Chapter 459

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Solid Waste Management

GENERAL PROVISIONS

459.005 Definitions for ORS 459.005 to 459.437, 459.705 to 459.790 and 459A.005 to 459A.665

459.015 Policy

459.017 Relationship of state to local governments in solid waste management

STATE ADMINISTRATION

459.025 General powers and duties of department

459.035 Assistance in development and implementation of solid waste management plans and practices and recycling programs

459.045 Rules

459.046 Solid waste regulatory program; federal approval

459.047 Landfill assistance from department; solid waste disposal site certificate for landfill; effect of issuance

459.049 Mandated landfills in certain counties; establishment by state

459.051 Procedural rules

459.053 Powers of department regarding landfills

459.055 Landfills in farm use areas; waste reduction programs

459.057 Department to limit wastes allowed in landfills in certain counties

LOCAL ADMINISTRATION

459.065 State preemption; intergovernmental agreements authorized

459.075 Acquisition of property for disposal sites by cities and counties

459.085 County authority outside cities; effect of annexation; interagency agreements

459.095 Restrictions on authority of local government units

459.105 Regulations on use of disposal sites

459.108 Civil penalty to enforce ordinance prohibiting action described in ORS 164.775, 164.785 or 164.805

REGIONAL ADMINISTRATION

459.112 Findings; fee for disposal of solid waste generated outside region

459.114 Out-of-region fee differential

459.118 Study of transportation routes and modes of transportation for transport of out-of-region solid waste

459.121 Legislative committee hearing on transportation study

MARION COUNTY AUTHORITY

459.125 Authority of Marion County over products or by-products of county disposal sites

459.135 Marion County authority over private facility in county

459.145 Limits on Marion County authority

459.153 Intent not to discourage recycling

DISPOSAL SITES

459.205 Permit required

459.215 Exclusion of certain sites from permit requirement; rules

459.225 Variances authorized

459.235 Applications for permits; fees

459.236 Additional permit fees for remedial action or removal; amount; utilization; eligibility of local governments

459.245 Issuance of permits; terms; refusal to renew; disposal of liquid waste

459.247 Prohibition on disposal of certain solid waste at disposal site

459.248 Cleanup of hazardous substance contaminating ground water

459.250 Place for collecting source separated recyclable material required for disposal site permit

459.255 Suspension or revocation of permits

459.265 Hearings; appeal

459.268 Closure of land disposal site

459.270 Renewal of permit prior to proposed closure of disposal site

459.272 Evidence of financial assurance for land disposal site

459.273 Disposition of excess moneys and interest received for financial assurance

459.280 Definitions for ORS 459.284 and 459.290

459.284 Use of disposal site fees

459.290 Disposal site rehabilitation and enhancement advisory committee

459.305 Certification or demonstration that government unit has implemented opportunity to recycle; rules; fee

459.310 Surcharge on solid waste disposal; surcharge use

459.311 Surcharge for remedial action or removal; amount; collection; allocation

459.315 Definitions for ORS 459.315 to 459.330

459.320 Regional disposal site advisory committee; membership; terms

459.325 Duties of regional disposal site advisory committee

459.330 Notification of advisory committee by regional disposal site permittee

459.335 Use of fees collected by the metropolitan service district

459.340 Implementation of the solid waste reduction program by metropolitan service district

459.345 Metropolitan service district report to commission

459.350 Commission review of metropolitan service district report

LIMITATION ON DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS

(Temporary provisions relating to federal deregulation of certain radioactive materials are compiled as notes preceding ORS 459.376)

ENFORCEMENT

459.376 Action to enforce rules or orders
459.385 Entry upon private premises authorized; access to records

INFECTIOUS WASTE DISPOSAL

459.386 Definitions for ORS 459.386 to 459.405
459.387 Policy
459.388 Restrictions on discarding, storing or transporting infectious waste
459.390 Procedures for segregation and containment of infectious waste; exemption
459.395 Treatment of infectious wastes; rules
459.398 Rules
459.400 Exceptions
459.405 Transport of infectious waste; certification; records

HOUSEHOLD AND SMALL QUANTITY GENERATOR HAZARDOUS WASTE

459.411 Policy
459.412 Definition for ORS 459.411 to 459.417
459.413 Household hazardous waste depots; location; promotion program
459.415 Department approval for collection activity required; written proposal
459.417 Statewide household hazardous waste public education program
459.418 Contract for statewide collection of household hazardous waste

BATTERIES

459.420 Permitted lead-acid battery disposal; disposal by retailers
459.422 Acceptance of used batteries by retailers and wholesalers
459.426 Notice to customers
459.431 Definitions for ORS 459.431 to 459.437
459.432 Policy
459.433 Limitation on sale or promotion of alkaline manganese or zinc carbon batteries
459.435 Prohibition on sale or promotion of button cell mercuric oxide batteries
459.437 Requirements for sale or promotion of mercuric oxide batteries

WASTE TIRE DISPOSAL

459.705 Definitions for ORS 459.705 to 459.790
459.708 Waste tire generator; requirements
459.710 Disposal in disposal site prohibited; exceptions; use in construction of reefs prohibited; exception
459.712 Transport without carrier permit prohibited; exceptions
459.715 Storage prohibited; exceptions
459.720 Conditions for storage site permit
459.725 Application for storage site operator or carrier
459.730 Information in application for storage site permit; carrier permit; bond
459.735 Notification of permit application in county of proposed disposal site
459.740 Hearing on site permit application
459.745 Department action on application; appeal
459.750 Storage site and carrier permit fees
459.755 Revocation of storage site or carrier permit
459.760 Monitoring and inspection of waste tire carriers and storage site; access to site and records
459.765 Department use of fees
459.772 Use of processed, source-separated waste tires for energy recovery
459.775 Waste Tire Recycling Account; uses
459.780 Tire removal or processing plan; financial assistance; department abatement
459.785 Rules
459.790 Exceptions to ORS 459.705 to 459.785

MISCELLANEOUS

459.900 Thermostats and motor vehicle switches containing mercury; disposal; findings

PENALTIES

459.992 Criminal penalties; license suspension and revocation
459.995 Civil penalties

GENERAL PROVISIONS

459.005 Definitions for ORS 459.005 to 459.437, 459.705 to 459.790 and 459A.005 to 459A.665. As used in ORS 459.005 to 459.437, 459.705 to 459.790 and 459A.005 to 459A.665:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

(2) "Board of county commissioners" or "board" includes a county court.

(3) "Collection service" means a service that provides for collection of solid waste or recyclable material or both but does not include that part of a business operated under a certificate issued under ORS 822.110.

(4) "Commercial" means stores, offices including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals and other nonmanufacturing entities, but does not include other manufacturing activities or business, manufacturing or processing activities in residential dwellings.

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

(6) "Compost" means the controlled biological decomposition of organic material or the product resulting from such a process.

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

(8)(a) "Disposal site" means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site.

(b) "Disposal site" does not include:

(A) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(B) A facility subject to the permit requirements of ORS 468B.050 or 468B.053;

(C) A site used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or

(D) A site operated by a wrecker issued a certificate under ORS 822.110.

(9) "Energy recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(10) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

(11) "Hazardous waste" has the meaning given that term in ORS 466.005.

(12) "Household hazardous waste" means any discarded, useless or unwanted chemical, material, substance or product that is or may be hazardous or toxic to the public or the environment and is commonly used in or around households and is generated by the household. "Household hazardous waste" may include but is not limited to some cleaners, solvents, pesticides and automotive and paint products.

(13) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(14) "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(15) "Local government unit" means a city, county, metropolitan service district formed under ORS chapter 268, sanitary district or sanitary authority formed under ORS chapter 450, county service district formed under ORS chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(16) "Material recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be reused or recycled for some purpose.

(17) "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under this chapter and ORS chapters 268 and 459A.

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

(19) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost

equal to or less than the cost of collection and disposal of the same material.

(20) "Recycling" means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

(21) "Region" means the states of Idaho, Oregon and Washington and those counties in California and Nevada that share a common border with Oregon.

(22) "Regional disposal site" means a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year from outside the immediate service area in which the disposal site is located. As used in this subsection, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means the metropolitan service district boundary.

(23) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(24) "Solid waste" means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. "Solid waste" does not include:

(a) Hazardous waste as defined in ORS 466.005.

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of animals.

(25) "Solid waste management" means prevention or reduction of solid waste, management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste and facilities necessary or convenient to such activities.

(26) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

(27) "Transfer station" means a fixed or mobile facility other than a collection vehicle where solid waste is deposited temporarily after being removed from the site of generation but before being transported to a final disposal location.

(28) "Waste prevention" means to reduce the amount of solid waste generated or resources used, without increasing toxicity, in the design, manufacture, purchase or use of products or packaging. "Waste prevention" does not include reuse, recycling or composting.

(29) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

(30) "Yard debris" includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities, but does not include stumps or similar bulky wood materials. [1971 c.648 §2; 1973 c.811 §1; 1973 c.835 §135; 1975 c.239 §1; 1977 c.867 §21; 1983 c.338 §931; 1983 c.729 §14; 1983 c.766 §5; 1987 c.876 §17; 1989 c.763 §12; 1989 c.833 §67; 1991 c.385 §6; 1991 c.765 §1; 1993 c.343 §1; 1993 c.560 §2; 1997 c.286 §3; 1997 c.552 §1; 2003 c.14 §290]

459.010 [1967 c.428 §2; 1969 c.593 §42; repealed by 1971 c.648 §33]

459.015 Policy. (1) The Legislative Assembly finds and declares that:

(a) The planning, development and operation of recycling programs is a matter of statewide concern.

(b) The opportunity to recycle should be provided to every person in Oregon.

(c) There is a shortage of appropriate sites for landfills in Oregon.

(d) It is in the best interests of the people of Oregon to extend the useful life of solid waste disposal sites by encouraging waste prevention and the recycling and reuse of materials, and by requiring solid waste to undergo volume reduction through recycling and reuse measures to the maximum extent feasible before disposal. Implementation of waste prevention and recycling and reuse measures will not only increase the useful life of solid waste disposal sites, but also decrease the potential public health and safety impacts associated with the operation of disposal sites.

(e) There are limits to Oregon's natural resources and the capacity of the state's environment to absorb the impacts of increasing consumption of resources, increasing waste generation and increasing solid waste disposal.

(f) It is in the best interests of the people of Oregon to conserve resources and energy

by developing an economy that encourages waste prevention and recycling.

(g) The State of Oregon should make it a priority to support efforts that assist each wasteshed in meeting its recovery goal so the statewide recovery goal may be achieved.

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to establish a comprehensive statewide program for solid waste management which will:

(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

(A) First, to reduce the amount of solid waste generated;

(B) Second, to reuse material for the purpose for which it was originally intended;

(C) Third, to recycle material that cannot be reused;

(D) Fourth, to compost material that cannot be reused or recycled;

(E) Fifth, to recover energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and

(F) Sixth, to dispose of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other method approved by the Department of Environmental Quality.

(b) Clearly express the Legislative Assembly's previous delegation of authority to cities and counties for collection service franchising and regulation and the extension of that authority under the provisions of this section and ORS 459.125 and 459A.005 to 459A.085.

(c) Retain primary responsibility for management of adequate solid waste management programs with cities, counties or metropolitan service districts, reserving to the state those functions necessary to ensure effective programs, cooperation among cities, counties or metropolitan service districts and coordination of solid waste management programs throughout the state.

(d) Promote, encourage and develop markets first for reusable material and then for recyclable material.

(e) Promote research, surveys and demonstration projects to encourage material or energy recovery.

(f) Promote research, surveys and demonstration projects to aid in developing more sanitary, efficient and economical methods of solid waste management.

(g) Provide advisory technical assistance and planning assistance to affected persons, in the planning, development and implementation of solid waste management programs.

(h) Develop, in coordination with federal, state and local agencies and other affected persons, long-range plans including regional approaches to promote reuse, to provide land reclamation in sparsely populated areas, and in urban areas necessary disposal facilities.

(i) Provide for the adoption and enforcement of recycling rates and standards as well as performance standards necessary for safe, economic and proper solid waste management.

(j) Provide authority for counties to establish a coordinated program for solid waste management, to regulate solid waste management and to license or franchise the providing of service in the field of solid waste management.

(k) Encourage utilization of the capabilities and expertise of private industry.

(L) Promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste.

(m) Promote application of material or energy recovery systems which preserve and enhance the quality of air, water and land resources. [1971 c.648 §1; 1975 c.239 §2; 1983 c.729 §15; 1989 c.541 §1; 1991 c.385 §7; 1993 c.560 §3; 1997 c.552 §2; 2001 c.513 §1]

459.017 Relationship of state to local governments in solid waste management. (1) The Legislative Assembly finds and declares that:

(a) The planning, location, acquisition, development and operation of landfills is a matter of statewide concern.

(b) Local government units have the primary responsibility for planning for solid waste management.

(c) Where the solid waste management plan of a local government unit has identified a need for a landfill, the state has a responsibility to assist local government and private persons in establishing such a site.

(2) It is the intent of the Legislative Assembly that any action taken by the Environmental Quality Commission to establish a landfill under ORS 459.049 be recognized as an extraordinary measure that should be exercised only in the closest cooperation with local government units that have jurisdiction over the area affected by the proposed establishment of a landfill. [1979 c.773 §2; 1993 c.560 §4]

459.020 [1967 c.248 §1; repealed by 1971 c.648 §33]

STATE ADMINISTRATION

459.025 General powers and duties of department. Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality:

(1) Shall promote and coordinate research, studies and demonstration projects on improved methods and techniques in all phases of solid waste management.

(2) May apply to and receive funds from the federal government and from public and private agencies to carry out studies, research and demonstration projects in the field of solid waste management.

(3) May enter into agreements with the federal government, state agencies, local government units and private persons to carry out ORS 459.005 to 459.105, 459.112 to 459.121 and 459.205 to 459.385. [1971 c.648 §4; 1973 c.835 §136; 1993 c.560 §5]

459.030 [1967 c.428 §3; 1969 c.593 §43; repealed by 1971 c.648 §33]

459.035 Assistance in development and implementation of solid waste management plans and practices and recycling programs. Consistent with ORS 459.015 (2)(c), the Department of Environmental Quality shall provide to state agencies, local government units and persons providing collection service, advisory technical and planning assistance in development and implementation of effective solid waste management plans and practices, implementation of recycling programs under ORS 459.250, 459A.005 to 459A.120 and 459A.600 to 459A.620, and assistance in training of personnel in solid waste management. The department shall report to the Legislative Assembly from time to time on further assistance that will be needed to develop, implement and administer effective solid waste management programs or recycling programs. The department shall assist in surveys to locate potential disposal sites. The department may request the assistance of other state agencies. [1971 c.648 §3; 1983 c.729 §16; 1993 c.560 §6]

459.040 [1967 c.428 §4; 1969 c.593 §44; repealed by 1971 c.648 §33]

459.045 Rules. (1) The Environmental Quality Commission shall adopt reasonable and necessary solid waste management rules governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, transmission of diseases to humans or animals, air pollution, pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

(b) Location of disposal sites, giving consideration to:

(A) The adaptability of each disposal site to the population served, topography and geology of the area and other characteristics as they affect protection of ground and surface waters and air pollution;

(B) Minimum standards of design, management and operation of disposal sites; and

(C) Salvage operations at disposal sites.

