Chapter 468A

2007 EDITION

Air Quality

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AIR POLLUTION CONTROL

468A.005 Definitions for air pollution laws. As used in ORS chapters 468, 468A and 468B, unless the context requires otherwise:

(1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

(2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

(3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

(6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the Environmental Quality Commission.

(7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in the low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable. [Formerly 468.275]

468A.010 Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon:

(a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state.

(b) To provide for a coordinated statewide program of air quality control and to allocate between the state and the units of local government responsibility for such control.

(c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs.

(2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned. [Formerly 449.765 and then 468.280]

468A.015 Purpose of air pollution laws. It is the purpose of the air pollution laws contained in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B to safeguard the air resources of the state by controlling, abating and preventing air pollution under a program which shall be consistent with the declaration of policy in this section and with ORS 468A.010. [Formerly 449.770 and then 468.285]

468A.020 Application of air pollution laws. (1) Except as provided in subsection (2) of this section, the air quality laws contained in ORS chapters 468, 468A and 468B do not apply to:

(a) Agricultural operations, including but not limited to:

(A) Growing or harvesting crops;

(B) Raising fowl or animals;

(C) Clearing or grading agricultural land;

(D) Propagating and raising nursery stock;

(E) Propane flaming of mint stubble; and

(F) Stack or pile burning of residue from Christmas trees, as defined in ORS 571.505, during the period beginning October 1 and ending May 31 of the following year.

(b) Equipment used in agricultural operations, except boilers used in connection with propagating and raising nursery stock.

(c) Barbecue equipment used in connection with any residence.

(d) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves which shall be subject to regulation under this section, ORS 468A.460 to 468A.480, 468A.490 and 468A.515.

(e) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employees in the methods of fire fighting,

which in the opinion of the agency is necessary.

(f) Fires set pursuant to permit for the purpose of instruction of employees of private industrial concerns in methods of fire fighting, or for civil defense instruction.

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

(a) Otherwise provided in ORS 468A.555 to 468A.620, 468A.790, 468A.992, 476.380 and 478.960;

(b) Necessary to implement the federal Clean Air Act (P.L. 88-206 as amended) under ORS 468A.025, 468A.030, 468A.035, 468A.040, 468A.045 and 468A.300 to 468A.330; or

(c) Necessary for the Environmental Quality Commission, in the commission's discretion, to implement a recommendation of the Task Force on Dairy Air Quality created under section 3, chapter 799, Oregon Laws 2007, for the regulation of dairy air contaminant emissions. [Formerly 468.290; 1997 c.473 §2; 1999 c.439 §1; 2007 c.799 §4]

468A.025 Air purity standards; air quality standards; treatment and control of emissions; rules. (1) By rule the Environmental Quality Commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof.

(4) The commission shall specifically fulfill the intent of the policy under ORS 468A.010 (1)(a) as it pertains to the highest and best practicable treatment and control of emissions from stationary sources through the adoption of rules:

(a) To require specific permit conditions for the operation and maintenance of pollution control equipment to the extent the Department of Environmental Quality considers the permit conditions necessary to insure that pollution control equipment is operated and maintained at the highest reasonable efficiency and effectiveness level.

(b) To require typically achievable control technology for new, modified and existing sources of air contaminants or precursors to air contaminants for which ambient air quality standards are established, to the extent emission units at the source are not subject to other emission standards for a particular air contaminant and to the extent the department determines additional controls on such sources are necessary to carry out the policy under ORS 468A.010 (1)(a).

(c) To require controls necessary to achieve ambient air quality standards or prevent significant impairment of visibility in areas designated by the commission for any source that is a substantial cause of any exceedance or projected exceedance in the

near future of national ambient air quality standards or visibility requirements.

(d) To require controls necessary to meet applicable federal requirements for any source.

(e) Applicable to a source category, contaminant or geographic area necessary to protect public health or welfare for air contaminants not otherwise regulated by the commission or as necessary to address the cumulative impact of sources on air quality.

(5) Rules adopted by the commission under subsection (4) of this section shall be applied to a specific stationary source only through express incorporation as a permit condition in the permit for the source.

(6) Nothing in subsection (4) of this section or rules adopted under subsection (4) of this section shall be construed to limit the authority of the commission to adopt rules, except rules addressing the highest and best practicable treatment and control.

(7) As used in this section, "typically achievable control technology" means the emission limit established on a case-by-case basis for a criterion contaminant from a particular emission unit in accordance with rules adopted under subsection (4) of this section. For an existing source, the emission limit established shall be typical of the emission level achieved by emission units similar in type and size. For a new or modified source, the emission limit established shall be typical of the emission level achieved by recently installed, well controlled new or modified emission units similar in type and size. Typically achievable control technology determinations shall be based on information known to the department. In making the determination, the department shall take into consideration pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness and the age and remaining economic life of existing emission control equipment. The department may consider emission control technologies typically applied to other types of emission units if such technologies can be readily applied to the emission unit. If an emission limitation is not feasible, the department may require a design, equipment, work practice or operational standard or a combination thereof. [Formerly 449.785 and then 468.295; 1993 c.790 §1]

468A.030 When liability for violation not applicable. The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B upon persons violating the provisions of any rule, standard or order of the Environmental Quality Commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or willful misconduct on the part of such person was not the proximate cause. [Formerly 449.825 and then 468.300]

468A.035 General comprehensive plan. Subject to policy direction by the Environmental Quality Commission, the Department of Environmental Quality shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state in which air pollution is found already existing or in danger of existing. The plan shall recognize varying requirements for different areas of the state. [Formerly 449.782 and then 468.305]

468A.040 Permits; rules. (1) By rule the Environmental Quality Commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. A permit subject to the federal operating permit program shall be issued in accordance with the rules adopted under ORS 468A.310.

(2) If a request for review of the final Department of Environmental Quality action, or any part thereof, is made on an application for a permit issued under the federal operating permit program established under ORS 468A.310 in accordance with the rules adopted by the commission, the effect of the contested conditions and any conditions that are not severable from those contested shall be stayed upon a showing that compliance with the contested conditions during the pendency of the appeal would require substantial expenditures or losses that would not be incurred if the permittee prevails on the merits of the review and there exists a reasonable likelihood of success on the merits. The department may require that the contested conditions not be stayed if the department finds that substantial endangerment of public health or welfare would result from the staying of the conditions.

(3) Any source under an existing permit shall:

(a) Comply with the conditions of the existing permit during any modification or reissuance proceeding; and

(b) To the extent conditions of any new or modified permit are stayed under subsection (2) of this section, comply with the conditions of the existing permit that correspond to the stayed conditions, unless compliance would be technologically incompatible with compliance with other conditions of the new or modified permit that have not been stayed. [Formerly 449.727 and then 468.310]

468A.045 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468.065, 468A.040 or 468A.155, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468A.040 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468A.040.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468A.040 in excess of the permissive discharges or emission specified under an existing permit. [Formerly 449.731 and then 468.315]

468A.050 Classification of air contamination sources; registration and reporting of sources; rules. (1) By rule the Environmental Quality Commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Department of Environmental Quality and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution. [Formerly 449.707 and then 468.320]

468A.055 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal. (1) The Environmental Quality Commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed except where prohibited by federal law. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 468.325; 1993 c.790 §4]

468A.060 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468A.055 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard. [Formerly 449.739 and then 468.330]

468A.065 Furnishing copies of rules and standards to building permit issuing agencies. Whenever under the provisions of ORS 468A.050 to 468A.070 rules or standards are adopted by either the Environmental Quality Commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards. [Formerly 449.722 and then 468.335]

468A.070 Measurement and testing of contamination sources; rules. (1) Pursuant to rules adopted by the Environmental Quality Commission, the Department of Environmental Quality shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples of air or air contaminants are taken by the department for analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702 and then 468.340]

468A.075 Variances from air contamination rules and standards; delegation to local governments; notices. (1) The Environmental Quality Commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held upon not less than 10 days′ notice. Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification. [Formerly 449.810 and then 468.345]

468A.080 Air and water pollution control permit for geothermal well drilling and operation; enforcement authority of director. (1) Upon issuance of a permit pursuant to ORS 522.115, the Director of the

Department of Environmental Quality shall accept applications for such appropriate permits under air and water pollution control laws as are necessary for the drilling of a geothermal well for which the permit has been issued and shall, within 30 days, act upon such application.

(2) The director shall continue to exercise enforcement authority over a permit issued pursuant to this section; and shall have primary responsibility in carrying out the policy set forth in ORS 468A.010, 468B.015 and rules adopted pursuant to ORS 468B.030, for air and water pollution control at geothermal wells which have been unlawfully abandoned, unlawfully suspended, or completed. [Formerly 468.350]

468A.085 Residential open burning of vegetative debris; rules; local government authority. (1) The Environmental Quality Commission shall establish by rule periods during which open burning of vegetative debris from residential yard cleanup shall be allowed or disallowed based on daily air quality and meteorological conditions as determined by the Department of Environmental Quality.

(2) After June 30, 1982, the commission may prohibit residential open burning in areas of the state if the commission finds:

(a) Such prohibition is necessary in the area affected to meet air quality standards; and

(b) Alternate disposal methods are reasonably available to a substantial majority of the population in the affected area.

(3)(a) Nothing in this section prevents a local government from taking any of the following actions if that governmental entity otherwise has the power to do so:

(A) Prohibiting residential open burning;

(B) Allowing residential open burning on fewer days than the number of days on which residential open burning is authorized by the commission; or

(C) Taking other action that is more restrictive of residential open burning than a rule adopted by the commission under this section.

(b) Nothing in this section affects any local government ordinance, rule, regulation or provision that:

(A) Is more restrictive of residential open burning than a rule adopted by the commission under this section; and

(B) Is in effect on August 21, 1981.

(c) As used in this subsection, "local government" means a city, county, other local governmental subdivision or a regional air quality control authority established under ORS 468A.105. [Formerly 468.355]

TAX CREDIT FOR EMISSION PREVENTION

468A.095 Legislative findings. The Legislative Assembly finds that:

(1) It is desirable to determine whether a tax credit program that encourages businesses to utilize technologies and processes that prevent the creation of pollutants should be offered.

(2) Based upon projections by the Department of Environmental Quality, a four-year pilot program should provide a sufficient period of time to determine the desirability of the tax credit without resorting to a program extension. [1995 c.746 §29]

Note: 468A.095 to 468A.098 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468A.096 Application for certification; eligible production technologies or processes; fees. (1) Any person may apply for certification under ORS 468A.098 of the cost of production technologies or processes installed at a business location within this state and producing emission levels and types not subject to regulation under 42 U.S.C. 7412 if:

(a) The technologies or processes are installed in replacement of technologies or processes that produce emission levels and types that are subject to or are installed in lieu of systems that would produce emission levels and types subject to regulation under:

(A) 40 C.F.R. 63.320 to 63.325 (national perchloroethylene air emission standards for dry cleaning facilities);

(B) 40 C.F.R. 63.340 to 63.347 (national emission standards for chromium emissions from hard and decorative chromium anodizing tanks); or

(C) 40 C.F.R. 63.460 to 63.469 (national emission standards for halogenated solvent cleaning);

(b) The technologies or processes are installed on or after January 1, 1996, and on or before December 31, 1999; and

(c) The cost of the technologies and processes does not qualify for certification under ORS 468.165 and 468.170. Subject to any applicable limits on credit amounts, the granting of certification of a pollution control facility under ORS 468.165 and 468.170 shall not prevent an application under this section for the cost of technologies and processes not included in the pollution control facility.

(2) The application shall be made in writing in a form prescribed by the Department of Environmental Quality and shall contain information on the actual cost of the technologies or processes for which a certificate is sought and a statement explaining how the technologies or processes used will prevent or eliminate emissions regulated under 40 C.F.R. 63.320 to 63.325, 63.340 to 63.347 or 63.460 to 63.469.

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

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

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

(6) The application shall be submitted within one year of installation of the technologies or processes. Failure to file a timely application shall make the cost of a technology or process ineligible for certification. An application shall not be considered filed until it is complete and ready for processing. The commission may grant an extension of time, not exceeding one year, to file an application when circumstances beyond the control of the applicant would make a timely filing unreasonable. [1995 c.746 §30; 1999 c.21 §77]

Note: See note under 468A.095.

468A.098 Certification; rejection of application. (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468A.096. The action of the commission shall include certification of the actual cost of the technologies or processes resulting in the elimination of emissions regulated under 40 C.F.R. 63.320 to 63.325, 63.340 to 63.347 or 63.460 to 63.469. The actual cost certified shall not exceed the taxpayer's own cash investment in the technologies or processes. The amount of the actual cost certified for all technologies or processes installed in any taxable year at a single business location shall not exceed $75,000.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the technologies or processes than was claimed in the application for certification, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

(3) If the application is rejected for any reason other than achievement of the program limitation imposed under subsection (7) of this section, including the information furnished by the applicant as to the cost of the technologies or processes, or if the applicant is dissatisfied with the certification of technology or process actual cost, the applicant may appeal the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify the cost of technologies or processes for which an application has been made under ORS 468A.096, if the commission finds that the technologies or processes:

(A) Were installed in accordance with the requirements of ORS 468A.096 (1); and

(B) Further the intents and purposes of 40 C.F.R. 63.320 to 63.325, 63.340 to 63.347 or 63.460 to 63.469.

(b) No determination of the actual cost of the technologies or processes to be certified shall be made until receipt of the application.

(c) The commission may certify the cost of more than one technology or process at a location under one certificate. A certificate under this section is effective for purposes of tax relief in accordance with ORS 315.311 if the technologies or processes were installed on or after January 1, 1996, and on or before December 31, 1999.

(5) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief beginning with the tax year following the tax year of certification as provided in ORS 315.311, based on that partner's pro rata share of the certified cost of the technology or process as determined by the partner's pro rata share of the business that installed the technology or process.

(6) Certification under this section shall be granted for a period of five consecutive years beginning with the tax year of the person in which the technology or process is certified under this section.

(7) The total actual cost certified for all projects completed on or after January 1, 1996, and on or before December 31, 1999, shall not exceed $5,200,000. [1995 c.746 §31; 1999 c.59 §139]

Note: See note under 468A.095.

REGIONAL AIR QUALITY CONTROL AUTHORITIES

468A.100 Definitions for ORS 468A.010 and 468A.100 to 468A.180. As used in ORS 468A.010 and 468A.100 to 468A.180, unless the context requires otherwise:

(1) "Board of directors" means the board of directors of a regional air quality control authority.

(2) "Governing body" means the county court or city legislative body.

(3) "Participating city" or "participating county" means a city or county or part of a county, or combination thereof, meeting the population requirements of ORS 468A.105 or having had such requirements waived under ORS 468A.110 that has joined with other eligible cities or counties or parts of counties to form a regional air quality control authority.

(4) "Regional authority" means a regional air quality control authority established under the provisions of ORS 468A.105. [Formerly 449.850 and then 468.500]

468A.105 Formation of regional air quality control authorities. (1) Notwithstanding the provisions of any law or charter to the contrary, a regional air quality control authority may be formed of contiguous territory having a population of at least 130,000 and consisting of two or more counties or parts of counties, two or more cities, or any combination thereof, or any county and a city or cities within the county.

(2) A regional authority shall be formed in the following manner:

(a) The cities and counties proposing to form a regional authority shall adopt ordinances or resolutions specifying the name of the proposed regional authority and setting forth the participating cities and counties, the principal places of business and the boundaries of the proposed regional authority; and

(b) A certified copy of the ordinances or resolutions adopted by each city or county shall be filed with the Secretary of State and with the Director of the Department of Environmental Quality; and

(c) The Environmental Quality Commission shall order the regional authority formed if it finds that the participating governments plan adequate financing and the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control.

(3) From and after the date of issuance of the order of the commission, the regional authority shall exercise its functions. [Formerly 449.855 and then 468.505]

468A.110 Waiver of population requirements. The Environmental Quality Commission may waive the population requirement of ORS 468A.105 whenever it is satisfied that adequate financing is planned by the participating governments and that the boundaries of the proposed region encompass territory reasonably included within a regional authority for purposes of air quality control. [Formerly 449.857 and then 468.510]

468A.115 Nature of authority. A regional air quality control authority is a body corporate, having perpetual succession and may:

(1) Sue and be sued.

(2) Adopt a seal.

(3) Acquire and hold real and other property necessary or incident to the exercise of its functions and sell or otherwise dispose of such property. [Formerly 449.870 and then 468.515]

468A.120 Board of directors; term. (1) The board of directors of a regional air quality control authority shall consist of not fewer than five nor more than nine members, designated as follows:

(a) One member of the governing body of each participating county, to be designated by the governing body of the county.

(b) One member of the governing body of each participating city of 25,000 or more population located within a participating county.

(c) Where regional air pollution authorities cover only one county, one additional member for each 35,000 population over 25,000 in a participating city, not to exceed three members from the city, to be designated by the governing body of the city. Any additional member designated under this paragraph may be either a member of the governing body or a resident of the participating city.

(d) One member of the governing body of a participating city of less than 25,000 population, to be designated jointly by the governing bodies of participating cities, each with less than 25,000 population, located in a participating county, but the combined

population of such cities must be at least 5,500.

(e) One or more additional members, if the board would otherwise consist of an even number of members, or less than the minimum number required by subsection (1) of this section, to be selected by members designated under paragraphs (a) to (d) of this subsection, such member or members also to be a member of the governing body or a resident of a participating city or county.

