shall use a higher threshold for evaluating the reasonableness of the costs for treating hot spots than for remediation of areas other than hot spots.

(e) For contamination constituting a hot spot as defined by the commission pursuant to subsection (2)(b) of this section, the director shall select or approve a remedial action requiring treatment of the hot spot contamination unless treatment is not feasible considering the factors set forth in paragraph (d) of this subsection. For contamination constituting a hot spot under

subsection (2)(b)(A) of this section, the director shall evaluate, with the same preference as treatment, the excavation and off-site disposal of the contamination at a facility authorized for such disposal under state or federal law. For excavation and off-site disposal of contamination that is a hazardous waste as described in ORS 466.005, the director shall consider the method and distance for transportation of the contamination to available disposal facilities in selecting or approving a remedial action that is protective under subsection (1)(d) of this section. If requested by the responsible party or recommended by the Department of Environmental Quality, the director may select or approve excavation and off-site disposal as the remedial action for contamination constituting a hot spot under subsection (2)(b)(A) of this section.

(f) The Department of Environmental Quality shall develop or identify generic remedies for common categories of facilities considering the balancing factors set forth in paragraph (d) of this subsection. The department's development of generic remedies shall take into consideration demonstrated remedial actions and technologies and scientific and engineering evaluation of performance data. Where a generic remedy would be protective and satisfy the balancing factors under paragraph (d) of this subsection at a specific facility, the director may select or approve the generic remedy for that site on a streamlined basis with a limited evaluation of other remedial alternatives.

(g) Subject to paragraphs (b) and (d) of this subsection, in selecting or approving a remedial action, the director shall consider current and reasonably anticipated future land uses at the facility and surrounding properties, taking into account current land use zoning, other land use designations, land use plans as established in local comprehensive plans and land use implementing regulations of any governmental body having land use jurisdiction, and concerns of the facility owner, neighboring owners and the community.

(2) Within 18 months after July 18, 1995, the commission shall adopt rules:

(a) Establishing a risk protocol for conducting risk assessments. The risk protocol shall:

(A) Require consideration of existing and reasonably likely future human exposures and significant adverse effects to ecological receptor health and viability, both in a baseline risk assessment and in an assessment of residual risk after a remedial action;

(B) Require risk assessments to include reasonable estimates of plausible upper-bound exposures that neither grossly underestimate nor grossly overestimate risks;

(C) Require risk assessments to consider, to the extent practicable, the range of probabilities of risks actually occurring, the range of size of the populations likely to be exposed to the risk, current and reasonably likely future land uses, and quantitative and qualitative descriptions of uncertainties;

(D) Identify appropriate sources of toxicity information;

(E) Define the use of probabilistic modeling;

(F) Identify criteria for the selection and application of fate and transport models;

(G) Define the use of high-end and central-tendency exposure cases and assumptions;

(H) Define the use of population risk estimates in addition to individual risk estimates;

(I) To the extent deemed appropriate and feasible by the commission considering available scientific information, define appropriate approaches for addressing cumulative risks posed by multiple contaminants or multiple exposure pathways, including how the acceptable risk levels set forth in subsection (1)(b)(A) of this section shall be applied in relation to cumulative risks; and

(J) Establish appropriate sampling approaches and data quality requirements.

(b) Defining hot spots of contamination. The definition of hot spots shall include:

(A) Hazardous substances that are present in high concentrations, are highly mobile or cannot be reliably contained, and that would present a risk to human health or the environment exceeding the acceptable risk level if exposure occurs.

(B) Concentrations of hazardous substances in ground water or surface water that have a significant adverse effect on existing or reasonably likely future beneficial uses of the water and for which treatment is reasonably likely to restore or protect such beneficial use within a reasonable time.

(3) Except as provided in subsection (4) of this section, the director may exempt the on-site portion of any removal or remedial action conducted under ORS 465.200 to 465.510 and 465.900 from any requirement of ORS 466.005 to 466.385 and ORS chapters 459, 468, 468A and 468B. Without affecting substantive requirements, no state or local permit, license or other authorization shall be required for, and no procedural requirements shall apply to, the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the director under this section, unless the permit, license, authorization or procedural requirement is necessary to preserve or obtain federal authorization of a state program or the person performing a removal or remedial action elects to obtain the permit, license or authorization or comply with the procedural requirement. The person performing a removal or remedial action shall notify the appropriate state or local governmental body of the permits, licenses, authorizations or procedural requirements waived under this subsection and, at the request of the governmental body, pay applicable fees. Any costs paid as a fee to a governmental body under this subsection shall not also be recoverable by the governmental body as remedial action costs.

(4) Notwithstanding any provision of subsection (3) of this section, any on-site treatment, storage or disposal of a hazardous substance shall comply with the standard established under subsection (1)(a) of this section and any activities conducted in a public right of way under a removal or remedial action pursuant to this section shall comply with the requirements of the applicable jurisdiction.

(5) Nothing in this section shall affect the authority of the director to undertake, order or authorize an interim or emergency removal action.

(6) Nothing in this section or in rules adopted pursuant to this section shall prohibit the application of rules in effect on July 18, 1995, that use numeric soil cleanup standards to govern remediation of motor fuel and heating oil releases from underground storage tanks. [Formerly 466.573; 1993 c.560 §102; 1995 c.662 §1; 1999 c.740 §1]

465.320 Notice of cleanup action; receipt and consideration of comment; notice of approval. Except as provided in ORS 465.260 (3), before approval of any remedial action to be undertaken by the Department of Environmental Quality or any other person, or adoption of a certification decision under ORS 465.325, the department shall:

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action.

(4) Upon final approval of the remedial action, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public. [Formerly 466.575]

465.325 Agreement to perform removal or remedial action; reimbursement; agreement as order and consent decree; effect on liability. (1) The Director of the Department of Environmental Quality, in the director's discretion, may enter into an agreement with any person including the owner or operator of the facility from which a release emanates, or any other potentially responsible person to perform any removal or remedial action if the director determines that the actions will be properly done by the person. Whenever practicable and in the public interest, as determined by the director, the director, in order to expedite effective removal or remedial actions and minimize litigation, shall act to facilitate agreements under this section that are in the public interest and consistent with the rules adopted under ORS 465.400. If the director decides not to use the procedures in this section, the director shall notify in writing potentially responsible parties at the facility of such decision. Notwithstanding ORS 183.310 to 183.550, a decision of the director to use or not to use the procedures described in this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(2)(a) An agreement under this section may provide that the director will reimburse the parties to the agreement from the fund, with interest, for certain costs of actions under the agreement that the parties have agreed to perform and the director has agreed to finance. In any case in which the director provides such reimbursement and, in the judgment of the director, cost recovery is in the public interest, the director shall make reasonable efforts to recover the amount of such reimbursement under ORS 465.200 to 465.510 and 465.900 or under other relevant authority.

(b) Notwithstanding ORS 183.310 to 183.550, the director's decision regarding fund financing under this subsection shall not be appealable to the commission or subject to judicial review.

(c) When a remedial action is completed under an agreement described in paragraph (a) of this subsection, the fund shall be subject to an obligation for any subsequent remedial action at the same facility but only to the extent that such subsequent remedial action is necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures or through payment, following settlement or enforcement action, by persons who were not signatories to the original agreement.

(3) If an agreement has been entered into under this section, the director may take any action under ORS 465.260 against any person who is not a party to the agreement, once the period for submitting a proposal under subsection (5)(c) of this section has expired. Nothing in this section shall be construed to affect either of the following:

(a) The liability of any person under ORS 465.255 or 465.260 with respect to any costs or damages which are not included in the agreement.

(b) The authority of the director to maintain an action under ORS 465.200 to 465.510 and 465.900 against any person who is not a party to the agreement.

(4)(a) Whenever the director enters into an agreement under this section with any potentially responsible person with respect to remedial action, following approval of the agreement by the Attorney General and except as otherwise provided in the case of certain administrative settlements referred to in subsection (8) of this section, the agreement shall be entered in the appropriate circuit court as a consent decree. The director need not make any finding regarding an imminent and substantial endangerment to the public health, safety, welfare or the environment in connection with any such agreement or consent decree.

(b) The entry of any consent decree under this subsection shall not be construed to be an acknowledgment by the parties that the release concerned constitutes an imminent and substantial endangerment to the public health, safety, welfare or the environment. Except as otherwise provided in the Oregon Evidence Code, the participation by any party in the process under this section shall not be considered an admission of liability for any purpose, and the fact of such participation shall not be admissible in any judicial or administrative proceeding, including a subsequent proceeding under this section.

(c) The director may fashion a consent decree so that the entering of the decree and compliance with the decree or with any determination or agreement made under this section shall not be considered an admission of liability for any purpose.

(d) The director shall provide notice and opportunity to the public and to persons not named as parties to the agreement to comment on the proposed agreement before its submittal to the court as a proposed consent decree, as provided under ORS 465.320. The director shall consider any written comments, views or allegations relating to the proposed agreement. The

director or any party may withdraw, withhold or modify its consent to the proposed agreement if the comments, views and allegations concerning the agreement disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

(5)(a) If the director determines that a period of negotiation under this subsection would facilitate an agreement with potentially responsible persons for taking removal or remedial action and would expedite removal or remedial action, the director shall so notify all such parties and shall provide them with the following information to the extent the information is available:

(A) The names and addresses of potentially responsible persons including owners and operators and other persons referred to in ORS 465.255.

(B) The volume and nature of substances contributed by each potentially responsible person identified at the facility.

(C) A ranking by volume of the substances at the facility.

(b) The director shall make the information referred to in paragraph (a) of this subsection available in advance of notice under this subsection upon the request of a potentially responsible person in accordance with procedures provided by the director. The provisions of ORS 465.250 (5) regarding confidential information apply to information provided under paragraph (a) of this subsection.

(c) Any person receiving notice under paragraph (a) of this subsection shall have 60 days from the date of receipt of the notice to submit to the director a proposal for undertaking or financing the action under ORS 465.260. The director may grant extensions for up to an additional 60 days.