(c) Construction, loading and operation of vehicles used in performing collection service to prevent the contents of the vehicles from dropping, sifting, leaking or escaping onto public highways.

(d) Definition of other "wastes" subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.385 and 459.992 (1) and (2).

(e) Closure and post-closure maintenance of land disposal sites.

(2) The commission may by rule:

(a) Exempt a class of land disposal sites other than those receiving domestic solid waste from the requirement to provide financial assurance under ORS 459.272; or

(b) Establish criteria that a land disposal site must meet to be exempted from the requirement to provide financial assurance under ORS 459.272.

(3) The commission shall adopt rules on other subjects as necessary to carry out:

(a) ORS 459.005 to 459.105 and 459.205 to 459.385.

(b) ORS 646.608 (1)(y). Rules adopted under this paragraph shall, to the greatest extent practicable, be consistent with the labeling requirements of other states.

(4) The commission shall adopt rules which have modified or limited application in different geographic areas of the state when special conditions prevail in specified geographic areas. Special conditions that shall be considered include, but are not limited to, climatic conditions, zone classification of the area, population characteristics, methods and costs of solid waste management, solid waste management plans and other conditions in the area. Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105 and 459.205 to 459.385.

(5) All rules adopted under this section shall be adopted after public hearing and in accordance with ORS chapter 183.

(6) Unless a rule adopted under this section is adopted pursuant to the authority granted by ORS 183.335 (5), the commission shall mail copies of the proposed rules to all persons who have requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by subsection (5) of

this section. [1971 c.648 §5; 1973 c.835 §137; 1981 c.709 §2; 1983 c.766 §6; 1993 c.560 §§7,7a; 2001 c.924 §23]

459.046 Solid waste regulatory program; federal approval. The Environmental Quality Commission and the Department of Environmental Quality are authorized to perform or cause to be performed any act necessary to gain partial and final approval of a solid waste regulatory program under the provisions of 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, and federal regulations and interpretive and guidance documents issued pursuant to the Resource Conservation and Recovery Act. [Formerly 459.209]

459.047 Landfill assistance from department; solid waste disposal site certificate for landfill; effect of issuance. Upon request by a city or county responsible for implementing a department approved solid waste management plan which identifies a need for a landfill, and subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality shall:

(1) Assist the local government unit in the establishment of the landfill including assisting in planning, location, acquisition, development and operation of the site.

(2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a landfill within the boundaries of the requesting local government unit. Subject to the conditions set forth in the permit, any permit for a landfill authorized by the Environmental Quality Commission under this subsection shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the landfill, subject only to condition of the site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate. [1979 c.773 §3; 1993 c.560 §8]

Note: Operation of the amendments to 459.047 by section 10, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval is set forth for the user's convenience.

459.047. Upon request by a city or county responsible for implementing a department approved solid waste management plan which identifies a need for a landfill, and subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality shall:

(1) Assist the local government unit in the establishment of the landfill including assisting in planning, location, acquisition, development and operation of the site.

(2) Locate a site and issue a solid waste disposal permit under ORS 459.205 to 459.385 for a landfill within the boundaries of the requesting local government unit. Subject to the conditions set forth in the permit and except for permit decisions delegated by the federal government to the Department of State Lands, any permit for a landfill authorized by the Environmental Quality Commission under this subsection shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed facility. Except for those statutes and rules for which compliance decisions have been delegated by the federal government to the Department of State Lands, all affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the landfill, subject only to condition of the site certificate. Each state or local government agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate.

459.049 Mandated landfills in certain counties; establishment by state. (1) Upon its own motion or upon the recommendation of the Department of Environmental Quality, the Environmental Quality Commission may determine that a landfill within the counties of Marion, Polk, Clackamas, Washington or Multnomah must be established in order to protect the health, safety and welfare of the residents of an area for which a local government solid waste management plan has identified the need for a landfill. In making its determination on the need for a landfill or, where applicable, on the location of a landfill, the commission shall give due consideration to:

(a) The legislative policy and findings expressed in ORS 459.015, 459.017 and 459.065, and particularly the policy that action taken under this section be exercised in cooperation with local government;

(b) The provisions of the solid waste management plan or plans for the affected area;

(c) Applicable local government ordinances, rules, regulations and plans other than for solid waste management;

(d) The statewide land use planning goals as defined in ORS 197.015;

(e) The need for a landfill;

(f) The availability and capacity of alternative disposal sites or material or energy recovery facilities;

(g) The time required to establish a landfill;

(h) Information received from public comment and hearings; and

(i) Any other factors the commission considers relevant.

(2) If the commission makes a determination under subsection (1) of this section that there is a need for a landfill within a plan area, the commission may issue an order directing the local government unit responsible for implementing the plan to establish a landfill within a specified period of time. The order may specify a time schedule for the completion of the major elements required to establish the site. A local government unit directed to establish a landfill under this section may request assistance from the department or request that the department establish the disposal site as provided in ORS 459.047.

(3) If the commission determines that the establishment of a landfill ordered by the commission under subsection (2) of this section is not being accomplished or that the completion of major elements has fallen behind the time schedule specified in the order, the commission may direct the department to establish the landfill or complete the establishment of the landfill undertaken by the local government unit. The commission may direct the department to establish or complete the establishment of a landfill under this section only if the commission finds that:

(a) The action is consistent with the statewide planning goals relating to solid waste management adopted under ORS chapters 195, 196 and 197 and any applicable provisions of a comprehensive plan or plans; and

(b) The responsible local government unit is unable to establish the landfill ordered by the commission under subsection (2) of this section.

(4) If the commission directs the department to establish or complete the establishment of a landfill under subsection (3) of this section, the department may establish the site subject only to the approval of the commission and the provisions of the solid waste management plan adopted for the area and in consultation with all affected local government units. Notwithstanding any city, county or other local government charter or ordinance to the contrary, the department may establish a landfill under this subsection without obtaining any license, permit, franchise or other form of approval from a local government unit. [1979 c.773 §4; 1983 c.827 §54; 1985 c.565 §74; 1993 c.560 §9]

459.050 [1967 c.428 §5; 1969 c.593 §45; repealed by 1971 c.648 §33]

459.051 Procedural rules. In accordance with the requirements of ORS chapter 183 and after public hearing, the Environmental Quality Commission shall adopt rules:

(1) To establish a procedure for local government units to request assistance from the Department of Environmental Quality in the establishment of a landfill under ORS 459.047, and to give notice of such requests.

(2) To establish a procedure for obtaining public comment on determinations of need for a landfill made by the commission under ORS 459.049.

(3) To provide for public hearings in the area affected by a proposed landfill to be established by the department under ORS 459.049. [1979 c.773 §5; 1993 c.560 §10]

459.053 Powers of department regarding landfills. Subject to policy direction by the Environmental Quality Commission in carrying out ORS 459.017, 459.047 to 459.065, 459.245 and 468.195 to 468.260, the Department of Environmental Quality may:

(1) By mutual agreement, return all or part of the responsibility for development or operation of the landfill to the local government unit within whose jurisdiction the landfill is to be established, or contract with the local government unit to establish the landfill.

(2) To the extent necessary, acquire by purchase, gift, grant or exercise of the power of eminent domain, real and personal property or any interest therein, including the property of a public corporation or local government unit.

(3) Lease and dispose of real or personal property.

(4) At reasonable times and after reasonable notice, enter upon land to perform necessary surveys or tests.

(5) Acquire, modify, expand or build landfills.

(6) Subject to any limitations in ORS 468.195 to 468.260, use money from the Pollution Control Fund created in ORS 468.215 for the purposes of carrying out ORS 459.047 and 459.049.

(7) Enter into contracts or other agreements with any local government unit or private person for the purposes stated in ORS 459.065 (1).

(8) Accept gifts, donations or contributions from any source to carry out the provisions of ORS 459.047 and 459.049.

(9) Establish a system of fees or user charges to fund the operation and maintenance of a department owned landfill and to repay department costs. [1979 c.773 §6; 1983 c.826 §22; 1993 c.560 §11]

459.055 Landfills in farm use areas; waste reduction programs. (1) Before issuing a permit for a landfill established after October 3, 1979, in any area zoned for exclusive farm use, the Department of Environmental Quality shall determine that the site can and will be reclaimed for uses permissi-

ble in the exclusive farm use zone. A permit issued for a landfill in an exclusive farm use zone shall contain requirements that:

(a) Ensure rehabilitation of the site at the termination of the use for solid waste disposal to a condition comparable to its original use;

(b) Protect the public health and safety and the environment;

(c) Minimize the impact of the landfill on adjacent property;

(d) Minimize traffic; and

(e) Minimize rodent and vector production and sustenance.

(2) Before issuing a permit for any disposal site, including a landfill established under ORS 459.047 or 459.049, the department shall require:

(a) Any person who sends more than 75,000 tons of solid waste a year to the disposal site to prepare a waste reduction program accepted by the department; and

(b) That any contract or agreement to dispose of more than 75,000 tons of out-of-state solid waste a year in an Oregon disposal site established under ORS 459.047 or 459.049 provides for a waste reduction program accepted by the department.

(3) A disposal site subject to the requirements of subsection (2) of this section may not accept solid waste from any person disposing of solid waste originating in any local government unit that does not have a waste reduction program or a contract accepted by the department. The department shall review the local government programs and the contract programs in the manner provided in subsection (5) of this section. A waste reduction program shall provide for:

(a) A commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as waste prevention, recycling, reuse, composting and energy recovery;

(b) An opportunity to recycle that:

(A) Includes a program for recycling that achieves the applicable recovery rate in ORS 459A.010 (6) for waste originating in Oregon, or as demonstrated by the disposal site operator for waste originating outside Oregon, either a recovery rate equivalent to that achieved in a comparable county in Oregon or a recycling program equivalent to the opportunity to recycle in ORS 459A.005 (1)(a) and (2) and the program elements in ORS 459A.010 (2) and (3); and

(B) For waste originating inside Oregon, meets or exceeds the requirements of ORS 459.250 and 459A.005 to 459A.085;

(c) A timetable for implementing each portion of the waste reduction program;

(d) Energy efficient, cost-effective approaches for waste reduction;

(e) Procedures commensurate with the type and volume of solid waste generated in the area; and

(f) Legal, technical and economical feasibility.

(4) For each area outside the state from which a disposal site receives solid waste, the disposal site shall have two years after first accepting solid waste from the area to demonstrate how the area complies with the requirements of subsection (3) of this section. If, after two years the waste reduction program required under subsection (3) of this section is not implemented, the Environmental Quality Commission may, by order, direct such implementation, or may prohibit the disposal site from accepting waste from the person responsible for preparing the waste reduction program. The disposal site operator shall provide written notice to the department prior to first accepting solid waste from outside the state. The requirements of this subsection shall apply only to contracts entered into after September 9, 1995.

(5) A waste reduction program prepared under subsection (2) of this section shall be reviewed by the department and shall be accepted by the department if it meets the criteria prescribed in subsection (3) of this section.

(6) Notwithstanding ORS 459.245 (1), if the department fails to act on an application subject to the requirements of this section within 60 days, the application shall not be considered granted.

(7) No contract or agreement for the disposal of solid waste made between an owner or operator of a disposal site and a person shall affect the authority of the commission to establish or modify the requirements of an acceptable waste reduction program under subsection (2) of this section.

(8) Notwithstanding any other provision of law relating to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of such solid waste in Oregon. [1979 c.773 §8a; 1989 c.541 §2; 1991 c.765 §8; 1993 c.560 §12; 1995 c.541 §1; 1997 c.552 §3]

459.057 Department to limit wastes allowed in landfills in certain counties. (1) Before issuing a permit for a landfill to be established under ORS 459.047 or 459.049 or for a disposal site established as a conditional use in an area zoned for exclusive

farm use within the boundaries of Clackamas, Marion, Multnomah, Polk or Washington County, the Department of Environmental Quality shall require that, to the extent legally, technically and economically feasible only solid waste from transfer stations or solid waste residues from material or energy recovery facilities will be deposited in the disposal site. As used in this section, "transfer station" means a site established for the collection and temporary storage of solid waste pending shipment in a compact and orderly manner to a disposal site.

(2) Nothing in this section shall be construed to prohibit the department from allowing other solid waste to be deposited in the disposal site in order to protect the public health and safety or the waters of this state during a temporary emergency condition. [1979 c.773 §86; 1993 c.560 §13]

459.060 [1967 c.428 §6; 1969 c.593 §46; repealed by 1971 c.648 §33]

LOCAL ADMINISTRATION

459.065 State preemption; intergovernmental agreements authorized. (1) The Legislative Assembly finds that solid waste disposal is a matter of statewide concern. The Legislative Assembly finds that carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.385 and 459A.005 to 459A.085 by local government units is a matter of statewide concern. In carrying out the provisions of ORS 459.005 to 459.105, 459.205 to 459.385 and 459A.005 to 459A.085, a local government unit may, as one of its authorized functions, enter into any agreement which the local government unit determines is desirable, for any period of time, with the Department of Environmental Quality, any local government unit or other person:

(a) For joint franchising of service or the franchising or licensing of disposal sites.

(b) For joint preparation or implementation of a solid waste management plan.

(c) For establishment of a joint solid waste management system.

(d) For cooperative establishment, maintenance, operation or use of joint disposal sites, including but not limited to energy and material recovery facilities.

(e) For the employment of persons to operate a site owned or leased by the local government unit.

(f) For promotion and development of markets for energy and material recovery.

(g) For the establishment of landfills including site planning, location, acquisition, development and placing into operation.

(2) Authority granted by ORS 459.005 to 459.105, 459.205 to 459.385 to a local government unit is specific and is in no way intended to restrict the general authority granted under ORS 190.010 to 190.030, 190.110, 203.010 to 203.075, 203.111, 203.145 to 203.810 and ORS chapters 268, 450 and 451 and is in addition to and not in lieu of such authority. [1971 c.648 §14; 1973 c.835 §138; 1975 c.239 §3; 1977 c.95 §6; 1979 c.773 §7; 1993 c.560 §14]

459.070 [1967 c.428 §7; 1969 c.593 §47; repealed by 1971 c.648 §33]

459.075 Acquisition of property for disposal sites by cities and counties. Subject to the requirements of ORS 459.005 to 459.105, 459.205 to 459.385, a county or a city may acquire real or personal property by lease, purchase, exercise of the power of eminent domain or otherwise for the purpose of operating and maintaining disposal sites. With the consent of the city involved, a county may acquire property for a site within the limits of a city. With the consent of the county having jurisdiction, a city may acquire property for a site outside the limits of the city. [1971 c.648 §15]

459.080 [1967 c.428 §8; repealed by 1971 c.648 §33]

459.085 County authority outside cities; effect of annexation; interagency agreements. (1) With respect to areas outside of cities, a board of county commissioners may, by ordinance or by regulation or order adopted pursuant to an ordinance or regulation:

(a) Prescribe the quality and character of and rates for collection service, and the minimum requirements to guarantee maintenance of service.

(b) Divide the unincorporated area into service areas, grant franchises to persons for collection service within service areas, and establish and collect fees from persons holding franchises.

(c) Prescribe a procedure for issuance, renewal or denial of a franchise to a person providing or proposing to provide collection service.

(d) Establish an agency to be responsible for investigation or inspection of collection service proposed or provided under a franchise or proposed franchise, such agency to have authority to order modifications, additions or extensions to the physical equipment, facilities, plan or service as shall be reasonable and necessary in the public interest.

