

A-Engrossed
House Bill 3500

Ordered by the House June 23
Including House Amendments dated June 23

Sponsored by COMMITTEE ON REVENUE (at the request of Oregon Business Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Modifies pollution control facility tax credit and extends period for which facilities may be certified for tax credit, if facilities constitute enhanced pollution control facilities.]
[Requires pollution control facility owners to report on continued operation and effectiveness of facilities.]

Modifies provisions relating to pollution control incentives.
Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to pollution control facilities; creating new provisions; amending ORS 307.405, 307.430,
3 314.255, 314.752, 315.304, 315.324, 315.356, 465.015, 468.153, 468.155, 468.160, 468.165, 468.167,
4 468.170, 468.173, 468.185, 468.190, 468A.020, 468A.096 and 468A.605 and section 3, chapter 928,
5 Oregon Laws 2001; repealing ORS 468.150, 468.163, 468.172 and 468.180; appropriating money;
6 and prescribing an effective date.

7 **Be It Enacted by the People of the State of Oregon:**

8 **SECTION 1.** ORS 468.153 is amended to read:

9 468.153. (1) The Legislative Assembly finds that the concept of environmental responsibility has
10 matured beyond basic compliance with regulatory requirements to one in which citizens and busi-
11 nesses voluntarily implement innovative solutions to achieve shared environmental goals.

12 (2) The Legislative Assembly declares that a *[pollution control]* tax credit that shifts the majority
13 of the incentive away from compensation for basic regulatory compliance and toward encouraging
14 voluntary investment is an effective way to achieve environmental goals.

15 (3) The Legislative Assembly finds and declares that it is the policy of this state to promote
16 sustainability and provide incentives for the voluntary prevention, elimination, reduction or control
17 of air pollution, water pollution, solid waste and hazardous waste through the voluntary application
18 of innovative solutions to achieve the environmental goals of this state.

19 (4) The Legislative Assembly declares it to be the policy of this state to promote social, eco-
20 nomic and environmental principles of sustainability by providing incentives to individuals and
21 businesses that support social, economic and environmental sustainability goals.

22 **SECTION 2.** ORS 468.155 is amended to read:

23 468.155. *[(1)(a)]* As used in ORS 468.155 to 468.190[,]:

24 (1) Unless the context requires otherwise, [*"pollution control facility" or "facility"*] **"control"**
25 means any land, structure, building, installation, excavation, machinery, equipment or device, or any
26 addition to, reconstruction of or improvement of, land or an existing structure, building, installation,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 excavation, machinery, equipment or device reasonably used, erected, constructed or installed [by
2 any person if:] **in Oregon to achieve an environmental benefit.**

3 **(2) “Environmental benefit” means:**

4 **(a) The prevention, control or reduction of air or water pollution or solid or hazardous**
5 **waste; or**

6 **(b) The recycling or appropriate disposal of used oil.**

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

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

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

15 **(3)(a) “Eligible method” means a control that:**

16 (A) [(The disposal or elimination of or redesign)] **Disposes of or eliminates or is redesigned** to
17 eliminate industrial waste [and] **or water pollution, including** the use of treatment works for in-
18 dustrial waste as defined in ORS 468B.005;

19 (B) [(The disposal or elimination of or redesign)] **Disposes of or eliminates or is redesigned** to
20 **dispose of or** eliminate air contaminants or air pollution or air contamination sources [and], **in-**
21 **cluding** the use of air cleaning devices as defined in ORS 468A.005;

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

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

27 [(E)] (D) [(The treatment, substantial reduction or elimination of or redesign to treat, substantially
28 *reduce or eliminate)] **Uses a plastic reclaimed through a material recovery process in the**
29 **manufacture of an end product of real economic value.***

30 (E) **Treats, substantially reduces or eliminates or is redesigned to treat, substantially**
31 **reduce or eliminate a substantial quantity of** hazardous waste as defined in ORS 466.005[.]; **or**

32 (F) **Is an alternative to field burning.**

33 (b) **With respect to the reduction of carbon dioxide emissions, a substantial quantity is**
34 **1,000 tons per year or, for any reduction in excess of 100 tons per year, a reduction by 40**
35 **percent of the prior emissions.**

36 (c) **The commission may adopt rules defining “substantial reduction,” “prevention,”**
37 **“control” or “reuse.”**

38 (4) **“Base pollution control” means:**

39 (a) **A control, or that portion of a control, that uses an eligible method to:**

40 (A) **Meet a requirement imposed by the Department of Environmental Quality or a re-**
41 **gional air pollution authority that provides an environmental benefit that goes beyond or is**
42 **in addition to the environmental benefits of any requirement imposed by the federal Envi-**
43 **ronmental Protection Agency under a numerical emission standard or limit of national ap-**
44 **plicability; or**

45 (B) **Reduce or prevent pollution from combined animal feeding operations or nonpoint**

1 sources as set forth by rules adopted by the Environmental Quality Commission; or

2 (b) With respect to stormwater, the controls necessary to achieve Oregon stormwater
3 permit benchmarks, to the extent the controls provide an environmental benefit that goes
4 beyond or is in addition to the environmental benefits of any requirement imposed by the
5 federal Environmental Protection Agency under a limit of national applicability, will be con-
6 sidered base pollution controls.

7 [(2)(a) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" includes a non-
8 point source pollution control facility.]

9 [(b) As used in this subsection, "nonpoint source pollution control facility" means a facility]

10 (5) "Nonpoint source pollution control" means practices, methods, processes or equip-
11 ment that the Environmental Quality Commission has identified by rule as reducing or controlling
12 significant amounts of nonpoint source pollution.

13 [(3) As used in ORS 468.155 to 468.190, "pollution control facility" or "facility" does not include:]

14 [(a) Air conditioners;]

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

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

18 [(d) Any distinct portion of a pollution control facility that makes an insignificant contribution to
19 the principal or sole purpose of the facility including the following specific items:]

20 [(A) Office buildings and furnishings;]

21 [(B) Parking lots and road improvements;]

22 [(C) Landscaping;]

23 [(D) External lighting;]

24 [(E) Company or related signs; and]

25 [(F) Automobiles;]

26 [(e) Replacement or reconstruction of all or a part of any facility for which a pollution control fa-
27 cility certificate has previously been issued under ORS 468.170, except:]

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

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

35 [(f) Asbestos abatement; or]

36 [(g) Property installed, constructed or used for cleanup of emergency spills or unauthorized re-
37 leases, as defined by the commission.]

38 (6) "Environmental enhancement" means a control, or that portion of a control, that
39 uses an eligible method and:

40 (a) Provides an environmental benefit that is not required by the Department of Envi-
41 ronmental Quality, the State Department of Agriculture, the federal Environmental Pro-
42 tection Agency or a regional air pollution authority; or

43 (b) Is a base pollution control constructed or installed in advance of the time the De-
44 partment of Environmental Quality, the State Department of Agriculture, the federal Envi-
45 ronmental Protection Agency or a regional air pollution control authority requires the

1 environmental benefit achieved by the control.

2 (7) "Environmental management system" means a systematic, documented, continual
3 cycle of planning, implementing, reviewing and improving the actions undertaken at a plant,
4 mill, facility or place of business in Oregon to meet environmental obligations and improve
5 environmental performance that includes a means to measure the environmental benefit and
6 that meets:

7 (a) The standards established by the International Organization for Standardization un-
8 der ISO 14001;

9 (b) The standards established in the Green Permit program established under ORS 468.501
10 to 468.521; or

11 (c) Other criteria established by the commission by rule.

12 (8) "Environmental improvement process" means an improvement implemented as a re-
13 sult of an environmental management system, to the extent that the improvement is beyond
14 what is required by a requirement or effluent limit established by the Department of Envi-
15 ronmental Quality, the State Department of Agriculture, the federal Environmental Pro-
16 tection Agency or a regional air pollution authority and that provides:

17 (a) A direct, substantial increase in pollution control by preventing, controlling or re-
18 ducing a substantial quantity of air or water pollution or solid or hazardous waste;

19 (b) For recycling or the appropriate disposal of used oil; or

20 (c) For the substantial reduction in waste or recycling of waste beyond what federal,
21 state or local law requires.

22 (9) "Environmental investment" or "investment" means:

23 (a) Base pollution control;

24 (b) Environmental enhancement;

25 (c) Nonpoint source pollution control;

26 (d) Environmental management system;

27 (e) Environmental improvement process; or

28 (f) Pollution control facility.