(6)(a) Any person may seek contribution from any other person who is liable or potentially liable under ORS 465.255. In resolving contribution claims, the court shall allocate remedial action costs among liable parties in accordance with ORS 465.257.

(b) A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c)(A) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or judicially approved settlement, the director may bring an action against any person who has not so resolved its liability.

(B) A person who has resolved its liability to the state for some or all of a removal or remedial action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subsection.

(C) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

(7)(a) In entering an agreement under this section, the director may provide any person subject to the agreement with a covenant not to sue concerning any liability to the State of Oregon under ORS 465.200 to 465.510 and 465.900, including future liability, resulting from a release of a hazardous substance addressed by the agreement if each of the following conditions is met:

(A) The covenant not to sue is in the public interest.

(B) The covenant not to sue would expedite removal or remedial action consistent with rules adopted by the commission under ORS 465.400 (2).

(C) The person is in full compliance with a consent decree under subsection (4)(a) of this section for response to the release concerned.

(D) The removal or remedial action has been approved by the director.

(b) The director shall provide a person with a covenant not to sue with respect to future liability to the State of Oregon under ORS 465.200 to 465.510 and 465.900 for a future release of a hazardous substance from a facility, and a person provided such covenant not to sue shall not be liable to the State of Oregon under ORS 465.255 with respect to such release at a future time, for the portion of the remedial action:

(A) That involves the transport and secure disposition offsite of a hazardous substance in a treatment, storage or disposal facility meeting the requirements of section 3004(c) to (g), (m), (o), (p), (u) and (v) and 3005(c) of the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, if the director has rejected a proposed remedial action that is consistent with rules adopted by the commission under ORS 465.400 that does not include such offsite disposition and has thereafter required offsite disposition; or

(B) That involves the treatment of a hazardous substance so as to destroy, eliminate or permanently immobilize the hazardous constituents of the substance, so that, in the judgment of the director, the substance no longer presents any current or currently foreseeable future significant risk to public health, safety, welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health, safety, welfare or the environment, and all by-products are themselves treated, destroyed or contained in a manner that assures that the by-products do not present any current or currently foreseeable future significant risk to public health, safety, welfare or the environment.

(c) A covenant not to sue concerning future liability to the State of Oregon shall not take effect until the director certifies that the removal or remedial action has been completed in accordance with the requirements of subsection (10) of this section at the facility that is the subject of the covenant.

(d) In assessing the appropriateness of a covenant not to sue under paragraph (a) of this subsection and any condition to be included in a covenant not to sue under paragraph (a) or (b) of this subsection, the director shall consider whether the covenant or conditions are in the public interest on the basis of factors such as the following:

(A) The effectiveness and reliability of the remedial action, in light of the other alternative remedial actions considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the removal or remedial action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the removal or remedial action is demonstrated to be effective.

(F) Whether the fund or other sources of funding would be available for any additional removal or remedial action that might eventually be necessary at the facility.

(G) Whether the removal or remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Any covenant not to sue under this subsection shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(f)(A) Except for the portion of the removal or remedial action that is subject to a covenant not to sue under paragraph (b) of this subsection or de minimis settlement under subsection (8) of this section, a covenant not to sue a person concerning future liability to the State of Oregon:

(i) Shall include an exception to the covenant that allows the director to sue the person concerning future liability resulting from the release or threatened release that is the subject of the covenant if the liability arises out of conditions unknown at the time the director certifies under subsection (10) of this section that the removal or remedial action has been completed at the facility concerned; and

(ii) May include an exception to the covenant that allows the director to sue the person concerning future liability resulting from failure of the remedial action.

(B) In extraordinary circumstances, the director may determine, after assessment of relevant factors such as those referred to in paragraph (d) of this subsection and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value and the inequities and aggravating factors, not to include the exception referred to in paragraph (f)(A) of this subsection if other terms, conditions or requirements of the agreement containing the covenant not to sue are sufficient to provide all reasonable assurances that public health, safety, welfare and the environment will be protected from any future release at or from the facility.

(C) The director may include any provisions allowing future enforcement action under ORS 465.260 that in the discretion of the director are necessary and appropriate to assure protection of public health, safety, welfare and the environment.

(8)(a) Whenever practicable and in the public interest, as determined by the director, the director shall as promptly as possible reach a final settlement with a potentially responsible person in an administrative or civil action under ORS 465.255 if such settlement involves only a minor portion of the remedial action costs at the facility concerned and, in the judgment of the director, both of the following are minimal in comparison to any other hazardous substance at the facility:

(A) The amount of the hazardous substance contributed by that person to the facility; and

(B) The toxic or other hazardous effects of the substance contributed by that person to the facility.

(b) The director may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this subsection unless such a covenant would be inconsistent with the public interest as determined under subsection (7) of this section.

(c) The director shall reach any such settlement or grant a covenant not to sue as soon as possible after the director has available the information necessary to reach a settlement or grant a covenant not to sue.

(d) A settlement under this subsection shall be entered as a consent decree or embodied in an administrative order setting forth the terms of the settlement. The circuit court for the county in which the release or threatened release occurs or the Circuit Court of Marion County may enforce any such administrative order.

(e) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(f) Nothing in this subsection shall be construed to affect the authority of the director to reach settlements with other potentially responsible persons under ORS 465.200 to 465.510 and 465.900.

(9)(a) Notwithstanding ORS 183.310 to 183.550, except for those covenants required under subsection (7)(b)(A) and (B) of this section, a decision by the director to agree or not to agree to inclusion of any covenant not to sue in an agreement under this section shall not be appealable to the commission or subject to judicial review.

(b) Nothing in this section shall limit or otherwise affect the authority of any court to review, in the consent decree process under subsection (4) of this section, any covenant not to sue contained in an agreement under this section.

(10)(a) Upon completion of any removal or remedial action under an agreement under this section, or pursuant to an order under ORS 465.260, the party undertaking the removal or remedial action shall notify the department and request certification of completion. Within 90 days after receiving notice, the director shall determine by certification whether the removal or remedial action is completed in accordance with the applicable agreement or order.

(b) Before submitting a final certification decision to the court that approved the consent decree, or before entering a final administrative order, the director shall provide to the public and to persons not named as parties to the agreement or order notice and opportunity to comment on the director's proposed certification decision, as provided under ORS 465.320.

(c) Any person aggrieved by the director's certification decision may seek judicial review of the certification decision by the court that approved the relevant consent decree or, in the case of an administrative order, in the circuit court for the county in which the facility is located or in Marion County. The decision of the director shall be upheld unless the person challenging the certification decision demonstrates that the decision was arbitrary and capricious, contrary to the provisions of ORS 465.200 to 465.510 and 465.900 or not supported by substantial evidence. The court shall apply a presumption in favor of the director's decision. The court may award attorney fees and costs to the prevailing party if the court finds the challenge or defense of the director's decision to have been frivolous. The court may assess against a party and award to the state, in addition to attorney fees and costs, an amount equal to the economic gain realized by the party if the court finds the only purpose of the party's challenge to the director's decision was delay for economic gain. [Formerly 466.577; 1995 c.662 §2]

465.327 Agreement to release party from potential liability to state to facilitate cleanup and reuse of property; eligible parties; terms of agreement. (1) In order to facilitate cleanup and reuse of contaminated property, the Department of Environmental Quality may, through a written agreement, provide a party with a release from potential liability to the state under ORS 465.255, if:

(a) The party is not currently liable under ORS 465.255 for an existing release of hazardous substance at the facility;

(b) Removal or remedial action is necessary at the facility to protect human health or the environment;

(c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing contamination, increase health risks or interfere with remedial measures necessary at the facility; and

(d) A substantial public benefit will result from the agreement, including but not limited to:

(A) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with this section;

(B) A commitment to perform substantial remedial measures at the facility in accordance with this section;

(C) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(D) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

(2) In determining whether to enter an agreement under this section, the department shall consult with affected land use planning jurisdictions and consider reasonably anticipated future land uses at the facility and surrounding properties.

(3) An agreement under this section may be set forth in an administrative consent order or other administrative agreement or in a judicial consent decree entered in accordance with ORS 465.325. Any such agreement may include provisions considered necessary by the department, and shall include:

(a) A commitment to undertake the measures constituting a substantial public benefit;

(b) If remedial measures are to be performed under the agreement, a commitment to perform any such measures under the department's oversight;

(c) A waiver by the party of any claim or cause of action against the State of Oregon arising from contamination at the facility existing as of the date of acquisition of ownership or operation of the facility;

(d) A grant of an irrevocable right of entry to the department and its authorized representative for purposes of the agreement or for remedial measures authorized under this section;

(e) A reservation of rights as to an entity not a party to the agreement; and

(f) A legal description of the property.

(4) Subject to the satisfactory performance by the party of its obligations under the agreement, the party shall not be liable to the State of Oregon under ORS 465.200 to 465.510 and 465.900 for any release of a hazardous substance at the facility existing as of the date of acquisition of ownership or operation of the facility. The party shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of ownership of the facility. This release from liability shall not affect a party's liability for claims arising from any:

(a) Release of a hazardous substance at the facility after the date of acquisition of ownership or operation;

(b) Contribution to or exacerbation of a release of a hazardous substance;

(c) Interference or failure to cooperate with the department or other persons conducting remedial measures under the department's oversight at the facility;

(d) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the facility; and

(e) Violation of federal, state or local law.

(5) Any agreement entered under this section shall be recorded in the real property records from the county in which the facility is located. The benefits and burdens of the agreement, including the release from liability, shall run with the land, but the release from liability shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of a hazardous substance at the facility as of the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation. [1995 c.662 §4]

465.330 State remedial action costs; payment; effect of failure to pay. (1) The Department of Environmental Quality shall keep a record of the state's remedial action costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 465.255 or 465.260 to pay the amount of the state's remedial action costs and, if applicable, punitive damages.