(2) A member designated under subsection (1)(a) to (d) of this section who is a member of a governing body shall hold office at the pleasure of the governing body by which the member was designated. A member designated under subsection (1)(c) of this section who is a resident of a participating city shall serve for a term established by the appointing governing body, not to exceed four years. Any member designated under subsection (1)(e) of this section shall serve for a term of two years.

(3) The term of any member shall terminate at any time:

(a) When the member is no longer a member of the governing body of the city or county by which the member was designated;

(b) If appointed under subsection (1)(c) or (d) of this section, when the member is no longer a member of the governing body of a participating city;

(c) If designated under subsection (1)(e) of this section, when the member is no longer a member of the governing body of a participating city or county; or

(d) If the member is appointed as a resident under subsection (1)(c) or (e) of this section, when the member is no longer a resident of the participating city or county by which the member was designated. [Formerly 449.865 and then 468.520]

468A.125 Board where population requirement waived. ORS 468A.120 applies to the designation of the members of the board of directors of a regional air quality control authority formed under a waiver authorized by ORS 468A.110. However, there shall be no maximum number of members and, in lieu of the members designated as provided in ORS 468A.120 (1)(b) to (d), members representing cities within the region shall be designated as follows:

(1) One member of the governing body of each participating city having a population of 2,000 or more and located within a participating county, not to exceed five members. If the number of such cities exceeds five, the governing bodies of the cities described by this subsection shall jointly select five members from the governing bodies of such cities.

(2) One member of the governing body of a participating city of less than 2,000 population, to be designated jointly by the governing bodies of participating cities, each having a population of less than 2,000. [Formerly 449.867 and then 468.525]

468A.130 Advisory committee; duties; members; term; chairperson; meetings. (1) The board of directors of the regional authority shall appoint an advisory committee which shall advise the board in matters pertaining to the region and particularly on methods and procedures for the protection of public health and welfare and of property from the adverse effects of air pollution.

(2) The advisory committee shall consist of at least seven members appointed for a term of three years with at least one representative from each of the following interests within the region:

(a) Public health agencies;

(b) Agriculture;

(c) Industry;

(d) Community planning;

(e) Fire suppression agencies; and

(f) The general public.

(3) The advisory committee shall select a chairperson and vice chairperson and such other officers as it considers necessary. Members shall serve without compensation, but may be allowed actual and necessary expenses incurred in the discharge of their duties. The committee shall meet as frequently as it or the board of directors considers necessary.

(4) Notwithstanding the provisions of subsection (2) of this section, the board of directors of the regional authority shall adopt by rule a method for establishing the initial terms of office of advisory committee members so that the terms of office do not all expire on the same date. [Formerly 468.530]

468A.135 Function of authority; rules. (1) When authorized to do so by the Environmental Quality Commission, a regional authority formed under ORS 468A.105 shall exercise the functions relating to air pollution control vested in the commission and the Department of Environmental Quality by ORS 468.020, 468.035, 468.065, 468.070, 468.090, 468.095, 468.120, 468.140, 468A.025, 468A.040, 468A.050, 468A.055, 468A.065, 468A.070 and 468A.700 to 468A.755 insofar as such functions are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission and the department to carry out the same functions. Such functions may be exercised over both incorporated and unincorporated areas

within the territory of the regional authority, regardless of whether the governing body of a city within the territory of the region is participating in the regional authority.

(2) No regional authority is authorized to establish or alter areas or to adopt any rule or standard that is less strict than any rule or standard of the commission. The regional authority must submit to the commission for its approval all air quality standards adopted by the regional authority prior to enforcing any such standards.

(3) Subject to ORS 468A.140, 468A.145 and 468A.165, when a regional authority is exercising functions under subsection (1) of this section, the commission and the department shall not exercise the same functions in the same territory. The regional authority's jurisdiction shall be exclusive. The regional authority shall enforce rules and standards of the commission as required to do so by the commission.

(4) The commission and the regional authorities may regulate, limit, control or prohibit by rule all air contamination sources not otherwise exempt within their respective jurisdictions. However, field burning and forestland burning shall be regulated by the commission and fire permit agencies as provided in ORS 468A.555 to 468A.620 and 468A.992, 476.380, 477.505 to 477.562 and 478.960. [Formerly 468.535; 1993 c.420 §1]

468A.140 Assumption, retention and transfer of control over classes of air contamination sources. (1) The Environmental Quality Commission may assume and retain control over any class of air contamination source if it finds that such control is beyond the reasonable capabilities of the regional authorities because of the complexity or magnitude of the source.

(2) If the commission does assume or retain control over any class of air contamination source under subsection (1) of this section, a regional authority may petition for the restoration or transfer of such control. If the commission finds that the reason for its assumption or retention is no longer valid, it may restore or transfer control over the class of air contaminants to the regional authority. [Formerly 449.910 and then 468.540]

468A.145 Contract for commission to retain authority under ORS 468A.135. A regional authority may contract with the Environmental Quality Commission for the commission to retain all or part of the authority that would otherwise be granted to the regional authority under ORS 468A.135, subject to terms of the contract. [Formerly 449.863 and then 468.545]

468A.150 Conduct of public hearings; entry of orders. (1) All public hearings other than those held prior to adoption of rules or standards shall be held by the board of directors or before any member or members of the board of directors or a hearing officer, as the board of directors may designate. Such hearings shall be conducted in the manner prescribed in ORS chapter 183.

(2) If a majority of the board of directors has conducted the hearing, it shall enter its order within 60 days after the conclusion of the hearing. If the hearing is conducted by a hearing officer, or by a member or members constituting less than a majority of the board, the final decision shall be made and entered by the board within 60 days after conclusion of the hearing if no exceptions are filed, or within 60 days after final arguments on written exceptions to a proposed decision are heard. [Formerly 449.890 and then 468.550]

468A.155 Rules authorizing regional permit programs. (1) The Environmental Quality Commission by rule may authorize regional authorities to issue permits for air contamination sources within their areas of jurisdiction.

(2) Permit programs established by regional authorities pursuant to subsection (1) of this section shall:

(a) Conform to the requirements of ORS 468.065, 468A.040, 468A.045 and 468A.300 to 468A.320;

(b) Be subject to review and approval by the commission; and

(c) If the permit program is a Title V program, include a provision to transfer a portion of the permit fees imposed for the program to the Department of Environmental Quality, sufficient to pay the expenses of the department incurred in including the regional program in the state program and for the department's oversight of the regional program. [Formerly 449.883 and then 468.555; 1993 c.790 §5]

468A.160 Expansion or dissolution of authority. (1) The territory of a regional authority may be expanded in the manner provided for forming regions by inclusion of an additional contiguous county or city if:

(a) All of the governing bodies of the participating counties and cities adopt ordinances or resolutions authorizing the inclusion of the additional territory;

(b) The governing body of the proposed county or city adopts such ordinance or resolution as would be required to form a regional authority; and

(c) The Environmental Quality Commission approves the expansion.

(2) Any regional authority may be dissolved by written consent of the governing bodies of all participating counties and cities. Upon dissolution, any assets remaining after payment of all debts shall be divided among the participating counties and cities in direct proportion to the total amount contributed by each. However, all rules, standards and orders of the regional authority shall continue in effect until superseded by action of the commission. [Formerly 449.900 and then 468.560; 2007 c.71 §149]

468A.165 Compliance with state standards required; hearing; notice. (1) The Environmental Quality Commission may require that necessary corrective measures be undertaken within a reasonable time if, after hearing, it finds that:

(a) A regional authority has failed to establish an adequate air quality control program within a reasonable time after its formation; or

(b) An air quality control program in force in the territory of a regional authority is being administered in a manner inconsistent with the requirements 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.

(2) Notice of the hearing required under subsection (1) of this section shall be sent to the regional authority not less than 30 days prior to the hearing.

(3) If the regional authority fails to take the necessary corrective measures within the time required, the commission shall undertake a program of administration and enforcement of the air quality control program in the territory of the regional authority. The program instituted by the commission shall supersede all rules, standards and orders of the regional authority.

(4) If, in the judgment of the commission, a regional authority is able to requalify to exercise the functions authorized in ORS 468A.135, the commission shall restore those functions to the regional authority and shall not exercise the same functions in the territory of the regional authority. [Formerly 449.905 and then 468.565]

468A.170 Payment of costs of services to authority by state. Any consultation and services provided to regional authorities or local air quality control programs by the Environmental Quality Commission may be paid for either from funds appropriated to the commission or under agreements between the parties on a reimbursable basis. [Formerly 449.915 and then 468.570]

468A.175 State aid. (1) Subject to the availability of funds therefor:

(a) Any air quality control program conforming to the rules of the Environmental Quality Commission and operated by not more than one unit of local government shall be eligible for state aid in an amount not to exceed 30 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(b) Any air quality control program exercising functions operated by a regional authority shall be eligible for state aid in an amount not to exceed 50 percent of the locally funded annual operating cost thereof, not including any federal funds to which the program may be entitled.

(2) Applications for state funds shall be made to the commission and funds shall be made available under subsection (1) of this section according to the determination of the commission. In making its determination, the commission shall consider:

(a) The adequacy and effectiveness of the air quality control program.

(b) The geographic and demographic factors in the territory under the program.

(c) The particular problems of the territory under the program.

(3) In order to qualify for any state aid and subject to the availability of funds therefor, the local government or the regional authority must submit all applications for federal financial assistance to the commission before submitting them to the federal government.

(4) When certified by the commission, claims for state aid shall be presented for payment in the manner that other claims against the state are paid. [Formerly 449.920 and then 468.575]

468A.180 Payment of certain court costs not required. A regional authority shall not be required to pay any filing, service or other fees or furnish any bond or undertaking upon appeal or otherwise in any action or proceedings in any court in this state in which it is a party or interested. [Formerly 449.923 and then 468.580]

OREGON GLOBAL WARMING COMMISSION

468A.200 Legislative findings. The Legislative Assembly finds that:

(1) In December 2004 the Governor's Advisory Group on Global Warming issued its report calling for immediate and significant action to address global warming, to reduce Oregon's exposure to the risks of global warming and to begin to prepare for the effects of global warming. The advisory group also identified 46 specific recommendations

for measurable reductions in the state's greenhouse gas emissions.

(2) In partnership with the Governor's advisory group, 50 scientists signed the "Scientific Consensus Statement on the Likely Impacts of Climate Change on the Pacific Northwest," which examined the potential effects of climate change on temperature, precipitation, sea level, marine ecosystems and terrestrial ecosystems. The scientists recommended additional, improved scientific studies and modeling of the effects of climate change on the atmosphere, oceans and land, as well as modeling of the effects of economic and management policies.

(3) Global warming poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon.

(4) Oregon relies on snowpack for summer stream flows to provide energy, municipal water, watershed health and irrigation. Also, a potential rise in sea levels threatens Oregon's coastal communities. Reduced snowpack, changes in the timing of stream flows, extreme or unusual weather events, rising sea levels, increased occurrences of vector-borne diseases and impacts on forest health could significantly impact the economy, environment and quality of life in Oregon.

(5) Oregon forests play a significant role in sequestering atmospheric carbon, and losing this potential to sequester carbon will have a significant negative effect on the reduction of carbon levels in the atmosphere.

(6) Global warming will have detrimental effects on many of Oregon's largest industries, including agriculture, wine making, tourism, skiing, recreational and commercial fishing, forestry and hydropower generation, and will therefore negatively impact the state's workers, consumers and residents.

(7) There is a need to assess the current level of greenhouse gas emissions in Oregon, to monitor the trend of greenhouse gas emissions in Oregon over the next several decades and to take necessary action to begin reducing greenhouse gas emissions in order to prevent disruption of Oregon's economy and quality of life and to meet Oregon's responsibility to reduce the impacts and the pace of global warming.

(8) Oregon has been a national leader in energy conservation and environmental stewardship, including the areas of energy efficiency requirements and investments, renewable energy investments, natural resource conservation, greenhouse gas offset requirements and investments, and global warming pollution standards for passenger vehicles. Significant opportunities remain to reduce greenhouse gas emissions statewide, especially from major contributors of greenhouse gas emissions, including electricity production, transportation, building construction and operation, and the residential and consumer sectors.

(9) Actions to reduce greenhouse gas emissions will reduce Oregon's reliance on foreign sources of energy, lead to the development of technology, attract new businesses to Oregon and increase energy efficiency throughout the state, resulting in benefits to the economy and to individual businesses and residents.

(10) In devising measures to achieve reduction of greenhouse gas emissions, Oregon must strive to not disadvantage Oregon businesses as compared to businesses in other states with which Oregon cooperates on regional greenhouse gas emissions reduction strategies.

(11) Policies pursued, and actions taken, by Oregon will:

(a) In concert with complementary policies and actions by other states and the federal government, substantially reduce the global levels of greenhouse gas emissions and the impacts of those emissions;

(b) Encourage similar policies and actions by various stakeholders;

(c) Inform and shape national policies and actions in ways that are advantageous to Oregon residents and businesses; and

(d) Directly benefit the state and local governments, businesses and residents. [2007 c.907 §1]

Note: 468A.200 to 468A.260 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468A.205 Policy; greenhouse gas emissions reduction goals. (1) The Legislative Assembly declares that it is the policy of this state to reduce greenhouse gas emissions in Oregon pursuant to the following greenhouse gas emissions reduction goals:

(a) By 2010, arrest the growth of Oregon's greenhouse gas emissions and begin to reduce greenhouse gas emissions.

(b) By 2020, achieve greenhouse gas levels that are 10 percent below 1990 levels.

(c) By 2050, achieve greenhouse gas levels that are at least 75 percent below 1990 levels.

(2) The Legislative Assembly declares that it is the policy of this state for state and local governments, businesses, nonprofit organizations and individual residents to prepare for the effects of global warming and by doing so, prevent and reduce the social, eco-

nomic and environmental effects of global warming.

(3) This section does not create any additional regulatory authority for an agency of the executive department as defined in ORS 174.112. [2007 c.907 §2]

Note: See note under 468A.200.

468A.210 Definitions for ORS 352.247 and 468A.200 to 468A.260. As used in ORS 352.247 and 468A.200 to 468A.260:

(1) "Global warming" means an increase in the average temperature of the earth's atmosphere that is associated with the release of greenhouse gases.

(2) "Greenhouse gas" means any gas that contributes to anthropogenic global warming including, but not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

(3) "Greenhouse gas cap-and-trade system" means a system that:

(a) Establishes a total cap on greenhouse gas emissions from an identified group of emitters;

(b) Establishes a market for allowances that represent emissions; and

(c) Allows trading of allowances among greenhouse gas emitters. [2007 c.907 §3]

Note: See note under 468A.200.

468A.215 Oregon Global Warming Commission; appointment; term; vacancies; expenses of members. (1) There is created the Oregon Global Warming Commission. The commission shall consist of 25 members, including 11 voting members appointed by the Governor under this section and 14 ex officio nonvoting members specified in ORS 468A.220.

(2) Members of the commission appointed under this section shall be appointed so as to be representative of the social, environmental, cultural and economic diversity of the state and to be representative of the policy, science, education and implementation elements of the efforts to reduce greenhouse gas emissions and to prepare Oregon for the effects of global warming. Of the members appointed by the Governor under this section:

(a) One member shall have significant experience in manufacturing;

(b) One member shall have significant experience in energy;

(c) One member shall have significant experience in transportation;

(d) One member shall have significant experience in forestry;

(e) One member shall have significant experience in agriculture; and

(f) One member shall have significant experience in environmental policy.

(3) The Governor shall select a chairperson and a vice chairperson from among the members appointed under this section.

(4) The term of office of a member appointed under this section is four years. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 31 next following. A member appointed under this section is eligible for reappointment. In case of vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(5) The members of the commission appointed under this section must be residents of this state. Failure of a member to maintain compliance with the eligibility requirements related to the member's appointment shall result in disqualification from serving on the commission.

(6) Voting members of the commission appointed under this section are entitled to expenses as provided in ORS 292.495 (2). [2007 c.907 §4]

Note: See note under 468A.200.

Note: Section 6, chapter 907, Oregon Laws 2007, provides:

Sec. 6. Notwithstanding the term of office specified by section 4 of this 2007 Act [468A.215], of the members first appointed to the Oregon Global Warming Commission pursuant to section 4 of this 2007 Act:

(1) Three shall serve for terms ending January 1, 2009.

(2) Three shall serve for terms ending January 1, 2010.

(3) Three shall serve for terms ending January 1, 2011.

(4) Two shall serve for terms ending July 1, 2011. [2007 c.907 §6]

468A.220 Ex officio members. (1) In addition to the members appointed under ORS 468A.215, the Oregon Global Warming Commission shall include the following ex officio members:

(a) The Director of the State Department of Energy;

(b) The Director of Transportation;

(c) The chairperson of the Public Utility Commission of Oregon;

(d) The Director of the Department of Environmental Quality;

(e) The Director of Agriculture;

(f) The State Forester;

(g) The Water Resources Director; and

(h) Three additional ex officio nonvoting members, each from a state agency or an academic institution.

(2) The following representatives of the Legislative Assembly also shall serve as ex officio nonvoting members:

(a) Two members of the Senate, not from the same political party, appointed by the President of the Senate; and

(b) Two members of the House of Representatives, not from the same political party, appointed by the Speaker of the House of Representatives.

(3) Each legislative member serves at the pleasure of the appointing authority and may serve so long as the member remains in the chamber of the Legislative Assembly from which the member was appointed. [2007 c.907 §5]

Note: See note under 468A.200.

468A.225 Meetings; quorum; support of agencies. (1) A majority of the members of the Oregon Global Warming Commission constitutes a quorum for the transaction of business.

