

House Bill 3500

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 **as introduced**.

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.

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 315.304, 468.155,
3 468.165, 468.170, 468.172, 468.173 and 468.190; and prescribing an effective date.

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

5 **SECTION 1.** ORS 468.155 is amended to read:

6 468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pol-
7 lution control facility" or "facility" means any land, structure, building, installation, excavation,
8 machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or
9 an existing structure, building, installation, excavation, machinery, equipment or device reasonably
10 used, erected, constructed or installed by any person if:

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

16 (B) The sole purpose of such use, erection, construction or installation is to prevent, control or
17 reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to re-
18 cycle or provide for the appropriate disposal of used oil.

19 (b) Such prevention, control or reduction required by this subsection shall be accomplished by:

20 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of
21 treatment works for industrial waste as defined in ORS 468B.005;

22 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or
23 air contamination sources and the use of air cleaning devices as defined in ORS 468A.005;

24 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
25 emission sources as defined by rule of the Environmental Quality Commission;

26 (D) The use of a material recovery process which obtains useful material from material that
27 would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS
28 466.005, or used oil as defined in ORS 459A.555; or

29 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-
30 duce or eliminate hazardous waste as defined in ORS 466.005.

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 (2)(a) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” includes a
 2 nonpoint source pollution control facility.

3 (b) As used in this subsection, “nonpoint source pollution control facility” means a facility that
 4 the Environmental Quality Commission has identified by rule as reducing or controlling significant
 5 amounts of nonpoint source pollution.

6 (3) As used in ORS 468.155 to 468.190, “pollution control facility” or “facility” does not include:

7 (a) Air conditioners;

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

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

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

13 (A) Office buildings and furnishings;

14 (B) Parking lots and road improvements;

15 (C) Landscaping;

16 (D) External lighting;

17 (E) Company or related signs; and

18 (F) Automobiles;

19 (e) Replacement or reconstruction of all or a part of any facility for which a pollution control
 20 facility certificate has previously been issued under ORS 468.170, except:

21 (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement
 22 cost of the original facility due to a requirement imposed by the department, the federal Environ-
 23 mental Protection Agency or a regional air pollution authority, then the facility may be eligible for
 24 tax credit certification up to an amount equal to the difference between the cost of the new facility
 25 and the like-for-like replacement cost of the original facility; or

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

28 (f) Asbestos abatement; or

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

31 (4) As used in ORS 468.155 to 468.190, “enhanced pollution control facility” means a pol-
 32 lution control facility that:

33 (a) Achieves greater pollution control, waste reduction or waste recycling than is re-
 34 quired by federal, state or local law;

35 (b) Provides for the segregation of used oil for disposal in circumstances when the seg-
 36regation of oil for disposal is not otherwise required by federal, state or local law;

37 (c) Constitutes an environmental management system, as defined in ORS 468.172; or

38 (d) Includes any portion of process improvements implemented as a result of an envi-
 39ronmental management system that provides:

40 (A) A direct, substantial increase in pollution control by preventing, controlling or re-
 41ducing a substantial quantity of air, water or noise pollution or solid or hazardous waste;

42 (B) For recycling or the appropriate disposal of used oil; or

43 (C) For the substantial reduction in waste or recycling of waste beyond what is required
 44 by federal, state or local law.

45 (5) For purposes of subsection (4) of this section:

1 (a) An enhanced pollution control facility does not include the cleanup of land or
2 watercourses of this state.

3 (b) A pollution control facility may constitute an enhanced pollution control facility be-
4 cause the facility is erected, constructed or installed in advance of the time the facility is
5 required to be erected, constructed or installed by federal, state or local law. The certified
6 costs of a facility described in this paragraph shall be subject to ORS 468.190 (8).

7 (c) The prevention, control or reduction required in order for a facility to constitute an
8 enhanced pollution control facility must be accomplished by:

9 (A) The disposal, elimination or redesign of processes that results in:

10 (i) A reduction in industrial waste, as defined in ORS 468B.005;

11 (ii) A reduction in air contaminants, air pollution or air contamination sources, as de-
12 fined in ORS 468A.005;

13 (iii) An increase in the use of air cleaning devices, as defined in ORS 468A.005; or

14 (iv) A substantial reduction in noise pollution or noise emission sources as defined by
15 rules of the Environmental Quality Commission; or

16 (B) The use of a material recovery process that obtains useful material from material
17 that would otherwise be:

18 (i) Solid waste, as defined in ORS 459.005;

19 (ii) Hazardous waste, as defined in ORS 466.005; or

20 (iii) Used oil, as defined in ORS 459A.555.