29 (10) "Alternative to field burning" means a base pollution control that provides an alter-
30 native method for field sanitation and straw utilization and disposal as established by the
31 Environmental Quality Commission by rule.

32 (11) "Material recovery process" means a process that obtains useful material from ma-
33 terial that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as de-
34 fined in ORS 466.005 or used oil as defined in ORS 459A.555.

35 (12) "Licensed engineer's statement" means a statement prepared by an independent en-
36 gineer licensed under ORS chapter 672, or by a Department of Environmental Quality engi-
37 neer, that documents:

38 (a) The extent to which a control will achieve an environmental enhancement;

39 (b) The actual cost attributable to the environmental enhancement, separate from any
40 costs associated with base and nonpoint source pollution controls;

41 (c) The permit limits existing at the time the costs were incurred;

42 (d) The permit limits that would become applicable during the certificate life; and

43 (e) Other criteria established by the commission by rule, including documentation of base
44 pollution control costs if deemed necessary.

45 (13) Unless the context requires otherwise, "pollution control facility" or "facility" means

1 a control constructed or installed before January 1, 2008, that:

2 (a) Complies with a requirement imposed by the Department of Environmental Quality,
3 the federal Environmental Protection Agency or a regional air pollution authority using an
4 eligible method; or

5 (b) Provides a substantial environmental benefit using an eligible method.

6 (14)(a) "Commencement" means:

7 (A) The date on which the person constructing or installing a control has obtained all
8 necessary preliminary approvals and has begun continuous on-site modification, con-
9 struction, installation or other activity, the completion of which will cause the person to be
10 able to obtain certification under ORS 468.155 to 468.190.

11 (B) With respect to an environmental management system or environmental improve-
12 ment process, the date on which internal or external resources are first expended to develop
13 the environmental management system or environmental improvement process for which the
14 person seeks certification, the development of which is then continuous.

15 (b) Interruptions and delays resulting from natural disasters, strikes, litigation or other
16 matters beyond the control of the owner shall be disregarded in determining whether the
17 actions undertaken by the person are continuous.

18 (c) The burden of demonstrating that environmental investment is commenced shall be
19 borne by the person filing an application for certification under ORS 468.165.

20 **SECTION 3.** ORS 468.165 is amended to read:

21 468.165. (1) Any person may apply to the Environmental Quality Commission for certification
22 under ORS 468.170 of [*a pollution control facility*] **an environmental investment** or portion thereof
23 [*erected, constructed or installed by the person*] in Oregon. [*if:*]

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

26 [(b) *The noise pollution control facility was erected, constructed or installed on or after January*
27 *1, 1977.*]

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

30 [(A) *The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and*
31 *(2);*]

32 [(B) *The facility will utilize material that would otherwise be solid waste as defined in ORS*
33 *459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-*
34 *chanical process or chemical process or through the production, processing including presegregation,*
35 *or use of, materials which have useful chemical or physical properties and which may be used for the*
36 *same or other purposes, or materials which may be used in the same kind of application as its prior*
37 *use without change in identity;*]

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

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

41 [(E) *The Oregon law regulating solid waste imposes standards at least substantially equivalent to*
42 *the federal law.*]

43 [(d) *The hazardous waste control facility was erected, constructed or installed on or after January*
44 *1, 1984, and if:*]

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

1 (2); and]

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

4 (2) The application shall be made in writing in a form prescribed by the Department of Envi-
5 ronmental Quality and [shall] **may** contain:

6 (a) [information on] **Documentation of the actual cost [of the facility,] or portion of the actual**
7 **cost directly attributed to the environmental investment;**

8 (b) **Documentation describing and data supporting the extent to which the investment**
9 **would achieve the environmental benefit;**

10 (c) A description of [the] **any** materials [incorporated therein,] **and** all machinery and equipment
11 made a part [thereof,] **of the environmental investment;**

12 (d) [the] **Any** existing or proposed operational procedure [thereof, and a statement of the purpose
13 of prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or re-
14 cycling or appropriate disposal of used oil served or to be served by the facility and the portion of the
15 actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or
16 solid or hazardous waste or to recycling or appropriately disposing of used oil.] **related to the en-**
17 **vironmental investment and the environmental benefit; and**

18 (e) **If required by the department, a licensed engineer's statement.**

19 (3) [The Director of the Department of Environmental Quality] **The department** may require any
20 further information the [director] **department** considers necessary before [a certificate is issued]
21 **recommending that the commission approve certification.**

22 (4) The application shall be accompanied by a fee established under subsection (5) of this sec-
23 tion. The [fee may be refunded] **Department of Environmental Quality may refund the fee** if the
24 application for certification is rejected **or withdrawn.**

25 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees [which]
26 **that** the department may require of applicants for certificates issued under ORS 468.167 and 468.170.
27 Before the adoption or revision of any such fees the commission shall estimate the total cost of the
28 program to the department. The fees shall be based on the anticipated [cost] **costs** of filing, inves-
29 tigating, granting and rejecting the applications **and of reporting results to the Legislative As-**
30 **sembly,** and shall be designed not to exceed the total cost estimated by the commission. Any excess
31 fees shall be held by the department and shall be used by the commission to reduce any future fee
32 increases. The fee may vary according to the size and complexity of the [facility] **environmental**
33 **investment.** The [fees] **commission** may not [be considered by the commission] **consider the fee** as
34 part of the cost of the [facility to be certified] **environmental investment.**

35 (6) **For pollution control facilities,** the application shall be submitted after construction of the
36 facility is substantially completed and the facility is placed in service and within one year after
37 construction of the facility is substantially completed. Failure to file a timely application shall make
38 the facility ineligible for tax credit certification. An application may not be considered filed until
39 it is complete and ready for processing. The commission may grant an extension of time to file an
40 application for circumstances beyond the control of the applicant that would make a timely filing
41 unreasonable. However, the period for filing an application may not be extended to a date beyond
42 December 31, 2008.

43 (7) **For environmental investments commenced after December 31, 2007, the application**
44 **shall be submitted within one year after:**

45 (a) **Construction of the control is substantially completed and the control is placed in**

1 service;

2 (b) The environmental management system is substantially completed; or

3 (c) The environmental process improvement is substantially implemented.

4 (8) Failure to file a timely application under subsections (6) and (7) of this section shall
5 make the environmental investment ineligible for tax credit certification. The commission
6 may grant an extension of time to file an application for circumstances beyond the control
7 of the applicant that would make a timely filing unreasonable.

8 (9) An application may not be considered filed until it is complete and ready for pro-
9 cessing and includes information requested by the department pursuant to subsection (3) of
10 this section.

11 (10) The final date the department may accept an application filed under this section shall
12 be:

13 (a) December 31, 2008, for pollution control facilities; or

14 (b) Four years after the final eligible project commencement, as established by ORS
15 468.173, for environmental investments.

16 (11) The commission may adopt rules with respect to the submission and timing of ap-
17 plications.

18 **SECTION 4.** ORS 468.167 is amended to read:

19 468.167. (1) Any person proposing to apply for certification for tax relief under ORS 468.155 to
20 468.190 may apply, before the completion of [*a pollution control facility*] **an environmental invest-**
21 **ment**, for precertification of the [*facility*] **investment** with the Environmental Quality Commission.

22 (2)(a) The application shall be made in writing in a form prescribed by the Department of En-
23 vironmental Quality. [*The application shall contain the following information:*]

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

27 [(B) *A description of the materials for incorporation into the facility or incorporated into the fa-*
28 *ility, machinery and equipment to be made or made a part of the facility and the proposed or existing*
29 *operational procedure of the facility.*]

30 [(C) *Any further information the Director of the Department of Environmental Quality considers*
31 *necessary before precertification is issued.*]

32 (b) The application need not contain information on the actual [*cost of the facility*] **investment**
33 **costs** or the portion of the actual [*cost properly allocable to the prevention, control or reduction of*
34 *air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of*
35 *used oil*] **investment costs attributed to the environmental benefit.**

36 (c) The application shall be accompanied by a fee as provided under ORS 468.165 (5). The [*fee*
37 *may be refunded*] **department may refund the fee** if the application for preliminary certification
38 is rejected **or withdrawn.**

39 (3) If the commission determines that [*the person and the pollution control facility will be eligible*
40 *for tax relief under ORS 307.405 or 315.304 if the facility is erected, constructed, reconstructed, added*
41 *to, installed, improved or used in accordance with the application for precertification*] **the environ-**
42 **mental investment would be eligible for certification under ORS 468.170**, the commission shall
43 precertify the [*facility*] **investment** by approving the application.

