

# Enrolled House Bill 3325

Sponsored by Representative BARKER, Senators SHIELDS, STARR; Representatives BAILEY, BUCKLEY, CANNON, DEMBROW, FREDERICK, GELSER, GILLIAM, GREENLICK, HARKER, KOTEK, NATHANSON, SHEEHAN, G SMITH, J SMITH, THOMPSON, TOMEI, WHISNANT, WITT, Senators BEYER, BOQUIST, DINGFELDER, EDWARDS, GEORGE, KRUSE, MORSE, TELFER (at the request of Department of Justice)

CHAPTER .....

AN ACT

Relating to the environment; creating new provisions; and amending ORS 465.320, 465.327, 466.640 and 468B.310.

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

**SECTION 1.** ORS 465.327 is amended to read:

465.327. (1) In order to facilitate cleanup and reuse of contaminated property, the Department of Environmental Quality may, through a written agreement, provide a party with a release from potential liability *[to the state]* under ORS 465.255, **466.640 and 468B.310** if:

(a) The party is not currently liable under:

(A) ORS 465.255 for an existing release of hazardous substance at the facility;

**(B) ORS 466.640 for an existing spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545; or**

**(C) ORS 468B.310 for the prior entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500;**

(b) Removal or remedial action is necessary at the facility to protect human health or the environment;

(c) The proposed redevelopment or reuse of the facility will not contribute to or exacerbate existing contamination, increase health risks or interfere with remedial measures necessary at the facility; and

(d) A substantial public benefit will result from the agreement, including but not limited to:

(A) The generation of substantial funding or other resources facilitating remedial measures at the facility in accordance with this section;

(B) A commitment to perform substantial remedial measures at the facility in accordance with this section;

(C) Productive reuse of a vacant or abandoned industrial or commercial facility; or

(D) Development of a facility by a governmental entity or nonprofit organization to address an important public purpose.

(2) In determining whether to enter an agreement under this section, the department shall consult with affected land use planning jurisdictions and consider reasonably anticipated future land uses at the facility and surrounding properties.

(3) An agreement under this section may be set forth in an [*administrative consent order or other*] administrative agreement or, **after opportunity for public notice and comment pursuant to ORS 465.320**, in a judicial consent judgment entered in accordance with ORS 465.325 **or an administrative consent order**. Any such agreement may include provisions considered necessary by the department, and shall include:

(a) A commitment to undertake the measures constituting a substantial public benefit;

(b) If remedial measures are to be performed under the agreement, a commitment to perform any such measures under the department's oversight;

(c) A waiver by the party of any claim or cause of action against the State of Oregon arising from contamination at the facility existing as of the date of acquisition of ownership or operation of the facility;

(d) A grant of an irrevocable right of entry to the department and its authorized representative for purposes of the agreement or for remedial measures authorized under this section;

(e) A reservation of rights as to an entity not a party to the agreement; and

(f) A legal description of the property.

(4)(a)(A) Subject to the satisfactory performance by the party of its obligations under [*the*] **an administrative agreement**, the party shall not be liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900 for any release of a hazardous substance at the facility existing as of the date of acquisition of ownership or operation of the facility, **under ORS 466.640 for the spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of acquisition of ownership or operation of the facility, or under ORS 468B.310 for the entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 before the date of acquisition of ownership or operation of the facility.**

(B) Subject to the satisfactory performance by the party of its obligations under a judicial consent judgment or an administrative consent order, the party shall not be liable to the State of Oregon or any person under ORS 465.200 to 465.545 and 465.900 for any release of a hazardous substance at the facility existing as of the date of acquisition of ownership or operation of the facility, under ORS 466.640 for the spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of acquisition of ownership or operation of the facility, or under ORS 468B.310 for the entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 before the date of acquisition of ownership or operation of the facility.