(2) The commission shall meet at times and places specified by a majority of the members of the commission.

(3) The State Department of Energy shall provide clerical, technical and management personnel to serve the commission. Other agencies shall provide support as requested by the department or the commission. [2007 c.907 §7]

Note: See note under 468A.200.

468A.230 Rules. The Oregon Global Warming Commission may adopt by rule such standards and procedures as it considers necessary for the operation of the commission. [2007 c.907 §8]

Note: See note under 468A.200.

468A.235 Coordination of state and local efforts to reduce greenhouse gas emissions. The Oregon Global Warming Commission shall recommend ways to coordinate state and local efforts to reduce greenhouse gas emissions in Oregon consistent with the greenhouse gas emissions reduction goals established by ORS 468A.205 and shall recommend efforts to help Oregon prepare for the effects of global warming. The Office of the Governor and state agencies working on multistate and regional efforts to reduce greenhouse gas emissions shall inform the commission about these efforts and shall consider input from the commission for such efforts. [2007 c.907 §9]

Note: See note under 468A.200.

468A.240 Recommendations; public comment; examination of greenhouse gas cap-and-trade systems. (1) In furtherance of the greenhouse gas emissions reduction goals established by ORS 468A.205, the Oregon Global Warming Commission may recommend statutory and administrative changes, policy measures and other recommendations to be carried out by state and local governments, businesses, nonprofit organizations or residents. In developing its recommendations, the commission shall consider economic, environmental, health and social costs, and the risks and benefits of alternative strategies, including least-cost options. The commission shall solicit and consider public comment relating to statutory, administrative or policy recommendations.

(2) The commission shall examine greenhouse gas cap-and-trade systems, including a statewide and multistate carbon cap-and-trade system and market-based mechanisms, as a means of achieving the greenhouse gas emissions reduction goals established by ORS 468A.205.

(3) The commission shall examine possible funding mechanisms to obtain low-cost greenhouse gas emissions reductions and energy efficiency enhancements, including but not limited to those in the natural gas industry. [2007 c.907 §10]

Note: See note under 468A.200.

468A.245 Outreach strategy. The Oregon Global Warming Commission shall develop an outreach strategy to educate Oregonians about the scientific aspects and economic impacts of global warming and to inform Oregonians of ways to reduce greenhouse gas emissions and ways to prepare for the effects of global warming. The commission, at a minimum, shall work with state and local governments, the State Department of Energy, the Department of Education, the State Board of Higher Education and businesses to implement the outreach strategy. [2007 c.907 §11]

Note: See note under 468A.200.

468A.250 Mandate of Oregon Global Warming Commission. (1) The Oregon Global Warming Commission shall track and evaluate:

(a) Economic, environmental, health and social assessments of global warming impacts on Oregon and the Pacific Northwest;

(b) Existing greenhouse gas emissions reduction policies and measures;

(c) Economic, environmental, health and social costs, and the risks and benefits of alternative strategies, including least-cost options;

(d) The physical science of global warming;

(e) Progress toward the greenhouse gas emissions reduction goals established by ORS 468A.205;

(f) Greenhouse gases emitted by various sectors of the state economy, including but not limited to industrial, transportation and utility sectors;

(g) Technological progress on sources of energy the use of which generates no or low greenhouse gas emissions and methods for carbon sequestration;

(h) Efforts to identify the greenhouse gas emissions attributable to the residential and commercial building sectors;

(i) The carbon sequestration potential of Oregon's forests, alternative methods of forest management that can increase carbon sequestration and reduce the loss of carbon sequestration to wildfire, changes in the mortality and distribution of tree and other plant species and the extent to which carbon is stored in tree-based building materials;

(j) The advancement of regional, national and international policies to reduce greenhouse gas emissions;

(k) Local and regional efforts to prepare for the effects of global warming; and

(L) Any other information, policies or analyses that the commission determines will aid in the achievement of the greenhouse gas emissions reduction goals established by ORS 468A.205.

(2) The commission shall:

(a) Work with the State Department of Energy and the Department of Environmental Quality to evaluate all gases with the potential to be greenhouse gases and to determine a carbon dioxide equivalency for those gases; and

(b) Use regional and national baseline studies of building performance to identify incremental targets for the reduction of greenhouse gas emissions attributable to residential and commercial building construction and operations. [2007 c.907 §12]

Note: See note under 468A.200.

468A.255 Citizen advisory groups. The Oregon Global Warming Commission may recommend to the Governor the formation of citizen advisory groups to explore particular areas of concern with regard to the reduction of greenhouse gas emissions and the effects of global warming. [2007 c.907 §13]

Note: See note under 468A.200.

468A.260 Report to Legislative Assembly. The Oregon Global Warming Commission shall submit a report to the Legislative Assembly, in the manner provided by ORS 192.245, by March 31 of each odd-numbered year that describes Oregon's progress toward achievement of the greenhouse gas emissions reduction goals established by ORS 468A.205. The report may include relevant issues and trends of significance, including trends of greenhouse gas emissions, emerging public policy and technological advances. The report also may discuss measures the state may adopt to mitigate the impacts of global warming on the environment, the economy and the residents of Oregon and to prepare for those impacts. [2007 c.907 §14]

Note: See note under 468A.200.

FEDERAL OPERATING PERMIT PROGRAM

468A.300 Definitions for federal operating permit program. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and 468A.485 to 468A.515:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Clean Air Act" means P.L. 88-206 as amended.

(3) "Federal operating permit program" means the program established by the Environmental Quality Commission and the Department of Environmental Quality pursuant to ORS 468A.310.

(4) "Major source" has the meaning given in section 501(2) of the Clean Air Act.

(5) "Title V" means Title V of the Clean Air Act. [1991 c.752 §3]

468A.305 Purpose. The Legislative Assembly declares the purpose of ORS 184.730, 184.733, 468.065, 468A.020, 468A.040, 468A.045, 468A.155, 468A.300 to 468A.330, 468A.415, 468A.420 and 468A.475 to 468A.520 is to:

(1) Insure that the state meets its minimum obligations under the Clean Air Act Amendments of 1990.

(2) Avoid direct regulation of industrial sources of air pollution through a federal government administered permit program.

(3) Prevent imposition of Clean Air Act sanctions which would impound federal highway funds appropriated for the state and increase emission offset requirements for new and expanding major industrial sources of air pollution.

(4) Provide adequate resources to fully cover the costs of the Department of Environmental Quality to develop and administer an approvable federal operating permit program in accordance with the Clean Air Act, including costs of permitting, compliance, rule development, emission inventorying, monitoring and modeling and related activities. [1991 c.752 §2]

468A.310 Federal operating permit program approval; rules; content of plan. (1) The Department of Environmental Quality shall prepare and submit to the Adminis-

trator of the United States Environmental Protection Agency for approval a federal operating permit program as required to implement Title V. The Environmental Quality Commission and the department may seek interim or partial approval if appropriate.

(2) The commission shall adopt rules to implement the federal operating permit program.

(3) To the maximum extent possible, consistent with subsection (2) of this section, and within budgetary constraints, rules adopted by the commission under subsection (2) of this section shall include:

(a) Streamlined procedures for expeditious review of permit actions in accordance with section 502(b)(6) of the Clean Air Act;

(b) Assurances against unreasonable delays in accordance with section 502(b)(7) of the Clean Air Act;

(c) In accordance with section 502(b)(10) of the Clean Air Act, provisions to allow changes within a permitted facility without requiring permit revisions;

(d) In accordance with section 503(d) of the Clean Air Act, protection for sources that file complete and timely permit applications;

(e) Provisions that deem compliance with a permit to be in compliance with other applicable provisions of the Clean Air Act in accordance with section 504(f) of the Clean Air Act;

(f) In accordance with section 112(i)(5) of the Clean Air Act, a deferral for early reductions of the requirement to meet standards promulgated under section 112(d) of the Clean Air Act;

(g) In accordance with section 504(b) of the Clean Air Act, provisions for alternatives to continuous emissions monitoring that provide sufficiently reliable and timely information; and

(h) Notice and opportunity for public comment as required by the Clean Air Act and for objection by the administrator under section 505(b) of the Clean Air Act. If the administrator objects to a proposed permit, the department shall:

(A) Revise the permit to meet the objection within 90 days after the date of the objection; or

(B) Determine not to issue the permit.

(4) In any discretionary rulemaking necessary to implement the federal operating permit program, the commission shall consider and make publicly available a brief written statement of the commission's judgment regarding:

(a) The need for the action and a reasonable range of alternatives that would satisfy the need;

(b) The environmental benefit that will be achieved, taking into consideration all environmental media, including energy consumption;

(c) The estimated cost of the rule; and

(d) Other sources of the air contaminants addressed in the rule and whether regulation of the other sources is possible or desirable. [1991 c.752 §§4,22]

468A.315 Emission fees for major sources; base fees; basis of fees; rules. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established every two years by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fee under subsection (2)(e) of this section, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section, subject to annual fee increases as set forth in paragraph (d) of this subsection. The following emission fees apply:

(A) $27 per ton emitted during the 2006 calendar year.

(B) $29 per ton emitted during the 2007 calendar year.

(C) $31 per ton emitted during the 2008 calendar year and each calendar year thereafter.

(b) Fees for the following specific elements of the federal operating permit program:

(A) Reviewing and acting upon applications for modifications to federal operating permits.

(B) Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.

(C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

(D) Department review of ambient monitoring networks installed by a source.

(E) Other distinct department activities created by a source or a group of sources if the commission finds that the activities are unique and specific and that additional rule-

making is necessary and will impose costs upon the department that are not otherwise covered by federal operating permit program fees.

(c) A base fee for a source subject to the federal operating permit program. This base fee shall be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases as set forth in paragraph (d) of this subsection:

(A) $2,700 for the period of November 15, 2007, through November 14, 2008.

(B) $2,900 for the period of November 15, 2008, through November 14, 2009.

(C) $3,100 for the period of November 15, 2009, through November 14, 2010.

(D) $4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual period thereafter.

(d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index for the calendar year 1989 if the commission determines by rule that the increased fees are necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

(2)(a) The fee on emissions of regulated pollutants required under this section shall be based on the amount of each regulated pollutant emitted during the prior calendar year as documented by information provided by the source in accordance with criteria adopted by the commission or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on the emission limit for the plant site of the major source.

(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000 tons per year of all regulated pollutants for each calendar year thereafter. The department may not revise a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

(A) Emission monitoring;

(B) Material balances;

(C) Emission factors;

(D) Fuel use;

(E) Production data; or

(F) Other calculations.

(d) The department shall accept reasonably accurate information that complies with the criteria established by the commission as documentation of emissions.

(e) The rules adopted under this section shall require an additional fee for failure to pay, substantial underpayment of or late payment of emission fees.

(3) The commission shall establish by rule the size fraction of total particulates subject to emission fees as particulates under this section.

(4) As used in this section:

(a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide; and

(b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June 20, 2007. [1991 c.752 §§5,25; 1993 c.790 §§6,7; 2007 c.480 §1]

468A.320 Accountability for costs of program. The Department of Environmental Quality shall establish a method to account for the costs of the federal operating permit program. The method shall, at a minimum, account for costs incurred for each element of the program as described in section 502(b)(3)(A)(i) through (vi) of the Clean Air Act. In accounting for the costs of the federal operating permit program the department shall include a commensurate amount of the costs for any other permit issued under ORS 468A.040, 468A.045 or 468A.155 to the extent that those costs are considered to be part of the federal operating permit program by the Director of the Department of Environmental Quality. [1991 c.752 §6; 1993 c.790 §8]

468A.325 Priority of department work schedule. (1) Nothing in ORS 468A.040, 468A.300 to 468A.320 or this section shall require the Environmental Quality Commission or Department of Environmental Quality to make less stringent any existing element of the state's air pollution control program.

(2) To the maximum extent possible under federal laws and regulations and within budgetary constraints, the department shall prioritize its permitting work schedule to address all of the following:

(a) Sources required to have permits under the federal operating permit program;

(b) Other sources over which the department has been granted authority for control of the emission of air contaminants that:

(A) Are either within nonattainment areas or within attainment areas projected by the department to exceed air standards within five years, and which substantially

contribute to or cause the nonattainment or projected nonattainment of air quality standards; or

(B) May individually be causing exceedances of air quality standards;

(c) Applications for construction or modification; and

(d) Sources that request a federally enforceable permit from the department regardless of whether such a permit would be required under the federal operating permit program. Within budgetary constraints, the department shall cooperate with sources seeking a federally enforceable permit. [1991 c.752 §8]

468A.327 Requirement for adoption, amendment or repeal of rules; oral hearing. (1) Prior to the adoption, amendment or repeal of any rule pursuant to ORS chapter 183 that applies to any facility required to pay fees under ORS 468A.315, the Environmental Quality Commission shall include with the notice of intended action required under ORS 183.335 (1) a statement of whether the intended action imposes requirements in addition to the applicable federal requirements and, if so, shall include a written explanation of:

(a) The commission's scientific, economic, technological, administrative or other reasons for exceeding applicable federal requirements; and

(b) Any alternatives the commission considered and the reasons that the alternatives were not pursued.

(2) The statement provided by the commission under subsection (1) of this section shall be based upon information available to the commission at the time the commission prepares the written explanation.

(3) Notwithstanding ORS 183.335 (3), an opportunity for an oral hearing before the commission regarding the statement specified in subsections (1) and (2) of this section shall be granted only if:

(a) The request for a hearing is received, within 14 days after the commission issues the notice of intended action required under ORS 183.335 (1), from 10 persons or from an association having no fewer than 10 members; and

(b) The request describes how the persons or association that made the request will be directly harmed by the adoption, amendment or repeal of a rule under subsection (1) of this section.

(4) If an oral hearing is granted under subsection (3) of this section, the commission shall give notice of the hearing at least 14 days before the hearing to the persons or association requesting the hearing, to any persons who have requested notice pursuant to ORS 183.335 (8) and to the persons specified in ORS 183.335 (15).

(5) Subsection (3) of this section does not apply if the commission includes with the notice of intended action required under ORS 183.335 (1) a notice that an oral hearing will be held before the commission.

(6) The provisions of this section do not apply to temporary rules adopted by the commission under ORS 183.335 (5). [2007 c.480 §3]

468A.330 Small Business Stationary Source Technical and Environmental Compliance Assistance Program. (1) Because of the extraordinary effect that the federal operating permit program may have on small business, there is hereby established within the Department of Environmental Quality a Small Business Stationary Source Technical and Environmental Compliance Assistance Program in accordance with section 507 of the Clean Air Act. This program shall include each element specified in section 507(a) of the Clean Air Act.

(2) A Compliance Advisory Panel is established to:

(a) Advise the department on the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program;

(b) Report to the Administrator of the United States Environmental Protection Agency as required by federal law;

(c) Review the information to be issued by the program for small businesses to assure the information is understandable by a layperson; and

(d) Perform any other function required by the Clean Air Act.

(3) The Compliance Advisory Panel shall consist of not less than seven members:

(a) Two members appointed by the Governor, who are not owners, or representatives of owners, of small business stationary sources, to represent the general public;

(b) Four members who are owners, or who represent owners, of small business stationary sources as follows:

(A) One member appointed by the President of the Senate;

(B) One member appointed by the Speaker of the House;

(C) One member appointed by the Senate Minority Leader; and

(D) One member appointed by the House Minority Leader; and

(c) One member appointed by the Director of the Department of Environmental Quality.

(4)(a) On-site technical assistance for the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall not result in inspections or enforcement actions, except that the department may initiate compliance and enforcement actions immediately if, during onsite technical assistance, there is reasonable cause to believe a clear and immediate danger to the public health and safety or to the environment exists.

(b) As used in this subsection:

(A) "Clear" means plain, evident, free from doubt.

(B) "Immediate danger" means a situation in which there is substantial likelihood that serious harm may be experienced within the time frame necessary for the department to pursue an enforcement action. [1991 c.752 §12]

MOTOR VEHICLE POLLUTION CONTROL

468A.350 Definitions for ORS 468A.350 to 468A.400. As used in ORS 468A.350 to 468A.400:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468A.365 (3).

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468A.365 (1), whichever criteria are stricter.

(3) "Motor vehicle" includes any self-propelled vehicle used for transporting persons or commodities on public roads and highways but does not include a vehicle of special interest as that term is defined in ORS 801.605, if the vehicle is maintained as a collector's item and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property, or a racing activity vehicle as defined in ORS 801.404.

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle. [Formerly 468.360; 2007 c.693 §8]

468A.355 Legislative findings. For purposes of ORS 468A.350 to 468A.400, the Legislative Assembly finds:

(1) That the emission of pollutants from motor vehicles is a significant cause of air pollution in many portions of this state.

(2) That the control and elimination of such pollutants are of prime importance for the protection and preservation of the public health, safety and well-being and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.

(3) That the state has a responsibility to establish procedures for compliance with standards which control or eliminate such pollutants.

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property. [Formerly 449.951 and then 468.365]

468A.360 Motor vehicle emission and noise standards; copy to Department of Transportation. (1) After public hearing and in accordance with the applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt motor vehicle emission standards. For the purposes of this section, the commission may include, as a part of such standards, any standards for the control of noise emissions adopted pursuant to ORS 467.030.

(2) The commission shall furnish a copy of standards adopted pursuant to this section to the Department of Transportation and shall publish notice of the standards in a manner reasonably calculated to notify affected members of the public. [Formerly 468.370]

468A.363 Purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300. The Legislative Assembly declares the purpose of ORS 468A.363, 468A.365, 468A.400 and 815.300 is to:

(1) Insure that the health of citizens in the Portland area is not threatened by recurring air pollution conditions.