44 (4) If the [*facility is erected, constructed, reconstructed, added to, installed, improved or used*] **en-**
45 **vironmental investment is completed** as proposed in the application for precertification, the

1 commission's approval of the application shall be prima facie evidence that the [facility] **investment**
 2 is qualified for certification [for tax relief] under ORS 468.170. However, precertification shall not
 3 ensure that [a facility erected, constructed, reconstructed, added to, installed, improved or used by the
 4 precertified person] **an investment** will receive certification under ORS 468.170 or tax relief under
 5 ORS 307.405 or 315.304.

6 (5) If the commission fails or refuses to precertify [a person and facility] **an environmental in-**
 7 **vestment**, the person may appeal as provided in ORS 468.170 (3).

8 **SECTION 5.** ORS 468.170 is amended to read:

9 468.170. (1) The Environmental Quality Commission shall act on an application for certification
 10 before the [120th] **180th** day after the filing of the application under ORS 468.165. The action of the
 11 commission shall include certification of the [actual cost of the facility and the portion of the actual
 12 cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid
 13 or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion
 14 of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion
 15 of the facility] **environmental investment and the amount of the tax credit.** Each certificate
 16 shall bear a separate serial number for each such [facility] **investment. Certification of environ-**
 17 **mental enhancements shall be separate and shall bear a separate serial number for each**
 18 **such certification.**

19 (2) If the commission rejects an application for certification, or certifies a lesser [actual cost of
 20 the facility or a lesser portion of the actual cost properly allocable to the prevention, control or re-
 21 duction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately
 22 disposing of used oil] **amount of the tax credit** than was claimed in the application for certif-
 23 ication, the commission shall cause written notice of its action, and a concise statement of the
 24 findings and reasons therefor, to be sent by registered or certified mail to the applicant before the
 25 [120th] **90th** day after the [filing of the application] **date of the hearing at which the commission**
 26 **made its decision.**

27 (3) If the **commission rejects the** application [is rejected] for any reason, including the infor-
 28 mation furnished by the applicant as to the cost of the [facility] **investment**, or if the applicant is
 29 dissatisfied with the certification of [actual cost or portion of the actual cost properly allocable to
 30 prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to re-
 31 cycling or appropriately disposing of used oil] **the amount of the tax credit**, the applicant may ap-
 32 peal from the rejection **or certification of a lesser amount of the tax credit** as provided in ORS
 33 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant
 34 takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed
 35 by the commission.

36 (4)(a) The commission shall certify [a pollution control, solid waste, hazardous waste or used oil
 37 facility or portion thereof] **an environmental investment[,]** for which an application has been made
 38 under ORS 468.165[,] **and the amount of the tax credit** if the commission finds that [the facility]:

39 (A) [Was erected, constructed or installed in accordance with the requirements of ORS 468.165
 40 (1)] **The investment meets the definition of an environmental investment;**

41 (B) **The investment** is designed for, and is being operated or will operate [in accordance with
 42 the requirements of ORS 468.155] **to provide, an environmental benefit;** [and]

43 (C) [Is necessary to satisfy] The **investment furthers the** intents and purposes of ORS 454.010
 44 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466
 45 and 467 and ORS chapters 468, 468A and 468B and rules thereunder[.]; **and**

1 **(D) Such certification will not exceed any limitation or certification priority set forth in**
2 **paragraph (e) of this subsection.**

3 (b) No determination of the [*proportion of the actual cost of the facility*] **amount of the tax**
4 **credit** to be certified shall be made until receipt of the **final** application.

5 (c) If one or more [*facilities*] **environmental investments** constitute an operational unit, the
6 commission may certify such [*facilities*] **investments** under one certificate, **provided that certif-**
7 **ication of environmental enhancements shall be separate and bear a separate serial**
8 **number.**

9 (d) A certificate under this section is effective for purposes of tax relief in accordance with ORS
10 307.405 and 315.304 if, on or before December 31, [*2007, erection, construction or installation of the*
11 *facility is completed, the facility is placed in service and the*] **2013, the applicant files a complete**
12 application for certification [*is filed with the commission*] **with the Department of Environmental**
13 **Quality** under ORS 468.165.

14 (e) **In determining the amount of a tax credit under this section, and the procedure for**
15 **awarding credits subject to this section, the commission may not certify a tax credit that**
16 **exceeds the program limitation or the proposed project limitation determined under para-**
17 **graph (f) of this subsection.**

18 (f) **The commission shall adopt rules implementing limitations and priorities that con-**
19 **sider the following:**

20 **(A) The commission may not certify tax credits in excess of 150 percent of \$13 million in**
21 **any one calendar year, which is the program limitation.**

22 **(B) The commission shall reduce the program limitation below 150 percent of \$13 million**
23 **as needed if the estimated revenue impact to the state for any year after December 31, 2007,**
24 **exceeds \$13 million. The estimate shall:**

25 **(i) Exclude any data from certified pollution control facilities tax credits;**

26 **(ii) Consider the period over which the certificate holder may claim the amount of the**
27 **tax credit provided in subsection (7) of this section; and**

28 **(iii) Consider historic usage rates for different categories of tax credits.**

29 **(C) The commission may not certify more than \$5 million for any one project. Projects**
30 **relating to the same environmental benefit at the same facility or physically contiguous fa-**
31 **cilities shall be treated as one project.**

32 **(D) The commission may, on an annual or other periodic basis, give priority to certif-**
33 **ication of environmental investments that are environmental enhancements, environmental**
34 **management systems or environmental improvement processes.**

35 **(E) An application or portion of an application that exceeds the program limitation may**
36 **be carried over to the next calendar year or next applicable period, but will be subject to any**
37 **priority established by the commission under subparagraph (D) of this paragraph for the next**
38 **calendar year or next applicable period.**

39 (5) A person receiving a certificate under this section may take tax relief only under ORS
40 315.304, depending upon the tax status of the person's trade or business except that:

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

43 (b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62
44 relating to the incorporation of cooperative associations or the subsequent transferee of the corpo-
45 ration may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405.

1 The corporation shall make the election at the time of applying for the certificate, except that a
2 corporation receiving a certificate prior to December 31, 1995, may make the election at any time
3 on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the
4 tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the cor-
5 poration for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making
6 the election shall be waived.

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

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

12 (ii) All future *[facilities]* **environmental investments** that are certified under this section, if the
13 corporation did not claim a credit under ORS 315.304 for a tax year beginning prior to December
14 31, 1995.

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

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

23 *[(8) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under this*
24 *section if ownership of the portions is in more than one person. Certification of such portions of a fa-*
25 *ility shall include certification of the actual cost of the portion of the facility to the person receiving*
26 *the certification. The actual cost certified for all portions of a facility separately certified under this*
27 *subsection may not exceed the total cost of the facility that would have been certified under one certif-*
28 *icate. The provisions of ORS 315.304 (8) apply to any sale, exchange or other disposition of a certified*
29 *portion of a facility.]*

30 **(7) Certification of an environmental investment under this section is valid:**

31 **(a) For an environmental management system, one year, which shall be the tax year of**
32 **the person in which the Environmental Quality Commission certified the investment under**
33 **this section; or**

34 **(b) For base pollution controls, nonpoint source pollution controls, environmental en-**
35 **hancements, environmental improvement processes or pollution control facilities:**

36 **(A) 10 years, subject to the provisions of ORS 315.304, which valid 10-year period shall**
37 **begin with the tax year of the person in which the investment is certified under this section;**
38 **or**

39 **(B) 20 years if ad valorem tax relief is utilized by a corporation organized under ORS**
40 **chapter 62 or 65, and the investment shall be exempt from ad valorem taxation for a period**
41 **of 20 consecutive years.**

42 *[(9)]* **(8) A certificate issued under this section shall state the *[applicable percentage of the certi-***
43 ***fied cost of the facility]* amount of the tax credit, as determined by multiplying the eligible cost**
44 **determined under ORS 468.190 by the maximum percentage determined under ORS 468.173.**

45 *[(10)]* **(9) If the construction or installation of a pollution control facility is commenced after**

1 December 31, 2005, the facility may be certified only if the facility or applicant is described in ORS
2 468.173 (3). A facility described in ORS 468.173 (2) for which construction or installation is com-
3 menced after December 31, 2005, may not be certified under this section.