(3) If the state's remedial action costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the Director of the Department of Environmental Quality, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381 if the moneys received pertain to a removal or remedial action taken at any facility. [Formerly 466.580]

465.333 Recovery of costs of program development, rulemaking and administrative actions as remedial action costs; determination of allocable costs. Notwithstanding ORS 291.050 to 291.060, the Department of Environmental Quality may recover, as remedial action costs, the costs of program development, rulemaking and other administrative actions required by the provisions of ORS 465.315, 465.325 and 465.327. After July 18, 1995, the department may recover such costs by requiring any person liable under ORS 465.255 or 465.260 or any person otherwise undertaking removal or remedial action under the department's oversight to pay such costs. Each person shall pay that portion of costs under ORS 465.315, 465.325 and 465.327 that the department determines to be allocable to removal or remedial action at the person's facility, using generally accepted accounting principles and as necessary to be charged per facility to recover the department's costs of implementing ORS 465.315, 465.325 and 465.327. [1995 c.662 §8]

465.335 Costs, penalties and damages as lien; enforcement of lien. (1) All of the state's remedial action costs, penalties and punitive damages for which a person is liable to the state under ORS 465.255, 465.260 or 465.900 shall constitute a lien upon any real and personal property owned by the person.

(2) At the discretion of the Department of Environmental Quality, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

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

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

(d) A statement of the failure of the person to conduct removal or remedial action and pay penalties and damages as required.

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

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 465.255, 465.260 or 465.900. [Formerly 466.583]

465.340 Contractor liability; indemnification. (1)(a) A person who is a contractor with respect to any release of a hazardous substance from a facility shall not be liable under ORS 465.200 to 465.510 and 465.900 or under any other state law to any person for injuries, costs, damages, expenses or other liability including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss that result from such release.

(b) Paragraph (a) of this subsection shall not apply if the release is caused by conduct of the contractor that is negligent, reckless, willful or wanton misconduct or that constitutes intentional misconduct.

(c) Nothing in this subsection shall affect the liability of any other person under any warranty under federal, state or common law. Nothing in this subsection shall affect the liability of an employer who is a contractor to any employee of such employer under any provision of law, including any provision of any law relating to workers' compensation.

(d) A state employee or an employee of a political subdivision who provides services relating to a removal or remedial action while acting within the scope of the person's authority as a governmental employee shall have the same exemption from liability subject to the other provisions of this section, as is provided to the contractor under this section.

(2)(a) The exclusion provided by ORS 465.255 (2)(b)(C) shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a contractor.

(b) Except as provided in subsection (1)(d) of this section and paragraph (a) of this subsection, nothing in this section shall affect the liability under ORS 465.200 to 465.510 and 465.900 or under any other federal or state law of any person, other than a contractor.

(c) Nothing in this section shall affect the plaintiff's burden of establishing liability under ORS 465.200 to 465.510 and 465.900.

(3)(a) The Director of the Department of Environmental Quality may agree to hold harmless and indemnify any contractor meeting the requirements of this subsection against any liability, including the expenses of litigation or settlement, for

negligence arising out of the contractor's performance in carrying out removal or remedial action activities under ORS 465.200 to 465.510 and 465.900, unless such liability was caused by conduct of the contractor which was grossly negligent, reckless, willful or wanton misconduct, or which constituted intentional misconduct.

(b) This subsection shall apply only to a removal or remedial action carried out under written agreement with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out any agreement under ORS 465.260 or 465.325.

(c) For purposes of ORS 465.200 to 465.510 and 465.900, amounts expended from the fund for indemnification of any contractor shall be considered remedial action costs.

(d) An indemnification agreement may be provided under this subsection only if the director determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide removal or remedial action, and adequate insurance to cover such liability is not generally available at the time the contract is entered into.

(B) The contractor has made diligent efforts to obtain insurance coverage.

(C) In the case of a contract covering more than one facility, the contractor agrees to continue to make diligent efforts to obtain insurance coverage each time the contractor begins work under the contract at a new facility.

(4)(a) Indemnification under this subsection shall apply only to a contractor liability which results from a release of any hazardous substance if the release arises out of removal or remedial action activities.

(b) An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(c)(A) In deciding whether to enter into an indemnification agreement with a contractor carrying out a written contract or agreement with any potentially responsible party, the director shall determine an amount which the potentially responsible party is able to indemnify the contractor. The director may enter into an indemnification agreement only if the director determines that the amount of indemnification available from the potentially responsible party is inadequate to cover any reasonable potential liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the party. In making the determinations required under this subparagraph related to the amount and the adequacy of the amount, the director shall take into account the total net assets and resources of the potentially responsible party with respect to the facility at the time the director makes the determinations.

(B) The director may pay a claim under an indemnification agreement referred to in subparagraph (A) of this paragraph for the amount determined under subparagraph (A) of this paragraph only if the contractor has exhausted all administrative, judicial and common law claims for indemnification against all potentially responsible parties participating in the cleanup of the facility with respect to the liability of the contractor arising out of the contractor's negligence in performing the contract or agreement with the parties. The indemnification agreement shall require the contractor to pay any deductible established under paragraph (b) of this subsection before the contractor may recover any amount from the potentially responsible party or under the indemnification agreement.

(d) No owner or operator of a facility regulated under the federal Solid Waste Disposal Act, as amended, P.L. 96-482 and P.L. 98-616, may be indemnified under this subsection with respect to such facility.

(e) For the purposes of ORS 465.255, any amounts expended under this section for indemnification of any person who is a contractor with respect to any release shall be considered a remedial action cost incurred by the state with respect to the release.

(5) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section shall not apply to any person liable under ORS 465.255 with respect to the release or threatened release concerned if the person would be covered by the provisions even if the person had not carried out any actions referred to in subsection (6) of this section.

(6) As used in this section:

(a) "Contract" means any written contract or agreement to provide any removal or remedial action under ORS 465.200 to 465.510 and 465.900 at a facility, or any removal under ORS 465.200 to 465.510 and 465.900, with respect to any release of a hazardous substance from the facility or to provide any evaluation, planning, engineering, surveying and mapping, design, construction, equipment or any ancillary services thereto for such facility, that is entered into by a contractor as defined in paragraph (b)(A) of this subsection with:

(A) The director;

(B) Any state agency; or

(C) Any potentially responsible party carrying out an agreement under ORS 465.260 or 465.325.

(b) "Contractor" means:

(A) Any person who enters into a removal or remedial action contract with respect to any release of a hazardous substance from a facility and is carrying out such contract; and

(B) Any person who is retained or hired by a person described in subparagraph (A) of this paragraph to provide any services relating to a removal or remedial action.

(c) "Insurance" means liability insurance that is fair and reasonably priced, as determined by the director, and that is made available at the time the contractor enters into the removal or remedial action contract to provide removal or remedial action.

[Formerly 466.585; 1991 c.692 §2]

465.375 Monthly fee of operators; amount; use of moneys. (1) Every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a permit issued under ORS 466.005 to 466.385 and 466.992 shall pay a hazardous waste management fee by the 45th day after the last day of each month for all waste brought into the facility during that month for treatment by incinerator or for disposal by landfill at the facility. The operator of the facility shall provide to every person who disposes of waste at the facility a statement showing the amount of the hazardous waste management fee paid by the person to the facility.

(2) The hazardous waste management fee under subsection (1) of this section shall be $20 a ton.

(3) In addition to the portion of the fee under subsection (2) of this section, $10 per ton shall be included as part of the hazardous waste management fee.

(4) The additional amounts collected under subsection (3) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality. Such moneys are continuously appropriated to the department to be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(5) At least 50 percent of the fees collected under subsection (3) of this section shall be used by the department to implement ORS 466.068. [Formerly 466.587; 1991 c.721 §1; 1995 c.552 §1]

Note: Section 2, chapter 443, Oregon Laws 1997, provides:

Sec. 2. (1) Notwithstanding ORS 465.375 (2) and (3), for the period beginning July 1, 2001, and ending January 1, 2004, the hazardous waste management fee under ORS 465.375 shall be:

(a) $7.50 per ton for waste that is emission control dust or sludge from the primary production of steel in electric furnaces, identified as United States Environmental Protection Agency hazardous waste number K061, provided that the facility has a plan and a schedule approved by the Department of Environmental Quality to develop and evaluate a treatment process for the waste. The treatment process shall be designed to achieve treatment levels similar to the treatment levels required for the hazardous waste if it were delisted in Alaska, Idaho or Washington under 40 C.F.R. 260.22, adopted under the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580) and the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as amended, or a state-authorized Resource Conservation and Recovery Act program. The department may withdraw approval of the plan if the facility does not implement the plan in accordance with the approved schedule.

(b) For the type of waste described in this paragraph, either $20 per ton for 2,500 tons or less of waste received by the facility in a calendar year from the same initial generator, or $10 per ton for all waste received by the facility in a calendar year from the same initial generator if the facility receives more than 2,500 tons from that generator in the year, if the waste is:

(A) PCB under Oregon or federal law;

(B) Hazardous debris;

(C) Hazardous waste that becomes subject to regulation solely as a result of removal or remedial action taken in response to environmental contamination; or

(D) Hazardous waste that results from corrective action or closure of a regulated or nonregulated hazardous waste management unit.

(c) Notwithstanding the requirement of ORS 465.375 (1) that a hazardous waste management fee be paid for all waste brought into the facility for treatment by incinerator or for disposal by landfill at the facility, $15 per ton for waste that is hazardous waste when received and treated at the facility so that the waste is no longer a solid waste as defined in ORS 459.005.