21 (d) "Base pollution control certified costs" mean costs that are determined under ORS
22 468.173 to be attributable to pollution control facilities that do not constitute enhanced pol-
23 lution control facilities.

24 (e) "Environmental enhancement certified costs" mean costs that are determined under
25 ORS 468.173 to be attributable to enhanced pollution control and that do not include any base
26 pollution control certified costs.

27 **SECTION 2.** ORS 468.165 is amended to read:

28 468.165. (1) Any person may apply to the Environmental Quality Commission for certification
29 under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed
30 by the person in Oregon if:

31 (a) The air or water pollution control facility was erected, constructed or installed on or after
32 January 1, 1967.

33 (b) The noise pollution control facility was erected, constructed or installed on or after January
34 1, 1977.

35 (c) The solid waste facility was under construction on or after January 1, 1973, the hazardous
36 waste or used oil facility was under construction on or after October 3, 1979, and if:

37 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and
38 (2);

39 (B) The facility will utilize material that would otherwise be solid waste as defined in ORS
40 459.005, hazardous waste as defined in ORS 466.005 or used oil as defined in ORS 459A.555 by me-
41 chanical process or chemical process or through the production, processing including presegrega-
42 tion, or use of, materials which have useful chemical or physical properties and which may be
43 used for the same or other purposes, or materials which may be used in the same kind of application
44 as its prior use without change in identity;

45 (C) The end product of the utilization is an item of real economic value;

1 (D) The end product of the utilization, other than a usable source of power, is competitive with
 2 an end product produced in another state; and

3 (E) The Oregon law regulating solid waste imposes standards at least substantially equivalent
 4 to the federal law.

5 (d) The hazardous waste control facility was erected, constructed or installed on or after Janu-
 6 ary 1, 1984, and if:

7 (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155 (1) and
 8 (2); and

9 (B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as de-
 10 fined in ORS 466.005.

11 **(e) The facility is an enhanced pollution control facility that was erected, constructed or**
 12 **installed on or after January 1, 2006.**

13 (2) The application shall be made in writing in a form prescribed by the Department of Envi-
 14 ronmental Quality and shall contain information on the actual cost of the facility, a description of
 15 the materials incorporated therein, all machinery and equipment made a part thereof, the existing
 16 or proposed operational procedure thereof, and a statement of the purpose of prevention, control or
 17 reduction of air, water or noise pollution or solid or hazardous waste or recycling or appropriate
 18 disposal of used oil served or to be served by the facility and the portion of the actual cost properly
 19 allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazard-
 20 ous waste or to recycling or appropriately disposing of used oil. **In the case of an enhanced pol-
 21 lution control facility, the application shall also describe in quantitative terms the extent to
 22 which the facility will constitute an enhanced pollution control facility and the actual cost
 23 allocable to costs that the applicant considers will be environmental enhancement certified
 24 costs upon certification. An application for an enhanced pollution control facility shall in-
 25 clude an engineering analysis, prepared by an engineer licensed under ORS chapter 672,
 26 documenting the extent to which the facility will achieve enhanced pollution control and the
 27 actual cost allocable to the enhancement.**

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

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

32 (5) By rule and after hearing the commission may adopt a schedule of reasonable fees which the
 33 department may require of applicants for certificates issued under ORS 468.167 and 468.170. Before
 34 the adoption or revision of any such fees the commission shall estimate the total cost of the program
 35 to the department. The fees shall be based on the anticipated cost of filing, investigating, granting
 36 and rejecting the applications and shall be designed not to exceed the total cost estimated by the
 37 commission. Any excess fees shall be held by the department and shall be used by the commission
 38 to reduce any future fee increases. The fee may vary according to the size and complexity of the
 39 facility. The fees may not be considered by the commission as part of the cost of the facility to be
 40 certified.

41 (6) The application shall be submitted after construction of the facility is substantially completed
 42 and the facility is placed in service and within one year after construction of the facility is sub-
 43 stantially completed. Failure to file a timely application shall make the facility ineligible for tax
 44 credit certification. An application may not be considered filed until it is complete and ready for
 45 processing. The commission may grant an extension of time to file an application for circumstances

beyond the control of the applicant that would make a timely filing unreasonable. However, the period for filing an application may not be extended to a date beyond December 31, [2008] **2014**.

