Chapter 468B

2005 EDITION

Water Quality

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WATER POLLUTION CONTROL

(Generally)

468B.005 Definitions for water pollution control laws. As used in the laws relating to water pollution, unless the context requires otherwise:

(1) "Disposal system" means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems.

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(3) "Nonpoint source" means any source of pollution other than a point source.

(4) "Point source" means any discernible, confined and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include agricultural storm water discharges and return flows from irrigated agriculture.

(5) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(6) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(7) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(8) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

(9) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

(10) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. [Formerly 449.075 and then 468.700; 2003 c.469 §1]

468B.010 Authority of commission over water pollution; construction. (1) Except as otherwise provided in ORS 469.300 to 469.563, 469.590 to 469.619 and 469.930, insofar as the authority of the Environmental Quality Commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468B.015. [Formerly 449.070 and then 468.705]

468B.015 Policy. Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives. [Formerly 449.077 and then 468.710]

468B.020 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468B.015.

(2) In order to carry out the public policy set forth in ORS 468B.015, the Department of Environmental Quality shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015 and to conform to the standards of water quality and purity established under ORS 468B.048. [Formerly 449.095 and then 468.715]

468B.025 Prohibited activities. (1) Except as provided in ORS 468B.050 or 468B.053, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the Environmental Quality Commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468B.050.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079 and then 468.720; 1997 c.286 §5]

468B.030 Effluent limitations; rules. In relation to the waters of the state, the Environmental Quality Commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081 and then 468.725]

468B.032 Alternative enforcement proceeding; request; public notice; fees. (1) In addition to enforcement proceedings pursuant to ORS 468.090 for a violation of a provision, rule, permit or order under this chapter, the Department of Environmental Quality shall implement the procedures established under this section upon the request of the person to whom the notice of the civil penalty or other formal enforcement action is addressed if the person files the request within 20 days from the date of service of the notice. The written request shall serve in lieu of any other prescribed response.

(2) The department shall provide public notice of, and reasonable opportunity to comment in writing on, the civil penalty or other formal enforcement action.

(3) After the comment period closes, the department may determine either to modify the civil penalty or other formal enforcement action based on any comment received under subsection (2) of this section or to reissue the original civil penalty or other formal enforcement action. The department shall serve the person to whom the notice of civil penalty or other formal enforcement action was addressed with a copy of any comments filed and a new notice that includes the determination of the department. The person shall then have 20 days from the date of service of the new notice in which to make written application for a hearing.

(4) The department shall give notice to any person who commented under subsection (2) of this section of the new notice that includes the determination of the department under subsection (3) of this section. The department also shall give notice to any person who commented under subsection (2) of this section if a hearing is requested under subsection (3) of this section.

(5) If a person does not apply for a hearing under subsection (3) of this section, a person who commented under subsection (2) of this section may request that the department hold a hearing if the person who commented makes the request in writing within 30 days of the mailing of the notice given

under subsection (4) of this section. However, the department shall hold a hearing only if the request includes material evidence that the department did not consider when the department issued the civil penalty or other formal enforcement action. If the department denies the request for a hearing, the department shall provide a copy of the denial and the reasons for the denial to the requester and shall provide public notice of the denial that includes the reasons for the denial.

(6) In a hearing under subsection (3) or (5) of this section, the person subject to the civil penalty or other formal enforcement action and any person who commented under subsection (2) of this section shall have a reasonable opportunity to be heard and to present evidence. The department shall conduct the hearing in accordance with ORS 183.745.

(7) If a person does not request a hearing pursuant to subsection (3) or (5) of this section, the department shall issue the civil penalty or other formal enforcement action.

(8) For purposes of judicial review under ORS 183.480 to 183.500, a person who comments under subsection (2) of this section and includes a request in writing to be a party to the civil penalty or other formal enforcement action shall have standing to be a party to an agency proceeding subject to judicial review of a final order. For the procedures established by this section only, the civil penalty or other formal enforcement action shall be deemed to be commenced for purposes of the state's implementation of section 309(g)(6) of the Federal Water Pollution Control Act, as amended, when the department first notifies a person in writing that a violation has been documented and that the violation is being referred for formal enforcement action or will result in a civil penalty or other formal enforcement action.

(9) The Environmental Quality Commission shall ensure that state enforcement procedures for implementing section 309(g)(6) of the Federal Water Pollution Control Act, as amended, are comparable to and not greater than the federal enforcement procedures for enforcing that federal Act.

(10) Any person who submits a request under subsection (1) of this section shall submit with the request a basic process fee in the amount of $2,000 and a refundable hearings fee in the amount of $3,650 to pay the expenses of the department incurred under this section. If a hearing is not conducted under this section, the department shall return the refundable hearing fee to the person who submitted the request under subsection (1) of this section. All fees received under this subsection shall be deposited into the State Treasury to the credit of an account of the department. Such moneys are continuously appropriated to the department for payment of the costs of the department in carrying out the provisions of this section. [1999 c.975 §2]

468B.035 Implementation of Federal Water Pollution Control Act; rules. (1) The Environmental Quality Commission may perform or cause to be performed any acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and federal regulations or guidelines issued pursuant to the Act. The commission may adopt, modify or repeal rules, pursuant to ORS chapter 183, for the administration and implementation of this subsection.

(2) The State Department of Agriculture may perform or cause to be performed any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, and any federal regulations or guidelines issued pursuant to the Act, relating to the control and prevention of water pollution from livestock and other animal-based agricultural operations. The department may adopt rules pursuant to ORS chapter 183 for the administration and implementation of this subsection. [Formerly 468.730; 2001 c.248 §3]

Note: Sections 5 and 6, chapter 523, Oregon Laws 2005, provide:

Sec. 5. On or before January 31 of each year, the Department of Environmental Quality shall report to the Environmental Quality Commission and to an appropriate committee of the Legislative Assembly on the department's efforts in administering a watershed approach toward water pollution control permitting. The report shall include, but need not be limited to, information that indicates:

(1) Whether the department is issuing permits on a watershed basis.

(2) The level of permit backlog, if any.

(3) The time frame that the department took to apply general permit coverage to applicants.

(4) The timeliness of the review and tracking of discharge monitoring reports.

(5) The timeliness of the issuance of permit noncompliance notifications. [2005 c.523 §5]

Sec. 6. Section 5 of this 2005 Act is repealed on January 2, 2010. [2005 c.523 §6]

(Surface Water)

468B.040 Certification of hydroelectric power project; comments of affected state agencies. (1) The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control

Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification only after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine whether the approval or denial is consistent with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards established in ORS 543A.025 (2) to (4), rules adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) If the proposed certification is for the reauthorization of a federally licensed project, as defined in ORS 543A.005, or for a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. If the proposed certification is for a project that is subject to federal relicensing but that operates under a water right that does not expire, and the Hydroelectric Application Review Team develops a unified state position under ORS 543A.400 (4)(b), the director shall act in accordance with the recommendation of the Hydroelectric Application Review Team, except as provided in ORS 543A.110. [Formerly 468.732; 1993 c.544 §1; 1997 c.449 §40]

468B.045 Certification of change to hydroelectric power project; notification of federal agency. Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 of the Federal Water Pollution Control Act P.L. 92-500, as amended:

(1) The director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Except as provided in subsection (2) of this section, standards established in ORS 543.017 and rules adopted by the Water Resources Commission implementing such standards; and

(D) Except as provided in subsection (2) of this section, standards of other state and local agencies that are consistent with the standards of ORS 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) If the proposed certification is for a change to a federally licensed project, as defined in ORS 543A.005, that has been reauthorized under ORS 543A.060 to 543A.300, or for a change to a project that is subject to federal relicensing but that operates under a water right that does not expire, the director shall not determine consistency under subsection (1)(b)(C) and (D) of this section, but shall determine consistency with the rules and provisions referred to in subsection (1)(b)(A) and (B) of this section, standards

established in ORS 543A.025 (2) to (4), rules adopted by the Water Resources Commission implementing such standards and rules of other state and local agencies that are consistent with the standards of ORS 543A.025 (2) to (4) and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(3) On the basis of the evaluation and determination under subsections (1) and (2) of this section, the director shall notify the appropriate federal agency that:

(a) The proposed change to the project is approved; or

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification. [Formerly 468.734; 1993 c.544 §2; 1997 c.449 §40a]

468B.046 Reauthorization of hydroelectric project not to limit authority of department related to certification of project for water quality purposes. (1) Except as provided in ORS 543A.110, nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A shall be construed to limit or affect any authority of the Director of the Department of Environmental Quality under existing law to establish conditions for any certification granted under ORS 468B.040, 468B.045 and 33 U.S.C. 1341, including but not limited to conditions for monitoring, review and enforcement of compliance with the certification and water quality standards during construction, operation and decommissioning of a project.

(2) Nothing in ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A, including but not limited to review of applications by the Hydroelectric Application Review Team, shall affect the authority of the Director of the Department of Environmental Quality to act on a request for water quality certification as necessary to avoid certification being deemed waived under the one-year period prescribed by 33 U.S.C. 1341(a)(1). [1997 c.449 §40d]

468B.047 Fees for state certification under section 401 of Federal Water Pollution Control Act; rules; disposition of fees. (1) The Environmental Quality Commission may establish, by rule, a schedule of fees for state certification under section 401 of the Federal Water Pollution Control Act, PL 92-500 as amended. The commission shall not assess fees under subsections (1) and (2) of this section for activities:

(a) That have an operating permit for surface mining under ORS chapter 517;

(b) Relating to commercial sand and gravel removal operations;

(c) Involving removal of less than 500 cubic yards of material; or

(d) Involving a fill of less than two acres.

(2) As used in subsections (1) and (2) of this section, "fill" and "removal" have the meanings given in ORS 196.800.

(3) Any fees received under subsections (1) and (2) of this section shall be deposited in the State Treasury to the credit of an account of the Department of Environmental Quality and are continuously appropriated to meet the administrative expenses of the state certification program under subsections (1) and (2) of this section. [Formerly 468.068]

468B.048 Rules for standards of quality and purity; factors to be considered; meeting standards. (1) The Environmental Quality Commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468B.015. In establishing such standards, the commission shall consider the following factors:

(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;

(c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters;

(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) The minimum dissolved oxygen content of the waters that shall be maintained;

(f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;

(g) The extent to which any substance must be excluded from the waters for the protection and preservation of public health; and

(h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner.

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536.220 to 536.540.

(3) Subject to the approval of the Department of Environmental Quality, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards. [Formerly 449.086 and then 468.735]

468B.050 Water quality permit; issuance by rule or order; rules. (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from the Director of the Department of Environmental Quality or the State Department of Agriculture, which permit shall specify applicable effluent limitations, a person may not:

(a) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(b) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(c) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(d) Construct, install, operate or conduct any industrial, commercial, confined animal feeding operation or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(e) Construct or use any new outlet for the discharge of any wastes into the waters of the state.

(2) The Department of Environmental Quality or the State Department of Agriculture may issue a permit under this section as an individual, general or watershed permit. A permit may be issued to a class of persons using the procedures for issuance of an order or for the adoption of a rule. Notwithstanding the definition of "order" or "rule" provided in ORS 183.310, in issuing a general or watershed permit by order pursuant to this section, the State Department of Agriculture or Department of Environmental Quality:

(a) Is not required to direct the order to a named person or named persons; and

(b) May include in the order agency directives, standards, regulations and statements of general applicability that implement, interpret or prescribe law or policy.

