

Senate Bill 737

Sponsored by Senators WALKER, G GEORGE

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**.

Directs Department of Environmental Quality to condition discharge permits to prohibit discharge of persistent bioaccumulative toxins in amounts or concentrations that may be harmful to aquatic life or human health.

A BILL FOR AN ACT

1
2 Relating to water quality; creating new provisions; and amending ORS 468B.005, 468B.025, 468B.050
3 and 468B.053.

4 Whereas Oregon statutes provide that "pollution of any of the waters of the state is declared
5 to be not a reasonable or natural use of such waters and to be contrary to the public policy of the
6 State of Oregon"; and

7 Whereas the Department of Environmental Quality designates certain portions of the waters as
8 "mixing zones" and "zones of immediate dilution," within which the water quality standards for
9 acute and chronic toxicity may be violated; and

10 Whereas discharges of certain wastes into these zones may actually cause acute and chronic
11 toxicity problems in flora and fauna and pose a threat to human health; and

12 Whereas the designation of mixing zones or zones of immediate dilution is contrary to the policy
13 of the State of Oregon; and

14 Whereas the purpose of this legislation is to prohibit the discharge of toxic wastes in toxic
15 concentrations into the waters of the state; now, therefore,

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

17 **SECTION 1.** ORS 468B.005 is amended to read:

18 468B.005. As used in the laws relating to water pollution, unless the context requires otherwise:

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

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

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

26 (4) "**Persistent bioaccumulative toxin**" means a toxic substance that accumulates in plant
27 or animal tissue and remains in the tissue for substantial periods of time.

28 [(4)] (5) "Point source" means any discernible, confined and discrete conveyance, including but
29 not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,
30 concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or
31 may be discharged. "Point source" does not include agricultural storm water discharges and return

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 flows from irrigated agriculture.

2 [(5)] (6) "Pollution" or "water pollution" means such alteration of the physical, chemical or bi-
 3 ological properties of any waters of the state, including change in temperature, taste, color,
 4 turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or
 5 other substance into any waters of the state, which will or tends to, either by itself or in connection
 6 with any other substance, create a public nuisance or which will or tends to render such waters
 7 harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial,
 8 industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish
 9 or other aquatic life or the habitat thereof.

10 [(6)] (7) "Sewage" means the water-carried human or animal waste from residences, buildings,
 11 industrial establishments or other places, together with such ground water infiltration and surface
 12 water as may be present. The admixture with sewage of wastes or industrial wastes shall also be
 13 considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255,
 14 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

15 [(7)] (8) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and
 16 all other structures, devices, appurtenances and facilities used for collecting or conducting wastes
 17 to an ultimate point for treatment or disposal.

18 [(8)] (9) "Treatment works" means any plant or other works used for the purpose of treating,
 19 stabilizing or holding wastes.

20 [(9)] (10) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radio-
 21 active or other substances which will or may cause pollution or tend to cause pollution of any wa-
 22 ters of the state.

23 [(10)] (11) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reser-
 24 vairs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean
 25 within the territorial limits of the State of Oregon and all other bodies of surface or underground
 26 waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private
 27 waters which do not combine or effect a junction with natural surface or underground waters),
 28 which are wholly or partially within or bordering the state or within its jurisdiction.

29 **SECTION 2.** ORS 468B.025 is amended to read:

30 468B.025. (1) Except as [*provided in ORS 468B.050 or 468B.053, no person shall*] **authorized by**
 31 **a permit issued pursuant to ORS 468B.050 or as allowed pursuant to ORS 468B.053, a person**
 32 **may not:**

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

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

39 (c) **Except as provided in section 6 of this 2007 Act, discharge any wastes into the waters**
 40 **of the state if the discharge contains persistent bioaccumulative toxins in amounts or con-**
 41 **centrations that violate chronic or acute toxicity criteria established by the commission for**
 42 **the protection of human health and aquatic life.**

43 (2) [*No person shall*] **A person may not** violate the conditions of any waste discharge permit
 44 issued under ORS 468B.050.

45 (3) Violation of subsection (1) or (2) of this section is a public nuisance.

1 **SECTION 3.** ORS 468B.050 is amended to read:

2 468B.050. (1) Except as provided in ORS 468B.053 or 468B.215, without holding a permit from the
3 [*Director of the*] Department of Environmental Quality or the State Department of Agriculture,
4 [*which permit shall specify applicable effluent limitations,*] a person may not:

5 (a) Discharge any wastes into the waters of the state from any industrial or commercial estab-
6 lishment or activity or any disposal system.