SECTION 3. ORS 468.170 is amended to read:

468.170. (1) The Environmental Quality Commission shall act on an application for certification before the 120th day after the filing of the application under ORS 468.165. The action of the commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil. The actual cost or portion of the actual cost certified may not exceed the taxpayer's own cash investment in the facility or portion of the facility. Each certificate shall bear a separate serial number for each such facility.

In the case of an application for an enhanced environmental control facility, the certified costs shall be comprised of the following two components:

(a) Base pollution control certified costs; and

(b) Environmental enhancement certified costs.

(2) If the commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil than was claimed in the application for certification, **or lesser environmental enhancement certified costs than was claimed in the application**, the commission shall cause written notice of its action, and a concise statement of the findings and reasons therefor, to be sent by registered or certified mail to the applicant before the 120th day after the filing of the application.

(3) If the application is rejected for any reason, including the information furnished by the applicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or appropriately disposing of used oil, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the commission.

(4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165 (1);

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, ORS chapters 459, 459A, 466 and 467 and ORS chapters 468, 468A and 468B and rules thereunder.

(b) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.

(c) If one or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.

(d) A certificate under this section is effective for purposes of tax relief in accordance with ORS 307.405 and 315.304 if, on or before December 31, [2007] **2013**, erection, construction or installation

1 of the facility is completed, the facility is placed in service and the application for certification is
2 filed with the commission under ORS 468.165.

3 (5) A person receiving a certificate under this section may take tax relief only under ORS
4 315.304, depending upon the tax status of the person's trade or business except that:

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

7 (b)(A) A corporation organized under ORS chapter 62 or any predecessor to ORS chapter 62
8 relating to the incorporation of cooperative associations or the subsequent transferee of the corpo-
9 ration may make an irrevocable election to take the tax relief under either ORS 315.304 or 307.405.
10 The corporation shall make the election at the time of applying for the certificate, except that a
11 corporation receiving a certificate prior to December 31, 1995, may make the election at any time
12 on or before December 31, 1995. If a corporation elects on or before December 31, 1995, to take the
13 tax relief under ORS 315.304, any income taxes, penalties or interest otherwise payable by the cor-
14 poration for improperly taking the tax relief under ORS 315.304 in a taxable year prior to making
15 the election shall be waived.

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

18 (i) All existing or future facilities that are certified under this section, if the corporation claimed
19 a credit under ORS 315.304 for a tax year beginning prior to December 31, 1995; or

20 (ii) All future facilities that are certified under this section, if the corporation did not claim a
21 credit under ORS 315.304 for a tax year beginning prior to December 31, 1995.

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

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

30 (8) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under
31 this section if ownership of the portions is in more than one person. Certification of such portions
32 of a facility shall include certification of the actual cost of the portion of the facility to the person
33 receiving the certification. The actual cost certified for all portions of a facility separately certified
34 under this subsection may not exceed the total cost of the facility that would have been certified
35 under one certificate. The provisions of ORS 315.304 (8) apply to any sale, exchange or other dis-
36 position of a certified portion of a facility.

37 (9) A certificate issued under this section shall state the applicable percentage of the certified
38 cost of the facility, as determined under ORS 468.173.

39 (10) If the **erection**, construction or installation of a facility is commenced after December 31,
40 2005, the facility may be certified only if the facility or applicant is described in ORS 468.173 (3)
41 **or** (4). A facility described in ORS 468.173 (2) for which construction or installation is commenced
42 after December 31, 2005, may not be certified under this section.

43 **SECTION 4.** ORS 468.172 is amended to read:

44 468.172. (1) As used in ORS 468.173, "environmental management system" means a **systematic**,
45 **documented** continual cycle of planning, implementing, reviewing and improving the actions

1 undertaken at the facility to meet environmental obligations and improve environmental perform-
 2 ance that meet:

3 [(1)] (a) The standards established by the International Organization for Standardization under
 4 ISO 14001;

5 [(2)] (b) The standards established in the Green Permit program established under ORS 468.501
 6 to 468.521; or

7 [(3)] (c) Other standards that meet criteria established by the Environmental Quality Commis-
 8 sion by rule.