(3) The State Department of Agriculture or the Department of Environmental Quality may define "confined animal feeding operation" by rule for purposes of implementing this section. [Formerly 449.083 and then 468.740; 1997 c.286 §6; 2001 c.248 §4; 2005 c.523 §4]

468B.051 Fees for water quality permit. Not more than once each calendar year, the Environmental Quality Commission may increase the fees established under ORS 468.065 for permits issued under ORS 468B.050. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the permit program or three percent, whichever is lower. [2005 c.523 §2]

Note: 468B.051 was added to and made a part of ORS chapter 468B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

468B.052 Fees for water quality permit to operate suction dredge. Notwithstanding the authority of the Environmental Quality Commission provided in ORS 468.065 to establish a schedule of fees for permits issued under ORS 468B.050 and in lieu of any fee established under the schedule of fees, a person who operates a suction dredge having a suction hose with an inside diameter of eight inches or less shall, upon application for or renewal of a permit issued under 468B.050, pay to the Department of Environmental Quality:

(1) For an individual permit:

(a) A one-time application fee of $300; and

(b) An annual renewal fee of $25.

(2) For a general permit, either:

(a) A $25 annual fee for each year the person registers under the general permit; or

(b) A $100 fee for a five-year registration under the general permit. [2005 c.729 §3]

468B.053 Alternatives to obtaining water quality permit; rules. In lieu of a permit required under ORS 468B.025 or 468B.050, the Environmental Quality Commission by rule may:

(1) Exempt de minimis discharges from permit requirements.

(2) Establish performance-based criteria for exempt operations and discharges.

(3) Require an operator or person discharging waste exempt under subsection (1) of this section to:

(a) Comply with the criteria established under subsection (2) of this section; and

(b) Monitor performance and certify and report the results to the Department of Environmental Quality. [1997 c.286 §2]

Note: 468B.053 was added to and made a part of ORS chapter 468B by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

468B.055 Plans and specifications for disposal, treatment and sewerage systems. (1) The Department of Environmental Quality may require that plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems be submitted to the department for its approval or rejection.

(2) If the department requires that plans and specifications be submitted under subsection (1) of this section, construction, installation or modification may not be commenced until the plans and specifications submitted to the department are approved. If the disposal or discharge is for a chemical process mine, as defined in ORS 517.953, departmental review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.989. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department. [Formerly 468.742; 2005 c.523 §7]

468B.060 Liability for damage to fish or wildlife or habitat; agency to which damages payable. (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the Environmental Quality Commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration.

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration, within a period of 60 days from the date of mailing by registered or certified mail of written demand therefor.

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the State of Oregon upon relation of the Department of Environmental Quality or State Department of Fish and Wildlife or the Attorney General. Amounts recovered under this section shall be paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered. [Formerly 449.103 and then 468.745]

468B.062 Use attainability analysis of certain waters of state. Consistent with the Federal Water Pollution Control Act, P.L. 92-500, as amended, the Department of Environmental Quality may determine whether selected segments of the waters of the state are capable of attaining designated uses. In conducting its use attainability analysis, the department shall include appropriate documentation and defensible data for determining whether subcategories or seasonal uses should be designated. The Director of the Department of Environmental Quality shall appoint an advisory group to nominate those waters of the state for which use attainability analysis is most warranted. [1997 c.770 §2]

468B.064 Follow-up assessments of waters of state that exceed numeric temperature criteria. (1) The Department of Environmental Quality may perform follow-up assessments of waters of the state that are included in the 1994-1996 list pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, for exceeding numeric temperature water quality criteria. The department shall give priority in performing follow-up assessments to those waters of the state listed primarily on the basis of temperature data from 1991 to 1994 and for which follow-up data are now available. The department may use follow-up data collected by a watershed council, university, soil and water conservation district or any other individual or group using data collection protocols approved by the department.

(2) Subject to available resources, the department shall act promptly to update the list developed pursuant to section 303 (d) of the Federal Water Pollution Control Act, P.L. 92-500, as amended, when appropriate based on the follow-up assessments under subsection (1) of this section. [1997 c.770 §3]

468B.065 [Formerly 468.750; renumbered 468B.083 in 1997]

468B.066 Report on development of use attainability analysis. The Department of Environmental Quality shall report regularly to the joint legislative committee created pursuant to ORS 171.551 on the development of the use attainability analysis under ORS 468B.062 and 468B.064. [1997 c.770 §4; 1999 c.270 §4]

468B.070 Prohibited activities for certain municipalities. (1) No municipality shall:

(a) Dump polluting substances into any public or private body of water that empties directly or indirectly into any navigable body of water in or adjacent to a municipality, except by permit issued by the Department of Environmental Quality.

(b) Dump polluting substances into any open dump or sanitary landfill where by drainage or seepage any navigable body of water in or adjacent to a municipality may be affected adversely unless:

(A) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(B) The Environmental Quality Commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(C) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery.

(2) As used in this section:

(a) "Municipality" means any city having a population of 250,000 or more or any home-rule county having a population of 350,000 or more.

(b) "Polluting substances" means dead animal carcasses, excrement, and putrid, nauseous, noisome, decaying, deleterious or offensive substances including refuse of any kind or description.

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468.195 to 468.245 unless:

(a) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(b) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery. [Formerly 449.113 and then 468.755]

468B.075 Definitions for ORS 468B.080. As used in ORS 468B.080:

(1) "Buildings or structures" includes but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such.

(2) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food.

(3) "Sewage" means human excreta as well as kitchen, bath and laundry wastes. [Formerly 449.140 and then 468.765; 2005 c.22 §341]

468B.080 Prohibitions relating to garbage or sewage dumping into waters of state. (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the Department of Environmental Quality. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150 and then 468.770]

468B.083 When motor vehicle parts may be placed in waters of state; rules. (1) The Environmental Quality Commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

(a) The possibility of pollution;

(b) The aesthetics of such use;

(c) The utility of such use in reclamation projects;

(d) The degradation of the waters, stream beds or banks; and

(e) The nature of the waters such as tidewater, slough or running stream.

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies, shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section. [Formerly 468B.065]

468B.085 Depositing vehicles or manufactured structures into water prohibited. Subject to ORS 468B.083, a person, including a person in the possession or control of land, may not deposit, discard or place the chassis, body or shell of a motor vehicle as defined by ORS 801.360, a vehicle as defined by ORS 801.590, a manufactured structure as defined in ORS 446.561 or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where the materials are likely to escape or be carried into the waters of the state by any means. [Formerly 449.109 and then 468.775; 2003 c.655 §77]

468B.090 Permit authorized for discharge of shrimp and crab processing by-products; conditions. (1) The Department of Environmental Quality may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468B.050 or 468B.053 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

(a) No toxic substances shall be present in the by-products discharged.

(b) The oxygen content of the estuarine waters shall not be reduced.

(c) The discharge shall not create a public nuisance.

(d) Other beneficial uses of the estuary shall not be adversely affected.

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [Formerly 468.777; 1997 c.286 §7]

468B.093 General permit for discharge of geothermal spring water to surface water. (1) The Director of the Department of Environmental Quality shall issue a general permit for the discharge of geothermal spring water to surface water. The general permit shall cover any activity with the following characteristics:

(a) The chemical nature of the water is not changed;

(b) The temperature of the water remains unchanged or is reduced; and

(c) The surface water into which the geothermal spring water is discharged is the naturally occurring junction of the geothermal spring water and surface water.

(2) Nothing in subsection (1) of this section shall be construed to preclude the director from issuing a general permit for any other activity involving the discharge of geothermal spring water.

(3) As used in this section, "geothermal spring water" means water that emerges naturally from the earth as a result of gravity flow or artesian pressure and that is capable of being used for heating as a result of the naturally occurring thermal characteristics of the water. [1997 c.547 §2]

468B.095 Use of sludge on agricultural, horticultural or silvicultural land; rules. The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

(1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing;

(2) Requirements for sludge treatment and processing before sludge is applied;

(3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied;

(4) Records that a sludge applicator must keep;

(5) Restrictions on public access to and cropping of land on which sludge has been applied; and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [Formerly 468.778]

Note: 468B.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Forest Operations)

468B.100 Definitions for ORS 468B.105 and 468B.110. As used in ORS 468B.105 and 468B.110, "forestlands" and "operation" have the meaning for those terms provided in ORS 527.620. [1991 c.919 §22a]

468B.105 Review of water quality standard affecting forest operations. Upon request of the State Board of Forestry, the Environmental Quality Commission shall review any water quality standard that affects forest operations on forestlands. The commission's review may be limited to or coordinated with the triennial or any other regularly scheduled review of the state's water quality standards, consistent with ORS 468B.048 and 468B.110 and applicable federal law. [1991 c.919 §23]

468B.110 Authority to establish and enforce water quality standards by rule or order; limitation on authority; instream water quality standards. (1) Except as provided in subsection (2) of this section, as necessary to achieve and maintain standards of water quality or purity adopted under ORS 468B.048, the Environmental Quality Commission or Department of Environmental Quality may, by rule or order, impose and enforce limitations or other controls which may include total maximum daily loads, wasteload allocations for point sources and load allocations for nonpoint sources, as provided in the Federal Water Pollution Control Act (33 U.S.C.§ 1321) and federal regulations and guidelines issued pursuant thereto.

(2) Unless required to do so by the provisions of the Federal Water Pollution Control Act, neither the Environmental Quality Commission nor the Department of Environmental Quality shall promulgate or enforce any effluent limitation upon nonpoint source discharges of pollutants resulting from forest operations on forestlands in this state. Implementation of any limitations or controls applying to nonpoint source discharges or pollutants resulting from forest operations are subject to ORS 527.765 and 527.770. However, nothing in this section is intended to affect the authority of the commission or the department provided by law to impose and enforce limitations or other controls on water pollution from sources other than forest operations.

(3) When the Environmental Quality Commission establishes instream water quality standards to protect designated beneficial uses in the waters of the state, it shall consider, where applicable, available scientific information including, but not limited to, stream flow, geomorphology and other factors representing the variability and complexity of hydrologic systems and intrinsic water quality conditions.

(4) When the Environmental Quality Commission establishes instream water quality standards, it will also issue guidelines describing how the department and the commission will determine whether water quality standards in waters affected by nonpoint source activities are being met. In developing these guidelines, the commission shall include, where applicable, those physical characteristics such as stream flow, geomorphology, seasons, frequency, duration, magnitude and other factors which represent the variability and complexity of forested and other appropriate hydrologic systems. [1991 c.919 §24; 2003 c.14 §302]

(Phosphate Cleansing Agents)

468B.120 Definitions for ORS 468B.120 to 468B.135. As used in ORS 468B.120 to 468B.135:

(1) "Cleaning agent" means any product, including but not limited to soaps and detergents, containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes, including but not limited to the cleansing of fabrics, dishes, food utensils and household commercial premises. "Cleaning agent" does not include foods, drugs, cosmetics, insecticides, fungicides and rodenticides or cleaning agents exempted under ORS 468B.135.