(d) $2 per ton for waste that is:

(A) A characteristic hazardous waste at the point of generation and that has been treated at the facility or at an off-site location so that the waste no longer exhibits the characteristics of hazardous waste and so that the waste complies with any applicable land disposal requirements;

(B) Liquid waste when the waste is received and treated at a wastewater treatment unit at the facility so that the waste does not exhibit any characteristics of hazardous waste and so that the resulting liquid is managed at a permitted unit at the facility;

(C) Solid waste resulting from cleanup activities that must be disposed of in a facility for the disposal of hazardous waste as a result of restrictions imposed under ORS 459.055 (8) or 459.305 (7); or

(D) Solid waste that is not hazardous waste or PCB under a state or federal law at the point of generation and that is not a hazardous waste under Oregon law.

(2) One-third of the amount collected under subsection (1) of this section shall be deposited in the State Treasury to the credit of an account of the department. Such moneys are continuously appropriated to the department to be used to carry out the department's duties under ORS 466.005 to 466.385 related to the management of hazardous waste.

(3) Two-thirds of the amount collected under subsection (1) of this section shall be deposited in the State Treasury to the credit of the Hazardous Substance Remedial Action Fund created under ORS 465.381 to be used for the purposes described in ORS 465.381 (5). [1997 c.443 §2; 1999 c.332 §1; 2001 c.400 §1]

Note: Section 2, chapter 332, Oregon Laws 1999, provides:

Sec. 2. Section 2, chapter 443, Oregon Laws 1997, is repealed January 2, 2004. [1999 c.332 §2; 2001 c.400 §2]

465.378 Department to work with other states to avoid disruption of waste flows. The Department of Environmental Quality shall work cooperatively with other states to avoid disrupting or changing waste flows between states that may be caused by the establishment or adjustment of state disposal fees. [1995 c.552 §4]

465.380 [Formerly 466.590; 1991 c.703 §47; 1991 c.721 §2; repealed by 1993 c.707 §4 (465.381 enacted in lieu of 465.380)]

465.381 Hazardous Substance Remedial Action Fund; sources; uses; Orphan Site Account; uses. (1) The Hazardous Substance Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned by the fund shall be credited to the fund.

(2) The following shall be deposited into the State Treasury and credited to the Hazardous Substance Remedial Action Fund:

(a) Fees received by the Department of Environmental Quality under ORS 465.375.

(b) Moneys recovered or otherwise received from responsible parties for remedial action costs. Moneys recovered from responsible parties for costs paid by the department from the Orphan Site Account established under subsection (6) of this section shall be credited to the Orphan Site Account.

(c) Moneys received under the schedule of fees established under ORS 453.402 (2)(c) and 459.236 for the purpose of providing funds for the Orphan Site Account, which shall be credited to the Orphan Site Account established under subsection (6) of this section.

(d) Any penalty, fine or punitive damages recovered under ORS 465.255, 465.260, 465.335 or 465.900.

(e) Fees received by the department under ORS 465.305.

(f) Moneys and interest that are paid, recovered or otherwise received under financial assistance agreements.

(g) Moneys appropriated to the fund by the Legislative Assembly.

(h) Moneys from any grant made to the fund by a federal agency.

(3) The State Treasurer may invest and reinvest moneys in the Hazardous Substance Remedial Action Fund in the manner provided by law.

(4) The moneys in the Hazardous Substance Remedial Action Fund are appropriated continuously to the department to be used as provided in subsection (5) of this section.

(5) Moneys in the Hazardous Substance Remedial Action Fund may be used for the following purposes:

(a) Payment of the department's remedial action costs;

(b) Funding any action or activity authorized by ORS 465.200 to 465.510 and 465.900, including but not limited to providing financial assistance pursuant to an agreement entered into under ORS 465.285; and

(c) Providing the state cost share for a removal or remedial action, as required by section 104(c)(3) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, and as amended by P.L. 99-499.

(6)(a) The Orphan Site Account is established in the Hazardous Substance Remedial Action Fund in the State Treasury. All moneys credited to the Orphan Site Account are continuously appropriated to the department for:

(A) Expenses of the department related to facilities or activities associated with the removal or remedial action where the department determines the responsible party is unknown or is unwilling or unable to undertake all required removal or remedial action; and

(B) Grants and loans to local government units for facilities or activities associated with the removal or remedial action of a hazardous substance.

(b) The Orphan Site Account may not be used to pay the state's remedial action costs at facilities owned by the state. However, this paragraph does not prohibit the use of Orphan Site Account moneys for remedial action on submerged or submersible lands as those terms are defined in ORS 274.005 and tidal submerged lands as defined in ORS 274.705.

(c) The Orphan Site Account may be used to pay claims for reimbursement filed and approved under ORS 465.260 (7).

(d) If bonds have been issued under ORS 468.195 to provide funds for removal or remedial action, the department shall first transfer from the Orphan Site Account to the Pollution Control Sinking Fund, solely from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236 for such purposes, any amount necessary to provide for the payment of the principal and interest upon such bonds. Moneys from repayment of financial assistance or recovered from a responsible party shall not be used to provide for the payment of the principal and interest upon such bonds.

(7)(a) Of the funds in the Orphan Site Account derived from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account, and of the proceeds of any bond sale under ORS 468.195 supported by the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account, no more than 25 percent may be obligated in any biennium by the department to pay for removal or remedial action at facilities determined by the department to have an unwilling responsible party, unless the department first receives approval from the Legislative Assembly.

(b) Before the department obligates money from the Orphan Site Account derived from the fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236 for the purpose of providing funds for the Orphan Site Account, or the proceeds of any bond sale under ORS 468.195 supported by fees collected pursuant to ORS 453.402 (2)(c) and under ORS 459.236, for the purpose of providing funds for the Orphan Site Account for removal or remedial action at a facility determined by the department to have an unwilling responsible party, the department must first determine whether there is a need for immediate

removal or remedial action at the facility to protect public health, safety, welfare or the environment. The department shall determine the need for immediate removal or remedial action in accordance with rules adopted by the Environmental Quality Commission. [1993 c.707 §5 (enacted in lieu of 465.380); 1999 c.534 §1]

465.385 [1989 c.833 §§132,171; 1991 c.703 §13; repealed by 1993 c.707 §6 (465.386 enacted in lieu of 465.385)]

465.386 Commission authorized to increase fees; basis of increase; amount of increase. (1) Notwithstanding the totals established in ORS 459.236, after July 1, 1993, the Environmental Quality Commission by rule may increase the total amount to be collected annually as a fee and deposited into the Orphan Site Account under ORS 459.236. The commission shall approve an increase if the commission determines:

(a) Existing fees being deposited into the Orphan Site Account are not sufficient to pay debt service on bonds sold to pay for removal or remedial actions at sites where the Department of Environmental Quality determines the responsible party is unknown or is unwilling or unable to undertake all required removal or remedial action; or

(b) Revenues from the sale of bonds cannot be used to pay for activities related to removal or remedial action, and existing fees being deposited into the Orphan Site Account are not sufficient to pay for these activities.

(2) The increased amount approved by the commission under subsection (1) of this section:

(a) Shall be no greater than the amount needed to pay anticipated costs specifically identified by the Department of Environmental Quality at sites where the department determines the responsible party is unknown, unwilling or unable to undertake all required removal or remedial action; and

(b) Shall be subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board during the interim period between sessions. [1993 c.707 §7 (enacted in lieu of 465.385); 1999 c.534 §2]

465.390 [1989 c.833 §§133,172; repealed by 1993 c.707 §8 (465.391 enacted in lieu of 465.390)]

465.391 Effect of certain laws on liability of person. Nothing in ORS 453.396 to 453.408, 453.414, 459.236 and 459.311, including the limitation on the amount a local government unit must contribute under ORS 459.236 and 459.311, shall be construed to affect or limit the liability of any person. [1993 c.707 §9 (enacted in lieu of 465.390)]

465.400 Rules; designation of hazardous substance. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission may adopt rules necessary to carry out the provisions of ORS 465.200 to 465.510 and 465.900.

(2)(a) Within one year after July 16, 1987, the commission shall adopt rules establishing the levels, factors, criteria or other provisions for the degree of cleanup including the control of further releases of a hazardous substance, and the selection of remedial actions necessary to assure protection of the public health, safety, welfare and the environment.

(b) In developing rules pertaining to the degree of cleanup and the selection of remedial actions under paragraph (a) of this subsection, the commission may, as appropriate, take into account:

(A) The long-term uncertainties associated with land disposal;

(B) The goals, objectives and requirements of ORS 466.005 to 466.385;

(C) The persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) The short-term and long-term potential for adverse health effects from human exposure to the hazardous substance;

(E) Long-term maintenance costs;

(F) The potential for future remedial action costs if the alternative remedial action in question were to fail;

(G) The potential threat to human health and the environment associated with excavation, transport and redisposal or containment; and

(H) The cost effectiveness.

(3)(a) By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance or any class of substances that, should a release occur, may present a substantial danger to the public health, safety, welfare or the environment.

(b) Before designating a substance or class of substances as a hazardous substance, the commission must find that the substance, because of its quantity, concentration, or physical, chemical or toxic characteristics, may pose a present or future hazard to human health, safety, welfare or the environment should a release occur. [Formerly 466.553]

465.405 Rules; "confirmed release"; "preliminary assessment." (1) The Environmental Quality Commission shall adopt by rule:

(a) A definition of "confirmed release" and "preliminary assessment"; and

(b) Criteria to be applied by the Director of the Department of Environmental Quality in determining whether to remove a facility from the list and inventory under ORS 465.230.

(2) In adopting rules under this section, the commission shall exclude from the list and inventory the following categories of releases to the extent the commission determines the release poses no significant threat to present or future public health,

safety, welfare or the environment:

(a) De minimis releases;

(b) Releases that by their nature rapidly dissipate to undetectable or insignificant levels;

(c) Releases specifically authorized by and in compliance with a current and legally enforceable permit issued by the Department of Environmental Quality or the United States Environmental Protection Agency; or

(d) Other releases that the commission finds pose no significant threat to present and future public health, safety, welfare or the environment.