(2) Provide necessary authority to the Environmental Quality Commission to implement one of the critical elements of the air quality maintenance strategy for the Portland area related to improvements in the motor vehicle inspection program.

(3) Insure that the Department of Environmental Quality is able to submit an approvable air quality maintenance plan for the Portland area through the year 2006 to the Environmental Protection Agency as soon as possible so that area can again be designated as an attainment area and imped-

iments to industrial growth imposed in the Clean Air Act can be removed.

(4) Direct the Environmental Quality Commission to use existing authority to incorporate the following programs for emission reduction credits into the air quality maintenance plan for the Portland area:

(a) California or United States Environmental Protection Agency emission standards for new lawn and garden equipment sold in the Portland area.

(b) Transportation-efficient land use requirements of the transportation planning rule adopted by the Land Conservation and Development Commission.

(c) Improvements in the vehicle inspection program as authorized in ORS 468A.350 to 468A.400, including emission reduction from on-road vehicles resulting from enhanced testing, elimination of exemptions for 1974 and later model year vehicles, and expansion of inspection program boundaries.

(d) An employer trip reduction program that provides an emission reduction from on-road vehicles.

(e) A parking ratio program that limits the construction of new parking spaces for employment, retail and commercial locations.

(f) Emission reductions resulting from any new federal motor vehicle fuel tax.

(g) State and federal alternative fuel vehicles fleet programs that result in emission reductions.

(h) Installation of maximum achievable control technology by major sources of hazardous air pollutants as required by the federal Clean Air Act, as amended, resulting in emission reductions.

(i) As a safety margin, or as a substitute in whole or in part for other elements of the plan, emission reductions resulting from any new state gasoline tax or for any new vehicle registration fee that allows use of revenue for air quality improvement purposes. [1993 c.791 §2]

Note: 468A.363 was added to and made a part of 468A.350 to 468A.400 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

468A.365 Certification of motor vehicle pollution control systems and inspection of motor vehicles; rules. The Environmental Quality Commission shall:

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control systems. In determining the criteria the commission shall consider the following:

(a) The experience of any other state or the federal government;

(b) The cost of the system and of its installation;

(c) The durability of the system;

(d) The ease of determining whether the system, when installed on a motor vehicle, is functioning properly; and

(e) Any other factors which, in the opinion of the commission, render such a system suitable for the control of motor vehicle air pollution or for the protection of the health, safety and welfare of the public.

(2) Prescribe by rule the manner in which a motor vehicle pollution control system shall be tested for certification. The rules may prescribe a more rigorous inspection procedure in the areas designated under ORS 815.300 (2)(a), including any expansion of such boundary under ORS 815.300 (2)(b), in order to reduce air pollution emissions in those areas of the state. No such rule shall require testing for certification more often than once during the period for which registration or renewal of registration for a motor vehicle is issued. No rule shall require testing for certification of a motor vehicle that is exempted from the requirement for certification under ORS 815.300.

(3) Issue certificates of approval for classes of motor vehicle pollution control systems which, after being tested by the commission or by a method acceptable to the commission, the commission finds meet the criteria adopted under subsection (1) of this section.

(4) Designate by rule classifications of motor vehicles for which certified systems are available.

(5) Revoke, suspend or restrict a certificate of approval previously issued upon a determination that the system no longer meets the criteria adopted under subsection (1) of this section pursuant to procedures for a contested case under ORS chapter 183.

(6) Designate suitable methods and standards for testing systems and inspecting motor vehicles to determine and insure compliance with the standards and criteria established by the commission.

(7) Except as provided in ORS 468A.370, contract for the use of or the performance of tests or other services within or without the state. [Formerly 468.375; 1993 c.791 §3]

468A.370 Cost-effective inspection program; contracts for inspections. The Environmental Quality Commission shall determine the most cost-effective method of conducting a motor vehicle pollution control system inspection program as required by ORS 468A.365. Upon finding that savings to the public and increased efficiency would result and the quality of the program would be adequately maintained, the commission may contract with a unit of local government or

with a private individual, partnership or corporation authorized to do business in the State of Oregon, for the performance of tests or other services associated with conducting a motor vehicle pollution control system inspection program. [Formerly 468.377]

468A.375 Notice to state agencies concerning certifications. The Department of Environmental Quality shall notify the Department of Transportation and the Oregon State Police whenever certificates of approval for motor vehicle pollution control systems are approved, revoked, suspended or restricted by the Environmental Quality Commission. [Formerly 449.963 and then 468.380]

468A.380 Licensing of personnel and equipment; certification of motor vehicles; rules. (1) The Environmental Quality Commission by rule may:

(a) Establish criteria and examinations for the qualification of persons eligible to inspect motor vehicles and motor vehicle pollution control systems and execute the certificates described under ORS 815.310, and for the procedures to be followed in such inspections.

(b) Establish criteria and examinations for the qualification of equipment, apparatus and methods used by persons to inspect motor vehicles and motor vehicle pollution control systems.

(c) Establish criteria and examinations for the testing of motor vehicles.

(2) Subject to rules of the commission, the Department of Environmental Quality shall:

(a) Issue licenses to any person, type of equipment, apparatus or method qualified pursuant to subsection (1) of this section.

(b) Revoke, suspend or modify licenses issued pursuant to paragraph (a) of this subsection in accordance with the provisions of ORS chapter 183 relating to contested cases.

(c) Issue certificates of compliance for motor vehicles which, after being tested in accordance with the rules of the commission, meet the criteria established under subsection (1) of this section and the standards adopted pursuant to ORS 468A.350 to 468A.385 and 468A.400. [Formerly 468.390]

468A.385 Determination of compliance of motor vehicles. (1) The Environmental Quality Commission shall establish and maintain procedures and programs for determining whether motor vehicles meet the minimum requirements necessary to secure a certificate under ORS 815.310.

(2) Such procedures and programs include, but are not limited to, the installation of a certified system and the adjustment, tune-up, or other mechanical work performed on the motor vehicle in accordance with the requirements of the commission. [Formerly 468.395]

468A.387 Operating schedules for testing stations. (1) The Department of Environmental Quality shall establish flexible weekday operating schedules for testing stations that conduct motor vehicle pollution control system inspections described under ORS 468A.365 that extend the hours of operation to 9 p.m. for some testing stations for some days of the week.

(2) After determining the hours of operation for testing stations under subsection (1) of this section, the department shall advertise the hours of operation in as many ways as practicable, including but not limited to:

(a) Enclosing information about the hours of operation in all mailings and notices related to motor vehicle emission testing and motor vehicle registration renewal notices;

(b) Posting the hours of operation at Department of Transportation field offices;

(c) Broadcasting public service announcements; and

(d) Using appropriate Internet and other electronic media services that may be available. [1999 c.475 §2]

468A.390 Designation of areas of the state subject to motor vehicle emission inspection program; rules. (1) If the need for a motor vehicle pollution control system inspection program is identified for an area in the State of Oregon Clean Air Act Implementation Plan, then the Environmental Quality Commission, by rule, shall designate boundaries, in addition to the areas specified in ORS 815.300 (2)(a) and (b), within which motor vehicles are subject to the requirement under ORS 815.300 to have a certificate of compliance issued under ORS 468A.380 to be registered or have the registration of the vehicle renewed.

(2) Whenever the Environmental Quality Commission designates boundaries under this section within which vehicles are subject to the requirements of ORS 815.300, the commission shall notify the Department of Transportation and shall provide the Department of Transportation with information necessary to perform the Department of Transportation's duties under ORS 815.300. [Formerly 468.397]

468A.395 Bond or letter of credit; remedy against person licensed under ORS 468A.380; cancellation of license. (1) Any person licensed to issue certificates of compliance pursuant to ORS 468A.380 shall file with the Department of Environmental Quality a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The bond or letter

of credit shall be executed to the State of Oregon in the sum of $1,000. It shall be approved as to form by the Attorney General, and shall be conditioned that inspections and certifications will be made only by persons who meet the qualifications fixed by the Environmental Quality Commission and will be made without fraud or fraudulent representations and without violating any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325.

(2) In addition to any other remedy that a person may have, if any person suffers any loss or damage by reason of the fraud, fraudulent representations or violation of any of the provisions of ORS 468A.350 to 468A.400, 815.295, 815.300, 815.310, 815.320 and 815.325 by a person licensed pursuant to ORS 468A.380, the injured person has the right of action against the business employing such licensed person and a right of action in the person's own name against the surety upon the bond or the letter of credit issuer.

(3) The license issued pursuant to ORS 468A.380 of any person whose bond is canceled by legal notice shall be canceled immediately by the department. If the license is not renewed or is voluntarily or involuntarily canceled, the sureties of the bond or the letter of credit issuers shall be relieved from liability accruing subsequent to such cancellation by the department. [Formerly 468.400; 1997 c.631 §480]

468A.400 Fees; collection; use. (1) The Department of Environmental Quality shall:

(a) Establish and collect fees for application, examination and licensing of persons, equipment, apparatus or methods in accordance with ORS 468A.380 and within the following limits:

(A) The fee for licensing shall not exceed $5.

(B) The fee for renewal of licenses shall not exceed $1.

(b) Establish fees for the issuance of certificates of compliance. The department may classify motor vehicles and establish a different fee for each such class. The fee for the issuance of certificates shall be established by the Environmental Quality Commission in an amount based upon the costs of administering this program. Before establishing the fees, the commission shall determine the most cost effective program consistent with Clean Air Act requirements for each area of the state pursuant to ORS 468A.370.

(2) The department shall collect the fees established pursuant to subsection (1)(b) of this section at the time of the issuance of certificates of compliance as required by ORS 468A.380 (2)(c).

(3) On or before the 15th day of each month, the commission shall pay into the State Treasury all moneys received as fees pursuant to subsections (1) and (2) of this section during the preceding calendar month. The State Treasurer shall credit such money to the Department of Environmental Quality Motor Vehicle Pollution Account, which is hereby created. The moneys in the Department of Environmental Quality Motor Vehicle Pollution Account are continuously appropriated to the department to be used by the department solely or in conjunction with other state agencies and local units of government for:

(a) Any expenses incurred by the department and, if approved by the Governor, any expenses incurred by the Department of Transportation in the certification, examination, inspection or licensing of persons, equipment, apparatus or methods in accordance with the provisions of ORS 468A.380 and 815.310.

(b) Such other expenses as are necessary to study traffic patterns and to inspect, regulate and control the emission of pollutants from motor vehicles in this state.

(4) The Department of Environmental Quality may enter into an agreement with the Department of Transportation to collect the licensing and renewal fees described in subsection (1)(a) of this section subject to the fees being paid and credited as provided in subsection (3) of this section. [Formerly 468.405; 1993 c.18 §122; 1993 c.791 §4]

468A.405 Authority to limit motor vehicle operation and traffic; rules. The Environmental Quality Commission and regional air pollution control authorities organized pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B by rule may regulate, limit, control or prohibit motor vehicle operation and traffic as necessary for the control of air pollution which presents an imminent and substantial endangerment to the health of persons. [Formerly 449.747 and then 468.410]

468A.410 Administration and enforcement of rules adopted under ORS 468A.405. Cities, counties, municipal corporations and other agencies, including the Department of State Police and the Department of Transportation, shall cooperate with the Environmental Quality Commission and regional air pollution control authorities in the administration and enforcement of the terms of any rule adopted pursuant to ORS 468A.405. [Formerly 449.751 and then 468.415]

468A.415 Legislative findings. The Legislative Assembly finds that extending additional statewide controls and fees on industrial and motor vehicle sources of air pollution may not be sufficient to attain and maintain desired air quality standards in the Portland-Vancouver air quality maintenance area. Additional approaches are needed to address growth in vehicle miles of travel that satisfy mobility needs and allow for economic growth while meeting the air quality goals for the region. [1991 c.752 §13]

468A.420 Oxygenated motor vehicle fuels; when required by rule. (1) The Environmental Quality Commission shall adopt rules consistent with section 211 of the Clean Air Act to require oxygenated motor vehicle fuels to be used in any carbon monoxide nonattainment area in the state.

(2) The rules adopted under subsection (1) of this section shall require:

(a) Oxygenated fuels to be used during any portion of the year during which the nonattainment area is prone to high ambient concentrations of carbon monoxide.

(b) The use of oxygenated fuels in carbon monoxide nonattainment areas on or before November 1, 1992.

(3) An oxygenated fuel shall contain 2.7 percent or more oxygen by weight. Methods to achieve this requirement may include but need not be limited to the use of ethanol blends. [1991 c.752 §13b]

468A.425 [1991 c.752 §14; repealed by 1995 c.79 §284]

468A.430 [1991 c.752 §14a; repealed by 1995 c.79 §284]

468A.435 [1991 c.752 §14b; repealed by 1995 c.79 §284]

468A.440 [1991 c.752 §14c; repealed by 1995 c.79 §284]

468A.445 [1991 c.752 §14d; repealed by 1995 c.79 §284]

468A.450 [1991 c.752 §14e; repealed by 1995 c.79 §284]

468A.455 Police enforcement. The Oregon State Police, the county sheriff and municipal police are authorized to use such reasonable force as is required in the enforcement of any rule adopted pursuant to ORS 468A.405 and may take such reasonable steps as are required to assure compliance therewith, including but not limited to:

(1) Locating appropriate signs and signals for detouring, prohibiting and stopping motor vehicle traffic; and

(2) Issuing warnings or citations. [Formerly 449.753 and then 468.420]

WOODSTOVE EMISSIONS CONTROL

468A.460 Policy. In the interest of the public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by woodstove emissions. The Legislative Assembly declares it to be the public policy of the state to reduce woodstove emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the effects of woodstove emissions and the desirability of achieving better woodstove emission performance and heating efficiency. [Formerly 468.630]

468A.465 Prohibited acts relating to uncertified and unlabeled woodstove. On and after July 1, 1986, a person may not advertise to sell, offer to sell or sell a new woodstove in Oregon unless:

(1) The woodstove has been tested to determine its emission performance and heating efficiency;

(2) The woodstove is certified by the Department of Environmental Quality under the program established under ORS 468A.480 (1); and

(3) An emission performance and heating efficiency label is attached to the woodstove. [Formerly 468.635]

468A.470 Evaluation of woodstove emission performance; fee; rules. (1) After July 1, 1984, a woodstove manufacturer or dealer may request the Department of Environmental Quality to evaluate the emission performance of a new woodstove.

(2) The Environmental Quality Commission shall establish by rule the amount of the fee that a manufacturer or dealer must submit to the department with each request to evaluate a woodstove.

(3) A new woodstove may be certified at the conclusion of an evaluation and before July 1, 1986, if:

(a) The department finds that the emission levels of the woodstove comply with the emission standards established by the commission; and

(b) The woodstove manufacturer or dealer submits the application for certification fee established by the commission under ORS 468A.480 (1).

(4) As used in this section, "evaluate" means to review a woodstove's emission levels as determined by an independent testing laboratory, and compare the emission levels of the woodstove to the emission standards established by the commission under ORS 468A.480 (1). [Formerly 468.640]

468A.475 Use of net emission reductions in airshed. (1) The Environmental Quality Commission shall use a portion of the net emission reductions in an airshed achieved by the woodstove certification program to provide room in the airshed for emissions associated with commercial and industrial growth.

(2) If the total emissions in an airshed are at a level that does not provide for commercial or industrial growth, an industrial or commercial operation may replace noncertified woodstoves with certified woodstoves or other heating systems having lower air pollution emissions than noncertified woodstoves or retrofit existing noncertified woodstoves to reduce total emissions in the airshed to a level that allows the industrial or commercial operation to begin or increase its operations.

(3) All noncertified woodstoves removed pursuant to subsection (2) of this section shall be destroyed. [Formerly 468.650]

468A.480 Standards and certification program; rules; fee. (1) The Environmental Quality Commission shall establish by rule:

(a) Emission performance standards for new woodstoves;

(b) Criteria and procedures for testing a new woodstove for compliance with the emission performance standards;

(c) A program administered by the Department of Environmental Quality to certify a new woodstove that complies with the emission performance standards when tested by an independent testing laboratory, according to the criteria and procedures established in paragraph (b) of this subsection;

(d) A program, including testing criteria and procedures to rate the heating efficiency of a new woodstove;

(e) The form and content of the emission performance and heating efficiency label to be attached to a new woodstove;

(f) The application fee to be submitted to the department by a manufacturer, dealer or seller applying for certification of a woodstove; and

(g) Emission values for noncertified woodstoves that are replaced or retrofitted under ORS 468A.475 to allow an industrial or commercial operation to begin or increase its operations.

(2) Nothing in this section shall exempt any woodstove from the listing or certification requirements established by 24 C.F.R. 3280.707 or the installation standards in 24 C.F.R. 3280.709 for woodstoves installed in manufactured dwellings, or from the standards for installation of woodstoves established by the Department of Consumer and Business Services.

(3) The program established under subsection (1)(c) of this section and the fee established under subsection (1)(f) of this section shall not apply to any woodstove certified for emission and tested for efficiency by the United States Environmental Protection Agency. Nothing in this subsection shall be construed to prevent the department from enforcing certifications issued by the department or the United States Environmental Protection Agency. [Formerly 468.655; 1993 c.742 §75]

468A.485 Definitions for ORS 468A.490. As used in ORS 468A.490:

(1) "Area that exceeds the PM10 standard" means an area of the state that exceeds, on or after January 1, 1990, the air quality standard for PM10 as established by the Environmental Quality Commission under ORS 468A.025.