(2) "Commercial premises" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, commercial or charitable activity, including but not limited to laundries, hotels, motels and food or restaurant establishments.

(3) "Person" means any individual, firm, partnership or corporation.

(4) "Phosphorus" means elemental phosphorus. [1991 c.764 §3]

468B.125 Policy to reduce phosphorous pollution. (1) The Legislative Assembly of the State of Oregon finds that:

(a) Phosphorous loading of the waters of the state is a serious pollution problem affecting water quality in some river basins in the state.

(b) Phosphate detergents contribute significant phosphorous loading to the treated waste water released to the surface waters of the state.

(c) When phosphorous loading becomes a serious pollution problem, federal and state water quality standards may require advanced waste water treatment facilities at public expense, in addition to primary and secondary treatment facilities.

(2) Therefore, the Legislative Assembly declares that it is a policy of this state to reduce phosphorous pollution at its source to maintain existing water quality and to enhance cost-effective waste water treatment where phosphorous pollution becomes a serious pollution problem. [1991 c.764 §2]

468B.130 Prohibition on sale or distribution of cleaning agents containing phosphorus; rules. (1) Except as provided in subsection (2) of this section, no person may sell, offer to sell or distribute for sale within Oregon, any cleaning agent containing more than 0.5 percent phosphorus by weight.

(2) A cleaning agent used in automatic dishwashers may be sold, offered for sale or distributed in Oregon if the cleaning agent

contains 8.7 percent or less phosphorus by weight.

(3) All cleaning agents that are sold in this state shall be labeled with the percent of phosphorus by weight, including equivalency in grams of phosphorus per recommended use level.

(4) The Environmental Quality Commission shall adopt rules governing the labeling requirements imposed by subsection (3) of this section. [1991 c.764 §4; 2003 c.14 §303]

468B.135 Exemptions. ORS 468B.130 (1) and (2) do not apply to any cleaning agent:

(1) Used in dairy, beverage or food processing equipment;

(2) Used as an industrial sanitizer, brightener, acid cleaner or metal conditioner, including phosphoric acid products or trisodium phosphate;

(3) Used in hospitals, veterinary hospitals or clinics or health care facilities;

(4) Used in agricultural production and the production of electronic components;

(5) Used in a commercial laundry for laundry services provided to a hospital, veterinary hospital or clinic or health care facility;

(6) Used by industry for metal cleaning or conditioning;

(7) Manufactured, stored or distributed for use or sale outside Oregon;

(8) Used in any laboratory, including a biological laboratory, research facility, chemical, electronic or engineering laboratory;

(9) Used for cleaning hard surfaces, including household cleansers for windows, sinks, counters, stoves, tubs or other food preparation surfaces and plumbing fixtures;

(10) Used as a water softening chemical, antiscale chemical or corrosion inhibitor intended for use in closed systems, including but not limited to boilers, air conditioners, cooling towers or hot water systems; and

(11) For which the Department of Environmental Quality determines that the prohibition under ORS 468B.130 (1) and (2) will either:

(a) Create a significant hardship on the user; or

(b) Be unreasonable because of the lack of an adequate substitute cleaning agent. [1991 c.764 §5]

(Ground Water)

468B.150 Definitions for ORS 468B.150 to 468B.190. As used in ORS 448.268, 448.271 and 468B.150 to 468B.190:

(1) "Area of ground water concern" means an area of the state subject to a declaration by the Department of Environmental Quality under ORS 468B.175 or the Department of Human Services under ORS 448.268.

(2) "Contaminant" means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance that does not occur naturally in ground water or that occurs naturally but at a lower concentration.

(3) "Ground water management area" means an area in which contaminants in the ground water have exceeded the levels established under ORS 468B.165, and the affected area is subject to a declaration under ORS 468B.180.

(4) "Fertilizer" has the meaning given that term in ORS 633.311.

(5) "Pesticide" has the meaning given that term in ORS 634.006. [Formerly 468.691; 1995 c.690 §7; 2001 c.914 §24]

Note: 468B.150 to 468B.188 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468B.155 State goal to prevent ground water contamination. The Legislative Assembly declares that it is the goal of the people of the State of Oregon to prevent contamination of Oregon's ground water resource while striving to conserve and restore this resource and to maintain the high quality of Oregon's ground water resource for present and future uses. [Formerly 468.692]

Note: See note under 468B.150.

468B.160 Ground water management and use policy. In order to achieve the goal set forth in ORS 468B.155, the Legislative Assembly establishes the following policies to control the management and use of the ground water resource of this state and to guide any activity that may affect the ground water resource of Oregon:

(1) Public education programs and research and demonstration projects shall be established in order to increase the awareness of the citizens of this state of the vulnerability of ground water to contamination and ways to protect this important resource.

(2) All state agencies' rules and programs affecting ground water shall be consistent with the overall intent of the goal set forth in ORS 468B.155.

(3) Statewide programs to identify and characterize ground water quality shall be conducted.

(4) Programs to prevent ground water quality degradation through the use of the best practicable management practices shall be established.

(5) Ground water contamination levels shall be used to trigger specific governmental actions designed to prevent those levels from being exceeded or to restore ground water quality to at least those levels.

(6) All ground water of the state shall be protected for both existing and future beneficial uses so that the state may continue to provide for whatever beneficial uses the natural water quality allows. [Formerly 468.693]

Note: See note under 468B.150.

468B.162 Coordination of ground water activities. (1) The Department of Environmental Quality shall coordinate the following:

(a) Interagency management of ground water as necessary to achieve the goal set forth in ORS 468B.155.

(b) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under ORS 468B.180. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

(2) The Department of Environmental Quality shall provide staff for project oversight and for those activities authorized under ORS 468B.165 to 468B.188, including scheduling meetings, providing public notice of meetings and other group activities and keeping records of group activities.

(3) In addition to its duties under subsection (1) of this section, the department shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources and grants awarded under ORS 468B.169. [Formerly 536.108; 1999 c.1074 §4]

Note: See note under 468B.150.

468B.164 Encouragement of federal actions. In carrying out its coordination activities under ORS 468B.162, the Department of Environmental Quality shall encourage federal agency actions that are consistent with the water policies of the State of Oregon. [Formerly 536.112]

Note: See note under 468B.150.

468B.165 Ground water contaminants; maximum levels; rules. (1) Within 90 days after receiving the recommendations of the technical advisory committee under ORS 468B.166, the Environmental Quality Commission shall begin rulemaking to first adopt final rules establishing maximum measurable levels for contaminants in ground water. The commission shall adopt the final rules not later than 180 days after the commission provides notice under ORS 183.335.

(2) The adoption or failure to adopt a rule establishing a maximum measurable level for a contaminant under subsection (1) of this section shall not alone be construed to require the imposition of restrictions on the use of fertilizers under ORS 633.311 to 633.479 and 633.994 or the use of pesticides under ORS chapter 634. [Formerly 468.694; 2001 c.914 §25]

Note: See note under 468B.150.

468B.166 Technical advisory committee; duties; membership. (1) The Department of Environmental Quality shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the Environmental Quality Commission shall first consider the federal standard, and if the Environmental Quality Commission does not adopt the federal standard, the method shall require the Environmental Quality Commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

(a) A toxicologist;

(b) A health professional;

(c) A water purveyor;

(d) A biologist; and

(e) Technically capable members of the public representing the following groups:

(A) Citizens;

(B) Local governments;

(C) Environmental organizations;

(D) Industrial organizations; and

(E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum

measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only. [Formerly 536.137]

Note: See note under 468B.150.

468B.167 Ground water resource protection strategy; advisory committees. (1) The Department of Environmental Quality shall implement the following ground water resource protection strategy:

(a) Coordinate projects and activities of other agencies designed to reduce impacts on ground water from:

(A) Commercial and industrial activities;

(B) Commercial and residential use of fertilizers and pesticides;

(C) Residential and sewage treatment activities; and

(D) Any other activity that may result in contaminants entering the ground water.

(b) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground water resource.

(c) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(d) Award grants for the implementation of projects approved under the criteria established under ORS 468B.171.

(e) Develop and maintain a centralized repository for information about ground water, including but not limited to:

(A) Hydrogeologic characterizations;

(B) Results of local and statewide monitoring or testing of ground water;

(C) Data obtained from ground water quality protection research or development projects; and

(D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(f) Identify research or information about ground water that needs to be conducted or made available.

(g) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to the protection of the ground water resource incorporate the state's intent to the fullest extent practicable.

(h) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the department in the performance of its functions, the department may establish such advisory and technical committees as the department considers necessary. These committees may be continuing or temporary. The department shall determine the representation, membership, terms and organization of the committees and shall appoint their members. [Formerly 536.125]

Note: See note under 468B.150.

468B.169 Requests for funding, advice or assistance for ground water projects. (1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 468B.179 or 468B.182 may submit to the Department of Environmental Quality a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the department. The requester may submit the request either to the department or to a ground water management committee organized under ORS 468B.179 OR 468B.182.

(3) The department shall approve only those requests that meet the criteria established by the department under ORS 468B.171. [Formerly 536.129]

Note: See note under 468B.150.

468B.170 [Formerly 468.695; repealed by 1995 c.690 §§25,26]

468B.171 Awarding grants; purpose; rules. (1) Of the moneys available to the Department of Environmental Quality to award as grants under ORS 468B.169, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The department may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative

residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in ORS 468B.155; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the department shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the department.

(5) In accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission shall adopt by rule guidelines and criteria for awarding grants under this section. [Formerly 536.133]

Note: See note under 468B.150.

468B.175 Declaration of area of ground water concern. (1) If, as a result of its statewide monitoring and assessment activities under ORS 468B.190, the Department of Environmental Quality confirms the presence in ground water of contaminants suspected to be the result, at least in part, of nonpoint source activities, the department shall declare an area of ground water concern. The declaration shall identify the substances confirmed to be in the ground water and all ground water aquifers that may be affected.

(2) Before declaring an area of ground water concern, the agency making the declaration shall have a laboratory confirm the results that would cause the agency to make the declaration. [Formerly 468.696]

Note: See note under 468B.150.

468B.177 Actions of department after declaration of area of ground water concern. After a declaration of an area of ground water concern, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall:

(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;

(2) Focus research and public education activities on the area of ground water concern;

(3) Provide for necessary monitoring in the area of ground water concern;

(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and

(5) If not developed by the ground water management committee, develop a draft and final local action plan. [Formerly 536.141]

Note: See note under 468B.150.

468B.179 Ground water management committee; appointment; duties. (1) Upon the request of a local government, or as required under ORS 468B.177 or 468B.182, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;

(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;

(c) Evaluation and recommendations of alternative practices;

(d) Recommendations regarding demonstration projects needed in the area;

(e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and

(f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the department to arrange for technical advice and assistance

from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under ORS 468B.169 for limited funding for staff or for expenses of the ground water management committee. [Formerly 536.145]

Note: See note under 468B.150.

