

Senate Bill 84

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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**.

Repeals provision requiring notice of violation related to sewage.
Modifies provisions related to collecting penalties from dry cleaning operators.
Modifies definition of "generator" for purposes of laws related to hazardous waste.
Modifies provisions related to enforcement and implementation of environmental laws.

A BILL FOR AN ACT

1
2 Relating to the environment; creating new provisions; amending ORS 222.900, 448.405, 454.505,
3 454.525, 454.655, 454.725, 465.992, 466.005, 468.005, 468.015, 468.035, 468.065, 468.070, 468.090,
4 468.095, 468.100, 468.120, 468.135, 468.140, 468.956, 468.997, 468A.015, 468A.030, 468A.040,
5 468A.055, 468A.165, 468A.405, 468B.005, 468B.010 and 468B.080; and repealing ORS 454.635.

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

SEWAGE

7
8
9
10 **SECTION 1. ORS 454.635 is repealed.**

11 **SECTION 2.** ORS 454.655 is amended to read:

12 454.655. (1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from
13 the Department of Environmental Quality, no person shall construct or install a subsurface sewage
14 disposal system, alternative sewage disposal system or part thereof. However, a person may under-
15 take emergency repairs limited to replacing minor broken components of the system without first
16 obtaining a permit.

17 (2) A permit required by subsection (1) of this section shall be issued only in the name of an
18 owner or contract purchaser in possession of the land. However, a permit issued to an owner or
19 contract purchaser carries the condition that the owner or purchaser or regular employees or a
20 person licensed under ORS 454.695 perform all labor in connection with the construction of the
21 subsurface or alternative sewage disposal system.

22 (3) The applications for a permit required by this section must be accompanied by the permit
23 fees prescribed in ORS 454.745.

24 (4) After receipt of an application and all requisite fees, subject to ORS 454.685, the department
25 shall issue a permit if it finds that the proposed construction will be in accordance with the rules
26 of the Environmental Quality Commission. A permit may not be issued if a community or area-wide
27 sewerage system is available which will satisfactorily accommodate the proposed sewage discharge.
28 The prohibition on the issuance of a permit in this subsection does not apply to a public agency as
29 defined in ORS 454.430.

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 (5)(a) Unless weather conditions or distance and unavailability of transportation prevent the is-
 2 suance of a permit within 20 days of the receipt of the application and fees by the department, the
 3 department shall issue or deny the permit within 20 days after such date. If such conditions prevent
 4 issuance or denial within 20 days, the department shall notify the applicant in writing of the reason
 5 for the delay and shall issue or deny the permit within 60 days after such notification.

6 (b) If within 20 days of the date of the application the department fails to issue or deny the
 7 permit or to give notice of conditions preventing such issuance or denial, the permit shall be con-
 8 sidered to have been issued.

9 (c) If within 60 days of the date of the notification referred to in paragraph (a) of this subsection,
 10 the department fails to issue or deny the permit, the permit shall be considered to have been issued.

11 (6) Upon request of any person, the department may issue a report, described in ORS 454.755 (1),
 12 of evaluation of site suitability for installation of a subsurface or alternative sewage disposal system
 13 or nonwater-carried sewage disposal facility. The application for such report must be accompanied
 14 by the fees prescribed in ORS 454.755.

15 (7) With respect to an application for a permit for the construction and installation of a septic
 16 tank and necessary effluent sewer and absorption facility for a single family residence or for a farm
 17 related activity on a parcel of 10 acres or more described in the application by the owner or con-
 18 tract purchaser of the parcel, the Department of Environmental Quality:

19 (a) Within the period allowed by subsection (5)(a) of this section after receipt by it of the ap-
 20 plication, shall issue the permit or deliver to the applicant a notice of intent to deny the issuance
 21 of the permit;

22 (b) In any notice of intent to deny an application, shall specify the reasons for the intended de-
 23 nial based upon the rules of the Environmental Quality Commission for the construction and in-
 24 stallation of a septic tank and necessary effluent sewer and absorption facility or based upon the
 25 factors included in ORS 454.685 (2)(a) to (j);

26 (c) Upon request of the applicant, shall conduct a **contested case** hearing in the manner pro-
 27 vided in ORS [454.635 (4) and (5)] **chapter 183** on the reasons specified in a notice of intent to deny
 28 the application with the burden of proof upon the department to justify the reasons specified; and

29 (d) In the case of issuance of a permit, may include as a condition of the permit that no other
 30 permit for a subsurface sewage disposal system or alternative sewage disposal system shall be issued
 31 for use on the described parcel while the approved septic tank, effluent sewer and absorption facility
 32 are in use on the described parcel.