(e) Regulate solid waste management.

(2) With respect to areas outside of cities, a board of county commissioners may adopt ordinances to provide for:

(a) The licensing of disposal sites as an alternative to franchising of service.

(b) The regulation, licensing or franchising of salvage businesses or the operation of salvage sites where such action is found necessary to implement any part of a solid waste management plan applicable in the county. Such an ordinance shall grant the same authority and prescribe the same procedures as provided for other franchises or licenses under this section.

(3)(a) When a city annexes all or a portion of a service area previously franchised by a county, the city, county and affected persons or local government units providing collection service shall attempt to reach an agreement to protect the extent and quality of service in areas remaining outside the city, to protect the quality of service within the city and to protect the rights of affected persons or local government units providing collection service.

(b) A city and county may, with permission of the city collector and the county franchisee, provide by prior agreement that an area, or portion of an area, annexed by the city but previously franchised by the county shall continue to be served by the county franchisee for at least 10 years after the effective date of the annexation.

(c) A city with permission of the city collector, or a city-regulated collector with permission of the city, may provide by prior agreement that an area, or portion of an area, annexed by the city but previously served by a collector located in an unfranchised area of the county shall continue to be served by the county collector or shall be transferred to the city collector with compensation from the city collector to the county collector.

(d) Where no agreement has been reached under paragraph (a), (b) or (c) of this subsection, upon annexation of territory to a city the county-franchised collector may continue to serve the annexed area until:

(A) The county collector is compensated by the city collector for the collection service in the annexed area, which compensation shall be the sum of the fair market value of the service at the time of the annexation and applicable severance damages; or

(B) The expiration of the longer of the county franchise term or the term of the current city license, contract or franchise regulating solid waste collection. However, the term shall not include any renewals or extensions made after the effective date of the annexation and the total term shall not exceed 10 years after the effective date of the annexation.

(e) Nothing in this subsection shall restrict the right of a county to franchise, license or regulate solid waste management or any portion thereof as otherwise provided in subsections (1) and (2) of this section. [1971 c.648 §16; 1977 c.639 §1; 1993 c.357 §1; 1993 c.560 §15a]

459.095 Restrictions on authority of local government units. (1) No ordinance, order, regulation or contract affecting solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with rules adopted by the Environmental Quality Commission under ORS 459.045 or 459A.025 or with a solid waste management plan or program adopted by a metropolitan service district and approved by the Department of Environmental Quality or any ordinances or regulations adopted under such plan or program.

(2) Solid waste management regulations adopted by a sanitary district or sanitary authority shall be limited to regulations supplemental to the rules adopted by the commission under ORS 459.045 or 459A.025 and necessary to meet special local conditions. [1971 c.648 §17; 1973 c.835 §139; 1977 c.95 §7; 1993 c.560 §16]

459.105 Regulations on use of disposal sites. A local government unit may regulate the use of each disposal site owned or operated by the local government unit, governing the volume or type of solid wastes that will be received at the site and the particular class of person that may use the site. [1971 c.648 §18; 1993 c.560 §17]

459.108 Civil penalty to enforce ordinance prohibiting action described in ORS 164.775, 164.785 or 164.805. (1) A city or county may impose a civil penalty to enforce the requirements of an ordinance that prohibits any action or conduct described in ORS 164.775, 164.785 or 164.805.

(2) An ordinance described in subsection (1) of this section may establish a maximum or minimum amount for the civil penalty imposed under the ordinance for each violation. The total amount of the civil penalty may be increased to include all of the costs incurred by the city or county in removing the refuse or offensive substance unlawfully placed on property and in eliminating the effects of such unlawful placement.

(3) A civil penalty imposed for violation of an ordinance prohibiting any action or conduct described in ORS 164.775, 164.785 or 164.805 shall be an alternative to criminal enforcement of the ordinance. A city or county that commences and maintains a civil action to collect such a civil penalty from any person shall not cause a criminal prosecution to be commenced or maintained against that person for the same violation of the ordinance.

(4) When a city or county ordinance prohibits any action or conduct that is described in ORS 164.775, 164.785 or 164.805, a name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation of the ordinance constitutes rebuttable evidence that the person whose name appears on the items has violated the ordinance. However, the rebuttable presumption created by this subsection exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope. [1991 c.653 §7]

Note: 459.108 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459.110 [1969 c.509 §1; repealed by 1971 c.648 §33]

459.111 [1991 c.653 §11; repealed by 1993 c.560 §107]

REGIONAL ADMINISTRATION

459.112 Findings; fee for disposal of solid waste generated outside region. (1) The Legislative Assembly finds:

(a) Solid waste management is a regional concern;

(b) Management of solid waste among the states of Idaho, Oregon and Washington and those counties in California and Nevada that share a common border with Oregon is interconnected and decisions related to solid waste management in one state can affect solid waste management in the other two states;

(c) It is appropriate that solid waste be managed on a regional basis; and

(d) It is not Oregon's responsibility to manage solid waste for states outside the region.

(2) Therefore, the Legislative Assembly finds it is appropriate that Oregon impose a fee for the disposal of solid waste in Oregon that was generated outside the region in order to:

(a) Compensate Oregon for managing solid waste for states outside the region; and

(b) Assure that the disposal of solid waste in Oregon is not less expensive for a state outside the region than for the state to dispose of the solid waste within the state. [1991 c.765 §3]

459.114 Out-of-region fee differential. When allowed by federal law, the Legislative Assembly may assess an out-of-region fee differential that is consistent with the policy set forth in ORS 459.112. [1991 c.765 §4]

459.116 [1991 c.765 §5; 1993 c.560 §18; repealed by 1997 c.807 §2]

459.118 Study of transportation routes and modes of transportation for transport of out-of-region solid waste. Before any disposal site operator enters into a new contract to receive more than 75,000 tons per year of solid waste from outside the region, the person proposing to transport the solid waste to the disposal site shall conduct or have conducted a study of the alternative transportation routes and modes of transportation that may be used to transport the solid waste to the disposal site. The study conducted under this section shall be made available, upon request, to any person. [1991 c.765 §6]

459.120 [1969 c.509 §2; 1971 c.648 §29; repealed by 1981 c.81 §3]

459.121 Legislative committee hearing on transportation study. Upon completion of the study required under ORS 459.118, the appropriate legislative committee shall conduct a hearing on the proposed contract and transportation study to allow the public to discuss the adequacy of the study and the best transportation route and mode to be used to transport the solid waste under the proposed contract. [1991 c.765 §7]

MARION COUNTY AUTHORITY

459.125 Authority of Marion County over products or by-products of county disposal sites. (1) Subject to ORS 459.145 and the requirements of ORS 459.005 to 459.437 and 459.705 to 459.790, the board of county commissioners of Marion County may:

(a) Sell, enter into short or long-term contracts, solicit bids, enter into direct negotiations, deal with brokers or use other methods of sale or disposal for the products or by-products of the disposal sites of the county.

(b) Require any person or class of persons who generate solid waste to make use of the disposal, transfer or material or energy recovery sites or facilities of the county or disposal, transfer or material or energy recovery sites or facilities designated by the county.

(c) Require any person or class of persons who pick up, collect or transport solid waste to make use of the disposal, transfer or material or energy recovery sites or facilities of the county or disposal, transfer or material or energy recovery sites or facilities designated by the county.

(d) Regulate, license, franchise and certify disposal, transfer and material or energy recovery sites or facilities; establish, maintain and amend rates charged by disposal, transfer and material or energy recovery sites or facilities; establish and collect li-

cense or franchise fees; and otherwise control and regulate the establishment and operation of all public or private disposal, transfer and material or energy recovery sites or facilities located within the county. Licenses or franchises granted by the board may be exclusive.

(e) Cause solid wastes received and accepted at the disposal sites of the county to be processed, recycled or reused.

(2) Contracts and other agreements authorized under subsection (1) of this section may be for terms not longer than 20 years. [1981 c.386 §2; 1993 c.560 §19]

459.130 [1969 c.509 §3; 1971 c.330 §1; 1971 c.648 §30; 1979 c.190 §421; repealed by 1981 c.81 §3]

459.135 Marion County authority over private facility in county. Subject to ORS 459.145 and the requirements of ORS 459.005 to 459.437 and 459.705 to 459.790, a public or private disposal, transfer or material or energy recovery site or facility shall not be established, modified or extended in Marion County without the prior approval of the board of county commissioners. The board may deny an application for the establishment, modification or extension of a site or facility if pursuant to its solid waste management plan the county has either:

(1) Entered into contracts obligating the county to supply or direct minimum quantities of solid wastes to sites or facilities designated in the contract in order that those sites or facilities will operate economically and generate sufficient revenues to liquidate any bonded or other indebtedness incurred by reason of those sites or facilities; or

(2) Adopted a franchise system for the disposal of solid or liquid wastes. [1981 c.386 §3; 1993 c.560 §20]

459.140 [1969 c.509 §4; 1975 c.239 §5; repealed by 1981 c.81 §3]

459.145 Limits on Marion County authority. ORS 459.125 and 459.135 do not apply to, or grant to Marion County any authority over:

(1) Material kept separate from waste material for the purpose of recycling or reuse by persons who generate solid waste and which is handled separately from waste material.

(2) Material or energy recovery involving the collection, storage, processing or use of materials kept separate from waste material for the purpose of recycling or reuse by persons who generate solid waste. [1981 c.386 §4; 1993 c.560 §21]

459.150 [1969 c.509 §5; 1975 c.239 §6; repealed by 1981 c.81 §3]

459.153 Intent not to discourage recycling. It is not the intent of the Legislative Assembly that Marion County, under ORS 459.125 and 459.135, take any action that would hinder or discourage recycling activities in the county. [1981 c.386 §5]

459.155 [1975 c.239 §8; 1979 c.772 §23; repealed by 1981 c.81 §3]

459.160 [1969 c.509 §7; repealed by 1971 c.648 §33]

459.165 [1983 c.729 §2; 1991 c.385 §9; renumbered 459A.005 in 1991]

459.168 [1983 c.729 §9; renumbered 459A.015 in 1991]

459.170 [1983 c.729 §3; renumbered 459A.025 in 1991]

459.175 [1983 c.729 §5; 1991 c.385 §10; renumbered 459A.045 in 1991]

459.180 [1983 c.729 §6; 1991 c.385 §11; renumbered 459A.050 in 1991]

459.185 [1983 c.729 §7; 1991 c.385 §12; renumbered 459A.055 in 1991]

459.188 [1983 c.729 §8; renumbered 459A.065 in 1991]

459.190 [1983 c.729 §11; 1991 c.385 §3; renumbered 459A.070 in 1991]

459.192 [1983 c.729 §12; renumbered 459A.075 in 1991]

459.195 [1983 c.729 §13; renumbered 459A.080 in 1991]

459.200 [1983 c.729 §10; renumbered 459A.085 in 1991]

DISPOSAL SITES

459.205 Permit required. (1) Except as provided by ORS 459.215, a disposal site shall not be established, operated, maintained or substantially altered, expanded or improved, and a change shall not be made in the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department of Environmental Quality as provided in ORS 459.235.

(2) The person who holds or last held the permit issued under subsection (1) of this section, or, if that person fails to comply, then the person owning or controlling a land disposal site that is closed and no longer receiving solid waste must continue or renew the permit required under subsection (1) of this section after the site is closed for the duration of the period in which the department continues to actively supervise the site, even though solid waste is no longer received at the site. [1971 c.648 §6; 1983 c.766 §7; 1993 c.560 §21a]

459.209 [1993 c.526 §4; renumbered 459.046 in 1995]

459.210 [1969 c.90 §2; repealed by 1971 c.648 §33]

459.215 Exclusion of certain sites from permit requirement; rules. (1) By rule and after public hearing, the Environmental Quality Commission may prescribe criteria and conditions for excluding classes of disposal sites from the permit requirements of ORS 459.205. Disposal sites so excluded shall be limited to those which, because of the nature or volume of solid waste handled, are not likely to create a public nuisance, health hazard, air or water pollution, or other serious problem. Facilities operated under a permit issued under ORS 468B.050 or 468B.053 are not required to obtain a permit

from the Department of Environmental Quality pursuant to ORS 459.205. However, exclusion from the permit requirements of ORS 459.205 does not relieve any person from compliance with other requirements of ORS 459.005 to 459.105 and 459.205 to 459.385 and the rules and regulations adopted pursuant thereto.

(2) By rule and after public hearing the commission may establish classes of disposal sites that qualify for exclusion under this section. [1971 c.648 §7; 1973 c.835 §140; 1993 c.560 §22; 1997 c.286 §4]

459.220 [1969 c.90 §1; repealed by 1971 c.648 §33]

459.225 Variances authorized. (1) If the Environmental Quality Commission finds that a disposal site cannot meet one or more of the requirements of ORS 459.005 to 459.105 and 459.205 to 459.385 or any rule or regulation adopted pursuant thereto, it may issue a variance from such requirement either for a limited or unlimited time or it may issue a permit containing a schedule of compliance specifying the time or times permitted to bring the disposal site into compliance with such requirements, or it may do both.

(2) In carrying out the provisions of subsection (1) of this section, the commission may grant specific variances from particular requirements or may grant a permit to an applicant or to a class of applicants or to a specific disposal site, and specify conditions it considers necessary to protect the public health.

(3) The commission shall grant a variance only if:

(a) Conditions exist that are beyond the control of the applicant.

(b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical.

(c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

(4) A variance may be revoked or modified by the commission after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the commission knows will be subjected to greater restrictions if such variance is revoked or modified, or who are likely to be affected or who have filed with the commission a written request for such notification.

(5) In addition to the authority to issue a variance under subsections (1) to (4) of this section, the commission may modify an existing disposal site permit to specify the conditions under which the disposal site may accept and dispose of infectious waste. The commission also may require that an energy recovery facility or solid waste incinerator accept infectious waste generated in Oregon if the infectious waste has been contained and transported in accordance with ORS 459.390 and 825.256, but only so long as the volume of infectious waste generated outside the county in which the facility or incinerator is located does not affect the ability of the facility or incinerator to process or dispose of all waste generated within the county in which the facility or incinerator is located. As used in this subsection, "infectious waste" has the meaning given that term in ORS 459.386.

(6) The establishment, operation, maintenance, expansion, alteration, improvement or other change of a disposal site in accordance with a variance is not a violation of ORS 459.005 to 459.105 and 459.205 to 459.385 or any rule or regulation adopted pursuant thereto. [1971 c.648 §8; 1973 c.835 §141; 1989 c.763 §13; 1993 c.560 §23]

459.230 [1969 c.90 §3; repealed by 1971 c.648 §33]

459.235 Applications for permits; fees. (1) Applications for permits shall be on forms prescribed by the Department of Environmental Quality. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by each local government unit having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) The Environmental Quality Commission shall establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit.

(3) In addition to the fees imposed under subsection (2) of this section, the commission shall establish a schedule of permit fees for the purpose of implementing this section and ORS 90.318, 182.375, 279.545 to 279.555, 279.570 to 279.650, 459.005, 459.015, 459.247, 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.115, 459A.500 to 459A.685, 459A.695 and 459A.750. The fees shall be based on the amount of solid waste received at the disposal site.