468B.180 Declaration of ground water management area; standards. (1) The Department of Environmental Quality shall declare a ground water management area if, as a result of information provided to the department or from its statewide monitoring and assessment activities under ORS 468B.190, the department confirms that, as a result of suspected nonpoint source activities, there is present in the ground water:

(a) Nitrate contaminants at levels greater than 70 percent of the levels established pursuant to ORS 468B.165; or

(b) Any other contaminants at levels greater than 50 percent of the levels established pursuant to ORS 468B.165.

(2) A declaration under subsection (1) of this section shall identify the substances detected in the ground water and all ground water aquifers that may be affected.

(3) Before declaring a ground water management area under subsections (1) and (2) of this section, the agency shall have a second laboratory confirm the results that cause the agency to make the declaration. [Formerly 468.698]

Note: See note under 468B.150.

468B.182 Alternative appointment of ground water management committee. After the declaration of a ground water management area, the Department of Environmental Quality, in consultation with other appropriate state agencies, shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under ORS 468B.177. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under ORS 468B.177 shall continue to address the ground water issues raised as a result of the declaration of a ground water management area. [Formerly 536.153]

Note: See note under 468B.150.

468B.183 Duties of ground water management committee after declaration of ground water management area. After the declaration of a ground water management area, a ground water management committee created under ORS 468B.179 shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under ORS 468B.184 to 468B.187 regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to ORS 468B.179 to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration. [Formerly 536.149]

Note: See note under 468B.150.

468B.184 Designation of lead agency for development of action plan; contents of action plan. (1) After a ground water management area is declared, the Department of Environmental Quality shall designate a lead agency responsible for developing an action plan and request other agencies to assume appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the affected ground water aquifer. The action plan shall include, but need not be limited to:

(a) Identification of practices that may be contributing to the contamination of ground water in the area;

(b) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water management area;

(c) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(d) A proposed time schedule for:

(A) Implementing the lead agency's recommendations;

(B) Achieving estimated reductions in concentrations of the ground water contaminants; and

(C) Public review of the action plan;

(e) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(f) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements of periodic review set forth in ORS chapter 197 to address the identified ground water protection and management concerns.

(2) If a ground water management area is located on agricultural lands or in an area designated as an exclusive farm use zone under ORS 215.203, the State Department of Agriculture shall be responsible for developing the portion of the action plan that addresses farming practices as defined in ORS 30.930. [Formerly 536.157]

Note: See note under 468B.150.

468B.185 [Formerly 468.699; 1995 c.690 §8; renumbered 468B.190 in 1995]

468B.186 Comment on plan; final plan. (1) After completion and distribution of the draft action plan under ORS 468B.184, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan. [Formerly 536.161]

Note: See note under 468B.150.

468B.187 Acceptance or rejection of action plan; rules. (1) The Department of Environmental Quality shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the department and other agencies participating in development of the plan. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the department within 30 days.

(2) Within 120 days after the department accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings. [Formerly 536.165]

Note: See note under 468B.150.

468B.188 Repeal of declaration of ground water management area. (1) If, after implementation of the action plan developed by affected agencies under ORS 468B.184 to 468B.187, the ground water improves so that the levels of contaminants no longer exceed the levels established under ORS 468B.180, the Department of Environmental Quality shall determine whether to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Department of Environmental Quality must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground water in the area and that the Department of Environmental Quality finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Department of Environmental Quality terminates any mandatory controls imposed under the action plan created under ORS 468B.184 to 468B.187, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the department finds can be implemented at the local level without the necessity of state enforcement authority. [Formerly 536.169]

Note: See note under 468B.150.

468B.190 Ground water monitoring and assessment. (1) In cooperation with the Water Resources Department, the Department of Environmental Quality and the Oregon State University Agricultural Experiment Station shall conduct an ongoing statewide monitoring and assessment program of the quality of the ground water resource of this state. The program shall be designed to identify:

(a) Areas of the state that are especially vulnerable to ground water contamination;

(b) Long-term trends in ground water quality;

(c) Ambient quality of the ground water resource of Oregon; and

(d) Any emerging ground water quality problems.

(2) The Oregon State University Agricultural Experiment Station shall forward copies of all information acquired from the statewide monitoring and assessment program conducted under this section to the Department of Environmental Quality for inclusion in the central repository of information about Oregon's ground water resource established pursuant to ORS 468B.167. [Formerly 468B.185]

ANIMAL WASTE CONTROL

468B.200 Legislative findings. The Legislative Assembly declares that it is the policy of the State of Oregon to protect the quality of the waters of this state by preventing animal wastes from discharging into the waters of the state. [Formerly 468.686]

468B.203 Applicability of 468B.200 to 468B.230. The provisions of ORS 468B.200 to 468B.230 apply to animal feeding operations regulated under 33 U.S.C. 1342 only to the extent that the operation of the provisions of ORS 468B.200 to 468B.230 is consistent with federal law, regulations or guidelines issued pursuant to the Federal Water Pollution Control Act, P.L. 92-500, as amended. [2001 c.248 §6]

468B.205 Definition of confined animal feeding operation; rules. (1) As used in ORS 468B.200 to 468B.230, "confined animal feeding operation" has the meaning given that term in rules adopted by the State Department of Agriculture or the Department of Environmental Quality. The definition must distinguish between various categories of animal feeding operations, including but not limited to those animal feeding operations that are subject to regulation under 33 U.S.C. 1342.

(2) A rule implementing ORS 468B.200 to 468B.230 may not be adopted using the procedures provided in ORS 183.337 for agency adoption of federal rules. [Formerly 468.687; 2001 c.248 §7]

468B.210 Maximum number of animals per facility; determination. (1) All permits for confined animal feeding operations issued under ORS 468B.050 shall specify the maximum number of animals that may be housed at the facility.

(2) The maximum number of animals specified in a permit shall be determined for each facility on the basis of the capacity of the particular confined animal feeding operation to contain, treat, hold and dispose of wastes as necessary to comply with all conditions of the permit.

(3) Any confined animal feeding operation that exceeds by more than 10 percent or 25 animals, whichever is greater, the maximum number of animals specified in its permit shall be considered in violation of the permit and the owner or operator shall be subject to enforcement action under ORS 468.140 or 468.943. [Formerly 468.688; 1993 c.422 §33]

468B.215 Fees; permit conditions; review. (1) Any person operating a confined animal feeding operation shall pay a fee established under ORS 561.255.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, a fee shall not be assessed to nor a permit required under ORS 468B.050 (1)(d) of confined animal feeding operations of four months or less duration or that do not have waste water control facilities. A confined animal feeding operation of four months or less duration or that does not have waste water control facilities is subject to all requirements of ORS chapters 468, 468A and 468B if found to be discharging wastes into the waters of the state.

(3) The Department of Environmental Quality or the State Department of Agriculture may impose on the permit required for a confined animal feeding operation only those conditions necessary to ensure that wastes are disposed of in a manner that does not cause pollution of the surface and ground waters of the state.

(4) A permit for a confined animal feeding operation may be revoked or modified by the Department of Environmental Quality or the State Department of Agriculture or may be terminated upon request by the permit holder. An animal feeding operation may be inspected for compliance with water quality laws and regulations by the Department of Environmental Quality or the State Department of Agriculture. [Formerly 468.689; 2001 c.248 §8]

468B.217 Memorandum of understanding with Department of Agriculture. (1) The Environmental Quality Commission and the State Department of Agriculture shall enter into a memorandum of understanding providing for the State Department of Agriculture to operate a program for the prevention and control of water pollution from a confined animal feeding operation.

(2) Subject to the terms of the memorandum of understanding required by subsection (1) of this section, the State Department of Agriculture:

(a) May perform any function of the Environmental Quality Commission or the Department of Environmental Quality relating to the control and prevention of water pollution from a confined animal feeding operation.

(b) May enter onto and inspect, at any reasonable time, a confined animal feeding operation or appurtenant land for the purpose of investigating a source of water pollution or to ascertain compliance with a statute, rule, standard or permit condition relating to the control or prevention of water pollution from the operation. The State Department of Agriculture shall have access to a pertinent record of a confined animal feeding operation including but not limited to a blueprint, design drawing and specification, maintenance record or log, or an operating

rule, procedure or plan. [1993 c.567 §2; 2003 c.14 §304]

468B.220 Civil penalty for violation of permit requirement. Any owner or operator of a confined animal feeding operation who has not applied for or does not have a permit required by ORS 468B.050 shall be assessed a civil penalty of $500 in addition to other penalties that the Director of the Department of Environmental Quality may assess. [Formerly 468.690]

468B.222 [1995 s.s. c.3 §37a; repealed by 1996 c.5 §3 (468B.223 enacted in lieu of 468B.222)]

468B.223 [1996 c.5 §4 (enacted in lieu of 468B.222); repealed by 2001 c.248 §14]

468B.224 [1995 s.s. c.3 §37b; repealed by 1996 c.5 §5 (468B.225 enacted in lieu of 468B.224)]

468B.225 Prerequisite for investigation; written complaint; security deposit. (1) Prior to conducting an investigation of an animal feeding operation under ORS 468B.217 on the basis of a complaint, the State Department of Agriculture shall:

(a)(A) Require the person making the complaint to specify the complaint in writing; or

(B) Make a detailed written record of the complaint; and

(b) Determine which provision of ORS chapter 468 or 468B, which rule adopted under ORS chapter 468 or 468B or which permit issued under ORS chapter 468 or 468B the operator of the animal feeding operation may have violated.

(2) If, upon investigation under ORS 468B.217 on the basis of a complaint received under subsection (1) of this section, the State Department of Agriculture determines that an animal feeding operation has not violated a provision of ORS chapter 468 or 468B, a rule adopted under ORS chapter 468 or 468B or the conditions of a permit issued under ORS chapter 468 or 468B, and the department has reason to believe that the complaint was groundless and made for the purpose of harassing the operator, the department may refuse to consider future complaints made by the person. [1996 c.5 §6 (enacted in lieu of 468B.224); 2001 c.248 §9]

468B.226 [1995 s.s. c.3 §37c; repealed by 1996 c.5 §7 (468B.227 enacted in lieu of 468B.226)]

468B.227 [1996 c.5 §8 (enacted in lieu of 468B.226); repealed by 2001 c.248 §14]

468B.230 Department of Agriculture civil penalty authority. (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on the owner or operator of a confined animal feeding operation for failure to comply with a provision of ORS chapter 468 or 468B or any rule adopted under, or a permit issued under ORS chapter 468 or 468B, relating to the control and prevention of water pollution from a confined animal feeding operation. For the purposes of this section, each day a violation continues after the period of time established for compliance shall be considered a separate violation unless the State Department of Agriculture finds that a different period of time is more appropriate to describe a specific violation event.

(2) Except for an animal feeding operation subject to regulation under 33 U.S.C. 1342, the State Department of Agriculture may not impose a civil penalty under subsection (1) of this section for a first violation by an owner or operator of a confined animal feeding operation:

(a) That is more than $2,500; and

(b) Unless the State Department of Agriculture notifies the violator that the violation must be eliminated no later than 30 business days from the date the violator receives the notice. If the violation requires more than 30 days to correct, the State Department of Agriculture may allow such time as is necessary to correct the violation. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty.

(3) The State Department of Agriculture may not impose a civil penalty under subsection (1) of this section that exceeds $10,000 for a subsequent violation.