4 **SECTION 6.** ORS 468.173 is amended to read:

5 468.173. For purposes of ORS 315.304, the *[applicable]* **maximum** percentage of the certified cost
6 of *[a facility]* **an environmental investment or pollution control facility** shall be one of the fol-
7 lowing:

8 (1) If *[the]* **a pollution control** facility is certified under ORS 468.155 to 468.190 (1999 Edition)
9 or if construction or installation of the facility is commenced prior to January 1, 2001, and com-
10 pleted prior to January 1, 2004, 50 percent.

11 (2) Except as provided in subsection (1) or (3) of this section, if the **pollution control** facility
12 is certified pursuant to application for certification filed on or after January 1, 2002, and:

13 (a) Construction or installation of the facility is commenced on or after January 1, 2001, and on
14 or before December 31, 2003, 25 percent; or

15 (b) Construction or installation of the facility is commenced after December 31, 2003, and on or
16 before December 31, 2005, 15 percent.

17 (3) If **a pollution control facility** is certified pursuant to **an** application for **pollution control**
18 **facility** certification filed on or after January 1, 2002, 35 percent if:

19 (a) The applicant is certified under International Organization for Standardization standard ISO
20 14001;

21 (b) A Green Permit that applies to the facility has been issued under ORS 468.501 to 468.521;

22 (c) The facility is a nonpoint source **pollution control** or is regulated as a confined animal
23 feeding operation under ORS 468B.200 to 468B.230;

24 (d) The facility is used for material recovery or recycling, as those terms are defined in ORS
25 459.005;

26 (e) The facility is used in an agricultural or forest products operation and is used for energy
27 recovery, as defined in ORS 459.005;

28 (f) The certified cost of the facility does not exceed \$200,000;

29 (g) Construction or installation of the facility is entirely voluntary and no portion of it is re-
30 quired in order to comply with a federal law administered by the United States Environmental
31 Protection Agency, a state law administered by the Department of Environmental Quality or a law
32 administered by a regional air pollution authority;

33 (h) The facility is, at the time of certification, located within an enterprise zone established
34 under ORS 285C.050 to 285C.250 or within an area that has been designated a distressed area, as
35 defined in ORS 285A.010, by the Economic and Community Development Department; or

36 (i) The applicant demonstrates to the Department of Environmental Quality that the applicant
37 uses an environmental management system at the facility. In order for the department to determine
38 that the applicant uses an environmental management system at the facility:

39 (A) The applicant must have the environmental management system used at the facility reviewed
40 by an independent third party familiar with environmental management systems and submit a report
41 to the department stating that the provisions of this paragraph have been met. The report shall be
42 accompanied by supporting materials that document compliance with the provisions of this para-
43 graph. The report shall include certification from a registered or certified environmental manage-
44 ment auditor employed by, or under contract with, the independent third party that reviewed the
45 environmental management system; or

1 (B) The department shall contract with an independent third party familiar with environmental
2 management systems to review the environmental management system employed at the facility. The
3 third party shall review the environmental management system, and, if the third party determines
4 that the environmental management system meets the provisions of this paragraph, a registered or
5 certified environmental management system auditor employed by, or contracted with, the third party
6 shall certify that determination to the department. The department shall recover from the applicant
7 the costs incurred by the department as prescribed in ORS 468.073. An applicant shall be liable for
8 the costs of the department under this subparagraph without regard to whether the department
9 certifies the facility as a pollution control facility. The department may not certify a facility to
10 which this subparagraph applies until the department has received full payment from the applicant.

11 **(4) If an environmental investment is commenced after December 31, 2007, and before the**
12 **final eligible project commencement date, the maximum percentage of the appropriate costs**
13 **determined under ORS 468.190 shall be:**

14 (a) **For base pollution controls and nonpoint source pollution controls:**

15 (A) **35 percent of the costs determined under ORS 468.190 if the environmental invest-**
16 **ment is commenced before January 1, 2011; or**

17 (B) **25 percent of the costs determined under ORS 468.190 if the environmental invest-**
18 **ment is commenced on or after January 1, 2011.**

19 (b) **For environmental enhancements, 50 percent of the costs determined under ORS**
20 **468.190.**

21 (c) **For environmental management systems and environmental improvement processes,**
22 **50 percent of the costs determined under ORS 468.190, not to exceed:**

23 (A) **\$25,000 for a business with fewer than 50 employees employed at the Oregon site for**
24 **which the environmental management system applies;**

25 (B) **\$50,000 for a business with 50 to 500 employees employed at the Oregon site for which**
26 **the environmental management system applies; or**

27 (C) **\$100,000 for a business with more than 500 employees employed at the Oregon site for**
28 **which the environmental management system applies.**

29 **(5) For purposes of this section, the final eligible project commencement date is Decem-**
30 **ber 31, 2013.**

31 **SECTION 7.** ORS 468.185 is amended to read:

32 468.185. (1) Pursuant to the procedures for a contested case under ORS chapter 183, the Envi-
33 ronmental Quality Commission may order the revocation of the certification issued under ORS
34 468.170 of any [*pollution control or solid waste, hazardous wastes or used oil facility,*] **environmental**
35 **investment** if it finds that:

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

37 (b) The **certificate** holder [*of the certificate*] has failed substantially to [*operate the facility*] **uti-**
38 **lize the environmental investment** for the purpose of, and to the extent necessary [*for, preventing,*
39 *controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil as*
40 *specified in such certificate*] **to provide, the environmental benefit.**

41 (2) As soon as the order of revocation under this section has become final, the commission shall
42 notify the Department of Revenue and the county assessor of the county in which the [*facility*] **en-**
43 **vironmental investment** is located of such order.

44 (3) If the **commission orders the revocation of the environmental investment** certification
45 [*of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked*] pursu-

1 ant to subsection (1)(a) of this section, all prior tax relief provided to the **certificate** holder [*of such*
2 *certificate*] by virtue of such certificate shall be forfeited and the Department of Revenue or the
3 proper county officers shall proceed to collect those taxes not paid by the certificate holder as a
4 result of the tax relief provided to the **certificate** holder under any provision of ORS 307.405 and
5 315.304.

6 (4) Except as provided in subsection (5) of this section, if the **commission orders the revoca-**
7 **tion of the environmental investment** certification [*of a pollution control or solid waste, hazardous*
8 *wastes or used oil facility is ordered revoked*] pursuant to subsection (1)(b) of this section, the cer-
9 tificate holder shall be denied any further relief provided under ORS 307.405 or 315.304 in con-
10 nection with such [*facility*] **investment**, as the case may be, from and after the date that the order
11 of revocation becomes final.

12 (5) The commission may reinstate a tax credit certification revoked under subsection (1)(b) of
13 this section if the commission finds the [*facility*] **investment** has been brought into compliance. If
14 the commission reinstates certification under this subsection, the commission shall notify the De-
15 partment of Revenue or the county assessor of the county in which the [*facility*] **investment** is lo-
16 cated that the tax credit certification is reinstated for the remaining period of the tax credit, less
17 the period of revocation as determined by the commission.

18 **SECTION 8.** ORS 468.190 is amended to read:

19 468.190. (1) [*Subject to subsections (2), (3) and (4) of this section, in establishing the portion of costs*
20 *properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or*
21 *hazardous waste or to recycling or appropriately disposing of used oil for facilities qualifying*] **In es-**
22 **tablishing the appropriate costs of an environmental investment** for certification under ORS
23 468.170, the Environmental Quality Commission [*shall*] **may** consider the following factors:

24 (a) [*If applicable,*] The extent to which the [*facility is used to recover and convert waste products*
25 *into a salable or usable commodity.*] **environmental investment is or would be used to provide**
26 **an environmental benefit;**

27 (b) **The pro rata portion of time the investment is or would be used to achieve the envi-**
28 **ronmental benefit as compared to the entire time the investment is used for any purpose;**

29 [*(b) The estimated annual percent return on the investment in the facility.*]

30 (c) [*If applicable, the*] **Any** alternative methods, equipment and costs for achieving the same
31 [*pollution control objective.*] **environmental benefit;**

32 (d) **The estimated annual percentage return on the environmental investment;**

33 [(d)] (e) Any related savings or increase in costs [*which*] **that** occur or may occur as a **direct**
34 result of the [*installation of the facility.*] **environmental investment; and**

35 [(e)] (f) Any other **relevant** factors [*which are relevant in establishing the portion of the actual*
36 *cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pol-*
37 *lution or solid or hazardous waste or to recycling or appropriately disposing of used oil*] **used to es-**
38 **tablish the appropriate costs of the investment that achieve the environmental benefit.**