(4) Notwithstanding any other fee or surcharge imposed under ORS 459.005 to 459.437 or 459A.005 to 459A.120, for the dis-

posal of solid waste, in order to encourage the use of suitable material other than virgin material for daily cover at a disposal site, the only fee that may be charged for the disposal of substitute material that is also used for daily cover is the permit fee established under this section. [1971 c.648 §9; 1977 c.37 §1; 1983 c.144 §1; 1987 c.876 §18; 1989 c.833 §154; 1991 c.331 §65; 1991 c.385 §12a; 1993 c.343 §2; 1993 c.560 §§24,24a; 1995 c.281 §1]

Note: The amendments to 459.235 by section 285, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

459.235. (1) Applications for permits shall be on forms prescribed by the Department of Environmental Quality. An application shall contain a description of the existing and proposed operation and the existing and proposed facilities at the site, with detailed plans and specifications for any facilities to be constructed. The application shall include a recommendation by each local government unit having jurisdiction and such other information the department deems necessary in order to determine whether the site and solid waste disposal facilities located thereon and the operation will comply with applicable requirements.

(2) The Environmental Quality Commission shall establish a schedule of fees for disposal site permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing and investigating the application, of issuing or denying the requested permit and of an inspection program to determine compliance or noncompliance with the permit.

(3) In addition to the fees imposed under subsection (2) of this section, the commission shall establish a schedule of permit fees for the purpose of implementing this section and ORS 90.318, 182.375, 279A.125, 279A.155, 279B.025, 279B.240, 279B.270, 279B.280, 459.005, 459.015, 459.247, 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.115, 459A.475, 459A.480, 459A.500 to 459A.685, 459A.695 and 459A.750. The fees shall be based on the amount of solid waste received at the disposal site.

(4) Notwithstanding any other fee or surcharge imposed under ORS 459.005 to 459.437 or 459A.005 to 459A.120, for the disposal of solid waste, in order to encourage the use of suitable material other than virgin material for daily cover at a disposal site, the only fee that may be charged for the disposal of substitute material that is also used for daily cover is the permit fee established under this section.

459.236 Additional permit fees for remedial action or removal; amount; utilization; eligibility of local governments. (1) In addition to the permit fees provided in ORS 459.235, upon prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees, on January 1 of each year there is imposed a fee on all:

(a) Disposal sites that receive domestic solid waste except transfer stations; and

(b) Persons who transport solid waste out of the State of Oregon to a disposal site that receives domestic solid waste.

(2) The amount raised under subsection (1) of this section shall be up to $1 million per year, based on the estimated tonnage or the actual tonnage, if known, received at the site or transported out of state for disposal and any other similar or related factors the Environmental Quality Commission finds appropriate. Such fees shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(3) For solid waste generated within the boundaries of a metropolitan service district, the fee imposed under subsection (1) of this section, but not the permit fees provided in ORS 459.235 (3), shall be levied on the district, not the disposal site.

(4) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department of Environmental Quality in writing.

(5)(a) A local government unit that franchises or licenses a domestic solid waste site shall allow the disposal site to pass through the amount of the fees established by the commission in subsection (1) of this section to the users of the site.

(b) If a disposal site that receives domestic solid waste passes through all or a portion of the fees established by the commission in subsection (1) of this section to a solid waste collector who uses the site, a local government unit that franchises or licenses the collection of solid waste shall allow the franchisee or licensee to include the amount of the fee in the collection service rate.

(6) Except as provided in subsection (7) of this section, moneys collected under this section shall be deposited in the Orphan Site Account created under ORS 465.381 to be used to pay the costs of removal or remedial action of hazardous substances, in excess of the maximum amount collected under ORS 459.311 at:

(a) Solid waste disposal sites owned or operated by a local government unit; or

(b) Privately owned or operated solid waste disposal sites that receive or received domestic solid waste for which the department determines the responsible party is unknown, unwilling or unable to undertake any portion or phase of a removal or remedial action.

(7) The moneys collected under this section, or proceeds of any bond sale under ORS 468.195 for which moneys collected under this section are pledged for repayment shall be made available to a local government unit

to pay removal or remedial action costs at a site if:

(a) The local government unit is responsible for conducting removal or remedial action under ORS 465.260; and

(b) The local government unit repays any moneys equal to the amount that may be raised by the charge imposed under ORS 459.311 and interest on such moneys, in accordance with an agreement between the local government unit and the department. A local government unit is not required to repay the first $100,000 the local government unit expends on removal or remedial action.

(8) As used in this section:

(a) "Domestic solid waste" has the meaning given that term in ORS 459A.100.

(b) "Person" does not include an individual who transports the individual's own residential solid waste to a disposal site located out of the state.

(c) "Removal" and "remedial action" have the meaning given those terms in ORS 465.200. [1989 c.833 §138; 1991 c.703 §43; 1993 c.528 §1; 1993 c.560 §25]

Note: 459.236 was added to and made a part of ORS 459.005 to 459.426 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.240 [1969 c.90 §4; repealed by 1971 c.648 §33]

459.245 Issuance of permits; terms; refusal to renew; disposal of liquid waste. (1) If the disposal site meets the requirements of ORS 459.005 to 459.105 and 459.205 to 459.385 and rules of the Environmental Quality Commission adopted pursuant thereto, the Department of Environmental Quality shall issue the permit. Every completed application shall be approved or disapproved within 60 days after its receipt by the department. Except as provided in ORS 459.055 or for a permit issued under the process set forth in ORS 517.952 to 517.989, if the department fails to act within the time allowed, the application shall be considered approved unless an extension of time is granted by the commission on a showing of good cause by the department.

(2) Disposal site permits shall be issued for a period not to exceed 10 years, to be determined by the department and specified in the permit.

(3) Subject to the provisions of ORS chapter 183, the department may refuse to renew a permit unless the disposal site meets the requirements of subsection (1) of this section.

(4) The department may, consistent with applicable federal law, authorize in a disposal site permit the addition at a disposal site of liquid waste or water in a controlled fashion to enhance the decomposition of solid waste if the disposal site otherwise meets the requirements of ORS 459.005 to 459.105 and 459.205 to 459.385 and rules of the commission adopted pursuant thereto. For purposes of this subsection, "liquid waste" means any waste that, by using a paint filter liquids test method adopted by the commission, is determined to contain free liquids. [1971 c.648 §10; 1973 c.835 §142; 1979 c.773 §8; 1991 c.735 §26; 1993 c.560 §26; 2003 c.649 §2]

459.247 Prohibition on disposal of certain solid waste at disposal site. (1) No person shall dispose of and no disposal site operator shall knowingly accept for disposal the following types of solid waste at a solid waste disposal site:

(a) Discarded or abandoned vehicles;

(b) Discarded large home or industrial appliances;

(c) Used oil;

(d) Tires; or

(e) Lead-acid batteries.

(2) As used in this section, "used oil" has the meaning given that term in ORS 459A.555.

(3) Nothing in this section shall prohibit a disposal site operator from accepting and storing, for purposes of recycling or recovering, any of the types of solid waste listed in subsection (1) of this section. [1991 c.385 §39]

459.248 Cleanup of hazardous substance contaminating ground water. In addition to any other authority granted by law, if the Department of Environmental Quality finds that ground water is contaminated with a hazardous substance originating at a land disposal site, the department may require cleanup of the hazardous substance pursuant to authority under ORS 465.200 to 465.545. As used in this section, "hazardous substance" has the meaning given that term in ORS 465.200. [1993 c.526 §3]

459.250 Place for collecting source separated recyclable material required for disposal site permit. (1) The Department of Environmental Quality shall require as a condition to issuing or renewing a disposal site permit under ORS 459.245 that a place for collecting source separated recyclable material located either at the disposal site or at another location more convenient to the population served by the disposal site is provided for every person whose solid waste enters the disposal site.

(2) The department may modify the requirements of this section if the department finds that the opportunity to recycle is being provided through an acceptable alternative method. [1983 c.729 §4; 1993 c.560 §28]

459.255 Suspension or revocation of permits. (1) A permit may be suspended or revoked at any time if the Department of Environmental Quality determines that the disposal site or the solid waste management facilities located on the disposal site are being operated in violation of ORS 459.005 to 459.105 and 459.205 to 459.385 or rules of the Environmental Quality Commission adopted pursuant thereto.

(2) The procedures for denial, suspension, modification of a condition or variance, revocation or refusal to renew a permit shall be those specified for a contested case in ORS chapter 183. [1971 c.648 §11; 1973 c.835 §143; 1993 c.560 §29]

459.265 Hearings; appeal. (1) The Environmental Quality Commission may on its own motion or upon the request of the Department of Environmental Quality, and shall upon application of any person entitled to appeal, fix a time and place for a public hearing on any action of the department or commission ordering, or approving action resulting in, the closure or curtailment of use of a disposal site.

(2) In making its determination upon appeal from the action of a local government unit or the department, which action would result in the closure or curtailment of the use of a disposal site, the commission shall consider and make findings with respect to:

(a) The nature and magnitude of the problems created by the site or its operation.

(b) The applicable solid waste management plan.

(c) The existence or threat of air or water pollution.

(d) The need for the particular disposal site and alternative methods of disposal or alternate disposal sites.

(e) The costs, funds available to meet the costs and the minimum time required for a change in disposal method or disposal site.

(3) In making its determination under subsection (2) of this section with respect to a disposal site owned or operated by a local government unit, and prior to ordering closure or curtailment of use of the site, the commission shall make a finding as to whether there is an alternative method of disposal or an alternate disposal site. [1971 c.648 §12; 1973 c.835 §144; 1993 c.560 §30]

459.268 Closure of land disposal site. When solid waste is no longer received at a land disposal site, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of this chapter, any applicable rule adopted by the Environmental Quality Commission under ORS 459.045 and any requirement imposed by the Department of Environmental Quality as a condition to renewing or issuing a disposal site permit. [1983 c.766 §2; 1993 c.560 §31]

459.270 Renewal of permit prior to proposed closure of disposal site. (1) At least five years before the proposed closure of a land disposal site, the person holding the disposal site permit shall apply to renew the permit.

(a) A permit renewed under this subsection shall be issued for the period including the remaining time of operation of the disposal site, closure of the site and all or part of the post-closure period established by the Department of Environmental Quality during which active supervision of the land disposal site is necessary.

(b) Application for the renewal of a permit under this subsection shall not prevent the disposal site permittee from applying for an extension of the useful life of the land disposal site for receiving solid waste.

(2) Unless the department finds a need to protect against a significant hazard or risk to the public health, safety or environment, the department shall terminate any permit for and active supervision of a land disposal site 30 years after the site is closed.

(3) Any time after a land disposal site is closed according to the requirements of this section, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee. Before the department grants a termination or release under this section, the department must find that there is no longer a need for:

(a) Active supervision of the site;

(b) Maintenance of the site; or

(c) Maintenance or operation of any system or facility on the site. [1983 c.766 §3; 1993 c.526 §7]

459.272 Evidence of financial assurance for land disposal site. (1) Unless exempted under rules adopted by the Environmental Quality Commission under ORS 459.045, an owner or operator of a land disposal site shall maintain cost estimates of the amount of financial assurance that is necessary and demonstrate evidence of financial assurance for:

(a) The costs of closure of the land disposal site and for post-closure maintenance of the land disposal site; and

(b) Any corrective action required to be taken at the land disposal site.

(2) The financial assurance requirements established by subsection (1) of this section may be satisfied by insurance, the establishment of a trust fund, surety bond, letter of credit or qualification as a self-insurer or any combination of these methods or any other method approved by the Director of the Department of Environmental Quality. In adopting rules under ORS 459.045 to implement subsection (1) of this section, the Environmental Quality Commission may specify policy or other contractual terms, conditions or defenses necessary to establish evidence of financial assurance.

(3) The owner or operator of a land disposal site shall annually review and update the financial assurance for closure, post-closure and corrective action required under this section and cost estimates of the amount of financial assurance necessary.

(4) The owner or operator of a land disposal site shall provide the evidence of financial assurance required under this section for closure and post-closure at the time a disposal site permit is issued under ORS 459.245. If the land disposal site is operating under an existing permit on November 4, 1993, the owner or operator shall provide the evidence of financial assurance on or before April 9, 1994, or a later date established by rule by the Environmental Quality Commission.

(5) When financial assurance is required for corrective action at a land disposal site under subsection (1) of this section, the owner or operator shall provide evidence of financial assurance before beginning corrective action. [1993 c.526 §2]

459.273 Disposition of excess moneys and interest received for financial assurance. An applicant required to provide financial assurance under ORS 459.272 shall establish provisions satisfactory to the Department of Environmental Quality for disposing of any excess moneys received or interest earned on moneys received for financial assurance. To the extent practicable, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(1) A reduction of the rates a person within the area served by the land disposal site is charged for collection service; or

(2) Enhancing present or future disposal sites within the area from which the excess moneys were received. [1983 c.766 §4; 1993 c.526 §8; 1993 c.560 §33]

459.275 [1971 c.648 §13; repealed by 1973 c.826 §3 (459.276 enacted in lieu of 459.275); 1973 c.835 §145; see 459.277]

459.276 [1973 c.826 §4 (enacted in lieu of 459.275); renumbered 459.376 in 1987]

459.277 [Formerly 459.275; repealed by 1974 c.36 §28]

459.280 Definitions for ORS 459.284 and 459.290. As used in ORS 459.284 and 459.290, "disposal site" has the meaning given that term in ORS 459.005, but does not include:

(1) A material recovery, recycling or reuse facility; or

(2) A regional disposal site as defined in ORS 459.005. [1987 c.876 §4; 1993 c.560 §34]

459.284 Use of disposal site fees. Each local government unit that has a disposal site operating under the provisions of ORS 459.005 to 459.437 and 459.710 and for which the local government unit collects a fee may apportion an amount of the service or user charges collected for solid waste disposal at each publicly owned, franchised or privately owned solid waste disposal site within or for the local government unit and dedicate and use the moneys obtained for rehabilitation and enhancement of the area around the disposal site from which the fees have been collected. That portion of the service and user charges set aside by the local government unit for the purposes of this section shall be not more than $1 for each ton of solid waste. If any local government unit apportions moneys under this section, another local government unit may not also apportion moneys under this section for the same disposal site. [1987 c.876 §2; 1989 c.763 §15; 1993 c.560 §35]

459.285 [1971 c.648 §19; 1973 c.835 §146; 1981 c.81 §1; 1981 c.709 §3; renumbered 459.385 in 1987]

459.290 Disposal site rehabilitation and enhancement advisory committee. Each local government unit that apportions money under ORS 459.284 shall establish a citizens advisory committee to select plans, programs and projects for the rehabilitation and enhancement of the area around disposal sites for which the local government unit has apportioned moneys under ORS 459.284. If any local government unit establishes a citizens advisory committee under this section, another local government unit may not also establish a local citizens advisory committee under this section for the same disposal site. [1987 c.876 §3; 1989 c.763 §16]

459.292 [1989 c.833 §150; renumbered 459A.100 in 1991]

459.293 [1989 c.833 §151; renumbered 459A.105 in 1991]

459.294 [1989 c.833 §152; 1991 c.385 §13; 1991 c.385 §91; renumbered 459A.110 in 1991]

459.295 [1989 c.833 §153; renumbered 459A.120 in 1991]

459.297 [1989 c.833 §155; 1993 c.560 §36; repealed by 1995 c.576 §6]

459.298 [1989 c.833 §156; 1995 c.79 §273; repealed by 1995 c.576 §6]

459.300 [1987 c.876 §5; repealed by 1993 c.560 §107]

459.305 Certification or demonstration that government unit has implemented opportunity to recycle; rules; fee. (1) Except as otherwise provided by rules adopted by the Environmental Quality Commission under subsection (4) of this section, a disposal site may not accept solid waste generated outside the county in which the disposal site is located unless the Department of Environmental Quality certifies or, for waste that originates outside Oregon in an amount exceeding 75,000 tons annually from a single source generator or wasteshed, the disposal site operator demonstrates to the department, that the person responsible for solid waste management in the area from which the solid waste originates has implemented an opportunity to recycle that:

(a) Includes a program for recycling that achieves the applicable recovery rate in ORS 459A.010 (6) for waste originating in Oregon, or for waste originating outside Oregon, either a recovery rate equivalent to that achieved in a comparable county in Oregon or a recycling program equivalent to the opportunity to recycle in ORS 459A.005 (1)(a) and (2) and the program elements in ORS 459A.010 (2) and (3); and

(b) For waste originating inside Oregon, meets the requirements of ORS 459.250 and 459A.005 to 459A.085.