(4) In imposing a civil penalty under this section, the State Department of Agriculture may consider:

(a) The past history of the owner or operator in taking all feasible steps or procedures necessary and appropriate to correct a violation.

(b) A past violation of a rule or statute relating to a water quality plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the cause of the violation was as a result of an unavoidable accident, negligence or an intentional act.

(f) Whether the owner or operator cooperated in an effort to correct the violation.

(g) The extent to which the violation threatens the public health and safety.

(5) No notice of violation or period for compliance shall be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The owner or operator has received a previous notice of the same or similar violation.

(6) A civil penalty collected by the State Department of Agriculture under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on animal waste management and to carry out animal waste management demonstration or research projects.

(7) Any civil penalty imposed under this section shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission, the Department of Environmental Quality or the United States Environmental Protection Agency, if the latter penalties are imposed on the same person and are based on the same violation. [1993 c.567 §3; 2001 c.248 §10]

OIL OR HAZARDOUS MATERIAL SPILLAGE

(Generally)

468B.300 Definitions for ORS 468B.300 to 468B.500. As used in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500:

(1) "Bulk" means material stored or transported in loose, unpackaged liquid, powder or granular form capable of being conveyed by a pipe, bucket, chute or belt system.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, of 300 gross tons or more. "Cargo vessel" does not include a vessel used solely for commercial fish harvesting.

(3) "Commercial fish harvesting" means taking food fish with any gear unlawful for angling under ORS 506.006, or taking food fish in excess of the limits permitted for personal use, or taking food fish with the intent of disposing of such food fish or parts thereof for profit, or by sale, barter or trade, in commercial channels.

(4) "Contingency plan" means an oil spill prevention and emergency response plan required under ORS 468B.345.

(5) "Covered vessel" means a tank vessel, cargo vessel, passenger vessel or dredge vessel.

(6) "Damages" includes damages, costs, losses, penalties or attorney fees of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil.

(7) "Discharge" means any emission other than natural seepage of oil, whether intentional or unintentional. "Discharge" includes but is not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping oil.

(8) "Dredge vessel" means a self-propelled vessel of 300 or more gross tons that is equipped for regularly engaging in dredging of submerged and submersible lands.

(9) "Exploration facility" means a platform, vessel or other offshore facility used to explore for oil in the navigable waters of the state. "Exploration facility" does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation.

(10) "Facility" means a pipeline or any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil. "Facility" does not include:

(a) A railroad car, motor vehicle or other rolling stock while transporting oil over the highways or rail lines of this state;

(b) An underground storage tank regulated by the Department of Environmental Quality or a local government under ORS 466.706 to 466.882 and 466.994; or

(c) Any structure, group of structures, equipment or device, other than a vessel located on or near navigable waters of a state, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk and that is capable of storing or transporting 10,000 or more gallons of oil but does not receive oil from tank vessels, barges or pipelines.

(11) "Federal on-scene coordinator" means the federal official predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses or the official designated by the lead agency to coordinate and direct removal under the National Contingency Plan.

(12) "Hazardous material" has the meaning given that term in ORS 466.605.

(13) "Maritime association" means an association or cooperative of marine terminals, facilities, vessel owners, vessel operators, vessel agents or other maritime industry groups, that provides oil spill response planning and spill related communications services within the state.

(14) "Maximum probable spill" means the maximum probable spill for a vessel operating in the navigable waters of the state considering the history of spills of vessels of the

same class operating on the west coast of the United States.

(15) "Navigable waters" means the Columbia River, the Willamette River up to Willamette Falls, the Pacific Ocean and estuaries to the head of tidewater.

(16) "National Contingency Plan" means the plan prepared and published under section 311(d) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(d), as amended by the Oil Pollution Act of 1990 (P.L. 101-380).

(17) "Offshore facility" means any facility located in, on or under any of the navigable waters of the state.

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

(19) "Onshore facility" means any facility located in, on or under any land of the state, other than submerged land, that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or adjoining shorelines.

(20) "Passenger vessel" means a ship of 300 or more gross tons carrying passengers for compensation.

(21) "Person" has the meaning given the term in ORS 468.005.

(22) "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the navigable waters of the state, and shall specifically include carriers and bailees of such oil.

(23) "Pipeline" means a facility, including piping, compressors, pump stations and storage tanks, used to transport oil between facilities or between facilities and tank vessels.

(24) "Region of operation" with respect to the holder of a contingency plan means the area where the operations of the holder that require a contingency plan are located.

(25) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize or mitigate oil pollution from the incident.

(26) "Responsible party" has the meaning given under section 1001 of the Oil Pollution Act of 1990 (P.L. 101-380).

(27) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind.

(28)(a) "State on-scene coordinator" means the state official appointed by the Department of Environmental Quality to represent the department and the State of Oregon in response to an oil or hazardous material spill or release or threatened spill or release and to coordinate cleanup response with state and local agencies.

(b) For purposes of this subsection:

(A) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of this state except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469 or ORS 466.005 to 466.385, 466.990 (1) and (2) or 466.992 or federal law, or except when being stored or used for its intended purpose.

(B) "Threatened spill or release" means that oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of this state.

(29) "Tank vessel" means a ship that is constructed or adapted to carry oil in bulk as cargo or cargo residue. "Tank vessel" does not include:

(a) A vessel carrying oil in drums, barrels or other packages;

(b) A vessel carrying oil as fuel or stores for that vessel; or

(c) An oil spill response barge or vessel.

(30) "Worst case spill" means:

(a) In the case of a vessel, a spill of the entire cargo and fuel of the tank vessel complicated by adverse weather conditions; and

(b) In the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [Formerly 468.780; 2001 c.688 §1; 2003 c.738 §1]

468B.305 Entry of oil into waters of state prohibited; exceptions. (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the state.

(2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state under the following circumstances:

(a) The person discharging the oil was expressly authorized to do so by the Department of Environmental Quality, having obtained a permit therefor required by ORS 468B.050;

(b) Notwithstanding any other provision of ORS 466.640, 468B.025 or 468B.050 or this

section, the person discharging the oil was expressly authorized to do so by a federal on-scene coordinator or the department in connection with activities related to the removal of or response to oil that entered the waters of the state; or

(c) The person having control over the oil can prove that the entry thereof into the waters of the state was caused by:

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

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

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent. [Formerly 449.157 and then 468.785; 1995 c.535 §1]

468B.310 Liability for violation of ORS 468B.305. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section. [Formerly 449.159 and then 468.790]

468B.315 Duty to collect and remove oil; dispersal of oil. (1) In addition to any other liability or penalty imposed by law, it shall be the obligation of any person owning or having control over oil which enters the waters of the state in violation of ORS 468B.305 to collect and remove the oil immediately.

(2) If it is not feasible to collect and remove the oil, the person shall take all practicable actions to contain, treat and disperse the oil.

(3) The Director of the Department of Environmental Quality shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this section whenever it appears to the director that use thereof would be detrimental to the public interest. [Formerly 449.161 and then 468.795]

468B.320 Action by state; liability for state expense; order; appeal. (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, the Department of Environmental Quality is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state.

(2) The Director of the Department of Environmental Quality shall keep a record of all necessary expenses incurred in carrying out any action authorized under this section, including a reasonable charge for costs incurred by the state, including state's equipment and materials utilized.

(3) The authority granted under this section shall be limited to actions which are designed to protect the public interest or public property.

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468B.315, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section.

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the Environmental Quality Commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed pursuant to ORS chapter 183 but not as a contested case. [Formerly 449.163 and then 468.800]

468B.325 Director's right of entry in response to oil spill; state liability for damages. (1) The Director of the Department of Environmental Quality shall have the power to enter upon any public or private property, premises or place for the purpose of controlling, collecting, removing, treating, containing or dispersing oil which reasonably appears to the director to threaten imminent and unlawful entry into the waters of the state, when the person responsible for an oil spill or an owner of property on which oil has been spilled fails to act to restrain or to remove the oil.

(2) Damages, other than those caused by the oil spill, suffered from the actions of the director pursuant to subsection (1) of this section shall be the responsibility of the state. [Formerly 468.802]

468B.330 Action to collect costs. (1) If the amount of state-incurred expenses under ORS 468B.320 is not paid by the responsible person to the Environmental Quality Com-

mission at the time provided in subsection (2) of this section, the Attorney General, upon the request of the Director of the Department of Environmental Quality, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the commission.

(2) Payment must be made within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court renders its decision if the decision affirms the order. [Formerly 449.165 and then 468.805]

468B.335 Effect of federal regulations of oil spillage. Nothing in ORS 468.020, 468.095, 468.140 (3) and 468B.300 to 468B.500 or the rules adopted thereunder shall require or prohibit any act if such requirement or prohibition is in conflict with any applicable federal law or regulation. [Formerly 449.175 and then 468.815]

(Contingency Planning)

468B.340 Legislative findings and intent. (1) The Legislative Assembly finds that:

(a) Oil spills present a serious danger to the fragile natural environment of the state.

(b) Commercial vessel activity on the navigable waters of the state is vital to the economic interests of the people of the state.

(c) Recent studies conducted in the wake of disastrous oil spills have identified the following problems in the transport and storage of oil:

(A) Gaps in regulatory oversight;

(B) Incomplete cost recovery by states;

(C) Despite research in spill cleanup technology, it is unlikely that a large percentage of oil can be recovered from a catastrophic spill;

(D) Because response efforts cannot effectively reduce the impact of oil spills, prevention is the most effective approach to oil spill management; and

(E) Comprehensive oil spill prevention demands participation by industry, citizens, environmental organizations and local, state, federal and international governments.

(2) Therefore, the Legislative Assembly declares it is the intent of ORS 468B.345 to 468B.415 to establish a program to promote:

(a) The prevention of oil spills especially on the large, navigable waters of the Columbia River, the Willamette River and the Oregon coast;

(b) Oil spill response preparedness, including the identification of actions and content required for an effective contingency plan;

(c) A consistent west coast approach to oil spill prevention and response;

(d) The establishment, coordination and duties of safety committees as provided in ORS 468B.415; and

(e) To the maximum extent possible, coordination of state programs with the programs and regulations of the United States Coast Guard and adjacent states. [1991 c.651 §2]

468B.345 Oil spill contingency plan required to operate facility or covered vessel in state or state waters; exceptions. (1) Unless an oil spill prevention and emergency response plan has been approved by the Department of Environmental Quality and has been properly implemented, no person shall:

(a) Cause or permit the operation of an onshore facility in the state;

(b) Cause or permit the operation of an offshore facility in the state; or

(c) Cause or permit the operation of a covered vessel within the navigable waters of the state.

(2) It is not a defense to an action brought for a violation of subsection (1) of this section that the person charged believed that a current contingency plan had been approved by the department.

(3) A contingency plan shall be renewed at least once every five years.

(4) This section shall not apply to the operation of a cargo or passenger vessel on Yaquina Bay or on the navigable waters of the state in the Pacific Ocean used by cargo or passenger vessels entering or leaving Yaquina Bay until January 1, 1998. [1991 c.651 §4; 1995 c.535 §2]

468B.350 Rules; standards for contingency plans; oil spill response zones. (1) The Environmental Quality Commission shall adopt rules defining:

(a) Standards for the preparation of contingency plans for facilities and covered vessels; and

(b) Oil spill response zones within the navigable waters of the state and the amount of equipment identified in an oil spill contingency plan that is required to be regularly located in those zones.