39 (2) **For environmental enhancements, the commission shall:**

40 (a) **Consider the information provided in the licensed engineer's statement to determine**
41 **the appropriate cost of the environmental enhancement portion of a control, excluding any**
42 **costs associated with the base or nonpoint source pollution portion of the control; and**

43 (b) **Allocate a portion of the total costs of an environmental enhancement defined in ORS**
44 **468.155 to the pro rata portion of time the control was completed in advance of the time the**
45 **law requires the control as compared to the useful life of the control.**

1 **(3) For environmental management systems, the commission shall consider all costs di-**
2 **rectly incurred in the development of the environmental management system, including**
3 **costs associated with internal staff and contractors that developed the system.**

4 **(4) For environmental process improvements, the commission shall consider costs di-**
5 **rectly incurred in the implementation of a system described in the applicant's environmental**
6 **management system, including costs associated with internal staff and contractors that im-**
7 **plemented the system.**

8 [(2)] **(5) [The portion of actual costs properly allocable shall be from zero to 100 percent in incre-**
9 **ments of one percent. If zero percent] If the costs, determined under this section, of the invest-**
10 **ment that achieves the environmental benefit is less than \$1, the commission shall issue an**
11 **order denying certification.**

12 [(3)] **(6) If the cost of the [facility (or facilities) investment (or investments certified under one**
13 **certificate) does not exceed \$50,000, the portion of the actual costs properly allocable shall be [in**
14 **the proportion that the ratio] the pro rata portion of the time the [facility is used for prevention,**
15 **control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or**
16 **appropriately disposing of used oil bears] investment is used to achieve the environmental ben-**
17 **efit as compared to the entire time the [facility] investment is used for any purpose.**

18 **(7) The cost of the environmental investment determined under this section shall not**
19 **exceed the applicant's own cash outlay for the investment.**

20 [(4)] **(8) In the case of a business described in ORS 315.304 (4)(a)(C)[(i)], the [Environmental**
21 **Quality] commission shall consider the factors listed in [subsection (1)] subsections (1) to (4) of this**
22 **section as if the person operating the [facility] environmental investment or conducting the trade**
23 **or business that utilizes property requiring such [a facility] an investment were the applicant for**
24 **the credit, regardless of whether the person is the contract purchaser, lessee or lessor of the fa-**
25 **cility.**

26 [(5)] **(9) The commission may adopt rules establishing:**

27 **(a) The costs allocable to the environmental investment; and**

28 **(b) Methods to be used to determine the portion of costs properly allocable to achieving the**
29 **[prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to re-**
30 **cyclining or appropriately disposing of used oil.] environmental benefit.**

31 **(10) The cost of the environmental investment may not include any costs that the com-**
32 **mission has identified by rule as ineligible or any of the following:**

33 **(a) Air conditioners;**

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

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

37 **(d) Controls of less than 100 total horsepower for chipping or shredding of wood waste;**

38 **(e) Any distinct portion of an environmental investment that makes an insignificant**
39 **contribution to an environmental benefit, including the following specific items:**

40 **(A) Office buildings and furnishings;**

41 **(B) Parking lots and road improvements;**

42 **(C) Landscaping;**

43 **(D) External lighting;**

44 **(E) Company or related signs; and**

45 **(F) Automobiles;**

1 (f) Replacement or reconstruction of all or a part of any environmental investment for
2 which a certificate has previously been issued under ORS 468.170, except:

3 (A) If such costs would otherwise be eligible costs, the extent to which the cost to re-
4 place or reconstruct the investment is greater than the like-for-like replacement cost of the
5 original investment, then the investment may be eligible for tax credit certification up to an
6 amount equal to the difference between the cost of the new investment and the like-for-like
7 replacement cost of the original investment; or

8 (B) If an investment is replaced or reconstructed before the end of the certificate life,
9 then the investment may be eligible for the remainder of the tax credit certified to the ori-
10 ginal investment;

11 (g) Asbestos abatement;

12 (h) Property installed, constructed or used for cleanup of emergency spills or unauthor-
13 ized releases, as defined by the commission by rule;

14 (i) Cleanup of land or the sediment of the watercourses of this state;

15 (j) For environmental enhancements, the costs for corrective actions required under a
16 permit or order issued by this state or by the federal government; or

17 (k) Any portion of a material recovery process:

18 (A) In which the major purpose is the production of fuel from solid waste, hazardous
19 waste or used oil that can be utilized for heat content or other forms of energy; or

20 (B) That burns waste to produce energy or to reduce the amount of waste. However, this
21 subsection does not eliminate from eligibility a control associated with a process that burns
22 waste.

23 **SECTION 9.** Sections 10 and 11 of this 2007 Act are added to and made a part of ORS
24 468.155 to 468.190.

25 **SECTION 10.** (1) For the purpose of defraying the costs of rulemaking and other admin-
26 istrative functions attributable to changes that result from this 2007 Act, the applicant shall
27 pay a program development fee with an application for certification under ORS 468.170. The
28 fee shall:

29 (a) Apply to environmental investments commenced after December 31, 2007;

30 (b) Be payable at the time of application and in addition to the application fee required
31 under ORS 468.165;

32 (c) Equal one percent of the claimed environmental investments cost claimed on the ap-
33 plication;

34 (d) Be payable to the Department of Environmental Quality; and

35 (e) Be nonrefundable.

36 (2) The department shall discontinue charging the program development fee when the
37 state has paid all costs associated with rulemaking and other administrative changes needed
38 to implement this 2007 Act.

39 **SECTION 11.** (1) On or before March 15 of each year in which a taxpayer claims a tax
40 credit under ORS 468.170 for an environmental investment that is a base pollution control,
41 a nonpoint source pollution control or an environmental enhancement for the preceding tax
42 year, the person that owns the control or enhancement shall provide a report to the De-
43 partment of Environmental Quality, on a form prescribed by the department, that:

44 (a) Attests to the continued use of the control or enhancement and the continued envi-
45 ronmental benefit arising from the use of the control or enhancement; and

1 **(b) Identifies and quantifies the environmental and other benefits of the control or en-**
2 **hancement.**

3 **(2) In the case of a property owner that claims an exemption for a base pollution control**
4 **under ORS 307.405, the property owner shall submit the report described in subsection (1)**
5 **of this section on or before September 15 of the tax year.**

6 **(3) If the owner of the control fails to file a report by the date prescribed in this section,**
7 **the Environmental Quality Commission may order revocation of the certification under ORS**
8 **468.185.**

9 **(4) The commission shall prepare and make available a written report to the Legislative**
10 **Assembly each biennium that summarizes the information reported by control owners under**
11 **this section.**

12 **SECTION 12.** ORS 315.304 is amended to read:

13 315.304. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
14 ration, under ORS chapter 317 or 318) for [*a pollution control facility or facilities*] **an environmental**
15 **investment** certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection
16 (4) of this section.

17 (2) For [*a facility*] **an investment** certified under ORS 468.170, the maximum credit allowed in
18 any one tax year shall be the lesser of the tax liability of the taxpayer or the [*applicable percentage*
19 *of the certified cost of the facility*] **amount of the tax credit**, as determined under ORS [*468.173 or*
20 *468.183, multiplied by the certified percentage allocable to pollution control,*] **468.170**, divided by the
21 number of years of the [*facility's*] **investment's** useful life. The number of years of the [*facility's*]
22 **investment's** useful life used in this calculation shall be the remaining number of years of useful
23 life at the time the [*facility*] **investment** is certified but not less than one year nor more than 10
24 years **for a base pollution control, nonpoint source pollution control, environmental en-**
25 **hancement or environmental improvement process. In the case of an environmental im-**
26 **provement process, the useful life of the investment shall be equivalent to the useful life of**
27 **the tangible machinery or equipment most closely associated with the process change, but**
28 **may not exceed 10 years. In the case of an investment that is an environmental management**
29 **system, the useful life of the investment shall be deemed to be one year.**

30 (3) To qualify for the credit the [*pollution control facility*] **environmental investment** must be
31 [*erected,*] constructed or installed in accordance with the provisions of ORS [*468.165 (1)*] **468.173** and
32 must be certified for tax relief under ORS 468.155 to 468.190.