(2) "Western interior valleys" means the area of the state encompassed by the borders of the States of Washington and California and the crests of the Cascade Mountain Range on the east and the Coast Range on the west. [1991 c.752 §8a]

468A.490 Residential Wood Heating Air Quality Improvement Fund; uses. (1) There is created within the State Treasury a fund known as the Residential Wood Heating Air Quality Improvement Fund, separate and distinct from the General Fund.

(2) All moneys appropriated or received as gifts or grants for the purposes of this section shall be credited to the Residential Wood Heating Air Quality Improvement Fund.

(3) The State Treasurer may invest and reinvest the moneys in the fund as provided in ORS 293.701 to 293.820. Interest from the moneys deposited in the fund and earnings from investment of the moneys in the fund shall accrue to the fund.

(4) All moneys in the Residential Wood Heating Air Quality Improvement Fund are continuously appropriated to the Department of Environmental Quality to:

(a) Pay all costs incurred by the department in maintaining residential wood heating emissions inventories, analyzing projects and programs proposed for funding in accordance with this section, administering projects and programs selected for funding in accordance with this section and implementing the requirements of ORS 468A.475 (2) and 468A.480 (1)(g).

(b) Pay all reasonable costs as determined by the Environmental Quality Commission for local government and regional

authority public education, emission inventory maintenance, curtailment and opacity programs to reduce residential wood heating emission in an area that exceeds the PM10 standard or an area that is at risk of becoming an area that exceeds the PM10 standard.

(c) To the extent moneys remain in the fund after paying the costs under paragraphs (a) and (b) of this subsection, to fund programs established under subsections (5) and (6) of this section in a manner designed to achieve cost-beneficial reductions in emission of air contaminants from woodstoves, attain federal ambient air quality standards before deadlines specified in the Clean Air Act and maintain compliance with such standards after the deadlines established in the Clean Air Act.

(d) Not more than 15 percent of the total amount of moneys received under this section shall be expended for costs under paragraphs (a) and (b) of this subsection.

(5) A portion of the moneys available under subsection (4) of this section shall be used by the Environmental Quality Commission to fund a low or no interest loan program for wood heated households located in the western interior valleys or in any other county containing an area that exceeds the PM10 standard to replace woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1, 1986. The program shall include the following elements:

(a) All forms of new high-efficiency, low air contaminant-emitting heating systems are allowed;

(b) Any removed woodstove must be destroyed;

(c) Any replacement woodstoves selected under the program must be installed in conformance with building code requirements and the manufacturer's specifications including but not limited to chimney specifications; and

(d) To be eligible, program participants shall participate in any home energy audit program provided at no charge to the homeowner and shall obtain all information available regarding subsidies for cost-effective weatherization. The department shall make the information required in this subsection readily available to program participants.

(6) A portion of the moneys available under subsection (4) of this section shall be used by the commission to fund local government or regional authority programs to provide subsidies for replacement of woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1, 1986, to low income persons in wood heated households in an area that exceeds the PM10 standard. The local government or regional authority programs must include the following elements to be eligible for funding:

(a) All forms of new high-efficiency, low emitting heating systems are allowed.

(b) All woodstoves removed are destroyed.

(c) The local government or regional authority adopts and enforces an ordinance that limits emissions from woodstoves to no visible smoke, except for steam and heat waves, during periods of air stagnation and to an average of 20 percent opacity at all other times except during start up and refueling as determined by the commission. This requirement shall not be in lieu of any final stage of woodstove curtailment required during air stagnation if the final stage of curtailment is necessary to prevent exceeding air quality standards established under ORS 468A.025 by the latest date allowed under the Clean Air Act to reach attainment of such standards.

(d) In an airshed requiring more than a 50 percent reduction in woodheating emissions as specified in the State Implementation Plan control strategy for PM10 emissions, program participants shall have a backup heat source if a certified woodstove is selected.

(e) Any replacement woodstove selected under the program must be installed in conformance with building code requirements and the manufacturer's specifications including but not limited to chimney specifications.

(f) To be eligible, program participants shall participate in any home energy audit program provided at no charge to the homeowner and shall obtain all information available regarding subsidies for cost-effective weatherization. The local government or regional air quality authority shall make the information required in this subsection readily available to program participants. [1991 c.752 §10]

468A.495 Prohibition on installation of used woodstoves. On and after September 29, 1991, the state building code under ORS 455.010 shall prohibit installations of used woodstoves that were not certified for sale as new on or after July 1, 1986, under ORS 468A.480 (1). [1991 c.752 §10a]

468A.500 Prohibition on sale of noncertified woodstove. On and after September 29, 1991, no person shall advertise for sale, offer to sell or sell, within this state, a used woodstove that was not certified under ORS 468A.480 (1) for sale as new on or after July 1, 1986. [1991 c.752 §10b]

468A.505 Removal of noncertified woodstoves. After December 31, 1994, all woodstoves, other than cookstoves, not certified for sale as new on or after July 1, 1986,

under ORS 468A.480 (1) shall be removed and destroyed upon sale of a home in any PM10 nonattainment area in the state that does not attain compliance with the PM10 standard established by the Environmental Quality Commission under ORS 468A.025 by December 31, 1994. [1991 c.752 §10c]

468A.510 Antique woodstove exemption. ORS 468A.495 to 468A.505 shall not apply to antique woodstoves. As used in this section, "antique woodstove" means a woodstove built before 1940 that has an ornate construction and a current market value substantially higher than a common woodstove manufactured in the same time period. [1991 c.752 §10d]

468A.515 Wood heating curtailment program requirements; exemptions; rules. (1) Any programs adopted by the Environmental Quality Commission to curtail residential wood heating during periods of air stagnation shall provide for two stages of curtailment based on the severity of projected air quality conditions. Except as provided in subsection (2) of this section, the programs shall apply to all woodburning fireplaces, woodstoves and appliances. The programs shall provide that woodstoves that were certified for sale as new on or after July 1, 1986, under ORS 468A.480 (1) shall be curtailed only at the second stage to insure attainment of air quality standards.

(2) Programs adopted by the commission to curtail residential wood heating shall not apply to:

(a) A person who is classified at less than or equal to 125 percent of poverty level pursuant to federal poverty income guidelines adopted under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35);

(b) A person whose residence is equipped only with wood heating until such time as funding becomes available for replacement or woodstoves that were not certified under ORS 468A.480 for sale as new on or after July 1, 1986, and for the period of time between application for such funds and completion of the replacement; and

(c) Wood burning pellet stoves.

(3) If a local government or regional authority has not adopted or is not adequately implementing the required curtailment program, the Environmental Quality Commission may adopt by rule and the Department of Environmental Quality may operate and enforce a program to curtail residential wood heating during periods of air stagnation as specified in subsection (1) of this section in any area of the state where such a program is required under the Clean Air Act. The department shall suspend operation and enforcement of a program adopted under this subsection upon a determination by the department that the local government or regional air quality authority has adopted and is adequately implementing the required curtailment program.

(4) Except as provided in this section, after September 29, 1991, the commission shall not adopt or make more stringent any additional regulatory programs affecting residential wood heating unless the air quality standard for PM10 established by the commission under ORS 468A.025 has not been attained in the state by the latest date, considering extensions, allowed under the Clean Air Act. Nothing in this section shall be construed to affect regulatory programs in effect on September 29, 1991. [1991 c.752 §11]

468A.520 Residential wood heating advisory committee. (1) The Department of Environmental Quality shall establish a residential wood heating emission advisory committee to advise the Environmental Quality Commission and the Department of Environmental Quality on the implementation of ORS 468A.475 and 468A.480.

(2) The advisory committee shall consist of at least seven members who shall be appointed by the commission to represent each of the following interests:

(a) A representative of the public-at-large;

(b) A representative of the residential wood heating manufacturing industry;

(c) A representative of residential wood heating retail dealers;

(d) A representative of major stationary sources subject to the permit requirements of ORS 468A.040;

(e) A representative of public interest organizations;

(f) A representative of local government; and

(g) A representative of the health professions. [1991 c.752 §21]

FIELD BURNING AND PROPANE FLAMING

468A.550 Definitions for ORS 468A.555 to 468A.620 and 468A.992. As used in this section and ORS 468A.555 to 468A.620 and 468A.992:

(1) "Field burning" and "open field burning" do not include:

(a) Propane flaming of mint stubble; or

(b) Stack or pile burning of residue from Christmas trees as defined in ORS 571.505.

(2) "Research and development of alternatives to field burning" includes, but is not limited to, projects concerned with cultural

practices for producing grass seed without field burning, environmental impacts of alternative seed production methods, straw marketing and utilization and alternative crops.

(3) "Smoke management" means the daily control of the conducting of open field burning to such times and places and in such amounts so as to provide for the escape of smoke and particulate matter therefrom into the atmosphere with minimal intrusion into cities and minimal impact on public health and in such a manner that under existing meteorological conditions a maximum number of acres registered can be burned in a minimum number of days without substantial impairment of air quality.

(4) "Smoke management program" means a plan or system for smoke management. A smoke management program shall include, but not be limited to, provisions for:

(a) Annual inventorying and registering, prior to the burning season, of agricultural fields for open field burning;

(b) Preparation and issuance of open field burning permits by affected governmental agencies;

(c) Gathering and disseminating regional and sectional meteorological conditions on a daily or hourly basis;

(d) Scheduling times, places and amounts of agricultural fields that may be open burned daily or hourly, based on meteorological conditions during the burning season;

(e) Conducting surveillance and gathering and disseminating information on a daily or more frequent basis;

(f) Effective communications between affected personnel during the burning season; and

(g) Employment of personnel to conduct the program. [Formerly 468.453; 1997 c.473 §3; 1999 c.439 §2; 2001 c.70 §1; 2007 c.799 §5]

468A.555 Policy to reduce open field burning. The Legislative Assembly declares it to be the public policy of this state to reduce the practice of open field burning while developing and providing alternative methods of field sanitization and alternative methods of utilizing and marketing crop residues. [1991 c.920 §3]

468A.560 Applicability of open field burning, propane flaming and stack and pile burning statutes. (1) Except for the fee imposed under ORS 468A.615 (1)(c), the provisions of ORS 468A.550 to 468A.620 and 468A.992 shall apply only to open field burning, propane flaming and stack or pile burning of grass seed or cereal grain crop residues on acreage located in the counties specified in ORS 468A.595 (2).

(2) Nothing in this section shall apply to the propane flaming of mint stubble. [1991 c.920 §2; 1997 c.473 §4]

468A.565 Use of certified alternative thermal field sanitizer. Notwithstanding any provision of ORS 468A.550 to 468A.620 and 468A.992, any acreage sanitized by the use of an alternative thermal field sanitizer certified by the Environmental Quality Commission and the Director of Agriculture shall be exempt from the provisions of ORS 468A.550 to 468A.620 and 468A.992. [1991 c.920 §5]

468A.570 Classification of atmospheric conditions; marginal day. (1) As used in this section:

(a) "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(b) "Marginal day" means a day on which marginal conditions exist.

(2) For purposes of ORS 476.380 and 478.960, the Environmental Quality Commission shall classify different types or combinations of atmospheric conditions as marginal conditions and shall specify the extent and types of burning that may be allowed under different combinations of atmospheric conditions. A schedule describing the types and extent of burning to be permitted on each type of marginal day shall be prepared and circulated to all public agencies responsible for providing information and issuing permits under ORS 476.380 and 478.960. The schedule shall give first priority to the burning of perennial grass seed crops used for grass seed production, second priority to annual grass seed crops used for grass seed production, third priority to grain crop burning, and fourth priority to all other burning and shall prescribe duration of periods of time during the day when burning is authorized.

(3) In preparing the schedule under subsection (2) of this section, the commission shall provide for the assignment of fourth priority burning by the State Department of Agriculture in accordance with the memorandum of understanding established pursuant to ORS 468A.585.

(4) In preparing the schedule required under subsection (2) of this section, the commission shall weigh the economic consequences of scheduled burnings and the feasibility of alternative actions, and shall consider weather conditions and other factors necessary to protect the public health and welfare.

(5) None of the functions of the commission under this section or under ORS 476.380 or 478.960, as it relates to agricultural burning, shall be performed by any regional air quality control authority established under ORS 468A.105. [1991 c.920 §6]

468A.575 Permits for open burning, propane flaming or stack or pile burning; rules. (1) Permits for open burning, propane flaming or stack or pile burning of the residue from perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in ORS 468A.595 (2) and shall be issued in accordance with rules adopted by the Environmental Quality Commission and subject to the fee prescribed in ORS 468A.615. The permit described in this section shall be issued in conjunction with permits required under ORS 476.380 or 478.960.

(2) By rule the Environmental Quality Commission may delegate to any county court, board of county commissioners, fire chief of a rural fire protection district or other responsible person the duty to deliver permits to burn acreage if the acreage has been registered under ORS 468A.615 and fees have been paid as required in ORS 468A.615. [1991 c.920 §7]

468A.580 Permits; inspections; planting restrictions. (1) Permits under ORS 468A.575 for open field burning of cereal grain crops shall be issued in the counties listed in ORS 468A.595 (2) only if the person seeking the permit submits to the issuing authority a signed statement under oath or affirmation that the acreage to be burned will be planted to seed crops other than cereal grains which require flame sanitation for proper cultivation.

(2) The Department of Environmental Quality shall inspect cereal grain crop acreage burned under subsection (1) of this section after planting in the following spring to determine compliance with subsection (1) of this section.

(3) Any person planting contrary to the restrictions of subsection (1) of this section shall be assessed by the department a civil penalty of $25 for each acre planted contrary to the restrictions. Any fines collected by the department under this subsection shall be deposited by the State Treasurer in the Department of Agriculture Service Fund to be used in carrying out the smoke management program in cooperation with the Oregon Seed Council and for administration of this section.

(4) Any person planting seed crops after burning cereal grain crops under subsection (1) of this section may apply to the department for permission to plant contrary to the restrictions of subsection (1) of this section if the seed crop fails to grow. The department may allow planting contrary to the restrictions of subsection (1) of this section if the crop failure occurred by reasons other than the negligence or intentional act of the person planting the crop or one under the control of the person planting the crop. [1991 c.920 §8]

468A.585 Memorandum of understanding with State Department of Agriculture. (1) The Environmental Quality Commission shall enter into a memorandum of understanding with the State Department of Agriculture that provides for the State Department of Agriculture to operate all of the field burning program.

(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 operation and enforcement of the field burning smoke management program.

(b) May enter onto and inspect, at any reasonable time, the premises of any person conducting an open field burn to ascertain compliance with a statute, rule, standard or permit condition relating to the field burning smoke management program.

(c) May conduct a program for the research and development of alternatives to field burning. [1991 c.920 §4; 1995 c.358 §3; 2001 c.70 §2]

468A.590 Duties of State Department of Agriculture. Pursuant to the memorandum of understanding established under ORS 468A.585, the State Department of Agriculture:

(1) Shall:

(a) Conduct the smoke management program established by rule by the Environmental Quality Commission as it pertains to open field burning, propane flaming and stack or pile burning.

(b) Aid fire districts and permit agents in carrying out their responsibilities for administering field sanitization programs.

(c) Subject to available funding, conduct a program for the research and development of alternatives to field burning.

(2) May:

(a) Enter into contracts with public and private agencies to carry out the purposes set forth in subsection (1) of this section;

(b) Obtain patents in the name of the State of Oregon and assign such rights therein as the State Department of Agriculture considers appropriate;

(c) Employ personnel to carry out the duties assigned to it; and

(d) Sell and dispose of all surplus property of the State Department of Agriculture related to smoke management, including but not limited to straw-based products produced or manufactured by the State Department of Agriculture. [1991 c.920 §9; 2001 c.70 §3]

468A.595 Commission rules to regulate burning pursuant to ORS 468A.610. In order to regulate open field burning pursuant to ORS 468A.610:

(1) In such areas of the state and for such periods of time as it considers necessary to carry out the policy of ORS 468A.010, the Environmental Quality Commission by rule may prohibit, restrict or limit classes, types and extent and amount of burning for perennial grass seed crops, annual grass seed crops and grain crops.

(2) In addition to but not in lieu of the provisions of ORS 468A.610 and of any other rule adopted under subsection (1) of this section, the commission shall adopt rules for Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, which provide for a more rapid phased reduction by certain permit areas, depending on particular local air quality conditions and soil characteristics, the extent, type or amount of open field burning of perennial grass seed crops, annual grass seed crops and grain crops and the availability of alternative methods of field sanitation and straw utilization and disposal.

(3) Before promulgating rules pursuant to subsections (1) and (2) of this section, the commission shall consult with Oregon State University and may consult with the United States Natural Resources Conservation Service, or its successor agency, the Agricultural Stabilization Commission, the state Soil and Water Conservation Commission and other interested agencies. The Department of Environmental Quality shall advise the commission in the promulgation of such rules. The commission must review and show on the record the recommendations of the department in promulgating such rules.

(4) No regional air quality control authority shall have authority to regulate burning of perennial grass seed crops, annual grass seed crops and grain crops.