9 **(2) In order to qualify as an enhanced pollution control facility, the environmental man-
 10 agement system must include a means to measure and report how much pollution is reduced
 11 or prevented.**

12 **SECTION 5.** ORS 468.173 is amended to read:

13 468.173. For purposes of ORS 315.304[, *the applicable percentage of the certified cost of a facility*
 14 *shall be one of the following*]:

15 (1) **The applicable percentage of the certified cost of a facility shall be**,if the facility is
 16 certified under ORS 468.155 to 468.190 (1999 Edition) or if construction or installation of the facility
 17 is commenced prior to January 1, 2001, and completed prior to January 1, 2004, 50 percent.

18 (2) **The applicable percentage of the certified cost of a facility shall be**,except as provided
 19 in subsection (1) or (3) of this section, if the facility is certified pursuant to application for certif-
 20 ication filed on or after January 1, 2002, **and before January 1, 2007**, and:

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

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

25 (3) **The applicable percentage of the certified cost of a facility shall be**,if certified pursuant
 26 to application for certification filed on or after January 1, 2002, **and before January 1, 2007**, 35
 27 percent if:

28 (a) The applicant is certified under International Organization for Standardization standard ISO
 29 14001;

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

31 (c) The facility is a nonpoint source or is regulated as a confined animal feeding operation under
 32 ORS 468B.200 to 468B.230;

33 (d) The facility is used for material recovery or recycling, as those terms are defined in ORS
 34 459.005;

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

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

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

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

45 (i) The applicant demonstrates to the Department of Environmental Quality that the applicant

1 uses an environmental management system at the facility. In order for the department to determine
 2 that the applicant uses an environmental management system at the facility:

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

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

20 **(4) If certified pursuant to application for certification filed on or after January 1, 2007,**
 21 **and if otherwise qualified under subsection (3) of this section, the certified cost for which a**
 22 **credit may be claimed is the sum of the base pollution control certified costs and the envi-**
 23 **ronmental enhancement certified costs, determined after application of the following appli-**
 24 **cable percentages:**

25 **(a) The applicable percentage of base pollution control certified costs, is:**

- 26 **(A) 20 percent, if certified prior to January 1, 2008;**
- 27 **(B) 15 percent, if certified prior to January 1, 2009;**
- 28 **(C) 10 percent, if certified prior to January 1, 2010;**
- 29 **(D) Five percent, if certified prior to January 1, 2011; and**
- 30 **(E) Zero percent, if certified on or after January 1, 2011.**

31 **(b) The applicable percentage of environmental enhancement certified costs is:**

- 32 **(A) 25 percent, if certified prior to January 1, 2008;**
- 33 **(B) 30 percent, if certified prior to January 1, 2009;**
- 34 **(C) 35 percent, if certified prior to January 1, 2010;**
- 35 **(D) 40 percent, if certified prior to January 1, 2011; and**
- 36 **(E) 45 percent, if certified on or after January 1, 2011.**

37 **SECTION 6.** ORS 468.190 is amended to read:

38 468.190. (1) Subject to subsections (2), (3) and (4) of this section, in establishing the portion of
 39 costs properly allocable to the prevention, control or reduction of air, water or noise pollution or
 40 solid or hazardous waste or to recycling or appropriately disposing of used oil for facilities qualify-
 41 ing for certification under ORS 468.170, the Environmental Quality Commission shall consider the
 42 following factors:

- 43 (a) If applicable, the extent to which the facility is used to recover and convert waste products
 44 into a salable or usable commodity.
- 45 (b) The estimated annual percent return on the investment in the facility.

1 (c) If applicable, the alternative methods, equipment and costs for achieving the same pollution
 2 control objective.

3 (d) Any related savings or increase in costs which occur or may occur as a result of the in-
 4 stallation of the facility.

5 (e) Any other factors which are relevant in establishing the portion of the actual cost of the
 6 facility properly allocable to the prevention, control or reduction of air, water or noise pollution or
 7 solid or hazardous waste or to recycling or appropriately disposing of used oil.

8 (2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments
 9 of one percent. If zero percent, the commission shall issue an order denying certification.

10 (3) If the cost of the facility (or facilities certified under one certificate) does not exceed \$50,000,
 11 the portion of the actual costs properly allocable shall be in the proportion that the ratio of the time
 12 the facility is used for prevention, control or reduction of air, water or noise pollution or solid or
 13 hazardous waste or to recycling or appropriately disposing of used oil bears to the entire time the
 14 facility is used for any purpose.