(2) The Environmental Quality Commission shall adopt rules to establish a program for certification of recycling programs established by a person in order to comply with the requirement of subsection (1) of this section. No contract or agreement for the disposal of solid waste made between an owner or operator of a disposal site and a person shall affect the authority of the commission to establish or modify the requirements established under subsection (1) of this section.

(3) For each area outside the state from which a disposal site receives solid waste, the disposal site shall have two years after first accepting solid waste from the area to demonstrate how the area complies with the requirements of subsection (1) of this section. The disposal site operator shall provide written notice to the Department of Environmental Quality prior to first accepting solid waste from outside the state. The requirements of this subsection shall apply only to contracts entered into after September 9, 1995.

(4) The commission shall establish by rule the amount of solid waste that may be accepted from outside the county in which the disposal site is located before the person must comply with the requirements set forth in subsection (1) of this section.

(5) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fee, and within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board, the Department of Environmental Quality may establish a certification fee in accordance with ORS 468.065. The fees shall not exceed the cost of the program.

(6) The certification requirement under subsection (1) of this section shall not apply to a person implementing a waste reduction program under ORS 459.055.

(7) Notwithstanding any other provision of law relating to solid waste disposal, if the laws of the state of origin prohibit or restrict the disposal of any kind of solid waste within the state of origin, such prohibition or restriction shall also apply to the disposal of such solid waste in Oregon. [1987 c.876 §6; 1989 c.541 §3; 1991 c.703 §8; 1991 c.765 §9; 1993 c.560 §38; 1995 c.541 §2; 1997 c.807 §1; 2003 c.14 §291]

459.310 Surcharge on solid waste disposal; surcharge use. (1) Each board of county commissioners of a county in which a regional disposal site is operating under provisions of ORS 459.005 to 459.437 may impose a surcharge on the solid waste received at the regional disposal site. The county may negotiate with the owner or operator of the regional disposal site to establish the amount of the surcharge imposed under this subsection. If the regional disposal site is publicly owned, the board of county commissioners shall give priority in expending the moneys to mitigation of adverse impacts on the area in and around the regional disposal site and related transfer stations located in the county including but not limited to rehabilitation and enhancement of the area, development of alternate water systems, road construction and maintenance and mitigation of adverse effects on wildlife and the environment, if provisions to mitigate such adverse impacts are not assured by permit conditions or bond requirements.

(2) If the parties negotiating a surcharge under subsection (1) of this section do not reach an agreement within 90 days after the Department of Environmental Quality receives an application under ORS 459.235 for a permit for the regional disposal site, the board of county commissioners shall unilaterally impose the following surcharge:

(a) For the first 2,000 tons per day	$	0.75/ton
(b) For each ton between 2,000 to 4,000 tons per day	$	1.00/ton
(c) For each ton above 4,000 tons per day	$	1.25/ton

(3) If a board of county commissioners imposes the surcharge under subsection (2) of this section:

(a) The surcharge shall be adjusted annually in accordance with the Portland Consumer Price Index;

(b) Up to 10 percent of the surcharge shall go into a transition fund to be used by the county after the regional disposal site is closed for the purpose of minimizing the dislocation resulting from the loss of revenue from closure of the site; and

(c) Of that portion of the surcharge not placed into a transition fund under paragraph (b) of this subsection, priority shall be given in expending the moneys to mitigation of adverse impacts on the area in and around the regional disposal site and related transfer stations located in the county including but not limited to rehabilitation and enhancement of the area, development of alternate water systems, road construction and maintenance and mitigation of adverse effects on wildlife and the environment, if provisions to mitigate such adverse impacts are not assured by permit conditions or bond requirements. [1987 c.876 §7; 1993 c.560 §39]

459.311 Surcharge for remedial action or removal; amount; collection; allocation. A local government unit responsible for conducting a remedial action or removal or related activities under ORS 465.260 at a solid waste disposal site, or a local government unit that contributed solid waste to a solid waste disposal site for which the local government is liable under ORS 465.255 or other applicable law, shall impose a charge to be added to all billings for collection services rendered within the boundaries of that local government unit unless the local government unit provides an equivalent amount of funding through another source. A charge imposed under this section shall be subject to the following requirements:

(1) The charge shall be:

(a) An amount equal to a maximum amount of $12 per capita per year and $60 per capita per local government unit;

(b) Collected for each volumetric or weight unit of solid waste collected;

(c) Imposed equitably on all persons who dispose of solid waste; and

(d) For a local government unit imposing and collecting a charge on behalf of another local government unit responsible for remedial action or related activities at a disposal site, an amount that, as a proportion of the total cost, equals the proportion of solid waste the local government unit contributed to such disposal site.

(2) The charge shall be collected on behalf of the local government unit by solid waste collectors who are subject to franchising, licensing or permitting requirements adopted by the local government unit. Notwithstanding any restriction on rates contained in a franchise or other local regulations, a solid waste collector may add the charge to bills for solid waste collection. The local government unit may enter into an intergovernmental agreement with any other local government unit to provide for imposition and collection of the charge on behalf of the local government unit.

(3) The solid waste collector shall remit the proceeds of the charge to the local government unit according to procedures adopted by the local government unit by ordinance. However, solid waste collectors shall not be responsible for covering any shortage caused by failure of a customer to pay charges for solid waste collection.

(4) A local government unit imposing a charge under this subsection may require solid waste collectors to submit reports or other documentation necessary to establish compliance with the requirements of this section or the ordinance adopted by the local government unit. All information contained in such reports relating to the number of accounts served by the solid waste collector or the revenue produced from such accounts shall be exempt from public disclosure.

(5) A solid waste collector required to collect charges under this section may retain five percent of the charge in order to defray the costs of collecting and accounting for the proceeds of the charge.

(6) If a person disposes of solid waste at a disposal site within the boundaries of a local government unit imposing a fee under this section without using the services of a solid waste collector, the person shall pay the fee established by this section at the time the person disposes of solid waste at the disposal site. That portion of the charge attributable to administrative costs as provided in subsection (5) of this section shall be retained by the operator of the solid waste disposal site. The operator of the solid waste disposal site shall remit the balance of the charge according to procedures established by ordinance by the local government unit imposing the charge.

(7) Except for the amount allocated to defray the administrative expenses of a solid waste collector or disposal site operator under subsections (5) and (6) of this section, proceeds of the charge shall be placed into a dedicated local government remedial action fund established by the local government unit and may be used only to pay for remedial action costs. As used in this subsection, "remedial action costs" also includes the cost of retiring debt incurred in connection with a remedial action.

(8) The amount collected by imposing a charge under this section shall be the

amount necessary to fund the local government unit's remedial action costs at one or more solid waste disposal sites for which the local government unit is responsible for conducting a remedial action or removal or related activities under ORS 465.260, or is liable under ORS 465.255 or other applicable law and necessary administrative expenses incurred under this section, and may include an increment to cover any delinquencies in collections. The amount of the charge may be adjusted from time to time as necessary to maintain the remedial action fund at the level necessary to accommodate the local government unit's remedial action responsibilities, but shall not exceed the maximum amounts provided in of subsection (1)(a) of this section.

(9) Any local government unit located within the boundaries of a metropolitan service district may enter into an intergovernmental agreement with the district to transfer to the district the funding authority granted under this section and the responsibility for performing all remedial action obligations for which the local government unit may be responsible.

(10) As used in this section, "remedial action," "remedial action costs" and "removal" have the meaning given those terms in ORS 465.200. [1989 c.833 §137; 1993 c.560 §40]

459.315 Definitions for ORS 459.315 to 459.330. As used in ORS 459.315 to 459.330:

(1) "Committee" means a local citizens advisory committee established under ORS 459.320.

(2) "Permittee" means a person operating a regional disposal site under a permit issued under ORS 459.245. [1987 c.876 §8]

459.320 Regional disposal site advisory committee; membership; terms. (1) Except as provided in subsection (3) or (4) of this section, the board of county commissioners of a county in which a regional disposal site is proposed to be located shall establish a local citizens advisory committee when the Department of Environmental Quality receives an application for a regional disposal site within the county. The board shall select members of the committee from among at least each of the following groups, to the extent feasible:

(a) Residents residing near or adjacent to the regional disposal site.

(b) Owners of real property adjacent to or near the regional disposal site.

(c) Persons who reside in or own real property within the county in which the regional disposal site is located.

(d) Employees of the permittee.

(e) Local organizations and citizen interest groups whose majority of members either:

(A) Are electors of the county in which the regional disposal site is located; or

(B) Own real property in the county in which the regional disposal site is located.

(2) Unless determined otherwise by a board of county commissioners:

(a) Members of the local citizens advisory committee shall serve a term of two years.

(b) The committee shall elect from among its members a chairperson of the committee with such duties and powers as the committee imposes.

(c) The committee shall meet at least four times each year for so long as the regional disposal site is proposed or operating.

(3) If the regional disposal site is operated by a metropolitan service district, the local citizens advisory committee shall be established by the governing body of the metropolitan service district.

(4) If the board of county commissioners of a county in which a regional disposal site is located or is proposed to be located has already established a local citizens advisory committee for solid waste issues in general, that committee may serve to fulfill the duties specified in ORS 459.325 so long as the membership of the committee is consistent with this section. [1987 c.876 §9; subsection (4) enacted as 1987 c.876 §10; 1999 c.720 §1]

459.325 Duties of regional disposal site advisory committee. The duties of the local citizens advisory committee established under ORS 459.320 shall include but need not be limited to:

(1) Reviewing with the permittee, the regional disposal site including but not limited to siting, operation, closure and long-term monitoring of the regional disposal site; and

(2) Providing a forum for citizen comments, questions and concerns about the regional disposal site and promoting a dialogue between the community in which the regional disposal site is to be located and the owner or operator of the regional disposal site. The committee shall prepare an annual written report summarizing the local citizens' concerns and the manner in which the owner or operator is addressing those concerns. The report shall be considered by the Department of Environmental Quality in issuing and renewing a solid waste permit under ORS 459.245. [1987 c.876 §11]

459.330 Notification of advisory committee by regional disposal site permittee. The permittee shall notify the local citizens advisory committee established under ORS 459.320 when the permittee pro-

poses to apply for a change to any state or local permit. [1987 c.876 §12]

459.335 Use of fees collected by the metropolitan service district. Notwithstanding any other provision of ORS 268.330, the metropolitan service district shall use moneys collected by the district as service or user fees for solid waste disposal for activities of the metropolitan service district related to solid waste and related planning, administrative and overhead costs of the district. [1987 c.876 §12a; 1995 c.79 §274; 1997 c.833 §23]

459.340 Implementation of the solid waste reduction program by metropolitan service district. (1) The metropolitan service district shall implement the provisions of the solid waste reduction program as adopted by the metropolitan service district.

(2) Before the metropolitan service district council amends the district's solid waste reduction program, the district shall submit the proposed amendment to the Department of Environmental Quality for review and comment. [1987 c.876 §13; 1993 c.560 §41]

459.345 Metropolitan service district report to commission. (1) In conjunction with and on the same schedule as the report required under ORS 459A.050 (1)(a), the metropolitan service district shall report to the Environmental Quality Commission on the implementation of its solid waste reduction program as approved or as amended in accordance with ORS 459.340.

(2) The report submitted by the metropolitan service district under this section shall be in writing and shall include, but need not be limited to:

(a) The current status of implementation of the metropolitan service district's solid waste reduction program including the use of disposal sites, recycling opportunities and the use of material and energy recovery technologies.

(b) A summary of the amount and percent of solid waste that is currently reused, recycled or disposed of in a solid waste disposal site and a comparison of such amounts and percentages to the district's existing and projected annual goals for:

(A) The amount and percent of solid waste that will be reused, recycled or disposed of in a solid waste disposal site operated by the metropolitan service district or in a solid waste disposal site that the district has entered into an agreement to use; and

(B) The amount in tons by which solid waste disposed of annually in a disposal site operated by the district or which the district has entered into an agreement to use will be reduced.

(c) A summary of the metropolitan service district's solid waste budget. [1987 c.876 §14; 1993 c.560 §42; 1997 c.552 §4]

459.350 Commission review of metropolitan service district report. The Environmental Quality Commission shall review the report submitted by the metropolitan service district under ORS 459.345 to determine:

(1) Whether the district's activities related to solid waste disposal comply with the district's solid waste reduction program and any goals established by the district in previous reports submitted under ORS 459.345; and

(2) Whether the program and all disposal sites operated by or used by the district continue to meet the criteria established under ORS 459.015. [1987 c.876 §15; 1989 c.171 §59]

459.355 [1987 c.876 §16; 1993 c.560 §43; repealed by 1997 c.552 §40]

LIMITATION ON DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS

Note: Sections 12 to 16 and 18, chapter 653, Oregon Laws 1991, provide:

Sec. 12. (1) The Legislative Assembly finds and declares:

(a) It is the policy of this state to minimize the release to the environment of radioactive material resulting from human activities;

(b) The United States Congress, the United States Nuclear Regulatory Commission, the United States Department of Energy and the United States Environmental Protection Agency have adopted measures intended to make possible federal deregulation of certain radioactive material;

(c) Deregulation would result in virtually unrestricted disposal or release of this radioactive material into land disposal sites, incinerators, transportation systems, waterways, sewage systems, recycling centers, consumer products or other parts of the environment;

(d) Such dissemination of radioactive material in the environment would represent an unnecessary increased risk to the health, safety and welfare of the citizens of this state and the environment;

(e) Such risk would necessitate the implementation of a costly and widespread radiation monitoring system to enable this state to insure that citizens are not exposed to radiation from deregulated radioactive material; and

(f) Such monitoring and verification of the absence of unacceptable risks resulting from federal deregulation will be more costly to this state than the current regulatory regime.

(2) Therefore, the State of Oregon hereby declares that radioactive material shall continue to be subject to regulatory control by this state. It is the purpose of sections 12 to 15 of this Act to guarantee that all radioactive material that was subject to regulation by this state, the United States Nuclear Regulatory Commission, the United States Department of Energy, the United States Environmental Protection Agency or any other state or federal agency as of January 1, 1989, shall remain subject to regulation by this state and shall be stored and disposed of only in licensed or approved radioactive waste storage or disposal facilities. [1991 c.653 §12]

Sec. 13. As used in sections 12 to 14, chapter 653, Oregon Laws 1991:

(1) "Facility approved by the Department of Human Services" means a facility for which there is a license, permit, letter of agreement or other means by which the state officially accepts the treatment, storage, recycling, incineration or disposal method for radioactive material.