(5) Any amendments to the State Implementation Plan prepared by the state pursuant to the federal Clean Air Act, as enacted by Congress, December 31, 1970, and as amended by Congress August 7, 1977, and November 15, 1990, and Acts amendatory thereto shall be only of such sufficiency as to gain approval of the amendment by the United States Environmental Protection Agency and shall not include rules promulgated by the commission pursuant to subsection (1) of this section not necessary for attainment of national ambient air quality standards. [Formerly 468.460; 1997 c.249 §163]

468A.597 Duty to dispose of straw. Unless otherwise specifically agreed by the parties, after straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, shall be upon the person who bales or removes the straw. [1993 c.414 §2]

468A.600 Standards of practice and performance. The Environmental Quality Commission shall establish standards of practice and performance for open field burning, propane flaming, stack or pile burning and certified alternative methods to open field burning. [1991 c.920 §10]

468A.605 Duties of Department of Environmental Quality. The Department of Environmental Quality, in coordinating efforts under ORS 468.140, 468.150, 468A.020, 468A.555 to 468A.620 and 468A.992, shall:

(1) Enforce all field burning rules adopted by the Environmental Quality Commission and all related statutes; and

(2) Monitor and prevent unlawful field burning. [1991 c.920 §11; 1995 c.358 §4]

468A.610 Reduction in acreage to be open burned, propane flamed or stack or pile burned. (1) Except as provided under ORS 468A.620, no person shall open burn or cause to be open burned, propane flamed or stack or pile burned in the counties specified in ORS 468A.595 (2), perennial or annual grass seed crop or cereal grain crop residue, unless the acreage has been registered under ORS 468A.615 and the permits required by ORS 468A.575, 476.380 and 478.960 have been obtained.

(2) The maximum total registered acreage allowed to be open burned per year pursuant to subsection (1) of this section shall be:

(a) For 1991, 180,000 acres.

(b) For 1992 and 1993, 140,000 acres.

(c) For 1994 and 1995, 120,000 acres.

(d) For 1996 and 1997, 100,000 acres.

(e) For 1998 and thereafter, 40,000 acres.

(3) The maximum total acreage allowed to be propane flamed under subsection (1) of this section shall be:

(a) In 1991 through 1997, 75,000 acres per year; and

(b) In 1998 and thereafter, 37,500 acres per year may be propane flamed.

(4)(a) After January 1, 1998, fields shall be prepared for propane flaming by removing all loose straw or vacuuming or prepared us-

ing other techniques approved by rule by the Environmental Quality Commission.

(b) After January 1, 1998, propane equipment shall satisfy best available technology.

(5) Notwithstanding the limitations set forth in subsection (2) of this section, in 1991 and thereafter, a maximum of 25,000 acres of steep terrain and species identified by the Director of Agriculture by rule may be open burned and shall not be included in the maximum total permitted acreage.

(6) Acreage registered to be open burned under this section may be propane flamed at the registrant's discretion without reregistering the acreage.

(7) In the event of the registration of more than the maximum allowable acres for open burning in the counties specified in ORS 468A.595 (2), after 1996, the commission, after consultation with the State Department of Agriculture, by rule or order may assign priority of permits based on soil characteristics, the crop type, terrain or drainage.

(8) Permits shall be issued and burning shall be allowed for the maximum acreage specified in subsection (2) of this section unless:

(a) The daily determination of suitability of meteorological conditions, regional or local air quality conditions or other burning conditions requires that a maximum number of acres not be burned on a given day; or

(b) The commission finds after hearing that other reasonable and economically feasible, environmentally acceptable alternatives to the practice of annual open field burning have been developed.

(9) Upon a finding of extreme danger to public health or safety, the commission may order temporary emergency cessation of all open field burning, propane flaming or stack or pile burning in any area of the counties listed in ORS 468A.595 (2).

(10) The commission shall act on any application for a permit under ORS 468A.575 within 60 days of registration and receipt of the fee required under ORS 468A.615. The commission may order emergency cessation of open field burning at any time. Any other decision required under this section must be made by the commission on or before June 1 of each year. [1991 c.920 §12; 1995 c.358 §5]

468A.615 Registration of acreage to be burned; fees. (1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register with the county court or board of county commissioners, the fire chief of a rural fire protection district, the designated representative of the fire chief or other responsible persons the number of acres to be open burned or propane flamed in the remainder of the year. At the time of registration, the Department of Environmental Quality shall collect a nonrefundable fee of $2 per acre registered to be sanitized by open burning or $1 per acre to be sanitized by propane flaming. The department may contract with counties and rural fire protection districts or other responsible persons for the collection of the fees which shall be forwarded to the department. Any person registering after April 1 of each year shall pay an additional fee of $1 per acre registered if the late registration is due to the fault of the late registrant or one under the control of the late registrant. Late registrations must be approved by the department. Copies of the registration form shall be forwarded to the department. The required registration must be made and the fee paid before a permit shall be issued under ORS 468A.575.

(b) Except as provided in paragraph (d) of this subsection, the department shall collect a fee in accordance with paragraph (c) of this subsection for issuing a permit for open burning, propane flaming or stack or pile burning of perennial or annual grass seed crop or cereal grain crop residue under ORS 468A.555 to 468A.620 and 468A.992. The department may contract with counties and rural fire protection districts or other responsible persons for the collection of the fees which shall be forwarded to the department.

(c) The fee required under paragraph (b) of this subsection shall be paid within 10 days after a permit is issued and shall be:

(A) $8 per acre of crop sanitized by open burning in the counties specified in ORS 468A.595 (2);

(B) $4 per acre of perennial or annual grass seed crop sanitized by open burning in any county not specified in ORS 468A.595 (2);

(C) $2 per acre of crop sanitized by propane flaming;

(D) For acreage from which 100 percent of the straw is removed and burned in stacks or piles:

(i) $2 per acre from January 1, 1992, to December 31, 1997;

(ii) $4 per acre in 1998;

(iii) $6 per acre in 1999;

(iv) $8 per acre in 2000; and

(v) $10 per acre in 2001 and thereafter; and

(E) For acreage from which less than 100 percent of the straw is removed and burned in stacks or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a reduction in the amount of acreage for which the fee is

charged by the same percentage as the reduction in the amount of straw to be burned.

(d) The fee required by paragraph (b) of this subsection shall not be charged for any acreage where efficient burning of stubble is accomplished with equipment certified by the department for field sanitizing purposes or with any other certified alternative method to open field burning, propane flaming or stack or pile burning. The fee required by paragraph (b) of this subsection shall not be charged for any acreage not harvested prior to burning or for any acreage not burned.

(2) All fees collected under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the State Department of Agriculture for the purpose of carrying out the duties and responsibilities carried out by the State Department of Agriculture pursuant to the memorandum of understanding established under ORS 468A.585.

(3) It is the intention of the Legislative Assembly that the programs for smoke management, air quality monitoring and the enforcement of rules under ORS 468A.550 to 468A.620 and 468A.992 be operated in a manner that maximizes the resources available for the research and development program. Therefore, with regard to the disbursement of funds collected under subsection (1) of this section, the State Department of Agriculture shall act in accordance with the intent of the Legislative Assembly and shall:

(a) Pay an amount to the county or board of county commissioners or the fire chief of the rural fire protection district or other responsible person, for each fire protection district, $1 per acre registered for each of the first 5,000 acres registered for open field burning and propane flaming in the district, 75 cents per acre registered for each of the second 5,000 acres registered in the district and 35 cents per acre registered for all acreage registered in the district in excess of 10,000 acres, to cover the cost of and to be used solely for the purpose of administering the program of registration of acreage to be burned, issuance of permits, keeping of records and other matters directly related to agricultural field burning. For each acre from which straw is removed and burned in stacks or piles, the State Department of Agriculture shall pay to the county or board of county commissioners, or the fire chief of the rural fire protection district or other responsible person, 25 cents per acre.

(b) Designate an amount to be used for the smoke management program. The State Department of Agriculture by contract with the Oregon Seed Council or otherwise shall organize rural fire protection districts and growers, coordinate and provide communications, hire ground support personnel, provide aircraft surveillance and provide such added support services as are necessary.

(c) Retain funds for the operation and maintenance of the Willamette Valley field burning air quality impact monitoring network and to insure adequate enforcement of rules established by the Environmental Quality Commission governing standards of practice for open field burning, propane flaming and stack or pile burning.

(d) Of the remaining funds, designate an amount to be used for additional funding for research and development proposals described in the plan developed pursuant to section 15, chapter 920, Oregon Laws 1991. [1991 c.920 §13; 1993 c.414 §3; 1995 c.79 §285; 1995 c.358 §6]

468A.620 Experimental field sanitization; rules. (1) Notwithstanding the provisions of ORS 468A.610, for the purpose of improving by demonstration or investigation the environmental or agronomic effects of alternative methods of field sanitization, the Environmental Quality Commission shall by rule allow experimental field sanitization under the direction of the Department of Environmental Quality for up to 1,000 acres of perennial grass seed crops, annual grass seed crops and grain crops in such areas and for such periods of time as it considers necessary. Experimental field sanitization includes but is not limited to:

(a) Development, demonstration or training personnel in the use of special or unusual field ignition techniques or methodologies.

(b) Setting aside times, days or areas for special studies.

(c) Operation of experimental mobile field sanitizers and improved propane flaming devices.

(d) Improved methods of stack or pile burning.

(2) The commission may allow open burning under this section of acreage for which permits have not been issued under ORS 468A.610 if the commission finds that the experimental burning:

(a) Can, in theory, reduce the adverse effects on air quality or public health from open field burning; and

(b) Is necessary in order to obtain information on air quality, public health or the agronomic effects of an experimental form of field sanitization.

(3) The commission may, by rule, establish fees, registration requirements and other requirements or limitations necessary to

carry out the provisions of this section. [1991 c.920 §14]

CHLOROFLUOROCARBONS AND HALON CONTROL

468A.625 Definitions for ORS 468A.630 to 468A.645. As used in ORS 468A.630 to 468A.645:

(1) "Chlorofluorocarbons" includes:

(a) CFC-11 (trichlorofluoromethane);

(b) CFC-12 (dichlorodifluoromethane);

(c) CFC-113 (trichlorotrifluoroethane);

(d) CFC-114 (dichlorotetrafluoroethane); and

(e) CFC-115 ((mono)chloropentafluoroethane).

(2) "Halon" includes:

(a) Halon-1211 (bromochlorodifluoroethane);

(b) Halon-1301 (bromotrifluoroethane); and

(c) Halon-2402 (dibromotetrafluoroethane). [Formerly 468.612]

468A.630 Legislative findings. (1) The Legislative Assembly finds and declares that chlorofluorocarbons and halons are being unnecessarily released into the atmosphere, destroying the Earth's protective ozone layer and causing damage to all life.

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Reduce the use of these compounds;

(b) Recycle these compounds in use; and

(c) Encourage the substitution of less dangerous substances. [Formerly 468.614]

468A.635 Restrictions on sale, installation and repairing of items containing chlorofluorocarbons and halon; rules. (1) After July 1, 1990, no person shall sell at wholesale, and after January 1, 1991, no person shall sell any of the following:

(a) Chlorofluorocarbon coolant for motor vehicles in containers with a total weight of less than 15 pounds.

(b) Hand-held halon fire extinguishers for residential use.

(c) Party streamers and noisemakers that contain chlorofluorocarbons.

(d) Electronic equipment cleaners, photographic equipment cleaners and disposable containers of chilling agents that contain chlorofluorocarbons and that are used for noncommercial or nonmedical purposes.

(e) Food containers or other food packaging that is made of polystyrene foam that contains chlorofluorocarbons.

(2)(a) One year after the Environmental Quality Commission determines that equipment for the recovery and recycling of chlorofluorocarbons used in automobile air conditioners is affordable and available, no person shall engage in the business of installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons with approved recovery and recycling equipment.

(b) Until one year after the operative date of paragraph (a) of this subsection, the provisions of paragraph (a) of this subsection shall not apply to:

(A) Any automobile repair shop that has fewer than four employees; or

(B) Any automobile repair shop that has fewer than three covered bays.

(3) The Environmental Quality Commission shall establish by rule standards for approved equipment for use in recovering and recycling chlorofluorocarbons in automobile air conditioners. [Formerly 468.616]

468A.640 Department program to reduce use of and recycle compounds. Subject to available funding, the Department of Environmental Quality may establish a program to carry out the purposes of ORS 468A.625 to 468A.645, including enforcement of the provisions of ORS 468A.635. [Formerly 468.618]

468A.645 State Fire Marshal; program; halons; guidelines. The State Fire Marshal shall establish a program to minimize the unnecessary release of halons into the environment by providing guidelines for alternatives to full-scale dump testing procedures for industrial halon-based fire extinguishing systems. [Formerly 468.621]

AEROSOL SPRAY CONTROL

468A.650 Legislative findings. The Legislative Assembly finds that:

(1) Scientific studies have revealed that certain chlorofluorocarbon compounds used in aerosol sprays may be destroying the ozone layer in the earth's stratosphere;

(2) The ozone layer is vital to life on earth, preventing approximately 99 percent of the sun's mid-ultraviolet radiation from reaching the earth's surface;

(3) Increased intensity of ultraviolet radiation poses a serious threat to life on earth including increased occurrences of skin cancer, damage to food crops, damage to phytoplankton which is vital to the production of oxygen and to the food chain, and unpredictable and irreversible global climatic changes;

(4) It has been estimated that production of ozone destroying chemicals is increasing at a rate of 10 percent per year, at which rate the ozone layer will be reduced 13 percent by the year 2014;

(5) It has been estimated that there has already been one-half to one percent depletion of the ozone layer;

(6) It has been estimated that an immediate halt to production of ozone destroying chemicals would still result in an approximate three and one-half percent reduction in ozone by 1990; and

(7) There is substantial evidence to believe that inhalation of aerosol sprays is a significant hazard to human health. [Formerly 468.600]

Note: 468A.650 and 468A.655 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468A.655 Prohibition on sale or promotion; exemption for medical use. (1) Unless otherwise provided by law, after March 1, 1977, no person shall sell or offer to sell or give as a sales inducement in this state any aerosol spray which contains as a propellant trichloromonofluoromethane, difluorodichloromethane or any other saturated chlorofluorocarbon compound not containing hydrogen.

(2) Nothing in this section prohibits the sale of any aerosol spray containing any propellant described in subsection (1) of this section if such aerosol spray is intended to be used for a legitimate medical purpose in the treatment of asthma or any respiratory disorder; or such aerosol spray is intended to be used for a legitimate medical purpose and the State Board of Pharmacy determines by administrative rule that the use of the aerosol spray is essential to such intended use. [Formerly 468.605]

Note: See note under 468A.650.

468A.660 Wholesale transactions permitted. Nothing in ORS 468A.655 shall prevent wholesale transactions, including but not limited to the transportation, warehousing, sale, and delivery of any aerosol spray described in ORS 468A.655 (1). [Formerly 468.610]

ASBESTOS ABATEMENT PROJECTS

468A.700 Definitions for ORS 468A.700 to 468A.760. As used in ORS 468A.700 to 468A.760:

(1) "Accredited" means a provider of asbestos abatement training courses is authorized by the Department of Environmental Quality to offer training courses that satisfy department requirements for contractor licensing and worker training.

(2) "Agent" means an individual who works on an asbestos abatement project for a contractor but is not an employee of the contractor.

(3) "Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummungtonite-grunerite (amosite), anthophyllite, actinolite and tremolite.

(4) "Asbestos abatement project" means any demolition, renovation, repair, construction or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling or disposal of any material with the potential of releasing asbestos fibers from asbestos-containing material into the air.

(5) "Asbestos-containing material" means any material containing more than one percent asbestos by weight.

(6) "Contractor" means a person that undertakes for compensation an asbestos abatement project for another person. As used in this subsection, "compensation" means wages, salaries, commissions and any other form of remuneration paid to a person for personal services.

(7) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including but not limited to ships.

(8) "Friable asbestos material" means any asbestos-containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(9) "Person" means an individual, public or private corporation, nonprofit corporation, association, firm, partnership, joint venture, business trust, joint stock company, municipal corporation, political subdivision, the state and any agency of the state or any other entity, public or private, however organized.

(10) "Trained worker" means a person who has successfully completed specified training in and can demonstrate knowledge of the health and safety aspects of working with asbestos.

(11) "Worker" means an employee or agent of a contractor or facility owner or operator. [Formerly 468.875]

468A.705 Legislative findings. The Legislative Assembly finds and declares that:

(1) Asbestos-containing material in a friable condition, or when physically or chemically altered, can release asbestos fibers into the air. Asbestos fibers are respiratory hazards proven to cause lung cancer, mesothelioma and asbestosis and as such, are a danger to the public health.

(2) There is no known minimal level of exposure to asbestos fibers that guarantees the full protection of the public health.

(3) Asbestos-containing material found in or on facilities or used for other purposes within the state is a potential health hazard.

(4) The increasing number of asbestos abatement projects increases the exposure of contractors, workers and the public to the hazards of asbestos.

(5) If improperly performed, an asbestos abatement project creates unnecessary health and safety hazards that are detrimental to citizens and to the state in terms of health, family life, preservation of human resources, wage loss, insurance, medical expenses and disability compensation payments.

(6) It is in the public interest to reduce exposure to asbestos caused by improperly performed asbestos abatement projects through the upgrading of contractor and worker knowledge, skill and competence. [Formerly 468.877]

468A.707 Asbestos abatement program; rules; contractor licensing; worker certification. (1) The Environmental Quality Commission by rule shall:

(a) Establish an asbestos abatement program that assures the proper and safe abatement of asbestos hazards through contractor licensing and worker training.

(b) Establish the date after which a contractor must be licensed under ORS 468A.720 and a worker must hold a certificate under ORS 468A.730.

(c) Establish criteria and provisions for granting an extension of time for contractor licensing and worker certification, which may consider the number of workers and the availability of accredited training courses.