(2) The rules adopted under subsection (1) of this section shall be coordinated with rules and regulations adopted by the State of Washington and the United States Coast Guard and shall require contingency plans that at a minimum meet the following standards. The plan shall:

(a) Include complete details concerning the response to oil spills of various sizes from any covered vessel or facility covered by the contingency plan.

(b) To the maximum extent practicable, be designed, in terms of personnel, materials and equipment, to:

(A) Remove oil and minimize any damage to the environment resulting from a maximum probable spill; and

(B) Remove oil and minimize any damage to the environment resulting from a worst case spill.

(c) Consider the nature and number of facilities and marine terminals in a geographic area and the resulting ability of a facility to finance a plan and pay for department review.

(d) Describe how the contingency plan relates to and is coordinated with the response plan developed by the Department of Environmental Quality under ORS 468B.495 and 468B.500 and any relevant contingency plan prepared by a cooperative, port, regional entity, the state or the federal government in the same area of the state covered by the plan.

(e) Provide procedures for early detection of an oil spill and timely notification of appropriate federal, state and local authorities about an oil spill in accordance with applicable state and federal law.

(f) Demonstrate ownership of or access to an emergency response communications network covering all locations of operation or transit by a covered vessel. The emergency response communications network also shall provide for immediate notification and continual emergency communications during cleanup response.

(g) State the number, training preparedness and fitness of all dedicated, prepositioned personnel assigned to direct and implement the plan.

(h) Incorporate periodic training and drill programs to evaluate whether the personnel and equipment provided under the plan are in a state of operational readiness at all times.

(i) State the means of protecting and mitigating the effects of a spill on the environment, including fish, marine mammals and other wildlife, and insuring that implementation of the plan does not pose unacceptable risks to the public or to the environment.

(j) Provide a detailed description of equipment, training and procedures to be used by the crew of a vessel, or the crew of a tugboat involved in the operation of a nonself-propelled tank vessel, to minimize vessel damage, stop or reduce spilling from the vessel and only when appropriate and the vessel's safety is assured, contain and clean up the spilled oil.

(k) Provide arrangements by contract or other approved means for pre-positioning oil spill containment equipment, cleanup equipment, dedicated response vessels and trained personnel at strategic locations from which the personnel and equipment can be deployed to the spill site to promptly and properly remove the spilled oil.

(L) Provide arrangements for enlisting the use of qualified and trained cleanup personnel to implement the plan.

(m) Provide for disposal of recovered oil in accordance with local, state and federal laws.

(n) State the measures that have been taken to reduce the likelihood a spill will occur, including but not limited to design and operation of a vessel or facility, training of personnel, number of personnel and backup systems designed to prevent a spill.

(o) State the amount and type of equipment and the dedicated response vessels available by contract or other approved means to respond to a spill, where the equipment and vessels are located and the extent to which other contingency plans rely on the same equipment and vessels.

(p) If the commission has adopted rules permitting the use of dispersants, describe the circumstances and the manner for the application of dispersants in conformance with the rules of the commission.

(3) As used in this section:

(a) "Contract or other approved means" means:

(A) A written contract between a covered vessel or facility owner or operator and an oil spill removal organization that identifies and ensures the availability of specified personnel and equipment within stipulated response times in specified oil spill response zones;

(B) Certification by the vessel or facility owner or operator that specified personnel and equipment are owned, operated or under the direct control of the vessel or facility owner or operator and are available within stipulated response times in specified oil spill response zones;

(C) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment that are available to respond to an oil spill within stipulated response times in specified oil spill response zones; or

(D) A written document that:

(i) Identifies personnel, equipment and services capable of being provided by the oil spill removal organization within stipulated response times in specified oil spill response zones;

(ii) Acknowledges that the oil spill removal organization intends to commit the identified resources in the event of an oil spill;

(iii) Permits the commission to verify the availability of the identified oil spill removal resources through tests, inspections and exercises; and

(iv) Is referenced in an oil spill contingency plan for the vessel or facility.

(b) "Dedicated response vessel" means a vessel that limits service exclusively to recovering and transporting spilled oil, tanker escorting, deploying oil spill response equipment, supplies and personnel, spill response related training, testing, exercises and research, or other oil spill removal and related activities. [1991 c.651 §5; 2001 c.688 §2]

468B.355 Contingency plans; participation in maritime association; lien; liability of maritime association; exemption from liability. (1) A contingency plan for a facility or covered vessel shall be submitted to the Department of Environmental Quality within 12 months after the Environmental Quality Commission adopts rules under ORS 468B.350. The department may adopt a schedule for submission of an oil contingency plan within the 12-month period. The schedule for the Columbia River shall be coordinated with the State of Washington. The department may adopt an alternative schedule for the Oregon coast and the Willamette River.

(2) The contingency plan for a facility shall be submitted by the owner or operator of the facility or by a qualified oil spill response cooperative in which the facility owner or operator is a participating member.

(3) The contingency plan for a tank vessel shall be submitted by:

(a) The owner or operator of the tank vessel;

(b) The owner or operator of the facility at which the vessel will be loading or unloading its cargo; or

(c) A qualified oil spill response cooperative in which the tank vessel owner or operator is a participating member.

(4) Subject to conditions imposed by the department, the contingency plan for a tank vessel, if submitted by the owner or operator of a facility, may be submitted as a single plan for all tank vessels of a particular class that will be loading or unloading cargo at the facility.

(5) The contingency plan for a cargo vessel or passenger vessel may be submitted by the owner or operator of the vessel, or the agent for the vessel resident in this state. Subject to conditions imposed by the department, the owner, operator, agent or a maritime association may submit a single contingency plan for cargo vessels or passenger vessels of a particular class.

(6) A person that has contracted with a facility or covered vessel to provide containment and cleanup services and that meets the standards established by the commission under ORS 468B.350 may submit the contingency plan for any facility or covered vessel for which the person is contractually obligated to provide services. Subject to conditions imposed by the department, the person may submit a single plan for more than one covered vessel.

(7) The requirements of submitting a contingency plan under this section may be satisfied by a covered vessel by submission of proof of assessment participation by the vessel in a maritime association. Subject to conditions imposed by the department, the association may submit a single plan for more than one facility or covered vessel or may submit a single plan providing contingencies to respond for different classes of covered vessels.

(8) A contingency plan prepared for an agency of the federal government or an adjacent state that satisfies the requirements of ORS 468B.345 to 468B.360 and the rules adopted by the Environmental Quality Commission may be accepted as a plan under ORS 468B.345. The commission shall assure that to the greatest extent possible, requirements for a contingency plan under ORS 468B.345 to 468B.360 are consistent with requirements for a plan under federal law.

(9) Covered vessels may satisfy the requirements of submitting a contingency plan under this section through proof of current assessment participation in an approved plan maintained with the department by a maritime association.

(10) A maritime association may submit a contingency plan for a cooperative group of covered vessels. Covered vessels that have not previously obtained approval of a plan may enter the navigable waters of the state if, upon entering such waters, the vessel pays the established assessment for participation in the approved plan maintained by the association.

(11) A maritime association shall have a lien on the responsible vessel if the vessel owner or operator fails to remit any regular operating assessments and shall further have a lien for the recovery for any direct costs provided to or for the vessel by the maritime

association for oil spill response or spill related communications services. The lien shall be enforced in accordance with applicable law.

(12) Obligations incurred by a maritime association and any other liabilities or claims against the association shall be enforced only against the assets of the association, and no liability for the debts or action of the association exists against either the State of Oregon or any other subdivision or instrumentality thereof, or against any member, officer, employee or agent of the association in an individual or representative capacity.

(13) Except as otherwise provided in ORS chapters 468, 468A and 468B, neither the members of the association, its officers, agents or employees, nor the business entities by whom the members are regularly employed, may be held individually responsible for errors in judgment, mistakes or other acts, either of commission or omission, as principal, agent, person or employee, save for their own individual acts of dishonesty or crime.

(14) Assessment participation in a maritime association does not constitute a defense to liability imposed under ORS 468B.345 to 468B.415 or other state or federal law. Such assessment participation shall not relieve a covered vessel from complying with those portions of the approved maritime association contingency plan that may require vessel specific oil spill response equipment, training or capabilities for that vessel.

(15) A person providing a contingency plan for a cargo or passenger vessel under this section shall be exempt from liability as provided under ORS 468B.425 for any action taken or omitted in the course of providing contingency planning service. [1991 c.651 §6; 1995 c.535 §3]

468B.360 Review of contingency plan. In reviewing the contingency plan required by ORS 468B.345, the Department of Environmental Quality shall consider at least the following factors:

(1) The adequacy of containment and cleanup equipment, personnel, communications equipment, notification procedures and call-down lists, response time and logistical arrangements for coordination and implementation of response efforts to remove oil spills promptly and properly and to protect the environment;

(2) The nature and amount of vessel traffic within the area covered by the plan;

(3) The volume and type of oil being transported within the area covered by the plan;

(4) The existence of navigational hazards within the area covered by the plan;

(5) The history and circumstances surrounding prior spills of oil within the area covered by the plan;

(6) The sensitivity of fisheries and wildlife and other natural resources within the area covered by the plan;

(7) Relevant information on previous spills contained in on-scene coordinator reports covered by the plan;

(8) The extent to which reasonable, cost-effective measures to reduce the likelihood that a spill will occur have been incorporated into the plan;

(9) The number of covered vessels calling in and the facilities located in the geographic area and the resulting ability of local agencies and industry groups to develop, finance and maintain a contingency plan and spill response system for those vessels and facilities; and

(10) The spill response equipment and resources available to a person providing a contingency plan for cargo and passenger vessels under contingency plans filed by the person under state or federal law for other covered vessels or facilities owned or operated by that person. [1991 c.651 §7; 1995 c.535 §4]

468B.365 Plan approval; change affecting plan; certificate of approval. (1) The Department of Environmental Quality shall approve a contingency plan only if it determines that the plan meets the requirements of ORS 468B.345 to 468B.360 and:

(a) The covered vessel or facility demonstrates evidence of compliance with ORS 468B.390; and

(b) If implemented, the plan is capable, to the maximum extent practicable in terms of personnel, materials and equipment, of removing oil promptly and properly and minimizing any damage to the environment.

(2) An owner or operator of a covered vessel or facility shall notify the department in writing immediately of any significant change affecting the contingency plan, including changes in any factor set forth in this section or in rules adopted by the Environmental Quality Commission. The department may require the owner or operator to update a contingency plan as a result of these changes.

(3) A holder of an approved contingency plan does not violate the terms of the contingency plan by furnishing to another plan holder, after notifying the department, equipment, materials or personnel to assist the other plan holder in a response to an oil discharge. The plan holder shall replace or

return the transferred equipment, materials and personnel as soon as feasible.

(4) The department may attach any reasonable term or condition to its approval or modification of a contingency plan that the department determines is necessary to insure that the applicant:

(a) Has access to sufficient resources to protect environmentally sensitive areas and to prevent, contain, clean up and mitigate potential oil discharges from the facility or tank vessel;

(b) Maintains personnel levels sufficient to carry out emergency operations; and

(c) Complies with the contingency plan.