(3) The director shall exclude from the list and inventory releases the director determines have been cleaned up to a level that:

(a) Is consistent with rules adopted by the commission under ORS 465.400; or

(b) Poses no significant threat to present or future public health, safety, welfare or the environment. [1989 c.485 §7]

465.410 Ranking of inventory according to risk; rules. In addition to the rules adopted under ORS 465.405, the Environmental Quality Commission shall adopt by rule a procedure for ranking facilities on the inventory based on the short-term and long-term risks they pose to present and future public health, safety, welfare or the environment. [1989 c.485 §8]

465.420 Remedial Action Advisory Committee. The Director of the Department of Environmental Quality shall appoint a Remedial Action Advisory Committee in order to advise the Department of Environmental Quality in the development of rules for the implementation of ORS 465.200 to 465.510 and 465.900. The committee shall be comprised of members representing at least the following interests:

(1) Citizens;

(2) Local governments;

(3) Environmental organizations; and

(4) Industry. [Formerly 466.555]

465.425 "Security interest holder" defined for ORS 465.430 to 465.455. As used in ORS 465.430 to 465.455, "security interest holder" means a person who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in a facility. [1991 c.680 §2]

465.430 Legislative findings. (1)(a) The Legislative Assembly finds that existing federal and state law related to liability of a security interest holder for environmental contamination is unclear, and that such lack of clarity has created uncertainty on the part of security interest holders as to whether security interest holders are liable for environmental contamination caused by their borrowers or other third parties.

(b) The Legislative Assembly therefore declares that clarification regarding such potential liability in a manner consistent with federal statutes and regulations is desirable in order to provide certainty for security interest holders and to encourage responsible practices by security interest holders and borrowers to protect the public health and the environment.

(2)(a) The Legislative Assembly also finds that uncertainty exists in state law as to potential liability of certain fiduciaries for environmental contamination at property held in their fiduciary capacity.

(b) The Legislative Assembly therefore declares that it is in the public interest to provide an exemption from such potential liability in certain circumstances. [1991 c.680 §3]

465.435 Rules relating to exemption from liability for security interest holder. (1) The Environmental Quality Commission may adopt rules necessary to clarify the scope and meaning of the exemption from liability under ORS 465.255 of a security interest holder. The rules shall:

(a) Identify activities that are consistent with holding and protecting a security interest in a facility and therefore exempt from liability under ORS 465.255;

(b) Identify the extent to which a security interest holder may undertake activities to oversee the affairs of a borrower for purposes of protecting a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255;

(c) Identify the activities a security interest holder may undertake in connection with foreclosure on a security interest in a facility and continue to be exempt from the liability imposed under ORS 465.255; and

(d) Allow a security interest holder to encourage and require responsible environmental management by borrowers.

(2) In adopting rules under subsection (1) of this section, the commission shall:

(a) Exclude the mere capacity or unexercised right to influence a facility's management of hazardous substance from activities that might void a security interest holder's exemption from liability; and

(b) Distinguish activities that are consistent with holding, protecting and foreclosing of a security interest, and that are therefore exempt from liability, from activities that constitute actual participation in the management of a facility that may be grounds for liability under ORS 465.255.

(3) In adopting rules under subsection (1) of this section, the commission shall consider and, to the extent consistent with subsections (1) and (2) of this section, adopt rules parallel in effect to any federal statute or regulation, adopted and effective on or after May 1, 1991, pertaining to the scope and meaning of the exemption from liability under the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980, as amended (P.L. 96-510 and 99-499), of a security interest holder. [1991 c.680 §4]

465.440 Rules relating to exemption from liability for fiduciary. In accordance with the purposes of ORS 465.425 to 465.455, the Environmental Quality Commission by rule shall define the instances in which a person acting under ORS chapter 709 and in a fiduciary capacity shall be exempt from liability for environmental contamination at property the fiduciary holds in a fiduciary capacity. In adopting the rules, the commission shall consider and, to the extent appropriate, provide exemptions from liability for the fiduciaries that are similar in purpose and effect to those exemptions provided for security interest holders under rules adopted under ORS 465.435. [1991 c.680 §5]

465.445 Advisory committee. The Director of the Department of Environmental Quality shall appoint an advisory committee to advise the Department of Environmental Quality and the Environmental Quality Commission in the development of rules under ORS 465.435 and 465.440. [1991 c.680 §6]

465.450 Limitation on commission's discretion to adopt rules. Notwithstanding the discretion otherwise allowed under ORS 465.435, if federal law is enacted or regulations are adopted and become effective after May 1, 1991, the Environmental Quality Commission shall adopt rules under ORS 465.435. [1991 c.680 §7]

465.455 Construction of ORS 465.425 to 465.455. Nothing in ORS 465.425 to 465.455 or any rule adopted under ORS 465.435 or 465.440 shall be construed to impose liability on a security interest holder or fiduciary or to expand the liability of a security interest holder or fiduciary beyond that which might otherwise exist. [1991 c.680 §8]

(Oregon Environmental Cleanup Assistance)

465.475 Definitions for ORS 465.475 to 465.480. For the purposes of ORS 465.475 to 465.480 and section 5, chapter 783, Oregon Laws 1999:

(1) "Environmental claim" means a claim for defense or indemnity submitted under a general liability insurance policy by an insured facing, or allegedly facing, potential liability for bodily injury or property damage arising from a release of pollutants onto or into land, air or water.

(2) "General liability insurance policy" means any contract of insurance that provides coverage for the obligations at law or in equity of an insured for bodily injury, property damage or personal injury to others. "General liability insurance policy" includes but is not limited to a pollution liability insurance policy, a commercial general liability insurance policy, a comprehensive general liability policy, an excess liability policy, an umbrella liability insurance policy or any other kind of policy covering the liability of an insured for the claims of third parties. "General liability insurance policy" does not include homeowner or motor vehicle policies or portions of other policies relating to homeowner or motor vehicle coverages, claims-made policies or portions of other policies relating to claims-made policies or specialty line liability coverage such as directors and officers insurance, errors and omissions insurance or other similar policies.

(3) "Insured" means any person included as a named insured on a general liability insurance policy who has or had a property interest in a site in Oregon that involves an environmental claim. [1999 c.783 §2]

465.478 Legislative findings. The Legislative Assembly finds that there are many insurance coverage disputes involving insureds who face potential liability for their ownership of or roles at polluted sites in this state. The State of Oregon has a substantial public interest in promoting the fair and efficient resolution of environmental claims while encouraging voluntary compliance and regulatory cooperation. [1999 c.783 §3]

465.480 Rules of construction for insurance policies involving environmental claims. (1) As used in this section, "suit" or "lawsuit" includes but is not limited to formal judicial proceedings, administrative proceedings and actions taken under Oregon or federal law, including actions taken under administrative oversight of the Department of Environmental Quality or the United States Environmental Protection Agency pursuant to written voluntary agreements, consent decrees and consent orders.

(2) Except as provided in subsection (3) of this section, in any action between an insured and an insurer to determine the existence of coverage for the costs of investigating and remediating environmental contamination, whether in response to governmental demand or pursuant to a written voluntary agreement, consent decree or consent order, including the existence of coverage for the costs of defending a suit against the insured for such costs, the following rules of construction shall apply in the interpretation of general liability insurance policies involving environmental claims:

(a) Oregon law shall be applied in all cases where the contaminated property to which the action relates is located within the State of Oregon. Nothing in this section shall be interpreted to modify common law rules governing choice of law determinations for sites located outside the State of Oregon.

(b) Any action or agreement by the Department of Environmental Quality or the United States Environmental Protection Agency against or with an insured in which the Department of Environmental Quality or the United States Environmental Protection Agency in writing directs, requests or agrees that an insured take action with respect to contamination within the

State of Oregon is equivalent to a suit or lawsuit as those terms are used in any general liability insurance policy.

(c) Insurance coverage for any reasonable and necessary fees, costs and expenses, including remedial investigations, feasibility study costs and expenses, incurred by the insured pursuant to a written voluntary agreement, consent decree or consent order between the insured and either the Department of Environmental Quality or the United States Environmental Protection Agency, when incurred as a result of a written direction, request or agreement by the Department of Environmental Quality or the United States Environmental Protection Agency to take action with respect to contamination within the State of Oregon, shall not be denied the insured on the ground that such expenses constitute voluntary payments by the insured.

(3) The rules of construction set forth in subsection (2) of this section shall not apply if the application of the rule results in an interpretation contrary to the intent of the parties to the general liability insurance policy. [1999 c.783 §4]

465.482 Short title. ORS 465.475 to 465.480 shall be known and may be cited as the Oregon Environmental Cleanup Assistance Act. [1999 c.783 §6]

Note: Section 5, chapter 783, Oregon Laws 1999, provides:

Sec. 5. (1) Sections 2 to 4 of this 1999 Act [465.475 to 465.480] apply to all causes of action and civil actions for which a judgment adjudicating the cause of action or civil action has not been entered in the register of a circuit court before the effective date of this 1999 Act [July 19, 1999].

(2) Subsection (1) of this section shall not be construed to require the retrying of any finding of fact made by a jury in any trial of an action based on an environmental claim that was conducted before the effective date of this 1999 Act. [1999 c.783 §5]

(Cleanup of Contamination Resulting From Dry Cleaning Facilities)

465.500 Purpose. (1) The purposes of ORS 465.503 to 465.540 are:

(a) To create a $1 million cleanup fund paid for solely by the dry cleaning industry, and to otherwise exempt dry cleaning owners and dry cleaning operators from cleanup liability; and

(b) To ensure the cleanup of contamination resulting from dry cleaning facilities.