15 (4) In the case of a business described in ORS 315.304 (4)(a)(C)(i), the Environmental Quality
 16 Commission shall consider the factors listed in subsection (1) of this section as if the person oper-
 17 ating the facility or conducting the trade or business that utilizes property requiring such a facility
 18 were the applicant for the credit, regardless of whether the person is the lessee or lessor of the fa-
 19 cility.

20 **(5) In the case of an enhanced pollution control facility, in addition to the other factors**
 21 **set forth in this section, the commission shall consider the following factors:**

22 **(a) The actual costs of the facility as contrasted with the costs that would be incurred**
 23 **in order to erect, construct or install a facility that complied with but did not exceed existing**
 24 **federal, state or local law, including but not limited to permit limits existing at the time the**
 25 **costs are incurred and permit limits that will become applicable during the useful life of the**
 26 **facility.**

27 **(b) An engineering analysis of the portion of the facility and the related costs that pro-**
 28 **vide environmental benefits beyond what is required by federal, state or local law.**

29 **(c) In the case of a facility that constitutes enhanced storm water pollution control or**
 30 **other water pollution control where permits do not apply, the application of permit**
 31 **benchmarks shall establish the point of compliance with existing law.**

32 **(6) In considering the portion of costs properly allocable to base control certified costs**
 33 **or environmental enhancement certified costs, the commission shall exclude costs for cor-**
 34 **rective actions required under a permit issued by this state or by the federal government.**

35 **(7) In the case of an enhanced pollution control facility that is an environmental man-**
 36 **agement system, the commission shall include all costs directly incurred in development and**
 37 **implementation of the system, including but not limited to:**

38 **(a) Internal staff and contractors that develop or implement the system; and**

39 **(b) Process improvement implementation costs that provide a direct and substantial in-**
 40 **crease in pollution control, waste reduction or waste recycling beyond what is required by**
 41 **law and also beyond the cost of an equivalent process that does not provide equivalent envi-**
 42 **ronmental benefits.**

43 **(8) If a pollution control facility is an enhanced pollution control facility because the fa-**
 44 **ility is erected, constructed or installed in advance of the time the facility is required by**
 45 **law, the commission shall allocate that portion of total costs to environmental enhancement**

1 **certified costs based on the pro rata portion of costs that is attributable to the period of time**
 2 **before the facility is required by law as compared to the total useful life of the facility.**

3 [(5)] (9) The commission may adopt rules establishing methods to be used to determine the por-
 4 tion of costs properly allocable to the prevention, control or reduction of air, water or noise pol-
 5 lution or solid or hazardous waste or to recycling or appropriately disposing of used oil.

6 **SECTION 7. Section 8 of this 2007 Act is added to and made a part of ORS 468.155 to**
 7 **468.190.**

8 **SECTION 8. (1) On or before March 15 of each year in which a taxpayer claims a tax**
 9 **credit under ORS 315.304 for a pollution control facility for the preceding tax year, the person**
 10 **that owns the facility shall report to the Department of Environmental Quality, on a form**
 11 **prescribed by the department, that:**

12 (a) **Attests to the continued use of the facility and the continued environmental benefit**
 13 **arising from the use of the facility; and**

14 (b) **Identifies and quantifies the environmental benefit of the facility.**

15 (2) **In the case of a property owner who claims an exemption for a pollution control fa-**
 16 **ility under ORS 307.405, the property owner shall submit the report described in subsection**
 17 **(1) of this section on or before September 15 of the tax year.**

18 (3) **If the owner of the facility fails to file a report by the date prescribed in this section,**
 19 **the Environmental Quality Commission may order revocation of the certification under ORS**
 20 **468.185.**

21 (4) **The commission shall prepare and submit a written report to the Legislative Assem-**
 22 **ble each biennium that summarizes the information reported by facility owners under this**
 23 **section.**

24 **SECTION 9. ORS 315.304 is amended to read:**

25 315.304. (1) A credit against taxes imposed by ORS chapter 316 (or, if the taxpayer is a corpo-
 26 ration, under ORS chapter 317 or 318) for a pollution control facility or facilities certified under
 27 ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4) of this section.