(5) The contingency plan must provide for the use by the applicant of the best technology available at the time the contingency plan was submitted or renewed.

(6) The department may require an applicant or a holder of an approved contingency plan to take steps necessary to demonstrate its ability to carry out the contingency plan, including:

(a) Periodic training;

(b) Response team exercises; and

(c) Verification of access to inventories of equipment, supplies and personnel identified as available in the approved contingency plan.

(7) The department may consider evidence that oil discharge prevention measures such as double hulls or double bottoms on vessels or barges, secondary containment systems, hydrostatic testing, enhanced vessel traffic systems or enhanced crew or staffing levels have been implemented and in its discretion, may make exceptions to the requirements of this section to reflect the reduced risk of oil discharges from the facility or tank vessel for which the plan is submitted or being modified.

(8) Before the department approves or modifies a contingency plan required under ORS 468B.345, the department shall provide a copy of the contingency plan to the State Department of Fish and Wildlife, the office of the State Fire Marshal and the Department of Land Conservation and Development for review. The agencies shall review the plan according to procedures and time limits established by rule of the Environmental Quality Commission.

(9) Upon approval of a contingency plan, the department shall issue to the plan holder a certificate stating that the plan has been approved. The certificate shall include the name of the facility or tank vessel for which the certificate is issued, the effective date of the plan and the date by which the plan must be submitted for renewal.

(10) The approval of a contingency plan by the department does not constitute an express assurance regarding the adequacy of the plan or constitute a defense to liability imposed under ORS chapters 468, 468A and 468B or any other state law. [1991 c.651 §8]

468B.370 Determination of adequacy of plan; practice drills; rules. (1)(a) The Environmental Quality Commission by rule shall adopt procedures to determine the adequacy of a contingency plan approved or filed for approval under ORS 468B.365.

(b) The rules shall require random practice drills without prior notice to test the adequacy of the responding entities. The rules may provide for unannounced practice drills of an individual contingency plan.

(c) The rules may require the contingency plan holder to publish a report on the drills. This report shall include an assessment of response time and available equipment and personnel compared to those listed in the contingency plan relying on the responding entities and requirements, if any, for changes in the plans or their implementation. The Department of Environmental Quality shall review the report and assess the adequacy of the drill.

(d) The department may require additional drills and changes in arrangements for implementing the approved plan that are necessary to insure the effective implementation of the plan.

(2) The Environmental Quality Commission by rule may require any tank vessel carrying oil as cargo in the navigable waters of the state to:

(a) Place booms, in-water sensors or other detection equipment around tank vessels during transfers of oil; and

(b) Submit to the department evidence of a structural and mechanical integrity inspection of the tank vessel equipment and hull structures.

(3) A tank vessel that is conducting, or is available only for conducting, oil discharge response operations is exempt from the requirements of subsection (1) of this section if the tank vessel has received prior approval of the department. The department may approve exemptions under this subsection upon application and presentation of information required by the department. [1991 c.651 §9; 2001 c.688 §3]

468B.375 Inspection of facilities and vessels; coordination with State of Washington. (1) In addition to any other right of access or inspection conferred upon the Department of Environmental Quality by ORS 468B.370, the department may at reasonable times and in a safe manner enter and

inspect facilities and tank vessels in order to insure compliance with the provisions of ORS 468B.345 to 468B.415.

(2) The department shall coordinate with the State of Washington in the review of the tank vessel structural integrity inspection programs conducted by the United States Coast Guard and other federal agencies to determine whether the programs as actually operated by the federal agencies adequately protect the navigable waters of the state. If the department determines that tank vessel inspection programs conducted by the federal agencies are not adequate to protect the navigable waters of the state, the department shall establish a state tank vessel inspection program. [1991 c.651 §10]

468B.380 Tank vessel inspection program; rules. If the Department of Environmental Quality determines under ORS 468B.375 that a state tank vessel inspection program is necessary, the Environmental Quality Commission shall adopt rules necessary to enable the department to implement the state tank vessel inspection program. [1991 c.651 §11]

468B.385 Modification of approval of contingency plan; revocation of approval; violation. (1) Upon request of a plan holder or on the initiative of the Department of Environmental Quality, the department, after notice and opportunity for hearing, may modify its approval of a contingency plan if the department determines that a change has occurred in the operation of the facility or tank vessel necessitating an amended or supplemental plan, or that the operator's discharge experience demonstrates a necessity for modification.

(2) The department, after notice and opportunity for hearing, may revoke its approval of a contingency plan if the department determines that:

(a) Approval was obtained by fraud or misrepresentation;

(b) The operator does not have access to the quality or quantity of resources identified in the plan;

(c) A term or condition of approval or modification has been violated; or

(d) The plan holder is not in compliance with the plan and the deficiency materially affects the plan holder's response capability.

(3) Failure of a holder of an approved or modified contingency plan to comply with the plan or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of ORS 468B.345 to 468B.415 for purposes of ORS 466.992, 468.140, 468.943 and any other applicable law.

(4) If the holder of an approved or modified contingency plan fails to respond to and conduct cleanup operations of an unpermitted discharge of oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under ORS 466.992 and 468.140.

(5) In order to be considered in compliance with a contingency plan, the plan holder must:

(a) Establish and carry out procedures identified in the plan as being the responsibility of the holder of the plan;

(b) Have access to and have on hand the quantity and quality of equipment, personnel and other resources identified as being accessible or on hand in the plan;

(c) Fulfill the assurances espoused in the plan in the manner described in the plan;

(d) Comply with terms and conditions attached to the plan by the department under ORS 468B.345 to 468B.380; and

(e) Successfully demonstrate the ability to carry out the plan when required by the department under ORS 468B.370. [1991 c.651 §12; 1993 c.422 §34]

468B.390 Compliance with federal Oil Pollution Act of 1990; proof of financial responsibility. (1) No person shall cause or permit the operation of a facility in the state unless the person has proof of compliance with Section 1016 of the federal Oil Pollution Act of 1990 (P.L. 101-380), if such compliance is required by federal law.

(2) No person may cause or permit the operation of an offshore exploration or production facility in the state unless the person has proof of compliance with Section 1016 of the federal Oil Pollution Act of 1990 (P.L. 101-380).

(3) Except for a barge that does not carry oil as cargo or fuel or a spill response vessel or barge, the owner of any vessel over 300 gross tons in the waters of this state shall have proof of financial responsibility for the following vessels:

(a) For tank vessels over 300 gross tons:

(A) $1,200 per gross ton or $2 million for vessels of 3,000 gross tons or less, whichever is greater; and

(B) $1,200 per gross ton or $10 million for vessels over 3,000 gross tons, whichever is greater; or

(b) For any other covered vessel over 300 gross tons carrying oil only for use as fuel, $600 per gross ton or $500,000, whichever is greater.

(4) The Department of Environmental Quality shall enter into an agreement with the United States Coast Guard to receive notification of noncompliance with the provisions of this section.

(5) The financial assurance requirement established under subsection (3) of this section shall meet the liability to the state for:

(a) Actual costs for removal of spilled oil;

(b) Civil penalties and fines imposed in connection with oil spills; and

(c) Natural resource damage. [1991 c.651 §13; 2001 c.688 §4]

468B.395 Department duties. The Department of Environmental Quality shall:

(1) In cooperation with other natural resource agencies, develop a method of natural resource valuation that fully incorporates nonmarket and market values in assessing damages resulting from oil discharges;

(2) Work with other potentially affected states to develop a joint oil discharge prevention education program for operators of fishing vessels, ferries, ports, cruise ships and marinas;

(3) Review the adequacy of and make recommendations for improvements in equipment, operating procedures and the appropriateness of west coast locations for transfer of oil;

(4) In cooperation with industry and the United States Coast Guard, develop local programs to provide oil discharge response training to fishing boat operators and marinas;

(5) Act as the state agency responsible for the overall management of the environmental cleanup of oil or hazardous material spills or releases, which shall include:

(a) Adoption of an incident command system to enhance the department's ability to manage responses to a major oil or hazardous material spill or release; and

(b) Appointment of a state on-scene coordinator for any major incident involving an oil or hazardous material spill or release or threatened spill or release;

(6) Coordinate oil spill research with other west coast states and develop a framework for information sharing and combined funding of research projects;

(7) Annually review and revise the interagency response plan for oil and hazardous material spills or releases in navigable waters of the state developed under ORS 468B.495 and 468B.500;

(8) On the Oregon coast, assist affected local agencies and industry groups to complete an inventory of existing plans and resources and to identify or establish an organization to coordinate oil spill contingency planning as part of the alternative schedule adopted for the Oregon coast described in ORS 468B.355 (1);

(9) Where adequate resources do not exist to prevent, contain, clean up and mitigate oil spills or threatened spills, assist local agencies and industry groups to secure necessary funds and equipment; and

(10) In its annual review and revision of the plan developed under ORS 468B.495 and 468B.500:

(a) Consult with all affected local, state and federal agencies, municipal and community officials and representatives of industry;

(b) Provide training in the use of the plan; and

(c) Conduct spill exercises to test the adequacy of the plan. [1991 c.651 §14; 2001 c.688 §5]

468B.400 Wildlife rescue training program. The State Department of Fish and Wildlife shall develop and implement a program to provide wildlife rescue training for volunteers. In developing the program, the State Department of Fish and Wildlife shall:

(1) Work with agencies responsible for wildlife protection in other west coast states;

(2) Rely upon the oil wildlife rehabilitation plan developed under ORS 468B.495; and

(3) Take such action as is required for reimbursement in accordance with the provisions of the federal Oil Pollution Act of 1990 (P.L. 101-380). [1991 c.651 §15]

468B.405 Fees; disposition. (1) The Department of Environmental Quality shall assess the following fees on covered vessels and offshore and onshore facilities to recover the costs of reviewing the plans and conducting the inspections, exercises, training and activities required under ORS 468B.345 to 468B.400 on all:

(a) Cargo and passenger vessels, $48 per trip.

(b) Nonself-propelled tank vessels, $42 per trip.

(c) Self-propelled tank vessels of 300 gross tons or less, $42 per trip.

(d) Self-propelled tank vessels over 300 gross tons, $836 per trip.

(e) Offshore and onshore facilities, $4,500 per year.

(f) Dredge vessels, $24 per day when operating in the navigable waters of the state.

(2) Moneys collected under this section shall be deposited in the State Treasury to the credit of the Oil Spill Prevention Fund established under ORS 468B.410.

(3) As used in this section, "trip" means travel to the appointed destination and return travel to the point of origin within the navigable waters of this state. For the purpose of assessing trip fees under this section, self-propelled tank vessels transiting the navigable waters of this state in ballast shall be considered cargo vessels. [1991 c.651 §17; 2001 c.688 §6; 2003 c.738 §2]

468B.410 Oil Spill Prevention Fund; uses. (1) The Oil Spill Prevention Fund is established separate and distinct from the General Fund in the State Treasury. Interest earned on the fund shall be credited to the fund. Moneys received by the Department of Environmental Quality for the purpose of oil and hazardous material spill prevention and the fees collected under ORS 468B.405 shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil Spill Prevention Fund in the manner prescribed by law.