(2) The provisions of ORS 465.200 to 465.510 and 465.900, and rules and programs adopted thereto, shall continue to apply to the cleanup of releases of hazardous substances from dry cleaning facilities, including but not limited to provisions and programs for:

(a) Listing of facilities having a confirmed release of dry cleaning solvents;

(b) Prioritizing dry cleaning facilities with confirmed releases for removal or remedial action;

(c) Applying standards and methods for removal and remedial actions selected or approved by the Department of Environmental Quality; and

(d) Enforcing or undertaking removal and remedial actions. [1995 c.427 §3; 2001 c.495 §1]

Note: 465.500 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

465.503 Exemption from administrative or judicial action to compel removal or remedial action; exemption from liability; exceptions; limitations. (1) Except as provided under subsections (3), (4) and (5) of this section, no dry cleaning owner or dry cleaning operator shall be subject to any administrative or judicial action to compel a removal or remedial action or to recover remedial action costs caused by the release or threatened release of dry cleaning solvent from an active or inactive dry cleaning facility, whether the action is brought under ORS 465.200 to 465.510 and 465.900 or any other statute or regulation.

(2) Except as provided under subsections (3), (4) and (5) of this section, no dry cleaning owner or dry cleaning operator shall be liable under statutory, common or administrative law for damage to real or personal property or to natural resources if the damage is caused by the release or threatened release of dry cleaning solvent from an active or inactive dry cleaning facility, except upon proof that the release of dry cleaning solvent was caused by the failure of the dry cleaning owner or dry cleaning operator to exercise due care. Compliance with applicable federal, state and local laws and regulations, including waste minimization requirements, is prima facie evidence that the dry cleaning owner or dry cleaning operator exercised due care.

(3) Notwithstanding the date on which the release occurred, the provisions of subsections (1) and (2) of this section do not apply to a dry cleaning operator if:

(a) The release was caused by gross negligence of the dry cleaning owner or dry cleaning operator;

(b) The release resulted from an action or omission that was a violation by the dry cleaning owner or dry cleaning operator of federal or state laws in effect at the time of the release, including but not limited to waste minimization requirements imposed under ORS 465.505;

(c) The dry cleaning owner or dry cleaning operator willfully concealed a release of dry cleaning solvent contrary to laws and regulations in effect at the time of the release or did not comply with release reporting requirements applicable at the time of the release;

(d) The dry cleaning owner or dry cleaning operator denies access or unreasonably hinders or delays removal or remedial

action necessary at the facility; or

(e) The dry cleaning operator of the facility where the release occurred has failed to pay fees under ORS 465.517 to 465.523 in relation to dry cleaning activity at any dry cleaning facility.

(4) Notwithstanding the date on which the release occurred, subsections (1) and (2) of this section do not apply to a dry cleaning owner if:

(a) The release was caused by gross negligence of the dry cleaning owner or dry cleaning operator;

(b) The release resulted from a violation by the dry cleaning owner or dry cleaning operator of federal or state laws in effect at the time of the release, including but not limited to waste minimization requirements imposed by ORS 465.505;

(c) The dry cleaning owner or dry cleaning operator willfully concealed a release of dry cleaning solvent contrary to laws and regulations in effect at the time of the release or did not comply with the release reporting requirements applicable at the time of release;

(d) The dry cleaning owner or dry cleaning operator denies access or unreasonably hinders or delays removal or remedial action necessary at the facility;

(e) The dry cleaning operator of the facility where the release occurred has failed to pay fees under ORS 465.517 to 465.523 in relation to dry cleaning activity at the facility; or

(f) The dry cleaning facility has been an inactive dry cleaning facility for a period of 90 days or more immediately preceding June 30, 1995.

(5) If hazardous substances are released as a result of both the release of dry cleaning solvent from dry cleaning operations and other activities, the exemptions from liability provided under this section shall apply only to that portion of the removal or remedial action or damage caused by the release or threatened release of dry cleaning solvent from the dry cleaning facility. [1995 c.427 §4; 2001 c.495 §2]

Note: 465.503 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

465.505 Waste minimization requirements for dry cleaning facilities; annual report; reportable release; rules. (1) In addition to any other applicable federal or state law and regulation, the following waste minimization requirements shall apply to dry cleaning facilities:

(a) All wastes meeting the state and federal criteria for hazardous waste, excluding wastewater, generated at any dry cleaning facility and containing dry cleaning solvents, including residues and filters, shall be managed and disposed of, regardless of quantity generated, as hazardous wastes in accordance with federal and state laws otherwise applicable to management of hazardous wastes, except that, as to the cleanup of releases of dry cleaning solvents, ORS 465.503 shall apply rather than ORS 466.205;

(b) Wastewater contaminated with dry cleaning solvents from the water separation process of dry cleaning machines may not be discharged into any sanitary sewer or septic tank or into the waters of this state;

(c) Dry cleaning operators shall manage solvent contaminated wastewater generated in the water separation process in accordance with rules adopted by the Environmental Quality Commission;

(d) A dry cleaning facility may not include operation of transfer-type dry cleaning equipment using perchloroethylene;

(e) All newly installed dry cleaning systems using perchloroethylene shall be of the dry-to-dry type and be equipped with integral refrigerated condensers with an outlet temperature sensor for the control of perchloroethylene emissions;

(f) All existing dry cleaning systems using perchloroethylene shall install refrigerated condensers, or an equivalent;

(g) Every dry cleaning facility shall install secondary containment systems capable of containing dry cleaning solvent under and around each machine or item of equipment in which any dry cleaning solvent is used, treated or stored; and

(h) All perchloroethylene dry cleaning solvent shall be delivered to dry cleaning facilities by means of closed, direct-coupled delivery systems.

(2) The Department of Environmental Quality may authorize the use of alternative measures at a dry cleaning facility in lieu of one or more of the measures described under subsection (1) of this section upon proof satisfactory to the department that the alternative measures can provide equivalent protection for public health and the environment, can achieve equivalent waste minimization and are consistent with other applicable laws and regulations.

(3) Every dry cleaning and dry store operator shall provide annually to the department on forms to be supplied by the department, information regarding compliance with the waste minimization requirements set forth in subsection (1) of this section and any other information as the department considers necessary for carrying out the purposes of ORS 465.200 and 465.500 to 465.548.

(4) Notwithstanding any law to the contrary, a dry cleaning operator for a facility having a release of dry cleaning solvents shall immediately report any release exceeding one pound to the notification system managed by the Office of Emergency Management pursuant to ORS 401.275.

(5) The Environmental Quality Commission shall adopt rules necessary to implement ORS 465.200 and 465.500 to 465.548, including but not limited to rules implementing the recommendations of the advisory group established under ORS 465.507 or requiring the implementation of new waste minimization technologies. [1995 c.427 §5; 1999 c.59 §132; 2001 c.495 §3]

Note: 465.505 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

465.507 Dry cleaning advisory group. (1) The Director of the Department of Environmental Quality shall appoint an advisory group comprised of members representing a balance of at least the following interests:

(a) Dry cleaning operators;

(b) Dry cleaning owners;

(c) Dry cleaning industry members other than owners and operators;

(d) Citizens;

(e) Environmental organizations; and

(f) Local governments.

(2) The advisory group shall meet periodically to review and advise the Department of Environmental Quality regarding:

(a) Methods and standards for removal and remedial actions as applied by the department at dry cleaning facilities;

(b) Waste minimization rules, guidelines and requirements as applied to dry cleaning facilities, including new technologies and industry practices;

(c) The department's use of the Dry Cleaner Environmental Response Account, including use at multiple-source sites;

(d) The adequacy of revenue generated by fees assessed under ORS 465.517 to 465.523 for meeting the costs of removal and remedial actions at dry cleaning facilities; and

(e) Any other matters pertinent to the purposes of ORS 465.200 and 465.500 to 465.548. [1995 c.427 §6; 1999 c.59 §133; 2001 c.495 §4]

Note: 465.507 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

465.510 Dry Cleaner Environmental Response Account; use; increase of fees; deductible amounts for expenditures. (1) The Dry Cleaner Environmental Response Account is established separate and distinct from the General Fund in the State Treasury. All moneys collected under ORS 465.517 to 465.523, all account expenditures recovered or otherwise received, penalties assessed under ORS 465.992 and all interest earned on moneys in the account shall be credited to the account.

(2) All moneys in the Dry Cleaner Environmental Response Account are continuously appropriated to the Department of Environmental Quality and, except as provided under this section, may be expended solely for the following purposes:

(a) Remedial action costs incurred by the department as a result of a release at or from a dry cleaning facility;

(b) Preapproved remedial action costs incurred by a person performing removal or remedial action as a result of a release at or from a dry cleaning facility under a department order or agreement expressly authorizing reimbursement from the account;

(c) The department's costs of program development, administration, enforcement and cost recovery; and

(d) The department's indirect costs attributable to removal or remedial action due to a release at or from a dry cleaning facility.

(3) The department may expend Dry Cleaner Environmental Response Account moneys only for those remedial action costs defined in ORS 465.200 (23) that are reasonable in the department's judgment. The department shall consider at least the following factors, to the extent relevant information is available, in determining the order in which removals or remedial actions shall receive funding and the amount of funding:

(a) The dry cleaning facility's risk to public health and the environment. Each facility's risk shall be evaluated relative to the risk posed by other facilities.

(b) The need for removal or remedial action at the dry cleaning facility relative to account availability and the need for removal or remedial actions at other facilities.

(c) The nature of the activities for which expenditures are necessary, in the following order of preference:

(A) Direct cost of cleanup, provided that adequate technical investigation has been completed;

(B) Direct cost of technical investigation and remedy evaluation;

(C) Administrative and indirect costs; and

(D) Enforcement, cost recovery and legal costs.

(4) If the department takes action at a facility, location or area where hazardous substances have been released as a result of both dry cleaning operations and other activities, including but not limited to laundry operations, account moneys may be used only for that portion of the removal or remedial action determined by the department to be necessitated by the release of dry cleaning solvent by the dry cleaning facility.

(5) Moneys in the account expended for remedial action costs may be expended solely for costs in excess of the following deductible amounts:

(a) For a release from a dry cleaning facility employing five or fewer individuals at the time of release, including any dry cleaning owner, dry cleaning operator or full-time employee, $5,000;

(b) For a release from a dry cleaning facility employing more than five individuals at the time of release, including any dry cleaning owner, dry cleaning operator or full-time employee, $1,000 per owner, operator or full-time employee up to $10,000; and

(c) For a release from an inactive site, $10,000.