33 (4) To qualify for a tax credit under this section:

34 (a) The taxpayer who is allowed the credit must be:

35 (A) The owner, including a contract purchaser, of the trade or business that utilizes Oregon
36 property [*requiring a pollution control facility to prevent or minimize pollution*] **implementing an**
37 **environmental investment to provide an environmental benefit;**

38 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
39 operates or utilizes such property; or

40 (C) A person who, as an owner, including a contract purchaser, or lessee, owns or leases [*a*
41 *pollution control facility*] **an environmental investment** that is used:

42 (i) In a business that is engaged in a production activity described in 40 C.F.R. 430.20 (as of July
43 1, 1998); or

44 (ii) For recycling, material recovery or energy recovery as defined in ORS 459.005; and

45 (b) The [*facility*] **investment** must be owned or leased during the tax year by the taxpayer

1 claiming the credit and must have been in use and operation during the tax year for which the
2 credit is claimed.

3 [(5) *Regardless of when the facility is erected, constructed or installed, a credit under this section*
4 *may be claimed by a taxpayer:*]

5 [(a) *For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin*
6 *on or after January 1, 1967.*]

7 [(b) *For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after*
8 *January 1, 1973.*]

9 [(c) *For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after*
10 *January 1, 1984.*]

11 [(6)] (5) [For a facility] **For an investment** certified under ORS 468.170, the maximum total
12 credit allowable [shall not exceed one-half of the certified cost of the facility multiplied by the certified
13 percentage allocable to pollution control] **may not exceed the amount of the tax credit determined**
14 **under ORS 468.170 (8).**

15 [(7)] (6) The credit provided by this section is not in lieu of any depreciation or amortization
16 deduction for the [facility] **investment** to which the taxpayer otherwise may be entitled under ORS
17 chapter 316, 317 or 318 for such year.

18 [(8)] (7) Upon any sale, exchange or other disposition of [a facility] **an investment**, notice
19 thereof shall be given to the Environmental Quality Commission [who], **which** shall revoke the
20 certification covering such [facility] **investment** as of the date of such disposition. Notwithstanding
21 ORS 468.170 (4)(c), the transferee may apply for a new certificate under ORS 468.170, but the tax
22 credit available to such transferee shall be limited to the amount of credit not claimed by the
23 transferor. The sale, exchange or other disposition of shares in an S corporation as defined in sec-
24 tion 1361 of the Internal Revenue Code or of a partner's interest in a partnership shall not be
25 deemed a sale, exchange or other disposition of [a facility] **an investment** for purposes of this sub-
26 section.

27 [(9)] (8) Any tax credit otherwise allowable under this section [which] **that** is not used by the
28 taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability
29 for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year
30 may be carried forward and used in the second succeeding tax year, and likewise, any credit not
31 used in that second succeeding tax year may be carried forward and used in the third succeeding
32 tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward
33 to and used in a tax year beyond the years specified in ORS 468.170.

34 [(10)] (9) The taxpayer's adjusted basis for determining gain or loss shall not be further de-
35 creased by any tax credits allowed under this section.

36 [(11)] (10) A person described in subsection (4)(a)(C) of this section may, but need not, operate
37 the [facility] **investment** or conduct a trade or business that utilizes property requiring the
38 [facility] **investment**. If more than one person has an interest under subsection (4)(a)[(C)] of this
39 section in the [facility] **investment**, only one person may claim the credit allowed under this section.
40 [However, portions of the facility may be certified separately in the same manner as provided in ORS
41 468.170 (8) if ownership of the portions is in more than one person.] The person claiming the credit
42 as between an owner, including a contract purchaser, and lessee under this subsection shall be
43 designated in a written statement signed by both the lessor and lessee of the [facility] **investment**.
44 This statement shall be filed with the Department of Revenue not later than the final day of the first
45 tax year for which a tax credit is claimed.

1 [(12)(a)] **(11)(a)** A taxpayer may not be allowed a tax credit under this section for any tax year
 2 during which the taxpayer is convicted of a felony under ORS 468.922 to 468.956 that is related to
 3 the [*facility*] **investment** for which the tax credit would otherwise be claimed, or for the four tax
 4 years succeeding the tax year during which the taxpayer is convicted.

5 (b) The amount of any tax credit that is otherwise allowable under this section but for para-
 6 graph (a) of this subsection shall be considered to be claimed by the taxpayer for purposes of de-
 7 termining the amount of tax credit that may be claimed in a tax year in which paragraph (a) of this
 8 subsection permits the taxpayer to claim the credit.

9 **SECTION 13.** Section 14 of this 2007 Act is added to and made a part of ORS chapter 315.

10 **SECTION 14.** (1) The owner of an environmental enhancement for which a certificate has
 11 been issued under ORS 468.170 that has not claimed any tax credit under ORS 315.304 may
 12 transfer the environmental enhancement certificate to a taxpayer subject to tax under ORS
 13 chapter 316, 317 or 318.

14 (2) In order to transfer an environmental enhancement certificate, the owner of the
 15 control and the taxpayer that will claim the credit shall jointly file a notice of tax credit
 16 transfer with the Department of Revenue on a form prescribed by the department and con-
 17 taining information prescribed by the department.

18 **SECTION 15.** Section 14 of this 2007 Act and the amendments to ORS 315.304 by section
 19 12 of this 2007 Act apply to tax years beginning on or after January 1, 2008.

20 **SECTION 16.** ORS 307.405 is amended to read:

21 307.405. (1) [*A pollution control facility or facilities which have been constructed in accordance*
 22 *with the requirements of ORS 468.165 (1), and]* **An environmental investment or investments that**
 23 have been certified by the Environmental Quality Commission pursuant to ORS 468.170 are exempt
 24 to the [*extent of the highest percentage figure*] **amount of the tax credit** certified by the Environ-
 25 mental Quality Commission [*as the portion of the actual cost properly allocable to the prevention,*
 26 *control or reduction of pollution*]. The exemption shall be allowed only if the taxpayer is a corpo-
 27 ration organized under ORS chapter 62 or 65, or any predecessor to ORS chapter 62 relating to in-
 28 corporation of cooperative associations, or is a subsequent transferee of such a corporation. If the
 29 subsequent transferee is organized under other than ORS chapter 62 or 65, the exemption shall only
 30 be allowed if the transfer occurs after the expiration of five years from the date of original certif-
 31 ication by the commission.

32 (2) To qualify for the ad valorem tax relief:

33 (a) The [*pollution control facility*] **environmental investment** must be erected, constructed or
 34 installed in connection with the trade or business conducted by the taxpayer on Oregon property
 35 owned or leased by said taxpayer.

36 (b) The taxpayer must be the owner of the trade or business that utilizes Oregon property re-
 37 quiring [*a pollution control facility*] **an environmental investment** to [*prevent or minimize*
 38 *pollution*] **provide an environmental benefit** or a person who, as a lessee under a written lease
 39 or pursuant to a written agreement, conducts the trade or business that operates or utilizes such
 40 property and who by the terms of such lease or agreement is obliged to pay the ad valorem taxes
 41 on such property. As used in this subsection, "owner" includes a contract purchaser.

42 (3) The ad valorem exemption of [*a facility*] **an investment** shall expire, in any event, 20 years
 43 from the date of its first certification for any owner or lessee by the Environmental Quality Com-
 44 mission.

45 (4) Upon any sale, exchange[,] or other disposition of [*a facility*] **an environmental investment**

1 **or the trade or business that implemented the investment**, notice thereof shall be given to the
 2 Environmental Quality Commission [*who*], **which** shall revoke the certification covering such [*facil-*
 3 *ity*] **investment** as of the date of such disposition. The transferee may apply for a new certificate
 4 under ORS 468.170, but the number of years of ad valorem tax exemption that may be claimed by
 5 the transferee is the remainder of the exemption period specified in subsection (3) of this section.

6 (5) If the [*facility*] **investment** also functions to prevent pollution from operations conducted on
 7 other property owned or leased by the taxpayer, the Environmental Quality Commission shall state
 8 in its certification of the [*facility*] **investment** the percentage of the [*facility*] **investment** used to
 9 prevent pollution from such qualifying trade or business conducted on such qualifying property. The
 10 exemption from ad valorem taxes under this section shall be limited to such percentage of the value
 11 of the [*facility*] **investment**.

