

**Enrolled
Senate Bill 737**

Sponsored by Senators WALKER, G GEORGE; Senator DEVLIN, Representative DINGFELDER

CHAPTER

AN ACT

Relating to water quality; appropriating money; limiting expenditures; and declaring an emergency.

Whereas it is the goal of the State of Oregon’s water quality protection scheme to protect, maintain and improve the quality of the waters of this state; and

Whereas persistent, bioaccumulative and toxic pollutants can pose a threat to the health and well-being of humans, fish and wildlife, especially aquatic species; and

Whereas there are many different sources of persistent, bioaccumulative and toxic pollutants that contribute to the presence of such pollutants in the waters of this state; and

Whereas the State of Oregon currently does not have a comprehensive approach toward such pollutants and their sources or an economically feasible alternative for reducing these pollutants; now, therefore,

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

SECTION 1. Sections 2 to 8 of this 2007 Act are added to and made a part of ORS chapter 468B.

SECTION 2. As used in sections 2 to 8 of this 2007 Act:

(1) “Legacy” means a pollutant, the use of which has been banned or restricted for several years, that remains at detectable levels in sediment and tissue samples.

(2) “Municipality” means a city or special district that operates and maintains a sewage treatment facility.

(3) “Permittee” means a municipality in possession of a National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the Department of Environmental Quality pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(4) “Persistent pollutant” means a substance that is toxic and either persists in the environment or accumulates in the tissues of humans, fish, wildlife or plants.

SECTION 3. (1) The Department of Environmental Quality shall conduct a study of persistent pollutants discharged in the State of Oregon and report the results of that study to an appropriate interim committee of the Legislative Assembly related to the environment by June 1, 2010.

(2) The department’s report shall include, but is not limited to, the following components:

(a) A priority listing of persistent pollutants that pose a threat to the waters of this state, as defined in ORS 196.800, and have documented harmful effects on the health and well-being of humans, fish or wildlife, especially aquatic species, based on factors including, but not limited to:

(A) Toxicological and bioaccumulative factors;

(B) The feasibility of reduction options;
(C) Data concerning pollutant dose and response; and
(D) Data regarding the magnitude and significance of specific ongoing and legacy discharges.

(b) Identification of individual point, nonpoint and legacy sources of priority listed persistent pollutants from existing data, including an analysis identifying the quantity, concentration and volume of such pollutants discharged by individual sources on an annual basis.

(c) An evaluation and assessment of source reduction and technological control measures that can reduce the discharge of persistent pollutants into the waters of this state, including an assessment of the costs and effectiveness of such measures and which measures should be prioritized for reducing such pollutants.

(3) The department may contract with a private organization to conduct the study required under this section.

(4) The department shall consult with interested local and tribal governments, state and federal agencies and other private organizations in preparing the report required under this section.

(5)(a) The department shall prepare and report the priority listing described in subsection (2)(a) of this section to the Seventy-fifth Legislative Assembly, in the manner provided by ORS 192.245, on or before June 1, 2009.

(b) After June 1, 2009, the department shall report to the Legislative Assembly or an interim committee related to the environment whenever the department adds to, or removes from, the priority listing described in subsection (2)(a) of this section a persistent pollutant.

(6) For the purpose of defraying the cost of conducting and administering the study under this section, the department may impose a surcharge on permits issued by the department to permittees. Moneys collected under this subsection shall be deposited into the Persistent Pollutant Control Account established under section 7 of this 2007 Act.

SECTION 4. (1)(a) By July 1, 2011, each permittee shall submit to the Department of Environmental Quality a plan for reducing the permittee's discharges of persistent pollutants listed on the priority listing described in section 3 (2)(a) of this 2007 Act:

(A) That occur in concentrations greater than the maximum contaminant levels established by the National Primary Drinking Water Regulations adopted pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f et seq.; or

(B) For which no maximum contaminant levels have been adopted, but that the Environmental Quality Commission determines by rule should be included in permittees' plans for reducing permittees' discharges of priority-listed persistent pollutants.

(b) Determinations made by the commission under this subsection regarding persistent pollutants are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048.

(2) Plans submitted to the department pursuant to subsection (1) of this section shall include, but are not limited to:

(a) A specific description of the concentrations and estimated annual quantity of persistent pollutants that are discharged, based on water quality sampling data.

(b) The identification of measures to reduce the discharge of persistent pollutants.

(c) The identification of focused goals for reduction of persistent pollutants.

(3) Measures identified to reduce persistent pollutants may include, but are not limited to:

(a) Collecting legacy pesticides;

(b) Reducing the use of mercury amalgams by dental offices;

(c) Implementing technological control measures;

(d) Working with businesses and manufacturers to reduce discharges through material process changes;

(e) Collecting arm cuffs from blood pressure monitors;

(f) Requiring contractors to return heating, ventilating and air-conditioning system thermostats;

(g) Recycling fluorescent lamps;

(h) Recycling rechargeable batteries;

(i) Monitoring abandoned mining sites;

(j) Managing sediments contaminated with persistent pollutants;

(k) Instituting policies for cleaning school laboratories;

(L) Instituting pharmaceutical take-back programs; and

(m) Taking steps to reduce the presence of mercury in schools.

(4) The department shall require, as a condition of receiving a new or renewed National Pollutant Discharge Elimination System permit or water pollution control facility permit issued by the department pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more, that municipal applicants:

(a) Implement plans to reduce the discharge of persistent pollutants according to pollution reduction goals adopted by applicants for new permits.

(b) Implement plans to reduce the discharge of persistent pollutants according to pollution reduction goals adopted by applicants and submit updated discharge reduction plans with applications to renew a permit.

(5) The department shall incorporate a plan submitted pursuant to subsection (1) of this section by a municipal applicant into a new or renewed National Pollutant Discharge Elimination System or water pollution control facility permit issued to the applicant.

SECTION 5. In accordance with applicable provisions of ORS chapter 183, the Environmental Quality Commission may adopt rules necessary for the administration of sections 3 and 4 of this 2007 Act.

SECTION 6. (1) The Department of Environmental Quality may apply to any circuit court for an order compelling compliance with any rule adopted by the Environmental Quality Commission under section 5 of this 2007 Act. If the court finds that the defendant is not complying with any rule so adopted, the court shall grant an injunction requiring compliance. The court, on motion and affidavits, may grant a preliminary injunction ex parte upon such terms as are just.

(2) The department need not give security before the issuance of an injunction under this section.

(3) The court may award reasonable attorney fees and costs to the department if the department prevails in an action under this section.

SECTION 7. The Persistent Pollutant Control Account is established, separate and distinct from the General Fund. Moneys may be credited to the account from any public or private source. Moneys in the account are continuously appropriated to the Department of Environmental Quality and may be used only for the purposes described in sections 3 to 6 of this 2007 Act.

SECTION 8. All moneys received by the Department of Environmental Quality under section 6 of this 2007 Act shall be deposited to the credit of the Persistent Pollutant Control Account established under section 7 of this 2007 Act.

SECTION 9. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter __, Oregon Laws 2007 (Enrolled House Bill 5022), for the biennium beginning July 1, 2007, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and certain federal funds, but excluding lottery funds and other federal funds, collected or received by the Department of Environmental Quality, is increased by \$229,430 for the purpose of carrying out the provisions of sections 2 to 8 of this 2007 Act.

SECTION 10. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate June 22, 2007

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Secretary of Senate

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President of Senate

Passed by House June 26, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State