(6) The dry cleaning owner or dry cleaning operator of the facility shall be responsible for paying the deductible amount. The department may bring a civil action to recover any moneys expended from the account in payment of costs properly payable under this subsection by the dry cleaning owner or dry cleaning operator.

(7) The department may not expend moneys out of the Dry Cleaner Environmental Response Account:

(a) For the payment of any claim or judgment against the state or its agencies for loss of business, damage or destruction of property or personal injury arising from removal or remedial action undertaken under ORS 465.500 to 465.510.

(b) For remedial action and other costs under this section if the dry cleaning owner or dry cleaning operator failed to comply with the waste minimization requirements under ORS 465.505, and the failure to comply with the requirements is determined by the department to be a contributing factor in the release. [1995 c.427 §7; 2001 c.495 §5]

Note: 465.510 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

465.515 Definitions for ORS 465.517 to 465.548. As used in ORS 465.517 to 465.548 and 465.992:

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

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

(3) "Dry Cleaner Environmental Response Account" has the meaning given under ORS 465.200.

(4) "Dry cleaning facility" has the meaning given under ORS 465.200.

(5) "Dry cleaning operator" has the meaning given under ORS 465.200.

(6) "Dry cleaning owner" has the meaning given under ORS 465.200.

(7) "Dry cleaning solvent" has the meaning given in ORS 465.200.

(8) "Dry store" has the meaning given in ORS 465.200.

(9) "Facility" has the meaning given in ORS 465.200.

(10) "Person" has the meaning given in ORS 465.200.

(11) "Release" has the meaning given in ORS 465.200.

(12) "Remedial action" has the meaning given in ORS 465.200.

(13) "Retail sale or transfer" has the meaning given in ORS 465.200. [1995 c.427 §8; 2001 c.495 §6]

Note: 465.515 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: 465.515 to 465.548 and 465.992 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 465 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

465.517 Operating fees; risk fees; environmental fees. (1) In addition to any other tax or fee imposed by law, there is imposed on the privilege of operating an active dry cleaning facility within this state a base annual fee of:

(a) $250 for each dry store plus, if a dry cleaning solvent was ever used at the dry store, an additional fee equal to the larger of the following:

(A) $200, if perchloroethylene was ever used at the dry store; or

(B) $100, if any other dry cleaning solvent was ever used at the dry store; and

(b) $500 for each dry cleaning facility.

(2) In addition to any other tax or fee imposed by law, there is assessed on an active dry cleaning facility the following annual risk fees:

(a) $100, for using a solvent other than perchloroethylene at the facility during the fee period;

(b) $200, for using perchloroethylene at the facility at any time prior to, but not during, the fee period; and

(c) $400, for using perchloroethylene at the facility during the fee period.

(3) In addition to any other tax or fee imposed by law, there is assessed on an active dry cleaning facility an environmental fee based on the amount of gross revenue of dry cleaning services the facility generates, in the following amounts:

(a) For facilities with less than $100,000 in gross revenue, $250.

(b) For facilities with gross revenues between $100,000 and $199,999, $500.

(c) For facilities with gross revenues between $200,000 and $299,999, $750.

(d) For facilities with gross revenues between $300,000 and $399,999, $1,000.

(e) For facilities with gross revenues of $400,000 or more, $1,250.

(4) The fees assessed shall be due on the first day of each calendar year that the facility operates as a dry cleaning facility and shall be prorated for partial year operation.

(5) A dry cleaning owner or dry cleaning operator shall pay the fees imposed under this section in a single payment, payable on January 1.

(6) Beginning January 1, 2003, and annually thereafter, the risk and environmental fees specified in this section shall be increased by 25 percent if the fees and deductibles paid under ORS 465.500 to 465.548 failed to generate $1 million or more during the preceding calendar year. [1995 c.427 §9; 1999 c.1047 §1; 2001 c.495 §7]

Note: 465.517 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.520 Fee on sale or transfer of dry cleaning solvent; exemption. (1) In addition to any other tax or fee imposed by

law, a fee is imposed on the retail sale or transfer within this state of dry cleaning solvent on or after January 1, 1996. The fee shall be paid by the seller or transferor.

(2) The fee on each gallon of dry cleaning solvent is the result obtained from multiplying the solvent factor of the dry cleaning solvent by $10.

(3) The solvent factor for each dry cleaning solvent is the amount listed in the following table:

Dry Cleaning Solvent	Solvent Factor
Perchloroethylene	1.00
Any other solvent	0.20

(4) Notwithstanding subsections (1) and (2) of this section, no fee shall be imposed on the retail sale or transfer of any dry cleaning solvent if, prior to the retail sale or transfer, the purchaser or transferee provides the seller or transferor with a certificate stating that:

(a) The dry cleaning solvent will not be used in a dry cleaning facility; or

(b) The purchaser or transferee does not operate a dry cleaning facility. [1995 c.427 §10; 1997 c.249 §161; 2001 c.495 §14]

Note: 465.520 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.523 Fee on use of dry cleaning solvent. (1) In addition to any other tax or fee imposed by law, a fee is imposed on the use of dry cleaning solvent at a dry cleaning facility within this state if:

(a) The purchaser or transferee of the solvent did not receive a bill or invoice showing the correct fee imposed under ORS 465.520 on the retail sale or transfer; or

(b) No fee was paid with respect to the retail sale or transfer and the purchaser or transferee had reason to believe that no fee would be paid.

(2) The fee imposed by this section equals the fee that should have been imposed on the retail sale or transfer of the dry cleaning solvent by ORS 465.520 less the fee, if any, shown on the bill or invoice. [1995 c.427 §11; 1999 c.59 §134]

Note: 465.523 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.525 Calculation of fee for partial gallons; refund or credit. (1) For a fraction of a gallon, the fee imposed under ORS 465.520 and 465.523 shall be proportionate to the fee imposed on a whole gallon.

(2) If the fee is paid pursuant to ORS 465.520 and 465.523 on dry cleaning solvent that is subsequently resold or exported from this state and not reimported for use in a dry cleaning facility, the reseller or exporter of the dry cleaning solvent is entitled to claim a refund or credit for the fee on the dry cleaning solvent that was paid by the reseller or exporter. The Department of Revenue may require a fee payer claiming a refund to provide proof that the fee was paid with respect to the dry cleaning solvent and proof of its use or sale in a manner not subject to fee assessment. [1995 c.427 §13]

Note: 465.525 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.527 Reporting of fees; extension of time for paying fee; interest. (1) The fees imposed by ORS 465.517 to 465.523 shall be reported on forms supplied by the Department of Revenue.

(2) The department for good cause may extend for not to exceed 30 days the time for paying any fee required under ORS 465.517 to 465.523. The extension may be granted at any time if a request therefor is filed with the department on or before the due date of the fee payment.

(3) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the rate established under ORS 305.220 for each month, or fraction thereof, from the date on which the fee would have been due without the extension to the date of payment. [1995 c.427 §14; 2001 c.495 §8]

Note: 465.527 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.530 Failure to comply with report requirements; determination of fee due. (1) If the Department of Revenue is dissatisfied with the report filed by any person, or if any person fails to file a report, the department shall contact the person required to file the report and request the immediate payment of the amount the department determines to be due. If the person makes immediate payment in full of the amount determined by the department to be due, the delay in payment shall not be considered to have caused any interruption in the application of ORS 465.503 (1) and (2).

(2) The department may compute and determine the amount to be paid under ORS 465.517 to 465.523 upon the basis of any information available to the department. One or more deficiency determinations of the fee due for one or more months shall be made.

(3) The amount of the determination, exclusive of penalties, shall bear interest at the rate established under ORS 305.220 for each month, or fraction thereof, from the 20th day after the close of the calendar quarter for which the fee, or any portion thereof, should have been reported until the date of payment.

(4) In making a determination, the department may offset overpayments for a calendar quarter or calendar quarters against underpayments for another month or months and against the interest and penalties on the underpayments. [1995 c.427 §15]

Note: 465.530 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.533 Jeopardy determination; petition for redetermination. (1) If the Department of Revenue believes that the collection of any fee required to be paid by any person under ORS 465.517 to 465.523 will be jeopardized by delay, it shall thereupon make a determination of the fee, noting that fact in the determination. The amount determined is immediately due and payable, with interest and penalty as provided in ORS 465.527 and 465.530.

(2) If the fee, interest and penalty specified in the jeopardy determination is not paid within 20 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 20 days.

(3) The person against whom a jeopardy determination is made may petition for the redetermination thereof. The person shall, however, file the petition for redetermination with the department within 20 days after the service upon the person of notice of the determination.

(4) The person shall at the time of filing the petition for redetermination deposit with the department any security as it may deem necessary to ensure compliance with this section and ORS 465.517 to 465.523, 465.527 and 465.530. The security may be sold by the department at public sale, if necessary, in order to recover any amount due. Notice of the sale may be served upon the person who deposited the security personally or by mail. Upon sale, the department shall return the surplus, if any, above the amount due under this section and ORS 465.517 to 465.523, 465.527 and 465.530 to the person who deposited the security. [1995 c.427 §16; 2001 c.495 §9]

Note: 465.533 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.535 Applicability of ORS chapters 305 and 314. Unless the context requires otherwise, the provisions of ORS chapters 305 and 314 pertaining to the audit and examination of returns, periods of limitations, determination of and notices of deficiencies, assessments, warrants, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Director of the Department of Revenue, appeals to the Oregon Tax Court, stay of collection pending appeal, confidentiality of returns and the penalties and procedures related thereto shall apply to the determinations of fees, penalties and interest under ORS 465.200 and 465.500 to 465.548. [1995 c.427 §17; 2001 c.495 §10]

Note: 465.535 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.537 Disposition of fees and civil penalties. All moneys received by the Department of Revenue under ORS 465.200 and 465.500 to 465.548 and moneys collected from civil penalties imposed under ORS 465.992 shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. After payment of administrative expenses incurred by the department in the administration of ORS 465.200 and 465.500 to 465.548 and of refunds or credits arising from erroneous overpayments, the balance of the moneys shall be credited to the Dry Cleaner Environmental Response Account. [1995 c.427 §18; 1999 c.1047 §2; 2001 c.495 §11]

Note: 465.537 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.540 Failure to comply with requirements to pay fee. (1) The failure to do any act required by or under the provisions of ORS 465.517 to 465.523, 465.527 or 465.533 shall be deemed an act committed in part at the office of the Department of Revenue in Salem, Oregon.