12 **SECTION 17.** ORS 314.255 is amended to read:

13 314.255. (1) Upon receipt of notice of the revocation of a certification of a pollution control fa-
 14 cility **or environmental investment** pursuant to ORS 468.185 (1), the Department of Revenue im-
 15 mediately shall collect any taxes due by reason of such revocation, and shall have the benefit of all
 16 laws of this state pertaining to the collection of income and excise taxes. No assessment of such
 17 taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

18 (2) No tax relief shall be allowed under ORS 307.405 or 315.304 for any [*pollution control*
 19 *facility*] **environmental investment** constructed or used by or for the benefit of any governmental
 20 or quasi-governmental body or public corporation or form thereof, except where such [*facilities are*]
 21 **investment is** used for resource recovery.

22 **SECTION 18.** ORS 314.752 is amended to read:

23 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 24 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 25 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 26 allowable to the shareholders of the S corporation.

27 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
 28 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 29 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 30 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 31 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 32 manner prescribed under section 1377(a) of the Internal Revenue Code.

33 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
 34 of this section shall be determined as if such item were realized directly from the source from which
 35 realized by the corporation, or incurred in the same manner as incurred by the corporation.

36 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 37 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 38 316.117, then that provision shall apply to the nonresident shareholder.

39 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 40 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 41 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 42 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 43 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 44 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 45 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS

1 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 2 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 3 315.254 (youth apprenticeship sponsorship), ORS 315.304 [*pollution control facility*] (**environmental**
 4 **investment**), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation
 5 facilities), ORS 315.507 (electronic commerce), ORS 315.511 (advanced telecommunications facilities),
 6 ORS 315.604 (bone marrow transplant expenses) and ORS 317.115 (fueling stations necessary to op-
 7 erate an alternative fuel vehicle).

8 **SECTION 19.** ORS 315.324 is amended to read:

9 315.324. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
 10 ration, under ORS chapter 317) for the investments certified under ORS 468.466 shall be allowed if
 11 the taxpayer qualifies under subsection (4) of this section.

12 (2) A taxpayer shall be allowed a tax credit under this section each year for five tax years be-
 13 ginning in the tax year the investment receives final certification under ORS 468.466. The maximum
 14 credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or 10 per-
 15 cent of the certified cost of the taxpayer's investment.

16 (3) To qualify for the credit the investment must be made in accordance with the provisions of
 17 ORS 468.461.

18 (4)(a) The taxpayer who is allowed the credit must be:

19 (A) The owner of the business that collects, transports or processes reclaimed plastic or manu-
 20 factures a reclaimed plastic product;

21 (B) A person who, as a lessee or pursuant to an agreement, conducts the business that collects,
 22 transports or processes reclaimed plastic or manufactures a reclaimed plastic product; or

23 (C) A person who, as an owner, lessee or pursuant to an agreement, owns, leases or has a ben-
 24 efiticial interest in a business that collects, transports or processes reclaimed plastic or manufactures
 25 a reclaimed plastic product. Such person may, but need not, operate or conduct such a business that
 26 collects, transports or processes reclaimed plastic or manufactures a reclaimed plastic product. If
 27 more than one person has an interest under this subparagraph in a qualifying business and one or
 28 more persons receive a certificate, such person or persons may allocate all or any part of the cer-
 29 tified investment cost among any persons and their successors or assigns having an interest under
 30 this subparagraph. Such allocation shall be evidenced by a written statement signed by the person
 31 or persons receiving the certificate and designating the persons to whom the certified investment
 32 costs have been allocated and the amount of certified investment cost allocated to each. This
 33 statement shall be filed with the Department of Revenue not later than the final day of the first tax
 34 year for which a tax credit is claimed pursuant to such agreement. In no event shall the aggregate
 35 certified investment costs allocated between or among more than one person exceed the amount of
 36 the total certified cost of the investment. As used in this paragraph, "owner" includes a contract
 37 purchaser;

38 (b) The business must be owned or leased during the tax year by the taxpayer claiming the
 39 credit, except as otherwise provided in paragraph (a)(C) of this subsection, and must have been
 40 collecting, transporting or processing reclaimed plastic or manufacturing a reclaimed plastic product
 41 during the tax year for which the credit is claimed; and

42 (c) The reclaimed plastic collected, transported, processed or used to manufacture the reclaimed
 43 plastic product must not be an industrial waste generated by the person claiming the tax credit, but
 44 must be purchased from a plastic recycler other than the person claiming the tax credit.

45 (5) The credit provided by this section is not in lieu of any depreciation or amortization de-

1 duction for the investment to which the taxpayer otherwise may be entitled under ORS chapter 316
2 or 317 for such year.

3 (6) Upon any sale, exchange, or other disposition of a qualifying business, notice thereof shall
4 be given to the Environmental Quality Commission [*who*], **which** shall revoke the certification cov-
5 ering the investment of such business as of the date of such disposition. Notwithstanding ORS
6 468.461 (6), the transferee may apply for a new certificate under ORS 468.466, but the tax credit
7 available to such transferee shall be limited to the amount of credit not claimed by the transferor.
8 The sale, exchange or other disposition of shares in an S corporation as defined in section 1361 of
9 the Internal Revenue Code or of a partner's interest in a partnership shall not be deemed a sale,
10 exchange or other disposition of a business for purposes of this subsection.

11 (7) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
12 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
13 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
14 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
15 succeeding tax year may be carried forward and used in the third succeeding tax year and any
16 credit not used in that third succeeding tax year may be carried forward and used in the fourth
17 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
18 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
19 thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in
20 ORS 468.461.

21 (8) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by
22 any tax credits allowed under this section.

23 (9) A nonresident shall be allowed the credit under this section in the proportion provided in
24 ORS 316.117.

25 (10) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
26 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
27 ORS 316.117.

28 (11) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the
29 department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this
30 section shall be prorated or computed in a manner consistent with ORS 314.085.

31 (12) No credit shall be allowed under this section and under ORS 468.451 to 468.491 for any
32 portion of a facility, **control or environmental investment** for which the taxpayer claims a tax
33 credit or ad valorem tax relief under ORS 307.405, 315.304, 315.354, 315.356 and 469.185 to 469.225
34 or 316.116.

35 **SECTION 20.** ORS 315.356 is amended to read:

36 315.356. (1) If a taxpayer obtains a grant or tax credit from the federal government other than
37 an investment tax credit or a low income housing tax credit in connection with a facility which has
38 been certified by the Director of the State Department of Energy, the certified cost of the facility
39 shall be reduced on a dollar for dollar basis. Any income or excise tax credits which such taxpayer
40 would be entitled to under ORS 315.354 and 469.185 to 469.225 after any such reduction shall not
41 be reduced by such federal grants or tax credits. A taxpayer applying for a federal grant or credit
42 shall notify the Department of Revenue by certified mail within 30 days after each application, and
43 after the receipt of any grant.

44 (2) A taxpayer is eligible to participate in both this tax credit program and low interest,
45 government-sponsored loans.

1 (3) A taxpayer who receives a tax credit or ad valorem tax relief on [a *pollution control*
2 *facility*] **an environmental investment** or an alternative energy device under ORS 307.405, 315.304
3 or 316.116 is not eligible for a tax credit on the same [facility] **investment** or device under ORS
4 315.354 and 469.185 to 469.225.

5 (4) A credit may not be allowed under ORS 315.354 if the taxpayer has received a tax credit on
6 the same [facility] **investment** or device under ORS 315.324.

7 **SECTION 21. ORS 468.150, 468.163, 468.172 and 468.180 are repealed.**

8 **SECTION 22.** ORS 468A.096 is amended to read:

9 468A.096. (1) Any person may apply for certification under ORS 468A.098 of the cost of pro-
10 duction technologies or processes installed at a business location within this state and producing
11 emission levels and types not subject to regulation under 42 U.S.C. 7412 if:

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

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

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

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

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

22 (c) The cost of the technologies and processes does not qualify for certification under ORS
23 [468.165 and] 468.170. Subject to any applicable limits on credit amounts, the granting of certif-
24 ication of [a *pollution control facility*] **an environmental investment** under ORS [468.165 and]
25 468.170 shall not prevent an application under this section for the cost of technologies and processes
26 not included in the [*pollution control facility*] **environmental investment**.

27 (2) The application shall be made in writing in a form prescribed by the Department of Envi-
28 ronmental Quality and shall contain information on the actual cost of the technologies or processes
29 for which a certificate is sought and a statement explaining how the technologies or processes used
30 will prevent or eliminate emissions regulated under 40 C.F.R. 63.320 to 63.325, 63.340 to 63.347 or
31 63.460 to 63.469.