28 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year
 29 shall be the lesser of the tax liability of the taxpayer or the **amount determined by applying the**
 30 **applicable percentage [of] to the certified cost of the facility, as determined under ORS 468.173 or**
 31 **468.183, multiplied by the certified percentage allocable to pollution control, divided by the number**
 32 **of years of the facility's useful life. The number of years of the facility's useful life used in this**
 33 **calculation shall be the remaining number of years of useful life at the time the facility is certified**
 34 **but not less than one year nor more than 10 years. In the case of a facility that is an environ-**
 35 **mental improvement system, the useful life of the facility shall be deemed to be five years,**
 36 **unless the system also results in a process change, in which case the useful life of the facility**
 37 **shall be equivalent to the useful life of the tangible machinery or equipment most closely**
 38 **associated with the process change, not to exceed 10 years.**

39 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
 40 stalled in accordance with the provisions of ORS 468.165 (1) and must be certified for tax relief un-
 41 der ORS 468.155 to 468.190.

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

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

44 (A) The owner, including a contract purchaser, of the trade or business that utilizes Oregon
 45 property requiring a pollution control facility to prevent or minimize pollution;

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

3 (C) A person who, as an owner, including a contract purchaser, or lessee, owns or leases a
 4 pollution control facility that is used:

5 (i) In a business that is engaged in a production activity described in 40 C.F.R. 430.20 (as of July
 6 1, 1998); or

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

8 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit
 9 and must have been in use and operation during the tax year for which the credit is claimed.

10 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
 11 tion may be claimed by a taxpayer:

12 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
 13 on or after January 1, 1967.

14 (b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after
 15 January 1, 1973.

16 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
 17 January 1, 1984.

18 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not ex-
 19 ceed one-half of the certified cost of the facility multiplied by the certified percentage allocable to
 20 pollution control.

21 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
 22 duction for the facility to which the taxpayer otherwise may be entitled under ORS chapter 316, 317
 23 or 318 for such year.

24 (8) Upon any sale, exchange or other disposition of a facility, notice thereof shall be given to
 25 the Environmental Quality Commission who shall revoke the certification covering such facility as
 26 of the date of such disposition. Notwithstanding ORS 468.170 (4)(c), the transferee may apply for a
 27 new certificate under ORS 468.170, but the tax credit available to such transferee shall be limited
 28 to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of
 29 shares in an S corporation as defined in section 1361 of the Internal Revenue Code or of a partner's
 30 interest in a partnership shall not be deemed a sale, exchange or other disposition of a facility for
 31 purposes of this subsection.

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

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

41 (11) A person described in subsection (4)(a)(C) of this section may, but need not, operate the
 42 facility or conduct a trade or business that utilizes property requiring the facility. If more than one
 43 person has an interest under subsection (4)(a)(C) of this section in the facility, only one person may
 44 claim the credit allowed under this section. However, portions of the facility may be certified sepa-
 45 rately in the same manner as provided in ORS 468.170 (8) if ownership of the portions is in more

1 than one person. The person claiming the credit as between an owner, including a contract pur-
 2 chaser, and lessee under this subsection shall be designated in a written statement signed by both
 3 the lessor and lessee of the facility. This statement shall be filed with the Department of Revenue
 4 not later than the final day of the first tax year for which a tax credit is claimed.

5 (12)(a) A taxpayer may not be allowed a tax credit under this section for any tax year during
 6 which the taxpayer is convicted of a felony under ORS 468.922 to 468.956 that is related to the fa-
 7 cility for which the tax credit would otherwise be claimed, or for the four tax years succeeding the
 8 tax year during which the taxpayer is convicted.

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

13 **SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS chapter 315.**

14 **SECTION 11. (1) The owner of a certified pollution control facility that has not claimed**
 15 **any tax credit under ORS 315.304 may transfer the pollution control facility certificate to a**
 16 **taxpayer subject to tax under ORS 316, 317 or 318.**

17 **(2) In order to transfer a pollution control facility certificate, the owner of the facility**
 18 **and the taxpayer that will claim the credit shall jointly file a notice of tax credit transfer**
 19 **with the Department of Revenue on a form prescribed by the department and containing the**
 20 **information prescribed by the department.**

21 **SECTION 12. Section 11 of this 2007 Act and the amendments to ORS 315.304 by section**
 22 **9 of this 2007 Act apply to tax years beginning on or after January 1, 2007.**

23 **SECTION 13. This 2007 Act takes effect on the 91st day after the date on which the**
 24 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**