(2) "Radioactive material" means any radioactive waste or other radioactive material resulting from activities of the federal government, the United States Nuclear Regulatory Commission or its licensees or licensees of a state that has entered into an agreement under 42 U.S.C. 2021 and that satisfies the definition of low-level radioactive waste in the federal Low-Level Radioactive Waste Policy Act, 42 U.S.C. 2021b(9)(a), as of January 1, 1989. "Radioactive material" does not include naturally occurring radionuclides, uranium mill tailings or high-level radioactive waste. [1991 c.653 §13; 2001 c.900 §233]

Sec. 14. Notwithstanding any declaration by the federal government that certain radioactive material may be exempt from regulatory control or below regulatory concern, no radioactive material may be recycled, incinerated or disposed of in Oregon except at a facility approved by the Department of Human Services specifically for the recycling, incineration or disposal of radioactive material. [1991 c.653 §14; 2001 c.900 §234]

Sec. 15. (1) No land disposal site in this state shall knowingly accept solid waste from another state that contains radioactive material. For purposes of this section, solid waste shall be presumed not to contain radioactive material if:

(a) The solid waste is from a state that is a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management set forth in ORS 469.930; or

(b) The solid waste is from a state that has a policy opposing exemption of radioactive material from regulation that is similar to the policy carried out by sections 12 to 15 of this 1991 Act.

(2) As used in this section, "radioactive material" has the meaning given in section 13 of this 1991 Act. [1991 c.653 §15]

Sec. 16. Section 15 of this Act is added to and made a part of ORS 459.005 to 459.105. [1991 c.653 §16]

Sec. 18. Sections 12 to 16 of this Act and the amendments to ORS 469.992 by section 17 of this Act do not become operative until the federal government or a state that has entered into an agreement under 42 U.S.C. 2021 exempts from regulation or changes the regulatory status of any radioactive material that is subject to regulation on January 1, 1989. [1991 c.653 §18]

ENFORCEMENT

459.376 Action to enforce rules or orders. (1) The Environmental Quality Commission may take whatever action is appropriate for the enforcement of its rules or orders.

(2) The commission may institute proceedings to enforce compliance with or restrain violations of ORS chapters 459 and 459A, or any rule, standard, permit or order adopted, entered or issued pursuant to ORS chapters 459 and 459A. [Formerly 459.276; 1993 c.560 §44]

459.385 Entry upon private premises authorized; access to records. The Department of Environmental Quality or county, district or city board of health personnel, authorized environmental health specialists or other authorized city or county personnel may enter upon the premises of any person regulated under ORS 459.005 to 459.105, 459.205 to 459.385, 466.005 to 466.385 and 466.992 or under regulations adopted pursuant to ORS 450.075, 450.810, 450.820 and 451.570, at reasonable times, to determine compliance with and to enforce ORS 450.075, 450.810, 450.820, 451.570, 459.005 to 459.105, 459.205 to 459.385, 466.005 to 466.385 and 466.992 and any rules or regulations adopted pursuant thereto. The department shall also have access to any pertinent records, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures. As used in this section, "pertinent records" does not include financial information unless otherwise authorized by law. [Formerly 459.285; 1993 c.526 §9; 1993 c.560 §45; 2003 c.547 §114]

INFECTIOUS WASTE DISPOSAL

459.386 Definitions for ORS 459.386 to 459.405. As used in ORS 459.386 to 459.405:

(1) "Disposal" means the final placement of treated infectious waste in a disposal site operating under a permit issued by a state or federal agency.

(2) "Infectious waste" includes:

(a) "Biological waste," which includes blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(b) "Cultures and stocks," which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures.

(c) "Pathological waste," which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(d) "Sharps," which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(3) "Storage" means the temporary containment of infectious waste in a manner that does not constitute treatment or disposal of such waste.

(4) "Transportation" means the movement of infectious waste from the point of generation over a public highway to any intermediate point or to the point of final treatment.

(5) "Treatment" means incineration, sterilization or other method, technique or process approved by the Department of Human Services that changes the character or composition of any infectious waste so as to render the waste noninfectious. [1989 c.763 §3; 1993 c.560 §46]

459.387 Policy. The Legislative Assembly finds and declares that:

(1) The collection, transportation, storage, treatment and disposal of infectious waste in a manner that protects the health, safety and welfare of the workers who handle the waste and of the public is a matter of statewide concern.

(2) The public health, safety and welfare is best protected by an infectious waste collection system that serves as many persons as possible in this state, including medical care and laboratory facilities, nursing care facilities and private residences.

(3) In the interest of public health, safety and welfare, it is the policy of this state to establish requirements for collection, transportation, storage, treatment and disposal of infectious waste that will establish priority in methods of treating and disposing of infectious waste. [1989 c.763 §2]

459.388 Restrictions on discarding, storing or transporting infectious waste. (1) No person who generates infectious waste shall discard or store such waste except as provided in ORS 459.390.

(2) No person shall transport infectious waste other than infectious waste that is an incidental part of other solid waste except as provided in ORS 459.390 (6) and 825.256. [1989 c.763 §4]

459.390 Procedures for segregation and containment of infectious waste; exemption. (1) Infectious waste shall be segregated from other wastes by separate containment at the point of generation. Enclosures used for storage of infectious waste shall be secured to prevent access by unauthorized persons and shall be marked with prominent warning signs.

(2) Infectious waste, except for sharps, shall be contained in disposable red plastic bags or containers made of other materials impervious to moisture and strong enough to prevent ripping, tearing or bursting under normal conditions of use. The bags or containers shall be closed to prevent leakage or expulsion of solid or liquid wastes during storage, collection or transportation.

(3) Sharps shall be contained for storage, collection, transportation and disposal in leakproof, rigid, puncture-resistant red containers that are taped closed or tightly lidded to prevent loss of the contents. Sharps may be stored in such containers for more than seven days.

(4) All bags, boxes or other containers for infectious waste and rigid containers of discarded sharps shall be clearly identified as containing infectious waste.

(5) Infectious waste shall be stored at temperatures and only for times established by rules of the Department of Human Services.

(6) Infectious waste shall not be compacted before treatment and shall not be placed for collection, storage or transportation in a portable or mobile trash compactor.

(7) Infectious waste contained in disposable bags as specified in this section shall be placed for collection, storage, handling or transportation in a disposable or reusable pail, carton, box, drum, dumpster, portable bin or similar container. The container shall have a tight-fitting cover and be kept clean and in good repair. The container may be of any color and shall be conspicuously labeled with the international biohazard symbol and the words "Biomedical Waste" on the sides so as to be readily visible from any lateral direction when the container is upright.

(8) Each time a reusable container for infectious waste is emptied, the container shall be thoroughly washed and decontaminated unless the surfaces of the container have been protected from contamination by a disposable red liner, bag or other device removed with the waste.

(9) Trash chutes shall not be used to transfer infectious waste between locations where it is contained or stored.

(10) Generators that produce 50 pounds or less of infectious waste in any calendar month shall be exempt from the specific requirements of subsections (5), (7) and (8) of this section. [1989 c.763 §5]

459.395 Treatment of infectious wastes; rules. (1) Pathological wastes shall be treated by incineration in an incinerator that provides complete combustion of waste to carbonized or mineralized ash. The ash shall be disposed of as provided in rules adopted by the Environmental Quality Commission. However, if the Department of Environmental Quality determines that incineration is not reasonably available within a wasteshed, pathological wastes may

be disposed of in the same manner provided for cultures and stocks.

(2) Cultures and stocks shall be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Department of Human Services rule. Sterilized waste may be disposed of in a permitted land disposal site if it is not otherwise classified as hazardous waste.

(3) Liquid or soluble semisolid biological wastes may be discharged into a sewage treatment system that provides secondary treatment of waste.

(4) Sharps and biological wastes may be incinerated as described in subsection (1) of this section or sterilized by other means prescribed by Department of Human Services rule. Sharps may be disposed of in a permitted land disposal site only if the sharps are in containers as required in ORS 459.390 (3) and are placed in a segregated area of the landfill.

(5) Other methods of treatment and disposal may be approved by rule of the Environmental Quality Commission. [1989 c.763 §6]

459.398 Rules. The Environmental Quality Commission may adopt rules for storage and handling of infectious waste at a solid waste disposal site. [1989 c.763 §7]

459.400 Exceptions. The requirements of ORS 459.386 to 459.405 shall not apply to waste, other than sharps as defined in ORS 459.386, that is:

(1) Generated in the practice of veterinary medicine; and

(2) Not capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans. [1989 c.763 §8; 1993 c.560 §47]

459.405 Transport of infectious waste; certification; records. Each person who transports infectious waste for consideration, other than waste that is an incidental part of other solid waste, shall:

(1) Provide written certification to a person who discards more than 50 pounds per month of infectious waste that such waste will be disposed of in compliance with the provisions of ORS 459.386 to 459.405; and

(2) Maintain records showing the point of origin and date and place of final disposal of infectious waste collected from generators. A copy of these records shall be given to the generator or the Department of Environmental Quality upon request. [1989 c.763 §9]

459.410 [1971 c.699 §1; 1973 c.778 §1; 1977 c.867 §1; 1979 c.132 §1; 1981 c.709 §4; 1983 c.703 §9; 1985 c.670 §1; renumbered 466.005]

HOUSEHOLD AND SMALL QUANTITY GENERATOR HAZARDOUS WASTE

459.411 Policy. (1) The Legislative Assembly finds:

(a) Individuals have limited opportunities to properly manage household hazardous waste;

(b) Businesses that are conditionally exempt small quantity generators of hazardous waste do not have feasible options for the management of hazardous waste; and

(c) The disposal of household hazardous waste and hazardous waste generated by conditionally exempt small quantity generators in solid waste disposal sites and sewage facilities presents a potential hazard to the public health and the environment because these sites and facilities may not be designed for the disposal of hazardous waste.

(2) Therefore, the Legislative Assembly declares that it is in the interest of public health, safety and the environment to provide:

(a) Alternatives to disposal of hazardous waste generated by conditionally exempt small quantity generators and household hazardous waste at solid waste disposal sites and sewage facilities; and

(b) Information and educational programs about:

(A) Alternatives for the management of household and conditionally exempt small quantity generator hazardous waste;

(B) Methods of reusing and recycling household and conditionally exempt small quantity generator hazardous waste; and

(C) Alternatives to the use of products that lead to the generation of hazardous waste by conditionally exempt small quantity generators and household hazardous waste. [1989 c.833 §69; 1993 c.560 §50]

459.412 Definition for ORS 459.411 to 459.417. As used in ORS 459.411 to 459.417, "conditionally exempt small quantity generator" means a person who generates a hazardous waste but is conditionally exempt from certain regulations because the waste is generated in quantities below the threshold adopted by the Environmental Quality Commission pursuant to ORS 466.020. [1993 c.560 §49]

459.413 Household hazardous waste depots; location; promotion program. (1) The metropolitan service district shall establish permanent depots to receive household hazardous waste. The depots shall be:

(a) Developed at geographically diverse locations throughout the district; and

(b) Located and operationally designed to conveniently receive household hazardous

waste from the general public on an ongoing basis.

(2) In conjunction with establishing permanent depots under subsection (1) of this section, the metropolitan service district also shall develop and implement a promotion program to encourage citizens to use the depots for household hazardous waste disposal. [1989 c.833 §74; 1993 c.560 §51]

459.415 Department approval for collection activity required; written proposal. (1) Before any local government operates a permanent collection depot or periodic collection events for household hazardous waste or hazardous waste generated by conditionally exempt small quantity generators, the local government shall receive written approval from the Department of Environmental Quality.

(2) In requesting written approval from the department, a local government unit proposing to operate a permanent collection depot or periodic collection events shall submit a detailed proposal. The proposal shall include at least the following information:

(a) Measures to be taken to insure safety of the public and employees or volunteers working at the collection site;

(b) Measures to be taken to prevent spills or releases of hazardous waste and a plan to respond to a spill or release if one occurs;

(c) A copy of the request for proposals for a contractor to properly manage and recycle or dispose of the waste collected in a manner consistent with the rules of the Environmental Quality Commission for hazardous waste collection, storage, transportation and disposal; and

(d) Measures to be implemented to insure no waste is accepted from generators of hazardous waste subject to regulation under ORS 466.005 to 466.385 unless the intent is to specifically collect such waste.

(3) The department may request additional information about the proposed program from the local government unit. The department shall not approve a program unless the program provides adequate provisions to protect the public health, safety and the environment. [1989 c.833 §75; 1993 c.560 §52]

459.417 Statewide household hazardous waste public education program. The Department of Environmental Quality shall implement a statewide household hazardous waste public education program. The program shall include but need not be limited to providing information about:

(1) Alternatives to disposal of household hazardous waste at solid waste disposal sites;

(2) Methods of reusing or recycling household hazardous waste; and

(3) Alternatives to the use of products that lead to the generation of household hazardous waste. [1989 c.833 §76]

459.418 Contract for statewide collection of household hazardous waste. The Department of Environmental Quality may contract with a hazardous waste collection service to provide for the statewide collection of household hazardous waste. As used in this section, "hazardous waste collection service" means a service that collects hazardous waste from conditionally exempt small quantity generators and from households. [1991 c.385 §51; 1993 c.560 §53]

459.419 [1991 c.385 §38; 1993 c.560 §54; renumbered 459A.695 in 1993]

BATTERIES

459.420 Permitted lead-acid battery disposal; disposal by retailers. (1) No person may place a used lead-acid battery in mixed municipal solid waste, discard or otherwise dispose of a lead-acid battery in this state except by delivery to a lead-acid battery retailer or wholesaler, to a collection or recycling facility authorized under ORS 459.005 to 459.437 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency.

(2) No lead-acid battery retailer shall dispose of a used lead-acid battery in this state except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency, to a collection or recycling facility authorized under ORS 459.005 to 459.437 or to a secondary lead smelter permitted by a state or the United States Environmental Protection Agency. [1989 c.290 §2; 1993 c.560 §56]

459.422 Acceptance of used batteries by retailers and wholesalers. (1) A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in the State of Oregon shall accept after December 31, 1993, used lead-acid batteries of the same type purchased from a customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by the customer.

(2) Any person selling new lead-acid batteries at wholesale shall accept used lead-acid batteries of the same type from any customer at the point of transfer in a quantity at least equal to the number of new batteries purchased, if offered by a customer.

(3) A person accepting batteries in transfer from an automotive battery retailer shall be allowed up to 90 days to remove batteries

from the retail point of collection. [1989 c.290 §§3,4]

459.426 Notice to customers. (1) Any person selling new lead-acid batteries shall post in each area where lead-acid batteries are sold a clearly visible and legible sign stating that:

(a) Lead-acid batteries cannot be disposed of in household solid waste or mixed municipal waste, but must be recycled; and

(b) The dealer will accept used lead-acid batteries of the same type sold by the dealer.

(2) If a person selling new lead-acid batteries requires a customer to pay a fee for a new lead-acid battery if the customer does not provide a used lead-acid battery for trade-in, the dealer shall also include on or near the sign required under subsection (1) of this section a statement advising potential customers that the dealer charges a fee if the customer does not provide a used lead-acid battery for trade-in. [1989 c.290 §5]

459.430 [1971 c.699 §3; 1973 c.778 §2; 1973 c.835 §147; 1977 c.867 §2; 1979 c.132 §2; 1981 c.709 §5; renumbered 466.015]

459.431 Definitions for ORS 459.431 to 459.437. As used in ORS 459.431 to 459.437:

(1) "Alkaline manganese battery" means a battery consisting of manganese dioxide positive electrode material, zinc negative electrode material, and an alkaline electrolyte.