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

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

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

45 (6) The application shall be submitted within one year of installation of the technologies or

1 processes. Failure to file a timely application shall make the cost of a technology or process ineli-
 2 gible for certification. An application shall not be considered filed until it is complete and ready for
 3 processing. The commission may grant an extension of time, not exceeding one year, to file an ap-
 4 plication when circumstances beyond the control of the applicant would make a timely filing un-
 5 reasonable.

6 **SECTION 23. Section 24 of this 2007 Act is added to and made a part of ORS 468.155 to**
 7 **468.190.**

8 **SECTION 24. (1) In addition to the application fee required under ORS 468.165, an appli-**
 9 **cant for certification of an environmental investment under ORS 468.170 must pay to the**
 10 **Department of Environmental Quality a surcharge equal to 1.5 percent of the appropriate**
 11 **cost of the investment determined under ORS 468.190.**

12 **(2) All moneys collected under subsection (1) of this section shall be deposited in the**
 13 **Ground Water Protection Account established under section 25 of this 2007 Act.**

14 **SECTION 25. (1) The Ground Water Protection Account is established in the State**
 15 **Treasury, separate and distinct from the General Fund. Interest earned by the Ground Wa-**
 16 **ter Protection Account shall be credited to the account.**

17 **(2) Moneys in the Ground Water Protection Account are continuously appropriated to the**
 18 **Department of Environmental Quality for the purpose of funding ground water protection**
 19 **programs.**

20 **SECTION 26. Section 3, chapter 928, Oregon Laws 2001, is amended to read:**

21 **Sec. 3.** (1) Notwithstanding ORS 315.304 [(9)] **(8)**, in the case of a pollution control facility **or**
 22 **environmental investment** for which unexpired tax credits exist as of the tax year of the taxpayer
 23 that begins in the 2001 calendar year, if the facility **or investment** is in use and operation during
 24 the tax year immediately following the third succeeding tax year described in ORS 315.304 [(9)]
 25 **(8)**, any credit under ORS 315.304 remaining unused may be carried forward to that fourth suc-
 26 ceeding tax year. If the facility **or investment** is in use and operation during the tax year imme-
 27 diately following the fourth succeeding tax year, any credit under ORS 315.304 remaining unused
 28 may be carried forward to that fifth succeeding tax year. If the facility **or investment** is in use and
 29 operation during the tax year immediately following the fifth succeeding tax year, any credit under
 30 ORS 315.304 remaining unused may be carried forward to that sixth succeeding tax year, but may
 31 not be carried forward to any tax year thereafter.

32 **(2) For purposes of this section, unexpired tax credits include credits claimed pursuant to ORS**
 33 **315.304 (2) and credits carried over from previous tax years pursuant to ORS 315.304 [(9)] (8).**

34 **SECTION 27. ORS 307.430 is amended to read:**

35 **307.430.** (1) Upon receipt of notice of the revocation of a certification of a pollution control fa-
 36 cility **or an environmental investment** pursuant to ORS 468.185 (1)(a), the county assessor shall
 37 proceed to correct the assessment and tax roll or rolls from which the facility **or investment** was
 38 omitted from taxation, in the manner provided in ORS 311.216 to 311.232, and in all cases shall add
 39 interest in the manner provided in ORS 311.229. The five-year limitation provided for in ORS 311.205
 40 shall not apply to such corrections.

41 **(2) Upon receipt of notice of the revocation of a certification of a pollution control facility **or****
 42 **an environmental investment** pursuant to ORS 468.185 (1)(b), if the final revocation occurs before
 43 September 15 of any assessment year, the exemption otherwise allowable shall terminate and not
 44 be allowed beginning with the assessment and tax rolls prepared as of January 1 of the assessment
 45 year.

1 **SECTION 28.** ORS 465.015 is amended to read:

2 465.015. (1) Except as provided in subsection (2) of this section, a person shall, within 120 days
3 after notification in writing by the Department of Environmental Quality that the person meets the
4 definition of a toxics user, complete a toxics use reduction and hazardous waste reduction plan. At
5 a minimum, a plan shall include:

6 (a) A written policy articulating organizational support for the toxics use reduction and haz-
7 arduous waste reduction plan and a commitment by the organization to implement plan goals.

8 (b) A description of its scope and objectives, including the evaluation of technologies, procedures
9 and personnel training programs to ensure unnecessary toxic substances are not used and unneces-
10 sary waste is not generated.

11 (c) Internal analysis and periodic assessment of individual processes for toxics use and hazard-
12 ous waste generation.

13 (d) Identification of opportunities to reduce or eliminate toxics use and hazardous waste gener-
14 ation.

15 (e) Employee awareness and training programs that involve employees in toxics use reduction
16 and hazardous waste reduction planning and implementation.

17 (f) Institutionalization of the plan by incorporating the plan into management practices and
18 procedures.

19 (2) A person is not required to complete a plan if the person has implemented an environmental
20 management system, as defined in ORS [468.172] **468.155**.

21 (3) A toxics user shall incorporate into the plan and associated decision-making process, the
22 costs of using toxic substances and generating hazardous waste. The costs may represent, among
23 other things, the costs of management, liability insurance, regulatory compliance and oversight.

24 (4) As part of each plan, a toxics user shall evaluate technically and economically practicable
25 toxics use reduction and hazardous waste reduction opportunities for:

26 (a) Any toxic substance for which the toxics user reports as a large user; and

27 (b) Any hazardous waste representing 10 percent or more by weight of the cumulative hazardous
28 waste stream generated per year.

29 (5) A toxics user shall explain the rationale for each toxics use reduction and waste reduction
30 opportunity specified in the plan, including any impediments, such as technical or economic barriers,
31 to toxics use reduction and hazardous waste reduction.

32 (6) A toxics use reduction and hazardous waste reduction plan developed under this section or
33 the documentation for an environmental management system shall be retained at the facility. To
34 the extent that a plan or system may be considered a public record under ORS 192.410, the infor-
35 mation contained in the plan or system is confidential and is exempt from public disclosure pursuant
36 to ORS 192.502.

37 (7) It is the policy of this state that plans developed under this section be kept current and that
38 the plans reflect changes in toxics use over time. In furtherance of this policy, a toxics user may
39 update its plan or modify its environmental management system to reflect any changes.

40 **SECTION 29.** ORS 468.160 is amended to read:

41 468.160. In the interest of the public peace, health and safety, it is the policy of the State of
42 Oregon to assist in the prevention, control and reduction of air[, *water and noise*] **and water** pol-
43 lution and solid waste, hazardous wastes and used oil in this state by providing tax relief with re-
44 spect to Oregon facilities constructed to accomplish such prevention, control and reduction.

45 **SECTION 30.** ORS 468A.020 is amended to read:

1 468A.020. (1) Except as provided in this section and in ORS 476.380 and 478.960, the air pollution
2 laws contained in ORS chapters 468, 468A and 468B do not apply to:

3 (a) Agricultural operations and the growing or harvesting of crops and the raising of fowls or
4 animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,
5 [468.150,] 468A.555 to 468A.620 and 468A.992 and this section;

6 (b) Use of equipment in agricultural operations in the growth of crops or the raising of fowls
7 or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140,
8 [468.150,] 468A.555 to 468A.620 and 468A.992 and this section;

9 (c) Barbecue equipment used in connection with any residence;

10 (d) Agricultural land clearing operations or land grading;

11 (e) Heating equipment in or used in connection with residences used exclusively as dwellings for
12 not more than four families, except woodstoves which shall be subject to regulation under this sec-
13 tion, ORS 468A.460 to 468A.480, 468A.490 and 468A.515;

14 (f) Fires set or permitted by any public agency when such fire is set or permitted in the per-
15 formance of its official duty for the purpose of weed abatement, prevention or elimination of a fire
16 hazard, or instruction of employees in the methods of fire fighting, which in the opinion of the
17 agency is necessary;

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

20 (h) The propagation and raising of nursery stock, except boilers used in connection with the
21 propagation and raising of nursery stock;

22 (i) The propane flaming of mint stubble; or

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

25 (2) As used in subsection (1) of this section, "field burning" does not include propane flaming
26 of mint stubble.

27 **SECTION 31.** ORS 468A.605 is amended to read:

28 468A.605. The Department of Environmental Quality, in coordinating efforts under ORS 468.140,
29 [468.150,] 468A.020, 468A.555 to 468A.620 and 468A.992, shall:

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

32 (2) Monitor and prevent unlawful field burning.

33 **SECTION 32.** This 2007 Act takes effect on the 91st day after the date on which the
34 regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

35