(2) The program established under subsection (1) of this section shall include at least:

(a) Criteria for contractor licensing and training;

(b) Criteria for worker certification and training;

(c) Standardized training courses; and

(d) A procedure for inspecting asbestos abatement projects.

(3) In establishing the training requirements under subsections (1) and (2) of this section, the commission shall adopt different training requirements that reflect the different levels of responsibility of the contractor or worker, so that within the category of contractor, sublevels shall be separately licensed or exempted and within the category of worker, sublevels shall be separately certified or exempted. The commission shall specifically address as a separate class, those contractors and workers who perform small scale, short duration renovating and maintenance activity. As used in this subsection, "small scale, short duration renovating and maintenance activity" means a task for which the removal of asbestos is not the primary objective of the job, including but not limited to:

(a) Removal of asbestos-containing insulation on pipes;

(b) Removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(c) Replacement of an asbestos-containing gasket on a valve;

(d) Installation or removal of a small section of drywall; or

(e) Installation of electrical conduits through or proximate to asbestos-containing materials.

(4) The Department of Environmental Quality, on behalf of the commission, shall consult with the Department of Consumer and Business Services and the Department of Human Services about proposed rules for the asbestos abatement program to assure that the rules are compatible with all other state and federal statutes and regulations related to asbestos abatement.

(5) The Department of Environmental Quality shall cooperate with the Department of Consumer and Business Services and the Department of Human Services to promote proper and safe asbestos abatement work practices and compliance with the provisions of ORS 279B.055 (2)(g), 279B.060 (2)(g), 279C.365 (1)(j), 468.126, 468A.135 and 468A.700 to 468A.760. [1987 c.741 §4; 1993 c.18 §175; 2003 c.794 §293]

468A.710 License required for asbestos abatement project. (1) Except as provided in ORS 468A.707 (1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.707 and 468A.745, no contractor shall work on an asbestos abatement project unless the contractor holds a license issued by the Department of Environmental Quality under ORS 468A.720.

(2) A contractor carrying out an asbestos abatement project shall be responsible for the safe and proper handling and delivery of waste that includes asbestos-containing material to a landfill authorized to receive such waste. [Formerly 468.879]

468A.715 Licensed contractor required; exception. (1) Except as provided in subsection (2) of this section, an owner or operator of a facility containing asbestos shall require only licensed contractors to perform asbestos abatement projects.

(2) A facility owner or operator whose own employees maintain, repair, renovate or demolish the facility may allow the employees to work on asbestos abatement projects only if the employees comply with the training and certification requirements established under ORS 468A.730. [Formerly 468.881]

468A.720 Qualifications for license; application. (1) The Department of Environmental Quality shall issue an asbestos abatement license to a contractor who:

(a) Successfully completes an accredited training course for contractors.

(b) Requires each employee or agent of the contractor who works on or is directly responsible for an asbestos abatement project to be certified under ORS 468A.730.

(c) Certifies that the contractor has read and understands the applicable state and federal rules and regulations on asbestos abatement and agrees to comply with the rules and regulations.

(2) A contractor shall apply for a license or renewal of a license according to the procedures established by rule by the Environmental Quality Commission. [Formerly 468.883]

468A.725 Grounds for license suspension or revocation. (1) The Department of Environmental Quality may suspend or revoke an asbestos abatement license issued to a contractor under ORS 468A.720 if the licensee:

(a) Fraudulently obtains or attempts to obtain a license.

(b) Fails at any time to satisfy the qualifications for a license or to comply with rules adopted by the Environmental Quality Commission under ORS 468A.700 to 468A.760.

(c) Fails to meet any applicable state or federal standard relating to asbestos abatement.

(d) Permits an untrained worker to work on an asbestos abatement project.

(e) Employs a worker who fails to comply with applicable state or federal rules or regulations relating to asbestos abatement.

(2) In addition to any penalty provided by ORS 468.140, the department may suspend or revoke the license or certification of any person who violates the conditions of ORS 468A.700 to 468A.755 or rules adopted under ORS 468A.700 to 468A.755. [Formerly 468.885]

468A.730 Worker certificate required; qualifications; renewal application; suspension or revocation. (1) Except as provided in ORS 468A.707 (1)(c) and (3), after the Environmental Quality Commission adopts rules under ORS 468A.745, no worker shall work on an asbestos abatement project unless the person holds a certificate issued by the Department of Environmental Quality or the department's authorized representative under subsection (2) of this section.

(2) The department or an authorized representative of the department shall issue an asbestos abatement certificate to a worker who successfully completes an accredited asbestos abatement training course approved by the department.

(3) If the commission determines there is a need for a category of workers to update the workers' training in order to meet new or changed conditions, the commission may require the worker, as a condition of certificate renewal, to successfully complete an accredited asbestos abatement review course.

(4) A worker or the facility owner or operator shall submit an application for an asbestos abatement certificate and renewal of a certificate according to procedures established by rule by the Environmental Quality Commission.

(5) The department may suspend or revoke a certificate if a worker fails to comply with applicable health and safety rules or standards. [Formerly 468.887]

468A.735 Alternatives to protection requirements; approval. Subject to the direction of the Environmental Quality Commission, the Director of the Department of Environmental Quality may approve, on a case-by-case basis, an alternative to a specific worker and public health protection requirement for an asbestos abatement project if the contractor or facility owner or operator submits a written description of the alternative procedure and demonstrates to the director's satisfaction that the proposed alternative procedure provides worker and public health protection equivalent to the protection that would be provided by the waived provisions. [Formerly 468.889]

468A.740 Accreditation requirements; rules. (1) The Environmental Quality Commission by rule shall provide for accreditation of courses that satisfy training requirements contractors must comply with to qualify for an asbestos abatement license under ORS 468A.720 and courses that workers must successfully complete to become certified under ORS 468.730.

(2) The accreditation requirements established by the commission under subsection (1) of this section shall reflect the level of training that a course provider must offer to satisfy the licensing requirements under ORS 468A.720 and the certification requirements under ORS 468A.730.

(3) In order to be accredited under subsection (1) of this section, a training course

shall include at a minimum material relating to:

(a) The characteristics and uses of asbestos and the associated health hazards;

(b) Local, state and federal standards relating to asbestos abatement work practices;

(c) Methods to protect personal and public health from asbestos hazards;

(d) Air monitoring;

(e) Safe and proper asbestos abatement techniques; and

(f) Proper disposal of waste containing asbestos.

(4) In addition to the requirements under subsection (3) of this section, the person providing a training course for which accreditation is sought shall demonstrate to the satisfaction of the Department of Environmental Quality the ability and proficiency to conduct the training.

(5) Any person providing accredited asbestos abatement training shall make available to the department for audit purposes, at no cost to the department, all course materials, records and access to training sessions.

(6) Applications for accreditation and renewals of accreditation shall be submitted according to procedures established by rule by the commission.

(7) The department may suspend or revoke training course accreditation if the provider fails to meet and maintain any standard established by the commission.

(8) The commission by rule shall establish provisions to allow a worker or contractor trained in another state to use training in other states to satisfy Oregon licensing and certification requirements, if the commission finds that the training received in the other state would meet the requirements of this section. [Formerly 468.891]

468A.745 Rules; variances; training; standards; procedures. The Environmental Quality Commission shall adopt rules to carry out its duties under ORS 279B.055 (2)(g), 279B.060 (2)(g), 279C.365 (1)(j), 468A.135 and 468A.700 to 468A.760. In addition, the commission may:

(1) Allow variances from the provisions of ORS 468A.700 to 468A.755 in the same manner variances are granted under ORS 468A.075.

(2) Establish training requirements for contractors applying for an asbestos abatement license.

(3) Establish training requirements for workers applying for a certificate to work on asbestos abatement projects.

(4) Establish standards and procedures to accredit asbestos abatement training courses for contractors and workers.

(5) Establish standards and procedures for licensing contractors and certifying workers.

(6) Issue, renew, suspend and revoke licenses, certificates and accreditations.

(7) Determine those classes of asbestos abatement projects for which the person undertaking the project must notify the Department of Environmental Quality before beginning the project.

(8) Establish work practice standards, compatible with standards of the Department of Consumer and Business Services, for the abatement of asbestos hazards and the handling and disposal of waste materials containing asbestos.

(9) Provide for asbestos abatement training courses that satisfy the requirements for contractor licensing under ORS 468A.720 or worker certification under ORS 468A.730. [Formerly 468.893; 1993 c.744 §229; 2003 c.794 §294]

468A.750 Fee schedule; waiver; disposition. (1) By rule and after hearing, the Environmental Quality Commission shall establish a schedule of fees for:

(a) Licenses issued under ORS 468A.720;

(b) Worker certification under ORS 468A.730;

(c) Training course accreditation under ORS 468A.740; and

(d) Notices of intent to perform an asbestos abatement project under ORS 468A.745 (7).

(2) The fees established under subsection (1) of this section shall be based upon the costs of the Department of Environmental Quality in carrying out the asbestos abatement program established under ORS 468A.707.

(3) In adopting the schedule of fees under this section the commission shall include provisions and procedures for granting a waiver of a fee.

(4) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Department of Environmental Quality. Such moneys are continuously appropriated to the Department of Environmental Quality to pay the department's expenses in administering and enforcing the asbestos abatement program. [Formerly 468.895]

468A.755 Exemptions. (1) Except as provided in subsection (2) of this section, ORS 468A.700 to 468A.750 do not apply to an asbestos abatement project in a private residence if:

(a) The residence is occupied by the owner; and

(b) The owner occupant is performing the asbestos abatement work.

(2) Any person exempt from ORS 468A.700 to 468A.750 under subsection (1) of this section shall handle and dispose of asbestos-containing material in compliance with standards established by the Environmental Quality Commission under ORS 468A.745. [Formerly 468.897]

468A.760 Content of bid advertisement. Any public agency requesting bids or proposals for a proposed project shall first make a determination of whether or not the project requires a contractor licensed under ORS 468A.720. The public agency shall include such requirement in the bid or proposal advertisement under ORS 279B.055 (2)(g), 279B.060 (2)(g) and 279C.365 (1)(j). [Formerly 468.899; 2003 c.794 §295]

INDOOR AIR POLLUTION CONTROL

468A.775 Indoor air quality sampling; accreditation and certification programs. (1) The Environmental Quality Commission shall establish a voluntary accreditation program for those providing indoor air quality sampling services or ventilation system evaluations for public areas, office workplaces or private residences. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section.

(2) The Environmental Quality Commission shall establish a voluntary contractor certification program for contractors providing remedial action for residential indoor air pollution. Provisions shall be made to accept accreditation of other state programs if they are comparable with the accreditation program established under this section. [Formerly 468.357]

Note: 468A.775 to 468A.785 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468A.780 Schedule of fees; accreditation and certification programs. The Environmental Quality Commission shall establish by rule a schedule of annual fees, not to exceed $500 per participating contractor, to pay the Department of Environmental Quality's costs in operating the:

(1) Voluntary accreditation program under ORS 468A.775 (1); and

(2) Voluntary contractor certification program under ORS 468A.775 (2). [Formerly 468.358]

Note: See note under 468A.775.

468A.785 Pilot programs. (1) Upon the advice of the Indoor Air Pollution Task Force, the Environmental Quality Commission may establish a pilot program for any product designed for household or office use that is not adequately regulated by federal law that may be a threat to human health by contaminating indoor air.

(2) The Environmental Quality Commission may establish a voluntary product-labeling pilot program to identify products with a low potential for causing indoor air pollution. [Formerly 468.359]

Note: See note under 468A.775.

AGRICULTURAL OPERATIONS AND EQUIPMENT

468A.790 Memorandum of understanding with State Department of Agriculture; rules. (1) The Environmental Quality Commission and the State Department of Agriculture shall enter into a memorandum of understanding that addresses the administration and enforcement of air quality laws contained in this chapter that apply to agricultural operations and equipment. The terms of the memorandum of understanding must be consistent with the obligations of this state under the federal Clean Air Act (P.L. 88-206 as amended) and the purposes described in ORS 468A.305. Subject to the terms of the memorandum of understanding and to oversight by the Department of Environmental Quality, the State Department of Agriculture may perform any function of the Department of Environmental Quality under this chapter that relates to air quality, including but not limited to the issuance of permits, establishment of fees, entry and inspection of premises and the assessment of civil penalties.

(2) The Environmental Quality Commission and the State Department of Agriculture shall consider the following when entering into a memorandum of understanding under subsection (1) of this section:

(a) Cooperation with private and public entities associated with agriculture in program research, development and implementation.

(b) Program flexibility.

(c) The use of voluntary measures, including education, demonstration projects and incentives, if practicable and reasonably expected to be effective in helping to carry out regulatory requirements.

(d) The diverse nature of agricultural operations and the importance of, and public interest in, the agricultural production of food, fiber and other products.

(e) The desirability of having the State Department of Agriculture serve as the lead

agency responsible for the administration of programs relating to agriculture.

(f) The importance of, and public interest in, the protection of human health and the environment, including the protection of natural resources in special areas of the state designated for their outstanding scenery and historical and cultural importance.

(3) In adopting rules subject to the memorandum of understanding required by subsection (1) of this section, the Environmental Quality Commission and the State Department of Agriculture shall consult with each other. [2007 c.799 §2]

Note: Sections 3 and 7, chapter 799, Oregon Laws 2007, provide:

Sec. 3. (1) There is created the Task Force on Dairy Air Quality, consisting of 15 members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives.

(c) The Director of the Department of Environmental Quality shall appoint one representative from the Department of Environmental Quality.

(d) The Director of Agriculture shall appoint one representative from the State Department of Agriculture.

(e) The Director of Human Services shall appoint one representative from the Department of Human Services having expertise in public health.

(f) The Governor shall appoint three representatives from the dairy industry.

(g) The Governor shall appoint three representatives from environmental and public interest organizations.

(h) The Governor shall appoint two representatives from institutions of higher education listed in ORS 352.002 having expertise in science and technology relevant to air emissions generated by dairy operations.

(2) The task force shall:

(a) Study the emission of air contaminants from dairy operations, including but not limited to emissions regulated under the federal Clean Air Act;

(b) Study available data on the emission of air contaminants, including but not limited to the United States Environmental Protection Agency national air study of animal feeding operations; and

(c) Evaluate available alternatives for reducing emissions, taking into consideration:

(A) The diverse nature and economic viability of dairies and the economic contribution dairies make to the state economy;

(B) The impact that federal Clean Air Act regulations have, and that actions to address air emissions would have, on Oregon's dairies in Pacific Northwest markets;

(C) The protection of human health, the environment and scenic and cultural resources;

(D) The impact of available alternatives on other environmental media, energy and the cost of producing dairy products; and

(E) The feasibility of implementation.

(3) To assist the task force in its work, the task force may establish technical or advisory committees as the task force considers necessary. The task force may determine committee representation, duration and organization and may appoint the members. Committee members who are not members of the task force are not entitled to compensation or reimbursement of expenses.

(4) A majority of the members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force shall present its findings and recommendations to the Department of Environmental Quality and the State Department of Agriculture no later than July 1, 2008. The findings and recommendations may include, but need not be limited to, findings and recommendations for technical studies, voluntary actions, regulation and proposed legislation.

(11) The Department of Environmental Quality and the State Department of Agriculture shall jointly report on dairy air quality to an interim committee related to agriculture or natural resources no later than October 1, 2008. The report shall include any recommendations of the departments for proposed legislation to reduce the emission of air contaminants by dairies.

(12) The Department of Environmental Quality and the State Department of Agriculture shall provide staff support to the task force.

(13) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Department of Environmental Quality and the State Department of Agriculture for that purpose.

(14) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2007 c.799 §3]

Sec. 7. Section 3 of this 2007 Act is repealed on the date of the convening of the next regular biennial legislative session. [2007 c.799 §7]

DIESEL ENGINES

468A.793 Goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions. The Environmental Quality Commission shall establish a goal to reduce excess lifetime risk of cancer due to exposure to diesel engine emissions to no more than one case per million individuals by 2017. In setting the goal, the commission shall include a target to substantially reduce the risk to school children from diesel engine emissions produced by Oregon school buses by the end of 2013.

The Department of Environmental Quality is directed to track and report to the Legislative Assembly on the progress in meeting this goal. [2007 c.855 §2]

468A.795 Definitions. As used in ORS 468A.795 to 468A.803 and sections 11 to 16, chapter 855, Oregon Laws 2007:

(1) "Combined weight" has the meaning given that term in ORS 825.005.

(2) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) "Heavy-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) "Incremental cost" means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) "Medium-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) "Motor vehicle" has the meaning given that term in ORS 825.005.

(7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) "Oregon diesel truck engine" means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) "Public highway" has the meaning given that term in ORS 825.005.

(11) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) "Scrap" means to destroy and render inoperable.

(14) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds. [2007 c.855 §6]

Note: The amendments to 468A.795 by section 6a, chapter 855, Oregon Laws 2007, become operative January 2, 2018. See section 6b, chapter 855, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

468A.795. As used in ORS 468A.795 to 468A.803:

(1) "Combined weight" has the meaning given that term in ORS 825.005.

(2) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) "Heavy-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) "Incremental cost" means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) "Medium-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) "Motor vehicle" has the meaning given that term in ORS 825.005.

(7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) "Oregon diesel truck engine" means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) "Public highway" has the meaning given that term in ORS 825.005.

(11) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) "Scrap" means to destroy and render inoperable.