(2) "Battery" means one or more cells, each consisting of a positive electrode, a negative electrode, and an electrolyte.

(3) "Battery pack" means one or more batteries enclosed in a housing.

(4) "Consumer product" means any product sold primarily for family or household use, and which is normally sold through consumer retail distribution.

(5) "Distributor" means a seller of batteries.

(6) "Easily removed" means a battery or battery pack that is either detachable or readily removable from a consumer product by the consumer with the use of common household tools and that can be removed by the consumer without cutting or desoldering any wires.

(7) "Nickel cadmium battery" means a battery consisting of nickel positive electrode material and cadmium negative electrode material.

(8) "Small lead battery" means a battery consisting of positive and negative electrode materials which are lead or compounds thereof, used in nonvehicular applications, and weighing less than 25 pounds. [1991 c.653 §2; 1993 c.560 §57]

459.432 Policy. (1) The Legislative Assembly finds and declares that:

(a) Batteries have come to play an important role in the advancement of social, medical and economic concerns.

(b) It is important to advance environmental interests without unnecessary interference with, or complications of, local, interstate and international commerce to the detriment of our state's economy.

(c) It is important to provide clear, safe and practical guidelines to our state's citizens, businesses and governmental bodies.

(d) There are inherent differences in batteries and products using batteries with respect to their composition, distribution and application.

(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to:

(a) Require that the mercury content in alkaline manganese batteries be reduced to a level that minimizes risk to public health and environment, and prohibit the sale in Oregon of batteries having a mercury content above that level.

(b) Maximize consumer acceptance and convenience in accomplishing important objectives of environmental protection.

(c) Minimize unnecessary administrative expense to the state and avoid undue burdens on the state's consumers, retailers, manufacturers and suppliers. [1991 c.653 §1]

459.433 Limitation on sale or promotion of alkaline manganese or zinc carbon batteries. (1) Except as otherwise provided in subsections (2) and (3) of this section, no person shall sell, offer for sale or offer for promotional purposes:

(a) Any alkaline manganese battery manufactured on or after January 1, 1996, containing intentionally introduced mercury.

(b) Any zinc carbon battery manufactured on or after January 1, 1996, containing intentionally introduced mercury.

(2) On and after January 1, 1996, a person may sell, offer for sale or offer for promotional purposes a button cell alkaline manganese battery with a mercury content of 25 milligrams or less.

(3) The provisions of subsection (1) of this section do not apply to mercury that is incidentally present in a battery. [1995 c.597 §2]

459.434 [1991 c.653 §3; repealed by 1995 c.597 §6]

459.435 Prohibition on sale or promotion of button cell mercuric oxide batteries. On and after January 1, 1996, no person shall sell, offer for sale or offer for

promotional purposes any button cell mercuric oxide battery for use in Oregon. [1995 c.597 §3]

459.436 [1991 c.653 §4; 1995 c.597 §5; repealed by 1997 c.552 §40]

459.437 Requirements for sale or promotion of mercuric oxide batteries. (1) On and after January 1, 1996, no person shall sell, offer for sale or offer for promotional purposes a mercuric oxide battery for use in Oregon unless the battery manufacturer:

(a) Identifies a collection site that has all required governmental approvals, to which persons may send used mercuric oxide batteries for recycling or proper disposal;

(b) Informs each person who purchases the manufacturer's mercuric oxide batteries of the collection site identified under paragraph (a) of this subsection; and

(c) Informs each person who purchases the manufacturer's mercuric oxide batteries of a telephone number the person may call to obtain information about sending mercuric oxide batteries for recycling or proper disposal.

(2) Subsection (1) of this section does not apply to mercuric oxide button cell batteries. [1995 c.597 §4]

459.438 [1991 c.653 §5; repealed by 1995 c.597 §6]

459.439 [1991 c.653 §6; repealed by 1993 c.560 §107]

459.440 [1971 c.699 §3a; 1973 c.835 §148; 1977 c.867 §3; 1981 c.709 §5a; renumbered 466.020]

459.442 [1981 c.709 §20; renumbered 466.070]

459.445 [1977 c.867 §6; 1981 c.709 §6; 1983 c.703 §10; 1985 c.565 §75; 1985 c.670 §37; renumbered 466.075]

459.450 [1971 c.699 §16a; 1973 c.835 §150; 1977 c.867 §4; renumbered 466.080]

459.455 [1983 c.703 §2; 1985 c.735 §2; renumbered 466.085]

459.460 [1971 c.699 §21; 1973 c.835 §149; 1981 c.709 §7; renumbered 466.090]

459.504 [1987 c.706 §20; repealed by 1991 c.882 §17]

459.505 [1977 c.867 §12; 1979 c.132 §10; 1981 c.709 §8; 1985 c.670 §38; renumbered 466.095]

459.509 [1987 c.706 §21; 1991 c.882 §5; repealed by 1991 c.882 §17]

459.510 [1971 c.699 §2; 1973 c.778 §3; 1973 c.835 §151; 1977 c.867 §7; 1981 c.709 §9; renumbered 466.100]

459.514 [1987 c.706 §22; repealed by 1991 c.882 §17]

459.517 [1977 c.867 §13; 1979 c.132 §11; 1981 c.709 §10; 1983 c.703 §11; renumbered 466.105]

459.519 [1987 c.706 §23; repealed by 1991 c.882 §17]

459.520 [1971 c.699 §2a; 1973 c.835 §152; repealed by 1977 c.867 §8]

459.524 [1987 c.706 §24; repealed by 1991 c.882 §17]

459.529 [1987 c.706 §25; repealed by 1991 c.882 §17]

459.530 [1971 c.699 §4; 1977 c.867 §9; repealed by 1985 c.670 §49]

459.534 [1987 c.706 §26; repealed by 1991 c.882 §17]

459.535 [1977 c.867 §14; 1979 c.132 §12; renumbered 466.110]

459.539 [1987 c.706 §27; repealed by 1991 c.882 §17]

459.540 [1971 c.699 §5; 1979 c.132 §3; renumbered 466.115]

459.544 [1987 c.706 §28; repealed by 1991 c.882 §17]

459.545 [1977 c.867 §15; 1979 c.132 §13; renumbered 466.120]

459.549 [1987 c.706 §29; 1993 c.560 §58; repealed by 1991 c.882 §17]

459.550 [1971 c.699 §6; 1979 c.132 §4; renumbered 466.125]

459.554 [1987 c.706 §30; repealed by 1991 c.882 §17]

459.559 [1987 c.706 §31; repealed by 1991 c.882 §17]

459.560 [1971 c.699 §7; 1979 c.132 §5; renumbered 466.130]

459.564 [1987 c.706 §32; repealed by 1991 c.882 §17]

459.569 [1987 c.706 §33; repealed by 1991 c.882 §17]

459.570 [1971 c.699 §8; 1973 c.835 §152a; 1979 c.132 §6; renumbered 466.135]

459.574 [1987 c.706 §34; repealed by 1991 c.882 §17]

459.579 [1987 c.706 §35; repealed by 1991 c.882 §17]

459.580 [1971 c.699 §9; 1979 c.132 §7; renumbered 466.140]

459.584 [1987 c.706 §36; repealed by 1991 c.882 §17]

459.585 [1979 c.132 §15; renumbered 466.145]

459.589 [1987 c.706 §37; repealed by 1991 c.882 §17]

459.590 [1971 c.699 §10; 1973 c.778 §4; 1973 c.835 §153; 1977 c.867 §10; 1979 c.132 §8; 1981 c.709 §11; 1983 c.703 §12; 1985 c.670 §39; renumbered 466.150]

459.594 [1987 c.706 §38; repealed by 1991 c.882 §17]

459.595 [1973 c.778 §7; 1977 c.867 §11; renumbered 466.155]

459.599 [1987 c.706 §39; repealed by 1991 c.882 §17]

459.600 [1971 c.699 §11; 1979 c.132 §9; 1981 c.709 §12; renumbered 466.160]

459.604 [1987 c.706 §40; repealed by 1991 c.882 §17]

459.609 [1987 c.706 §41; repealed by 1991 c.882 §17]

459.610 [1971 c.699 §12; 1973 c.835 §154; 1981 c.709 §13; 1983 c.90 §1; renumbered 466.165]

459.614 [1987 c.706 §42; repealed by 1991 c.882 §17]

459.619 [1987 c.706 §43; repealed by 1991 c.882 §17]

459.620 [1971 c.699 §16; 1973 c.835 §155; renumbered 466.170]

459.625 [1975 c.483 §3; 1977 c.796 §3; renumbered 469.375]

459.630 [1975 c.483 §2; 1977 c.796 §4; renumbered 469.525]

459.635 [1975 c.483 §4; 1985 c.670 §40; renumbered 466.175]

459.640 [1981 c.709 §22; 1985 c.670 §41; renumbered 466.180]

459.650 [1971 c.699 §13a; 1977 c.867 §16; 1979 c.132 §16; 1981 c.709 §14; 1983 c.703 §13; renumbered 466.185]

459.660 [1971 c.699 §14; 1973 c.835 §156; 1977 c.867 §17; 1979 c.132 §17; 1981 c.709 §15; 1983 c.703 §14; renumbered 466.190]

459.670 [1971 c.699 §13; 1977 c.867 §18; 1979 c.132 §18; 1981 c.709 §16; 1983 c.90 §2; renumbered 466.195]

459.680 [1971 c.699 §15a; 1977 c.867 §19; 1979 c.132 §19; 1981 c.709 §16a; 1983 c.703 §15; renumbered 466.200]

459.685 [1973 c.778 §§8,9,10,11,12,13; 1977 c.867 §20; 1985 c.685 §3; renumbered 466.205]

459.690 [1971 c.699 §15; 1973 c.835 §157; 1979 c.284 §150; renumbered 466.210]

459.695 [1983 c.703 §3; renumbered 466.215]

WASTE TIRE DISPOSAL

459.705 Definitions for ORS 459.705 to 459.790. As used in ORS 459.705 to 459.790:

(1) "Danger" or "nuisance" includes but is not limited to the unpermitted storage of waste tires or the storage of waste tires in a manner that does not comply with a condition of a permittee's waste tire storage permit.

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

(3) "Dispose" means to deposit, dump, spill or place any waste tire on any land or into any waters of the state as defined by ORS 468B.005.

(4) "Private carrier" means a person who receives or generates waste tires and who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which the person is engaged. "Private carrier" does not include a person whose primary tire business is collecting, sorting or transporting used or waste tires.

(5) "Retreadable casing" means a waste tire suitable for retreading.

(6) "Store" or "storage" means to accumulate waste tires above ground, or to own or control property on which there are waste tires above ground. "Storage" includes the beneficial use of waste tires as fences and other uses with similar potential for causing environmental risks. "Storage" does not include the use of waste tires as a ballast to maintain covers on agricultural materials or at a construction site or a beneficial use such as a planter except when the department determines the use creates an environmental risk.

(7) "Tire" means a continuous solid or pneumatic rubber covering encircling the wheel of a vehicle in which a person or property is or may be transported in or drawn by upon a highway.

(8) "Tire carrier" means any person engaged in picking up or transporting waste tires for the purpose of storage, removal to a processor or disposal. "Tire carrier" does not include a solid waste collector operating under a license or franchise from any local government unit, a private individual or private carrier who transports the person's own waste tires to a processor or for proper disposal, a person who transports fewer than five tires for disposal, or the United States, the State of Oregon, any county, city, town or municipality in this state, or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state.

(9) "Tire retailer" means any person actively engaged in the business of selling new replacement tires.

(10) "Tire retreader" means any person actively engaged in the business of retreading waste tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(11) "Waste tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(12) "Wrecking business" means a business operating according to a certificate issued under ORS 822.110. [1987 c.706 §1; 1991 c.882 §6; 1993 c.560 §59]

459.708 Waste tire generator; requirements. (1) Any person who generates waste tires shall either:

(a) Have the waste tires transported by a waste tire carrier operating under a permit issued by the Department of Environmental Quality under ORS 459.705 to 459.790; or

(b) Transport the waste tires generated by the person to a waste tire storage site operating under a permit issued by the department, to a solid waste disposal site permitted by the department to accept waste tires or to another site authorized by the department.

(2) Any person who generates waste tires shall maintain a written record of the disposition of the waste tires including:

(a) Receipts indicating the disposition of the waste tires;

(b) The name and permit number of the waste tire carrier to whom waste tires were given for disposal;

(c) The name and location of the disposal site where waste tires were taken, including the date and number of waste tires; and

(d) Any other information the department may require.

(3) The information maintained under subsection (2) of this section shall be made available to the department upon request of the department. [1991 c.882 §3; 1993 c.560 §60]

Note: 459.708 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.710 Disposal in disposal site prohibited; exceptions; use in construction of reefs prohibited; exception. (1) Except as provided in subsection (2) of this section, no person shall dispose of waste tires in a disposal site, as defined in ORS 459.005.

(2) A person may dispose of waste tires in a disposal site permitted by the Department of Environmental Quality if the waste tires are chipped in accordance with stan-

dards established by the Environmental Quality Commission.

(3) Except as provided in subsection (4) of this section, no person shall use waste tires as material in the construction of artificial reefs in the ocean waters of the State of Oregon.

(4) Subsection (3) of this section shall not apply to the use of waste tires in the construction of any artificial reef in any tidal or nontidal bay or estuary of this state. As used in this subsection, "estuary" has the meaning given that term in ORS 196.800. [1987 c.706 §2; 1989 c.203 §1; 1993 c.560 §61]

459.712 Transport without carrier permit prohibited; exceptions. (1) No person shall collect or transport waste tires for the purpose of storage, processing or disposal or purport to be in the business of collecting or transporting waste tires unless the person has a waste tire carrier permit issued by the Department of Environmental Quality under ORS 459.705 to 459.790.

(2) As a condition to holding a permit issued under subsection (1) of this section, each waste tire carrier shall:

(a) Comply with the provisions of ORS 459.705 to 459.790.

(b) Report periodically to the department on numbers of waste tires transported and the manner of disposition.

(c) Maintain financial assurance in the amount of $5,000 in the name of the State of Oregon.

(d) Maintain other plans and exhibits pertaining to the tire carrier operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(3) Subsection (1) of this section shall not apply to:

(a) A solid waste collector operating under a license or franchise from a local government unit.

(b) A private individual transporting the individual's own waste tires to a processor or for proper disposal.

(c) A private carrier transporting the carrier's own waste tires to a processor or for proper disposal.

(d) The United States, the State of Oregon, any county, city, town or municipality in this state or any agency of the United States, the State of Oregon or a county, city, town or municipality of this state. [1991 c.882 §2]

Note: 459.712 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.715 Storage prohibited; exceptions. (1) No person shall store more than 100 waste tires anywhere in this state except at a waste tire storage site operated under a permit issued under ORS 459.745.