(2) The certificate of the department to the effect that a fee has not been paid, that a return has not been filed or that information has not been supplied as required by or under the provisions of ORS 465.517 to 465.523 or 465.527 to 465.533 shall be prima facie evidence that the fee has not been paid, that the return has not been filed or that the information has not been supplied. [1995 c.427 §19]

Note: 465.540 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.543 Department of Revenue enforcement; authority. (1) The Department of Revenue shall enforce the provisions of ORS 465.517 to 465.540 and may prescribe, adopt and enforce rules relating to the administration and enforcement of ORS 465.517 to 465.540.

(2) The department may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of ORS 465.517 to 465.540 and may designate representatives to conduct hearings or perform any other duties imposed upon the department by ORS 465.517 to 465.540. [1995 c.427 §20]

Note: 465.543 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.545 Suspension of dry cleaning fees; recommendation to Legislative Assembly. (1) Upon a determination by the Director of the Department of Environmental Quality that necessary removal and remedial action is completed and paid for at all dry cleaning facilities having a confirmed release of dry cleaning solvent, the director shall report to the next following session of the Legislative Assembly with a recommendation for the suspension of the fees, other than the annual license fee, imposed under ORS 465.517 to 465.523.

(2) The Director of the Department of Environmental Quality shall give notice of the intent to make the recommendation described under subsection (1) of this section at least one year prior to the date recommended by the director as the date of suspension.

(3) The provisions of ORS 465.500 to 465.510 shall apply retroactively to releases of dry cleaning solvents occurring before June 30, 1995. [1995 c.427 §21; 2001 c.495 §12]

Note: 465.545 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.546 Certificate; display of certificate; penalty for failure to display. (1) Upon payment of the annual fee under ORS 465.517 and any penalty, the Department of Revenue shall issue to each dry cleaning operator a certificate for each dry cleaning facility with respect to which the fee and penalty are paid.

(2) No person shall, after the date that the fee becomes due, operate or permit the operation of any dry cleaning facility in this state unless there is prominently displayed on the premises the certificate of the department evidencing the payment of the fee and any penalty and indicating the name and address of the dry cleaning operator engaged in the operation of the dry cleaning facility. Absence of the duly issued certificate is prima facie evidence that the fee and any penalty have not been paid.

(3) No person shall alter or change any department certificate issued under this section in an attempt to avoid payment of any fee or any penalty imposed under ORS 465.517 to 465.548 and 465.992.

(4) No person shall avoid or attempt to avoid the payment of any fee or any penalty due under ORS 465.517 to 465.548 and 465.992 by displaying anything similar in design, size or color to a department certificate issued under this section.

(5) No person shall avoid or attempt to avoid the payment of any fee or any penalty due under ORS 465.517 to 465.548 and 465.992 by using the certificate issued under this section for a dry cleaning facility for any other facility, except where a substitution is made pursuant to rules of the department.

(6) A penalty of $200 is imposed on a person that fails to display or fails to cause the display of, on the premises of the dry cleaning facility, a certificate of the department for the fee remitted under ORS 465.517. [1999 c.1047 §4]

Note: 465.546 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

465.548 List of certified dry cleaning facilities. The Department of Revenue shall make available to the Department of Environmental Quality and other interested parties a list of all dry cleaning facilities certified by the Department of Revenue

under ORS 465.546, evidencing payment by the dry cleaning facility to the Department of Revenue of the annual fee required under ORS 465.517. Notwithstanding ORS 465.535, the provisions of ORS chapters 305 and 314 pertaining to confidentiality of returns shall not apply to the disclosure of the list under this section. [1999 c.1047 §5; 2001 c.495 §13]

Note: 465.548 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.

Note: Section 16, chapter 495, Oregon Laws 2001, provides:

Sec. 16. List of inactive dry cleaning facilities eligible to receive funding; fees; eligibility. (1) The Department of Environmental Quality shall create a list of inactive dry cleaning facilities eligible to receive funding from the Dry Cleaner Environmental Response Account. The current or former owner or operator of an inactive dry cleaning facility, or a representative of the current or former owner or operator, may apply to the department to place the facility on the list. In order to be placed on the list, a fee of $250 must be submitted with the application and:

(a)(A) The facility must have been an inactive dry cleaning facility eligible to receive funding from the account as of December 31, 2001; and

(B) The application must be received by the department on or before January 1, 2003; or

(b) The facility must have been an active facility on or after January 1, 2002, and the application must be received by the department within 180 days of becoming an inactive dry cleaning facility.

(2) In order to remain on the list created by the department pursuant to this section, a current or former owner or operator, or a representative of a current or former owner or operator, must submit an annual fee of $250 to the department.

(3) In order to receive funding from the account, an inactive dry cleaning facility must be on the list created by the department pursuant to this section.

(4) Beginning January 1, 2003, and annually thereafter, the fees specified in this section shall be increased by 25 percent if the fees and deductibles paid under ORS 465.500 to 465.548 failed to generate $1 million or more during the preceding calendar year. [2001 c.495 §16]

Note: Section 16, chapter 495, Oregon Laws 2001, is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

CHEMICAL AGENTS

465.550 Definitions for ORS 465.550 and 465.555. As used in ORS 465.550 and 465.555:

(1) “Chemical agents” means:

(a) Blister agents, such as mustard gas;

(b) Nerve agents, such as sarin and VX;

(c) Residues from demilitarization, treatment and testing of blister agents; and

(d) Residues from demilitarization, treatment and testing of nerve agents.

(2) “Major recovery action” means a recovery action that will take more than one year to complete and that will employ 200 or more individuals.

(3) “Major remedial action” means a remedial action that will take more than one year to complete and that will employ 200 or more individuals.

(4) “Owner” means a person or the State of Oregon, the United States of America or any agency, department or political subdivision thereof that owns, possesses or controls property upon which a remedial or recovery action involving stored chemical agents is conducted.

(5) “Recovery action” means any activity designed to mitigate the effects of an unintended release of chemical agents into the air, water or soil of this state.

(6) “Remedial action” means any activity intended to prevent the release of chemical agents into the air, water or soil of this state. “Remedial action” includes controlled destruction of chemical agents. [1997 c.554 §1]

Note: 465.550 and 465.555 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 465 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

465.555 County assessment of effects of major recovery or remedial action at storage or disposal site for chemical agents; annual fee. (1) If a site for the storage or disposal of chemical agents is located within a county and if a major recovery or major remedial action is anticipated to occur at the site, the governing body of the county may conduct an assessment of the social and economic effects on communities within the county that are likely to occur by reason of the major recovery or major remedial action.

(2) When assessing the effects on communities caused by the major recovery or major remedial action, the county governing body may consider, among other matters, the following:

(a) Effects upon roads and streets;

(b) Effects upon existing sewer and water systems;
(c) Effects upon schools;
(d) Effects upon medical facilities and services;
(e) Additional law enforcement requirements;
(f) Additional housing requirements; and
(g) Technical planning requirements.

(3) After completion of the assessment required under this section, the county governing body may impose upon the owner of the site an annual fee reasonably calculated to mitigate the social and economic effects on communities that are occurring or that are likely to occur by reason of the major recovery or major remedial action. The annual fee may be imposed during the first year in which the major recovery or major remedial action is conducted and in each succeeding year for the duration of the major recovery or major remedial action. When a fee is imposed under this section, the fee shall be reviewed in each year and may be adjusted when circumstances make an adjustment necessary or appropriate. The total aggregate fee imposed under this section shall not exceed five percent of the total aggregate cost of the major recovery or major remedial action.

(4) If the entity responsible for conducting the major recovery or major remedial action is different from the owner of the site at which the major recovery or major remedial action is conducted, the fee authorized by this section may be imposed upon either the owner or the entity or upon both jointly. [1997 c.554 §2]

Note: See note under 465.550.

CIVIL PENALTIES

465.900 Civil penalties for violation of removal or remedial actions. (1) In addition to any other penalty provided by law, any person who violates a provision of 465.200 to 465.510, or any rule or order entered or adopted under ORS 465.200 to 465.510, shall incur a civil penalty not to exceed $10,000 a day for each day that such violation occurs or that failure to comply continues.

(2) The civil penalty authorized by subsection (1) of this section shall be imposed in the manner provided by ORS 468.135, except that a penalty collected under this section shall be deposited in the Hazardous Substance Remedial Action Fund established under ORS 465.381, if the penalty pertains to a release at any facility. [Formerly 466.900; 1991 c.734 §34]

465.990 [Amended by 1953 c.540 §5; repealed by 1989 c.846 §15]

465.992 Civil penalty for failure to pay fees. (1) Any dry cleaning operator who fails to pay a fee required under ORS 465.517, 465.520 or 465.523 shall incur a civil penalty of not more than $5,000. The penalty shall be recovered as provided in subsection (2) of this section.

(2) Any person against whom a penalty is assessed under subsection (1) of this section may appeal to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after the order of the tax court becomes final, the Department of Revenue may record the order and collect the amount assessed in the same manner as income tax deficiencies are recorded and collected under ORS 314.430. [1999 c.1047 §6]

Note: 465.992 is repealed January 1, 2006. See section 20, chapter 495, Oregon Laws 2001.

Note: See note under 465.515.