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

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

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

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

17 **(2) The Department of Environmental Quality or the State Department of Agriculture**
18 **may issue a permit to a person seeking to perform any of the actions specified in subsection**
19 **(1) of this section.**

20 **(3) Except as provided in section 6 of this 2007 Act, the Department of Environmental**
21 **Quality or the State Department of Agriculture shall condition each permit issued under this**
22 **section to prohibit discharges that contain persistent bioaccumulative toxins in amounts or**
23 **concentrations that violate chronic or acute toxicity criteria established by the Environ-**
24 **mental Quality Commission for the protection of human health and aquatic life.**

25 [(2)] **(4)** The Department of Environmental Quality or the State Department of Agriculture may
26 issue a permit under this section as an individual, general or watershed permit. A permit may be
27 issued to a class of persons using the procedures for issuance of an order or for the adoption of a
28 rule. Notwithstanding the definition of “order” or “rule” provided in ORS 183.310, in issuing a
29 general or watershed permit by order pursuant to this section, the State Department of Agriculture
30 or Department of Environmental Quality:

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

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

34 [(3)] **(5)** The State Department of Agriculture or the Department of Environmental Quality may
35 define “confined animal feeding operation” by rule for purposes of implementing this section.

36 **SECTION 4.** ORS 468B.053 is amended to read:

37 468B.053. In lieu of a permit required under ORS [*468B.025 or*] 468B.050, the Environmental
38 Quality Commission by rule may:

39 (1) Exempt de minimis discharges from permit requirements, **unless the discharges contain**
40 **persistent bioaccumulative toxins in amounts or concentrations that violate chronic or acute**
41 **toxicity criteria established by the commission for the protection of human health and**
42 **aquatic life.**

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

44 (3) Require [*an operator or*] a person discharging waste exempt under subsection (1) of this
45 section to:

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

2 (b) Monitor performance and certify and report the results to the Department of Environmental
3 Quality.

4 **SECTION 5.** Section 6 of this 2007 Act is added to and made a part of ORS chapter 468B.

5 **SECTION 6.** (1) The Department of Environmental Quality may, upon request of the
6 permittee, condition a permit issued under ORS 468B.050 to allow discharges that contain
7 persistent bioaccumulative toxins in amounts or concentrations that violate chronic or acute
8 toxicity criteria established by the Environmental Quality Commission for the protection of
9 human health and aquatic life if:

10 (a) The department determines that the prevention measures or control technology nec-
11 essary to comply with ORS 468B.025 and 468B.050 would result in an annual financial cost to
12 a permittee that is greater than five percent of the permittee's annual operating budget or
13 would result in a significant and unreasonable burden to the permittee, the permittee's em-
14 ployees or the human population in surrounding areas;

15 (b) The permittee agrees to reduce the amount or concentration of persistent
16 bioaccumulative toxins contained in the discharge to the maximum extent possible, through
17 the use of control technology, reduction plans, process changes or other similar measures;

18 (c) The discharge is diluted by the waters into which it is discharged to concentrations
19 that do not violate chronic or acute toxicity criteria within an area that is as small as is
20 feasible to protect instream water quality, public health and other beneficial uses and no
21 larger than is necessary to allow for technological constraints or economic effects; and

22 (d) The conditions provided under the permit are limited to one permit period, unless the
23 department determines upon renewal of the permit that another conditioned period is war-
24 ranted.

25 (2) In determining whether the prevention measures or control technology would result
26 in a significant and unreasonable burden on the permittee, the department shall, at a mini-
27 mum, evaluate:

28 (a) The economic cost of a given measure or control and the costs that a permittee has
29 already paid or would pay for discharge control and reduction;

30 (b) The effect that a measure or control would have on the permittee's economic ability
31 to implement the measure or control;

32 (c) The effect that the measure or control would have on employment; and

33 (d) The discharge reduction benefits that a given measure or control would achieve.

34 (3) If the department conditions a permit under this section to allow an otherwise pro-
35 hibited discharge, the conditions:

36 (a) May not contain discharge limitations less stringent than those imposed under the
37 permittee's previous permit, if one exists.

38 (b) Shall ensure that the permittee meets all state and federal water quality laws, regu-
39 lations and standards.

40 (c) Shall be based on a representative level of discharge and representative level of water
41 flow for the body of water into which the discharge will be placed in order for the department
42 to reasonably assess the effect of the discharge on the body of water and the ability of the
43 body of water to dilute the discharge.

44 (4) The permittee is responsible for the payment of any costs incurred by the department
45 in assessing whether to condition the permit to allow discharges that would otherwise be

1 prohibited by ORS 468B.025 and 468B.050.

2 **SECTION 7. (1) The amendments to ORS 468B.050 by section 3 of this 2007 Act that re-**
3 **quire the Department of Environmental Quality to condition permits to prohibit the dis-**
4 **charge of certain wastes into the waters of this state apply to:**

5 (a) All new permits issued on or after January 1, 2008.

6 (b) All permits renewed by entities other than municipal waste treatment facilities on
7 or after January 1, 2011.

8 (c) All permits renewed by municipal waste treatment facilities on or after January 1,
9 2013.

10 (2) The Department of Environmental Quality and the Environmental Quality Commis-
11 sion may establish rules and processes, provide educational materials and technical assist-
12 ance and put in place any procedures necessary to prepare persons holding permits issued
13 under ORS 468B.050 for the conditioning of permits renewed on or after January 1, 2011, to
14 prohibit the discharge of certain wastes.

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