(2) Subsection (1) of this section shall not apply to:

(a) A solid waste disposal site permitted by the Department of Environmental Quality if the permit has been modified by the department to authorize the storage of tires;

(b) A tire retailer with not more than 1,500 waste tires in storage;

(c) A tire retreader with not more than 3,000 waste tires in storage so long as the waste tires are of the type the retreader is actively retreading; or

(d) A wrecking business with not more than 1,500 waste tires in storage. [1987 c.706 §3; 1991 c.882 §7; 1993 c.560 §62]

459.720 Conditions for storage site permit. (1) Each waste tire storage site permittee shall be required to do the following as a condition to holding the permit:

(a) Report periodically to the Department of Environmental Quality on numbers of waste tires received and the manner of disposition.

(b) Maintain current contingency plans to minimize damage from fire or other accidental or intentional event.

(c) Maintain financial assurance acceptable to the department and in such amounts as determined by the department to be reasonably necessary for waste tire removal processing, fire suppression or other measures to protect the environment and the health, safety and welfare of the people of this state.

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

(2) The department may waive any of the requirements of subsection (1) of this section for a waste tire storage site in existence on or before January 1, 1988. [1987 c.706 §4]

459.725 Application for storage site operator or carrier. (1) The Department of Environmental Quality shall furnish an application form to anyone who wishes to operate a waste tire storage site or to be a waste tire carrier.

(2) In addition to information requested on the application form, the department also shall require the submission of such information relating to the construction, development or establishment of a proposed waste tire storage site and facilities to be operated

in conjunction therewith and such additional information, data and reports as it considers necessary to make a decision granting or denying a permit. [1987 c.706 §5]

459.730 Information in application for storage site permit; carrier permit; bond. (1) Permit applications submitted to the Department of Environmental Quality for operating a waste tire storage site shall contain the following:

(a) The management program for the operation of the site, including the person to be responsible for the operation of the site, the proposed method of disposal and the proposed emergency measures to be provided at the site.

(b) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used.

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

(d) An application fee, as determined by the Environmental Quality Commission to be adequate to pay for the department's costs in investigating and processing the application.

(e) Any additional information requested by the department.

(2) A permit application submitted to the department for operating as a waste tire carrier shall include the following:

(a) The name and place of business of the applicant.

(b) A description and license number of each truck used for transporting waste tires.

(c) The locations of the sites at which waste tires will be stored or disposed.

(d) A bond in the sum of $5,000 in favor of the State of Oregon. In lieu of the bond, the applicant may submit financial assurance acceptable to the department.

(e) An application fee, as determined by the commission to be adequate to pay for the department's costs in investigating and processing the application.

(f) Any additional information requested by the department.

(3) The bond required under subsection (2) of this section shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon. The bond shall be filed with the department and shall provide that:

(a) In performing services as a waste tire carrier, the applicant shall comply with the provisions of ORS 459.705 to 459.790 and rules adopted by the commission regarding tire carriers; and

(b) Any person injured by the failure of the applicant to comply with the provisions of ORS 459.705 to 459.790 or the rules adopted by the commission regarding waste tire carriers shall have a right of action on the bond in the name of the person, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the injury. [1987 c.706 §6]

459.735 Notification of permit application in county of proposed disposal site. (1) Following the submittal of a waste tire storage site permit application, the Director of the Department of Environmental Quality shall cause notice to be given in the county where the proposed site is located in a manner reasonably calculated to notify interested persons of the permit application.

(2) The notice shall contain information regarding the location of the site and the type and amount of waste tires intended for storage at the site, and may fix a time and place for a public hearing. In addition, the notice shall give any person substantially affected by the proposed site an opportunity to comment on the permit application. [1987 c.706 §7; 1993 c.560 §63]

459.740 Hearing on site permit application. The Department of Environmental Quality may conduct a public hearing in the county where a proposed waste tire storage site is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1987 c.706 §8]

459.745 Department action on application; appeal. Based upon the review by the Department of Environmental Quality of the waste tire storage site or waste tire carrier permit application, and any public comments received by the department, the Director of the Department of Environmental Quality shall issue or deny the permit. The director's decision shall be subject to appeal to the Environmental Quality Commission and judicial review under ORS chapter 183. [1987 c.706 §9]

459.750 Storage site and carrier permit fees. A fee may be required from every person for whom a permit is issued under ORS 459.745. The fee shall be in an amount determined by the Environmental Quality Commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS

459.760 and to cover related administrative costs. [1987 c.706 §10; 1993 c.560 §64]

459.755 Revocation of storage site or carrier permit. The Director of the Department of Environmental Quality may revoke any permit issued under ORS 459.745 upon a finding that the permittee has violated any provision of ORS 459.705 to 459.790 or rules adopted pursuant thereto or any material condition of the permit, subject to appeal to the Environmental Quality Commission and judicial review under ORS chapter 183. [1987 c.706 §11; 1993 c.560 §65]

459.760 Monitoring and inspection of waste tire carriers and storage site; access to site and records. The Department of Environmental Quality shall establish and operate a monitoring, inspection and surveillance program over all waste tire storage sites and all waste tire carriers or may contract with any qualified public or private agency to do so. After reasonable notice, waste tire carriers and owners and operators of storage sites must allow the department necessary access to the site of waste tire storage and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1987 c.706 §12; 1993 c.560 §66]

459.765 Department use of fees. Fees received by the Department of Environmental Quality pursuant to ORS 459.730 and 459.750 shall be deposited in the State Treasury and credited to the department and are continuously appropriated to carry out the permitting program under ORS 459.705 to 459.790. [1987 c.706 §12a; 1993 c.560 §67]

459.770 [1987 c.706 §13; 1989 c.203 §2; 1991 c.882 §8; repealed by 1991 c.882 §17]

459.772 Use of processed, source-separated waste tires for energy recovery. Notwithstanding any other provision of ORS 459.015, for purposes of encouraging the use of waste tires under ORS 459.705 to 459.790, the use of processed, source-separated waste tires having a positive market value as a new product to recover energy shall be considered recycling under ORS 459.015 (2)(a)(C). [1991 c.882 §4]

Note: 459.772 was added to and made a part of 459.705 to 459.790 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

459.775 Waste Tire Recycling Account; uses. (1) The Waste Tire Recycling Account is established in the State Treasury, separate and distinct from the General Fund. All moneys received by the Department of Revenue under ORS 459.504 to 459.619 (1989 Edition) shall be deposited to the credit of the account.

(2) Any moneys remaining in the Waste Tire Recycling Account on July 1, 1992, and any interest earned on such moneys are appropriated continuously to the Department of Environmental Quality and shall be used:

(a) To reimburse users for the costs of using waste tires or chips or similar material for requests made for the calendar quarter immediately preceding July 1, 1992; and

(b) By the Department of Environmental Quality for other programs and activities related to waste tire storage, removal or disposal. [1987 c.706 §14; 1991 c.882 §9; 1993 c.560 §68; 1997 c.552 §5]

459.780 Tire removal or processing plan; financial assistance; department abatement. (1) The Department of Environmental Quality, as a condition of a waste tire storage site permit issued under ORS 459.745, may require the permittee to remove or process the waste tires according to a plan approved by the department.

(2) The department may use moneys from the Waste Tire Recycling Account to assist a permittee in removing or processing the waste tires. Such assistance may include the payment by the department of the total costs of removal or processing the waste tires and the entering into an agreement between the department and the permittee that requires the permittee to pay to the department a portion of the costs of removal or processing calculated according to rules adopted by the Environmental Quality Commission. Moneys may be used only after the commission finds that:

(a) Special circumstances make such assistance appropriate; or

(b) Strict compliance with the provisions of ORS 459.705 to 459.790 would result in substantial curtailment or closing of the permittee's business or operation or the bankruptcy of the permittee.

(3) The department may proceed under subsections (4) to (8) of this section if:

(a) A person fails to apply for or obtain a waste tire storage site permit under ORS 459.715 to 459.760;

(b) A permittee fails to meet the conditions of such permit; or

(c) An owner of real property fails to remove waste tires as required by the department.

(4) The department may abate any danger or nuisance created by waste tires or other waste tire materials by removing or processing the tires or other waste tire materials. Before taking any action to abate the danger or nuisance, the department shall give any persons having the care, custody or control of the waste tires or materials, or owning the property upon which the tires or materials are located, notice of the department's in-

tentions and order the person to abate the danger or nuisance in a manner approved by the department. After the abatement, the department, upon request, may conduct a hearing according to the provisions of ORS chapter 183 applicable to contested case hearings to determine the financial responsibility of any party involved. If a hearing is not requested, the department may proceed to recover the costs incurred in abating the waste tires or other waste tire materials.

(5) If a person fails to take action as required under subsection (4) of this section within the time specified the Director of the Department of Environmental Quality may abate the danger or nuisance. The order issued under subsection (4) of this section may include entering the property where the danger or nuisance is located, taking the tires or other waste tire materials into public custody and providing for their processing or removal.

(6) The department may bring an action or proceeding against the property owner or the person having possession, care, custody or control of the waste tires or other waste tire materials to enforce the abatement order issued under subsection (4) of this section and recover any reasonable and necessary expenses incurred by the department for abatement costs, including administrative and legal expenses. The department's certification of expenses shall be prima facie evidence that the expenses are reasonable and necessary.

(7) In lieu of entering an order and conducting a contested case hearing, the department may enter into a stipulation, agreed settlement or consent order with any or all of the applicable parties, allowing the department to enter and remove the waste tires on the property. The stipulation, agreed settlement or consent order also may provide that the parties shall pay to the department either a specified sum of money representing the department's costs in removing the waste tires from the property, or if the exact amount of the costs are unknown at the time of the agreement, the parties may agree to pay to the department a percentage of the department's final costs incurred in removing the waste tires from the property. Upon completion of the waste tire removal, the department shall send to the applicable parties a certified statement indicating the total cost of removal and the percentage of the total costs the parties are required to pay to the department. The costs or percentage of costs to be paid by the parties shall be computed according to rules adopted by the Environmental Quality Commission.

(8) Nothing in ORS 459.705 to 459.790 shall affect the right of any person or local government unit to abate a danger or nuisance or to recover for damages to real property or personal injury related to the transportation, storage or disposal of waste tires. The department may reimburse a person or local government unit for the cost of abatement.

(9) No state or local government shall be liable for costs or damages as a result of actions taken under the provisions of ORS 459.705 to 459.790. This subsection shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For purposes of this subsection, reckless, willful or wanton misconduct shall constitute gross negligence. [1987 c.706 §15; 1991 c.882 §10; 1993 c.560 §70]

459.785 Rules. (1) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt rules necessary to carry out the provisions of ORS 459.705 to 459.790.

(2) The commission may adopt rules that limit, restrict or prohibit the storage of waste tire chips not chipped and disposed of in accordance with standards adopted by the commission under ORS 459.710. The rules also may include requirements for obtaining a permit from the Department of Environmental Quality for the storage of tire chips. [1987 c.706 §16; 1991 c.882 §11; 1993 c.560 §71]

459.790 Exceptions to ORS 459.705 to 459.785. Except for the purposes of waste tire removal under ORS 459.780 (2) and (4) to (8), the provisions of ORS 459.705 to 459.785 do not apply to:

(1) Tires from:

(a) Any device moved exclusively by human power.

(b) Any device used exclusively upon stationary rails or tracks.

(c) A motorcycle.

(d) An all-terrain vehicle.

(e) Any device used exclusively for farming purposes, except a farm truck.

(2) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader. [1987 c.706 §18; 1991 c.882 §12]

459.810 [1971 c.745 §1; renumbered 459A.700 in 1991]

459.820 [1971 c.745 §2; renumbered 459A.705 in 1991]

459.830 [1971 c.745 §3; 1973 c.758 §1; renumbered 459A.710 in 1991]

459.840 [1971 c.745 §4; 1973 c.758 §2; 1981 c.513 §1; renumbered 459A.715 in 1991]

459.850 [1971 c.745 §5; 1977 c.151 §1; 1977 c.157 §1; 1979 c.188 §1; renumbered 459A.720 in 1991]

459.860 [1971 c.745 §6; 1973 c.693 §1; renumbered 459A.725 in 1991]

459.870 [1971 c.745 §7; renumbered 459A.730 in 1991]

459.880 [1971 c.745 §8; 1973 c.758 §3; renumbered 459A.735 in 1991]

459.890 [1971 c.745 §9; renumbered 459A.740 in 1991]

MISCELLANEOUS

459.900 Thermostats and motor vehicle switches containing mercury; disposal; findings. (1) The Legislative Assembly finds that mercury is a potent neurotoxin that can cause long-lasting health problems. In order to reduce the amount of mercury entering the environment from the solid waste stream:

(a) A manufacturer of thermostats that contain mercury:

(A) Shall make available a program for the collection of such thermostats to be managed as a universal waste.

(B) Shall provide incentives for and sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream.

(C) Is not liable for improper disposal of thermostats containing mercury by consumers if the manufacturer complies with this paragraph.

(b) A person may not crush a motor vehicle without first attempting to remove mercury light switches that are mounted on the hood or trunk of the vehicle. The mercury light switches removed from motor vehicles under this paragraph are subject to the universal waste management standards adopted by the Environmental Quality Commission.

(2) For purposes of this section, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature. [2001 c.924 §1]

Note: 459.900 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 459 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

459.990 [1967 c.428 §16; 1969 c.593 §48; subsection (2) enacted as 1969 c.509 §6; repealed by 1971 c.648 §33]

459.992 Criminal penalties; license suspension and revocation. (1) The following are Class A misdemeanors:

(a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105 and 459.205 to 459.385.

(b) Violation of ORS 459.205.

(c) Violation of ORS 459.270.

(d) Violation of ORS 459A.080.

(e) Violation of ORS 459.272.

(2) Each day a violation referred to by subsection (1) of this section continues constitutes a separate offense. Such separate offenses may be joined in one indictment or complaint or information in several counts.

(3) Violation of ORS 459A.705, 459A.710 or 459A.720 is a Class A misdemeanor.

(4) In addition to the penalty prescribed by subsection (3) of this section, the Oregon Liquor Control Commission or the State Department of Agriculture may revoke or suspend the license of any person who willfully violates ORS 459A.705, 459A.710 or 459A.720, who is required by ORS chapter 471 or 635, respectively, to have a license. [Subsections (1), (2) and (3) enacted as 1971 c.648 §20; subsection (4) enacted as 1971 c.699 §20; subsections (5) and (6) enacted as 1971 c.745 §10; 1973 c.835 §158; 1977 c.867 §22; 1981 c.81 §2; 1981 c.709 §17; 1983 c.729 §17; 1983 c.766 §8; subsections (3) and (4) renumbered 466.995; 1993 c.526 §10; 1995 c.301 §37]

459.995 Civil penalties. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:

(a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.675 to 459A.685 or 646.845 or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, shall incur a civil penalty not to exceed $10,000 a day for each day of the violation.

(b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed $500 for each violation. Each battery that is disposed of improperly shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed $500 for each violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed $1,000 per day for each day of the violation. A violation of ORS 459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135. [1973 c.835 §130; 1977 c.317 §1; 1981 c.709 §18; 1983 c.703 §16; 1983 c.729 §18; 1983 c.766 §9; subsections (2) and (3) renumbered 466.880; 1987 c.706 §19; 1989 c.290 §7; 1989 c.763 §14; 1991 c.385 §§14,90; 1991 c.650 §3; 1991 c.653 §8; 1991 c.734 §32; 1991 c.882 §13; 1993 c.18 §115; 1993 c.526 §11; 1993 c.560 §73; 1995 c.584 §5; 2001 c.924 §8]

459.997 [1987 c.706 §44; repealed by 1991 c.882 §17]