(3) The moneys in the Oil Spill Prevention Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in subsection (4) of this section.

(4) The Oil Spill Prevention Fund may be used by the Department of Environmental Quality to:

(a) Pay all costs of the department incurred to:

(A) Review the contingency plans submitted under ORS 468B.360;

(B) Conduct training, response exercises, inspection and tests in order to verify equipment inventories and ability to prevent and respond to oil release emergencies and to undertake other activities intended to verify or establish the preparedness of the state, a municipality or a party required by ORS 468B.345 to 468B.415 to have an approved contingency plan to act in accordance with that plan; and

(C) Verify or establish proof of financial responsibility required by ORS 468B.390.

(b) Review and revise the oil spill response plan required by ORS 468B.495 and 468B.500. [1991 c.651 §18]

468B.415 Oregon coast safety committee; subcommittees. (1) There is established a safety committee for the Oregon coast. A subcommittee shall be appointed for Coos Bay and Yaquina Bay. In addition, the Department of Environmental Quality also shall consult with the State of Washington to establish a joint regional safety committee for the Columbia River and may appoint a subcommittee for the Willamette River. The safety committee shall operate under the direction of the Economic and Community Development Department pursuant to ORS 285A.615.

(2) Each committee shall consist of not more than 11 members, appointed by the Director of the Economic and Community Development Department in consultation with the Director of the Department of Environmental Quality. At a minimum, the following groups should be considered for representation on the committees:

(a) Local port authorities;

(b) Tank vessel operators;

(c) Tug and barge operators;

(d) Pilots' organizations;

(e) Cargo vessel operators;

(f) Commercial fishermen;

(g) Pleasure boat operators;

(h) Environmental organizations;

(i) Local planning authorities; and

(j) The public at large.

(3) The members shall be appointed to the safety committee for a term of four years. The Director of the Economic and Community Development Department in consultation with the Director of the Department of Environmental Quality shall appoint the chairperson of each committee to serve a term of four years.

(4) A majority of the members shall constitute a quorum for the transaction of business.

(5) The duties of the safety committees shall include but are not limited to:

(a) Planning for safe navigation and operation of covered vessels within each harbor;

(b) Developing safety plans;

(c) Reviewing and making recommendations to the Oregon Board of Maritime Pilots, ports and the United States Coast Guard on the following:

(A) Pilotage requirements for all single boiler or single engine and single screw tank vessels carrying oil in pilotage grounds;

(B) Reducing deadweight tonnage specifications for pilotage service for vessels carrying oil;

(C) Guidelines for tugs on tank vessels for tow cable size and material specifications, cable maintenance practices, cable handling equipment design and barge recovery plan preparation;

(D) Establishing regional speed limits, based on escort vehicle limitations, for all tank vessels in inland navigable waters and critical approaches to inland navigable waters;

(E) Requiring towing systems and plans on all tank vessels carrying oil; and

(F) The feasibility of establishing a pilot program for a near-miss reporting system that is coordinated with vessel inspection information compiled as a result of inspections under ORS 468B.370 and 468B.375.

(6) Members of the safety committees established under this section are entitled to compensation and expenses as provided in ORS 292.495.

(7) The Department of Environmental Quality shall serve in an advisory capacity to the safety committees and review the safety plans. In addition, the United States Coast Guard shall be invited to also act in an advisory capacity to the safety committees and may participate in the review of safety plans. [1991 c.651 §19; 1993 c.736 §56]

468B.420 Safety committee recommendations. If a safety committee established under ORS 468B.415 determines that the United States Coast Guard has not acted on the recommendations submitted under ORS 468B.415 (5)(c)(C) and (E) in a timely and adequate manner, the committee may recommend to the port that the port adopt rules to implement the committee's recommendations under ORS 468B.415 (5)(c)(C) and (E). [1991 c.651 §19a]

468B.425 Exemption from liability for removal costs or damages. (1) Notwithstanding any other provision of law, a person is not liable for removal costs or damages that result from action taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by a state official responsible for oil spill response.

(2) Subsection (1) of this section does not apply:

(a) To a responsible party;

(b) With respect to personal injury or wrongful death; or

(c) If the person is grossly negligent or engages in willful misconduct.

(3) A responsible party is liable for any removal costs or damages for which a person is relieved of under subsection (1) this section.

(4) Nothing in this section affects the liability of a responsible party for oil spill response under ORS 468B.300 to 468B.500. [1991 c.606 §3]

(Willful or Negligent Discharge)

468B.450 Willful or negligent discharge of oil; civil penalty; authority of director to mitigate. (1) Any person who willfully or negligently causes or permits the discharge of oil into the waters of the state shall incur, in addition to any other penalty provided by law, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty shall be determined by the Director of the Department of Environmental Quality with the advice of the State Fish and Wildlife Director after taking into consideration the gravity of the violation, the previous record of the violator in complying, or failing to comply, with the provisions of ORS 468B.450 to 468B.460, and such other considerations as the director considers appropriate. The penalty provided for in this subsection shall be imposed and enforced in accordance with ORS 468.135.

(2) The director may, upon written application therefor received within 15 days after receipt of notice under ORS 468.135, and when considered in the best interest of this state in carrying out the purposes of ORS chapters 468, 468A and 468B, remit or mitigate any penalty provided for in subsection (1) of this section or discontinue any prosecution to recover the same upon such terms as the director in the director's discretion considers proper. [Formerly 468.817]

468B.455 Oil Spillage Control Fund; source; use. (1) There is established an Oil Spillage Control Fund within the General Fund. This account shall be a revolving fund, the interest of which accrues to the Oil Spillage Control Fund.

(2) All penalties recovered under ORS 468B.450 (1) shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468B.060.

(3) With the approval of the Environmental Quality Commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.820, and earnings from such investment shall be credited to the fund.

(4) The Oil Spillage Control Fund shall not be used for any purpose other than that for which the fund was created. [Formerly 468.819]

468B.460 Rules. The Environmental Quality Commission shall adopt rules necessary to carry out the provisions of ORS 468B.450 and 468B.455. [Formerly 468.821]

(Shipping)

468B.475 Legislative finding; need for evidence of financial assurance for ships transporting oil. The Legislative Assembly finds that oil spills, hazardous material spills and other forms of incremental pollution present serious danger to the fragile marine environment of the state. Therefore, it is the intent of this section and ORS 468B.485 to establish financial assurance for ships that transport oil and other hazardous material in the waters of the state. [Formerly 468.823]

468B.480 [Formerly 468.825; repealed by 2001 c.688 §11]

468B.485 Methods of establishing financial assurance. (1) Financial assurance may be established by any of the following methods or a combination of these methods acceptable to the Environmental Quality Commission:

(a) Evidence of insurance;

(b) Surety bond;

(c) Qualifications as a self-insurer; or

(d) Any other evidence of financial assurance approved by the commission.

(2) Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(3) Documentation of the financial assurance shall be kept on the ship or filed with the Department of Environmental Quality. The owner or operator of any other ship shall maintain on the ship a certificate issued by the United States Coast Guard evidencing compliance with the requirements of section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. [Formerly 468.827]

468B.490 [Formerly 468.829; repealed by 2001 c.688 §11]

468B.495 Interagency response plan for oil or hazardous material spills in certain waters. (1) The Department of Environmental Quality shall develop an integrated, interagency response plan for oil or hazardous material spills in the Columbia River, the Willamette River up to Willamette Falls and the coastal waters and estuaries of the state. In developing the response plan, the department shall work with all affected local, state and federal agencies and with any volunteer group interested in participating in oil or hazardous material spill response.

(2) The plan developed under subsection (1) of this section shall be consistent to the extent practicable with the plan for a statewide hazardous material emergency response system established by the State Fire Marshal under ORS 453.374. [Formerly 468.831]

468B.500 Contents of plan. The plan developed under ORS 468B.495 shall include at a minimum:

(1) A compilation of maps and information about the waters of the state including shorelines, access points, critical habitats, shoreline sensitivity, disposal sites, ownership and jurisdictional control over each area. This portion of the plan shall use and expand the computer mapping system currently being developed by the State Department of Energy.

(2) An index of federal, state and local agency personnel, private contractors, volunteers, labor employment centers, wildlife rehabilitation centers and other sources of persons and equipment available to respond in the event of an oil or hazardous material spill. The index shall include information necessary to contact the organizations and persons in the index in the event of an oil or hazardous material spill.

(3) A spill response strategy. This strategy shall include methods for discovery of the spill, notification of agencies, organizations and individuals in the index, evaluation and initiation of response, containment and countermeasures and cleanup. The spill response strategy shall also include provisions for documenting the response measures taken and procedures for cost recovery.

(4) Provisions for coordinating Oregon's oil or hazardous material spill response procedures for coastal and interstate waters with the states of Washington and California. To the maximum extent practicable, interstate cooperation shall include but need not be limited to coordination of:

(a) Development of coastal and ocean information systems with those of adjacent states; and

(b) Oregon's oil or hazardous material spill response, damage assessment and cost recovery procedures for coastal or interstate waters with those developed by adjacent states. [Formerly 468.833]

POLLUTANT REDUCTION TRADING PROGRAMS

468B.550 Short title. This section and ORS 468B.555 shall be known as the "Willamette Watershed Improvement Trading Act." [2001 c.758 §1]

Note: 468B.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468B or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468B.555 Trading program development; priorities; fees. (1) The Department of Environmental Quality shall develop and implement a pollutant reduction trading pro-

gram as a means of achieving water quality objectives and standards in this state. The department shall develop the program in a manner that complies with state and federal water quality regulations and promotes economic efficiency.

(2) In developing the program, the department shall place a priority on trades that improve the water quality of the Willamette River and on the following pollutants or conditions:

(a) Nitrogenous and phosphorous compounds commonly referred to as nutrients;

(b) Sediment;

(c) Temperature;

(d) Biological oxygen demand; and

(e) Chemical oxygen demand.

(3) The department shall:

(a) Develop a procedure to assist persons entering into an agreement to offset or trade quantities of pollutants under this section in a manner that results in a net reduction of pollutants, assists in meeting water quality standards and implements total maximum daily load allocations;

(b) Provide oversight and administration of agreements entered into under this section;

(c) Minimize administrative and technical requirements in order to encourage and facilitate pollutant trading under this section; and

(d) Emphasize practical procedures for pollutant trading that can be implemented using reasonable estimations and engineering judgment.

(4)(a) The department may assess reasonable fees to a party engaging in pollutant reduction trading under this section to offset its administrative costs associated with the pollutant reduction trading program.

(b) The department shall make every effort to minimize fees to facilitate and encourage pollutant trading.

(c) Fees collected by the department under this section shall be deposited in the State Treasury to the credit of an account of the department and are continuously appropriated to the department.

(5) The department shall seek any approvals, waivers or authorizations from the United States Environmental Protection Agency necessary to implement the program.

(6) The department shall seek a minimum of $200,000 in federal funding to support the program.

(7) The department shall report to the Seventy-second and Seventy-third Legislative Assemblies regarding the progress of the program.

(8) This section may not be construed to allow any activity expressly prohibited by federal law or regulation. [2001 c.758 §3]

468B.990 [Formerly 468.990; repealed by 1993 c.422 §35]