33 **SECTION 3.** ORS 454.725 is amended to read:

34 454.725. (1) The Department of Environmental Quality may enter into agreements with local
 35 units of government for the local units to perform the duties of the department under ORS
 36 [454.635,] 454.655, 454.665 and 454.755.

37 (2) The Department of Environmental Quality may enter into an agreement with a local unit of
 38 government when the local unit of government requests to perform the variance duties of the de-
 39 partment under ORS 454.657 and 454.660 subject to variance criteria specified in the agreement by
 40 the department. Each local unit of government performing variance duties under an agreement may
 41 set and collect a variance application fee as provided in ORS 454.662. A fee collected by a local unit
 42 of government under this subsection shall not exceed the cost to the local unit of government of
 43 performing the variance duties of the department.

44
 45 **HAZARDOUS WASTE**

1 **SECTION 4.** ORS 465.992 is amended to read:

2 465.992. [(1)] Any dry cleaning operator who fails to pay a fee required under ORS 465.517,
3 465.520 or 465.523 shall incur a civil penalty of not more than \$5,000. The penalty shall be [*recovered*
4 *as provided in subsection (2) of this section*] **imposed in the manner provided by ORS 468.135.**

5 [(2) *Any person against whom a penalty is assessed under subsection (1) of this section may appeal*
6 *to the tax court as provided in ORS 305.404 to 305.560. If the penalty is not paid within 10 days after*
7 *the order of the tax court becomes final, the Department of Revenue may record the order and collect*
8 *the amount assessed in the same manner as income tax deficiencies are recorded and collected under*
9 *ORS 314.430.*]

10 **SECTION 5.** ORS 466.005 is amended to read:

11 466.005. As used in ORS 453.635 and 466.005 to 466.385 and 466.992, unless the context requires
12 otherwise:

13 (1) "Commission" means the Environmental Quality Commission.

14 (2) "Department" means the Department of Environmental Quality.

15 (3) "Director" means the Director of the Department of Environmental Quality.

16 (4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or
17 placing of any hazardous waste into or on any land or water so that the hazardous waste or any
18 hazardous constituent thereof may enter the environment or be emitted into the air or discharged
19 into any waters of the state as defined in ORS 468B.005.

20 (5) "Facility" means all contiguous land, structures, other appurtenances and improvements on
21 the land used for treating, storing or disposing of hazardous waste. "Facility" may consist of one
22 or more treatment, storage or disposal operational units.

23 (6) "Generator" means [*the person, who by virtue of ownership, management or control, is re-*
24 *sponsible for causing or allowing to be caused the creation of a hazardous waste*] **any person, by site,**
25 **whose act or process produces hazardous waste, or whose act or process first causes haz-**
26 **ardous waste to become subject to regulation under ORS 466.005 to 466.385.**

27 (7) "Hazardous waste" does not include radioactive material or the radioactively contaminated
28 containers and receptacles used in the transportation, storage, use or application of radioactive
29 waste, unless the material, container or receptacle is classified as hazardous waste under paragraph
30 (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container
31 or receptacle. Hazardous waste [*does include*] **includes** all of the following [*which are not*] **unless**
32 declassified by the commission under ORS 466.015 (3):

33 (a) Discarded, useless or unwanted materials or residues resulting from any substance or com-
34 bination of substances intended for the purpose of defoliating plants or for the preventing, destroy-
35 ing, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not
36 limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

37 (b) Residues resulting from any process of industry, manufacturing, trade or business or gov-
38 ernment or from the development or recovery of any natural resources, if such residues are classi-
39 fied as hazardous by order of the commission, after notice and public hearing. For purposes of
40 classification, the commission must find that the residue, because of its quantity, concentration, or
41 physical, chemical or infectious characteristics may:

42 (A) Cause or significantly contribute to an increase in mortality or an increase in serious irre-
43 versible or incapacitating reversible illness; or

44 (B) Pose a substantial present or potential hazard to human health or the environment when
45 improperly treated, stored, transported, or disposed of, or otherwise managed.

1 (c) Discarded, useless or unwanted containers and receptacles used in the transportation, stor-
 2 age, use or application of the substances described in paragraphs (a) and (b) of this subsection.

3 (8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous
 4 waste is disposed.

5 (9) "Hazardous waste storage site" means the geographical site upon which hazardous waste is
 6 stored.

7 (10) "Hazardous waste treatment site" means the geographical site upon which or a facility in
 8 which hazardous waste is treated.

9 (11) "Manifest" means the form used for identifying the quantity, composition, and the origin,
 10 routing and destination of hazardous waste during its transportation from the point of generation
 11 to the point of disposal, treatment or storage.

12 (12) "PCB" has the meaning given that term in ORS 466.505.

13 (13) "Person" means the United States, the state or a public or private corporation, local gov-
 14 ernment unit, public agency, individual, partnership, association, firm, trust, estate or any other le-
 15 gal entity.