(14) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

468A.797 Standards for certified cost of qualifying repower or retrofit; rules. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit, including but

not limited to rules establishing the certified cost for purposes of the tax credit established in section 12, chapter 855, Oregon Laws 2007.

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold. [2007 c.855 §7]

Note: The amendments to 468A.797 by section 7a, chapter 855, Oregon Laws 2007, become operative January 2, 2018. See section 7b, chapter 855, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

468A.797. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit.

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold.

468A.799 Standards for qualifying repower of nonroad diesel engine or retrofit of diesel engine; rules. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine, including but not limited to rules establishing repower or retrofit qualifications for purposes of the tax credit established in section 12, chapter 855, Oregon Laws 2007.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant, loan or tax credit under ORS 468A.803 or section 12, chapter 855, Oregon Laws 2007, has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant, loan or tax credit. [2007 c.855 §8]

Note: The amendments to 468A.799 by section 8a, chapter 855, Oregon Laws 2007, become operative January 2, 2018. See section 8b, chapter 855, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

468A.799. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a grant or loan under ORS 468A.803 has been awarded or allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the grant or loan.

468A.801 Clean Diesel Engine Fund; interest. (1) The Clean Diesel Engine Fund is established in the State Treasury separate and distinct from the General Fund. Interest earned by the Clean Diesel Engine Fund shall be credited to the fund. The moneys in the fund are continuously appropriated to the Department of Environmental Quality to be used for the purposes described in ORS 468A.803.

(2) The Clean Diesel Engine Fund consists of:

(a) Funds appropriated by the Legislative Assembly;

(b) Grants provided by the federal government pursuant to the federal Clean Air Act, 42 U.S.C. 7401 et seq., or other federal laws; and

(c) Any other revenues derived from gifts or grants given to the state for the purpose of providing financial assistance to owners or operators of diesel engines for the purpose of repowering, retrofitting or scrapping diesel engines to reduce diesel engine emissions. [2007 c.855 §9]

468A.803 Uses of Clean Diesel Engine Fund; rules. (1) The Department of Environmental Quality shall use the moneys in the Clean Diesel Engine Fund to award:

(a) Grants and loans to the owners and operators of Oregon diesel engines for up to 100 percent of the certified costs of qualify-

ing retrofits as described in ORS 468A.797 and 468A.799;

(b) Grants and loans to the owners and operators of nonroad Oregon diesel engines for up to 25 percent of the certified costs of qualifying repowers as described in ORS 468A.797 and 468A.799; and

(c) Grants to the owners of Oregon diesel truck engines to scrap those engines.

(2) In determining the amount of a grant or loan under this section, the department must reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, other grants or loans, or any other public financial assistance.

(3) The department may certify third parties to perform qualifying repowers and retrofits and may contract with third parties to perform such services for the certified costs of qualifying repowers and retrofits. The department may also contract with institutions of higher education or other public bodies as defined by ORS 174.109 to train and certify third parties to perform qualifying repowers and retrofits.

(4) The department may not award a grant to scrap an Oregon diesel truck engine under subsection (1)(c) of this section unless the engine was manufactured prior to 1994 and the engine is in operating condition at the time of the grant application or, if repairs are needed, the owner demonstrates to the department's satisfaction that the engine can be repaired to an operating condition for less than its commercial scrap value. The Environmental Quality Commission shall adopt rules for a maximum grant awarded under subsection (1)(c) of this section for an engine in a heavy-duty truck and for an engine in a medium-duty truck. A grant awarded under subsection (1)(c) of this section may not be combined with any other tax credits, grants or loans, or any other public financial assistance, to scrap an Oregon diesel truck engine.

(5) The department may use the moneys in the Clean Diesel Engine Fund to pay expenses of the department in administering the program described in this section.

(6) The commission shall adopt rules to implement this section and ORS 468A.801, including but not limited to establishing preferences for grant and loan awards based upon percentage of engine use in Oregon, whether a grant or loan applicant will provide matching funds, whether scrapping, repowering or retrofitting an engine will benefit sensitive populations or areas with elevated concentrations of diesel particulate matter, or such other criteria as the commission may establish. The rules adopted by the commission shall reserve a portion of the financial assistance available each year for applicants that own or operate a small number of Oregon diesel engines or Oregon diesel truck engines and shall provide for simplified access to financial assistance for those applicants.

(7) The department may perform activities necessary to ensure that recipients of grants and loans from the Clean Diesel Engine Fund comply with applicable requirements. If the department determines that a recipient has not complied with applicable requirements, it may order the recipient to refund all grant or loan moneys and may impose penalties pursuant to ORS 468.140. [2007 c.855 §10]

Note: Section 11, chapter 855, Oregon Laws 2007, provides:

Sec. 11. The rules adopted by the Environmental Quality Commission pursuant to section 10 (6) of this 2007 Act [468A.803 (6)], beginning on the effective date of this 2007 Act [September 27, 2007] and ending on June 30, 2010, shall reserve 75 percent of the funds available for grants and loans under section 10 of this 2007 Act [468A.803] for Oregon diesel engines that:

(1) Will be used in Oregon for at least 75 percent of the total number of miles that the vehicle is driven during the three years following the repowering or retrofitting of the engine; or

(2) Will be used in Oregon for at least 75 percent of the total number of hours the engine is operated during the three years following the repowering or retrofitting of the engine. [2007 c.855 §11]

Note: Sections 15, 16 and 16a, chapter 855, Oregon Laws 2007, provide:

Sec. 15. (1) The Environmental Quality Commission shall adopt rules to implement this section and sections 12, 13 [sections 12 and 13 are compiled as notes under 315.356] and 16 of this 2007 Act, including rules:

(a) Imposing a nonrefundable application fee of $50 for applications for cost certification of repowers or retrofits that qualify for the tax credit allowed under section 12 of this 2007 Act.

(b) Imposing a nonrefundable application processing fee. The amount of the fee shall be the amount that in the judgment of the commission is needed for the Department of Environmental Quality to recoup its expenses in administering the tax credit cost certification under section 16 of this 2007 Act.

(2) The Environmental Quality Commission shall consult with the Department of Revenue prior to adopting or amending rules under this section. [2007 c.855 §15]

Sec. 16. (1) A person seeking a tax credit under section 12 of this 2007 Act or a person seeking to transfer a tax credit cost certification under section 13 of this 2007 Act shall first apply to the Department of Environmental Quality for certification of the cost of a repower or retrofit of an engine that qualifies for the tax credit under section 12 of this 2007 Act.

(2) The application must contain the following information:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) A statement that the engine on which the repower or retrofit was performed is owned by the applicant and is intended to be an Oregon diesel engine;

(c) A description of the technologies used in the repower or retrofit that are sufficient for the department to determine if the repower or retrofit qualifies for the tax credit;

(d) Invoices or other documentation of the cost and payment of the repower or retrofit; and

(e) Any other information required by the department or required under rules adopted by the Environmental Quality Commission.

(3) The taxpayer shall file the application within one year following the date of the invoice for the qualifying repower or retrofit. The application may not be accepted unless the application includes payment of the nonrefundable fees imposed under rules adopted under section 15 of this 2007 Act.

(4) The department shall consider completed applications and determine if the application describes a repower or retrofit that qualifies for a tax credit under section 12 of this 2007 Act and, if qualified, the certified cost of the repower or retrofit. In determining the amount of a tax credit under this section, the department shall reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, grants, loans or any other public financial assistance. The department shall send written notice of the certified cost to the taxpayer. The department may not certify more than $3 million of tax credits under this section during each calendar year.

(5) If the department determines that a repower or retrofit does not qualify for a tax credit under section 12 of this 2007 Act or certifies a lesser amount than was sought in the application, the taxpayer may appeal the determination as a contested case under ORS chapter 183.

(6) The department shall deposit fees collected under this section in a miscellaneous receipts account established in the State Treasury for the benefit of the department. Amounts in the account are continuously appropriated to the department for the purpose of reimbursing the department for expenses incurred in administering this section. [2007 c.855 §16]

Sec. 16a. Sections 12 to 16 of this 2007 Act are repealed on January 2, 2018. [2007 c.855 §16a]

Note: Sections 38, 41, 44, 50, 51 and 52, chapter 843, Oregon Laws 2007, are substantially the same as ORS 468A.795, 468A.797 and 468A.799 and sections 15, 16 and 16a, chapter 855, Oregon Laws 2007. Sections 38, 41, 44, 50, 51 and 52, chapter 843, Oregon Laws 2007, provide:

Sec. 38. As used in this section and sections 41, 44, 47, 48 [sections 47 and 48 are compiled as notes under 315.356], 50 and 51 of this 2007 Act:

(1) "Combined weight" has the meaning given that term in ORS 825.005.

(2) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) "Heavy-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) "Incremental cost" means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) "Medium-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) "Motor vehicle" has the meaning given that term in ORS 825.005.

(7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) "Oregon diesel truck engine" means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) "Public highway" has the meaning given that term in ORS 825.005.

(11) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) "Scrap" means to destroy and render inoperable.

(14) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds. [2007 c.843 §38]

Note: The amendments to section 38, chapter 843, Oregon Laws 2007, by section 39, chapter 843, Oregon Laws 2007, become operative January 2, 2018. See section 40, chapter 843, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

Sec. 38. As used in this section and sections 41 and 44 of this 2007 Act:

(1) "Combined weight" has the meaning given that term in ORS 825.005.

(2) "Cost-effectiveness threshold" means the cost, in dollars, per ton of diesel particulate matter reduced, as established by rule of the Environmental Quality Commission.

(3) "Heavy-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 26,000 pounds.

(4) "Incremental cost" means the cost of a qualifying repower or retrofit less a baseline cost that would otherwise be incurred in the normal course of business.

(5) "Medium-duty truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds but less than or equal to 26,000 pounds.

(6) "Motor vehicle" has the meaning given that term in ORS 825.005.

(7) "Nonroad Oregon diesel engine" means any Oregon diesel engine that was not designed primarily to propel a motor vehicle on public highways of this state.

(8) "Oregon diesel engine" means an engine at least 50 percent of the use of which, as measured by miles driven or hours operated, will occur in Oregon for the three years following the repowering or retrofitting of the engine.

(9) "Oregon diesel truck engine" means a diesel engine in a truck at least 50 percent of the use of which, as measured by miles driven or hours operated, has occurred in Oregon for the two years preceding the scrapping of the engine.

(10) "Public highway" has the meaning given that term in ORS 825.005.

(11) "Repower" means to scrap an old diesel engine and replace it with a new engine, a used engine or a remanufactured engine, or with electric motors, drives or fuel cells, with a minimum useful life of seven years.

(12) "Retrofit" means to equip a diesel engine with new emissions-reducing parts or technology after the manufacture of the original engine. A retrofit must use the greatest degree of emissions reduction available for the particular application of the equipment retrofitted that meets the cost-effectiveness threshold.

(13) "Scrap" means to destroy and render inoperable.

(14) "Truck" means a motor vehicle or combination of vehicles operated as a unit that has a combined weight that is greater than 14,000 pounds.

Sec. 41. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit, including but not limited to rules establishing the certified cost for purposes of the tax credit established in section 47 of this 2007 Act.

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold. [2007 c.843 §41]

Note: The amendments to section 41, chapter 843, Oregon Laws 2007, by section 42, chapter 843, Oregon Laws 2007, become operative January 2, 2018. See section 43, chapter 843, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

Sec. 41. (1) The Environmental Quality Commission by rule shall establish standards related to the certified cost necessary to perform a qualifying repower or retrofit.

(2) For the purposes of subsection (1) of this section, certified cost:

(a) May not exceed the incremental cost of labor and hardware that the Department of Environmental Quality finds necessary to perform a qualifying repower or retrofit;

(b) Does not include the cost of any portion of a repower or retrofit undertaken to comply with any applicable local, state or federal pollution or emissions law or for ordinary maintenance, repair or replacement of a diesel engine; and

(c) May not exceed the cost-effectiveness threshold.

Sec. 44. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine, including but not limited to rules establishing repower or retrofit qualifications for purposes of the tax credit established in section 47 of this 2007 Act.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application;

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board; and

(c) A requirement that a qualifying repower or retrofit does not include the repower or retrofit of a vehicle or engine for which a tax credit under section 47 of this 2007 Act has been allowed, unless the repower or retrofit will reduce emissions further than the repower or retrofit funded by the tax credit. [2007 c.843 §44]

Note: The amendments to section 44, chapter 843, Oregon Laws 2007, by section 45, chapter 843, Oregon Laws 2007, become operative January 2, 2018. See section 46, chapter 843, Oregon Laws 2007. The text that is operative on and after January 2, 2018, is set forth for the user's convenience.

Sec. 44. (1) The Environmental Quality Commission by rule shall establish standards for the qualifying repower of a nonroad Oregon diesel engine or retrofit of an Oregon diesel engine.

(2) The standards adopted by the commission under this section must include:

(a) A requirement for the reduction of diesel particulate matter emissions by at least 25 percent compared with the baseline emissions for the relevant engine year and application; and

(b) A list of technologies approved as qualifying repowers or retrofits that have been verified by the United States Environmental Protection Agency or the California Air Resources Board.

Sec. 50. (1) The Environmental Quality Commission shall adopt rules to implement this section and sections 47, 48 and 51 of this 2007 Act, including rules:

(a) Imposing a nonrefundable application fee of $50 for applications for cost certification of repowers or retrofits that qualify for the tax credit allowed under section 47 of this 2007 Act.

(b) Imposing a nonrefundable application processing fee. The amount of the fee shall be the amount that in the judgment of the commission is needed for the Department of Environmental Quality to recoup its expenses in administering the tax credit cost certification under section 51 of this 2007 Act.

(2) The Environmental Quality Commission shall consult with the Department of Revenue prior to adopting or amending rules under this section. [2007 c.843 §50]

Sec. 51. (1) A person seeking a tax credit under section 47 of this 2007 Act or a person seeking to transfer a tax credit cost certification under section 48 of this 2007 Act shall first apply to the Department of Environmental Quality for certification of the cost of a repower or retrofit of an engine that qualifies for the tax credit under section 47 of this 2007 Act.

(2) The application must contain the following information:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) A statement that the engine on which the repower or retrofit was performed is owned by the applicant and is intended to be an Oregon diesel engine;

(c) A description of the technologies used in the repower or retrofit that are sufficient for the department to determine if the repower or retrofit qualifies for the tax credit;

(d) Invoices or other documentation of the cost and payment of the repower or retrofit; and

(e) Any other information required by the department or required under rules adopted by the Environmental Quality Commission.

(3) The taxpayer shall file the application within one year following the date of the invoice for the qualifying repower or retrofit. The application may not be

accepted unless the application includes payment of the nonrefundable fees imposed under rules adopted under section 50 of this 2007 Act.

(4) The department shall consider completed applications and determine if the application describes a repower or retrofit that qualifies for a tax credit under section 47 of this 2007 Act and, if qualified, the certified cost of the repower or retrofit. In determining the amount of a tax credit under this section, the department shall reduce the incremental cost of a qualifying repower or retrofit by the value of any existing financial incentive that directly reduces the cost of the qualifying repower or retrofit, including tax credits, grants, loans or any other public financial assistance. The department shall send written notice of the certified cost to the taxpayer. The department may not certify more than $3 million of tax credits under this section during each calendar year.

(5) If the department determines that a repower or retrofit does not qualify for a tax credit under section 47 of this 2007 Act or certifies a lesser amount than was sought in the application, the taxpayer may appeal the determination as a contested case under ORS chapter 183.

(6) The department shall deposit fees collected under this section in a miscellaneous receipts account established in the State Treasury for the benefit of the department. Amounts in the account are continuously appropriated to the department for the purpose of reimbursing the department for expenses incurred in administering this section. [2007 c.843 §51]

Sec. 52. Sections 47, 48, 50 and 51 of this 2007 Act are repealed on January 2, 2018. [2007 c.843 §52]

EMISSION REDUCTION CREDIT BANKS

468A.820 Community emission reduction credit banks; establishment; rules; credits. (1) The Department of Environmental Quality shall establish a community emission reduction credit bank upon written request to the department by the appropriate board or boards of county commissioners.

(2) The community emission reduction credit bank shall be governed by rules adopted by the Environmental Quality Commission. The validity of emission reduction credits shall be determined by rule. The rules shall include, but need not be limited to, the following:

(a) Valid emission reduction credits created or banked within two years from the time of actual emission reduction may be transferred to the community bank for up to 10 years. The 10-year period shall begin at the time of actual emission reduction.

(b) The department shall transfer valid emission reduction credits to the community bank upon written application from the holder of the credits.

(c) The department may not discount credits banked under this section during any 10-year period unless the commission finds it necessary to discount the credits to attain or maintain air quality standards.

(3) The community emission reduction credit bank shall be administered by the appropriate board or boards of county commissioners, in coordination with the department. [2001 c.468 §1]

Note: 468A.820 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

468A.990 Penalties for air pollution offenses. (1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor.

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense.

(3) Violation of ORS 468A.610 or of any rule adopted pursuant to ORS 468A.595 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(4) Violation of the provisions of ORS 468A.655 is a Class A misdemeanor. [Formerly 468.995]

468A.992 Civil penalties for open field burning violations. (1) In addition to any liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on any person who fails to comply with a provision of ORS 468A.555 to 468A.620 or any rule adopted thereunder, or a permit issued under ORS 468A.555 to 468A.620, relating to open field burning.

(2) The State Department of Agriculture shall impose any civil penalty under this section in the same manner as the Department of Environmental Quality imposes and collects a civil penalty under ORS 468.140. [1995 c.358 §2; 1997 c.249 §164]