(b) The party shall bear the burden of proving that any hazardous substance release **under ORS 465.200 to 465.545 at the facility** existed before the date of acquisition of ownership or operation of the facility, **that any spill or release under ORS 466.640 of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existed before the date of acquisition of ownership or operation of the facility, or that the entry of oil under ORS 468B.310 into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 occurred before the date of acquisition of ownership or operation of the facility.**

(c) This release from liability shall not affect a party's liability for claims arising from any:

[(a)] (A)(i) Release of a hazardous substance **under ORS 465.200 to 465.545** at the facility **on or after the date of acquisition of ownership or operation of the facility;**

(ii) **Spill or release under ORS 466.640 of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 on or after the date of acquisition of ownership or operation of the facility; or**

(iii) **Entry of oil under ORS 468B.310 into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 on or after the date of acquisition of ownership or operation of the facility.**

[(b)] (B)(i) Contribution to, or exacerbation of, **on or after the date of acquisition of ownership or operation of the facility**, a release of a hazardous substance **at the facility under ORS 465.200 to 465.545;**

(ii) **Contribution to, or exacerbation of, on or after the date of acquisition of ownership or operation of a facility that is subject to ORS 465.200 to 465.545, a spill or release under ORS 466.640 of oil or hazardous material at the facility; or**

(iii) **Contribution to, or exacerbation of, on or after the date of acquisition of ownership or operation of a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500, any entry of oil under ORS 468B.310 into the waters of the state from the facility.**

[(c)] (C) **Interference or failure to cooperate on or after the date of acquisition of ownership or operation of the facility** with the department or other persons conducting remedial measures under the department's oversight at the facility[;].

[(d)] (D) **Failure to exercise due care or take reasonable precautions on or after the date of acquisition of ownership or operation of the facility** with respect to any hazardous substance at the facility[; and].

[(e)] (E) **Violation of federal, state or local law on or after the date of acquisition of ownership or operation of the facility.**

(5) Any agreement entered under this section shall be recorded in the real property records from the county in which the facility is located. The benefits and burdens of the agreement, including the release from liability, shall run with the land, but the release from liability shall limit or otherwise affect the liability only of persons who are not potentially liable:

(a) Under ORS 465.255 for a release of a hazardous substance at the facility **existing** as of the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation[.];

(b) **Under ORS 466.640 for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation; or**

(c) **Under ORS 468B.310 for the entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of acquisition of ownership or operation of the facility and who assume and are bound by terms of the agreement applicable to the facility as of the date of acquisition of ownership or operation.**

**SECTION 2.** ORS 465.320 is amended to read:

465.320. Except as provided in ORS 465.260 (3), before approval of any remedial action to be undertaken by the Department of Environmental Quality or any other person, [or] adoption of a certification decision under ORS 465.325 **or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order**, the department shall:

(1) Publish a notice and brief description of the proposed action in a local paper of general circulation and in the Secretary of State's Bulletin, and make copies of the proposal available to the public.

(2) Provide at least 30 days for submission of written comments regarding the proposed action, and, upon written request by 10 or more persons or by a group having 10 or more members, conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed action.

(3) Consider any written or verbal comments before approving the removal or remedial action **or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order.**

(4) Upon final approval of the remedial action **or providing a release from liability under ORS 465.327 to a party in a judicial consent judgment or an administrative consent order**, publish notice, as provided under subsection (1) of this section, and make copies of the approved action available to the public.

**SECTION 3.** ORS 466.640 is amended to read:

466.640. (1) Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by:

[(1)] (a) An act of war or sabotage or an act of God.

[(2)] (b) Negligence on the part of the United States Government or the State of Oregon.

[(3)] (c) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

**(2) Notwithstanding the provisions of subsection (1) of this section:**

**(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.**

**(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any spill or release of oil or hazardous material at a facility that is subject to ORS 465.200 to 465.545 existing as of the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.**

**SECTION 4.** ORS 468B.310 is amended to read:

468B.310. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468B.305 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468B.305 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section.

**(3) Notwithstanding the provisions of subsections (1) and (2) of this section:**

**(a) A person who has entered into, and is in compliance with, an administrative agreement under ORS 465.327 is not liable to the State of Oregon for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.**

**(b) A person who has entered into, and is in compliance with, a judicial consent judgment or an administrative consent order under ORS 465.327 is not liable to the State of Oregon or any person for any entry of oil into the waters of the state from a facility that is subject to ORS 465.200 to 465.545 and 468B.300 to 468B.500 that occurred before the date of the person's acquisition of ownership or operation of the facility, to the extent provided in ORS 465.327.**

**SECTION 5.** The amendments to ORS 465.320, 465.327, 466.640 and 468B.310 by sections 1 to 4 of this 2011 Act apply to written agreements entered into by the Department of Environmental Quality with a party on or after the effective date of this 2011 Act.

**Passed by House April 27, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate May 26, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State