16 (14) "Store" or "storage" means the containment of hazardous waste either on a temporary basis
 17 or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

18 (15) "Transporter" means any person engaged in the transportation of hazardous waste by any
 19 means.

20 (16) "Treat" or "treatment" means any method, technique, activity or process, including but not
 21 limited to neutralization, designed to change the physical, chemical, or biological character or
 22 composition of any hazardous waste so as to neutralize the waste or so as to render the waste
 23 nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in vol-
 24 ume.

25
 26 **ENFORCEMENT**
 27

28 **SECTION 6.** ORS 468.065 is amended to read:

29 468.065. Subject to any specific requirements imposed by ORS [448.305,] **448.410 to 448.430,**
 30 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800,**
 31 **459A.552 to 459A.599 and 468B.095** and ORS chapters **459, 459A, 465, 466, 467,** 468, 468A and 468B:

32 (1) Applications for all permits **or certifications** authorized or required by ORS [448.305,]
 33 **448.410 to 448.430,** 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755,
 34 **454.782 to 454.800, 459A.552 to 459A.599 and 468B.095** and ORS chapters **459, 459A, 465, 466, 467,**
 35 468, 468A and 468B shall be made in a form prescribed by the Department of Environmental Quality.
 36 Any permit **or certification** issued by the department shall specify its duration, and the conditions
 37 for compliance with the rules and standards, if any, adopted by the Environmental Quality Com-
 38 mission pursuant to ORS [448.305,] **448.410 to 448.430,** 454.010 to 454.040, 454.205 to 454.255, 454.505
 39 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459A.552 to 459A.599 and 468B.095** and ORS
 40 chapters **459, 459A, 465, 466, 467,** 468, 468A and 468B.

41 (2) By rule and after hearing, the commission may establish a schedule of fees for permits issued
 42 pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315
 43 and 468B.051, the fees contained in the schedule shall be based upon the anticipated cost of filing
 44 and investigating the application, of carrying out applicable requirements of Title V, of issuing or
 45 denying the requested permit, and of an inspection program to determine compliance or noncompli-

1 ance with the permit. The fee shall accompany the application for the permit. The fees for a permit
2 issued under ORS 468A.040 or 468B.050 may be imposed on an annual basis.

3 (3) An applicant for certification of a project under ORS 468B.040 or 468B.045, and any person
4 submitting a notice of intent to seek reauthorization, a preliminary application or an application for
5 reauthorization of a water right for a hydroelectric project under ORS 543A.030, 543A.035, 543A.075,
6 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the commission and department
7 related to the review and decision of the Director of the Department of Environmental Quality and
8 commission. These expenses may include legal expenses, expenses incurred in evaluating the project,
9 issuing or denying certification and expenses of commissioning an independent study by a contractor
10 of any aspect of the proposed project. These expenses shall not include the costs incurred in de-
11 fending a decision of either the director or the commission against appeals or legal challenges. The
12 department shall bill applicants for costs incurred on a monthly basis, and shall provide a biennial
13 report describing how the moneys were spent. An applicant may arrange with the department to pay
14 the fee on a quarterly basis. The department shall not charge a fee under the fee authority in this
15 subsection if the holder is being charged a fee under ORS 543.088 and 543.090 or 543A.405. In no
16 event shall the department assess fees under this section and under ORS 543A.405 for performance
17 of the same work.

18 (4) The department may require the submission of plans, specifications and corrections and re-
19 visions thereto and such other reasonable information as it considers necessary to determine the
20 eligibility of the applicant for the permit.

21 (5) The department may require periodic reports from persons who hold permits **or certifi-**
22 **ications** under ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.225, 454.505 to
23 454.535, 454.605 to 454.755, **454.782 to 454.800**, **459A.552 to 459A.599** and **468B.095** and ORS chap-
24 ters **459, 459A, 465, 466, 467**, 468, 468A and 468B. The report shall be in a form prescribed by the
25 department and shall contain such information as to the amount and nature or common description
26 of the pollutant, contaminant or waste and such other information as the department may require.

27 (6) Any fee collected under a schedule of fees established pursuant to this section or ORS
28 468A.315 shall be deposited in the State Treasury to the credit of an account of the department. The
29 fees are continuously appropriated to meet the expenses of the program for which they are collected,
30 except as follows:

31 (a) The federal operating permit program shall include a commensurate amount of the fee for
32 any permit specified in this section for which the department incurs costs associated with the re-
33 quirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal
34 operating permit program in any biennium that exceed the legislatively approved budget, including
35 amounts authorized by the Emergency Board for the federal operating permit program for such
36 biennium, shall be credited toward the federal operating permit program budget for the following
37 biennium.

38 (b) Fees collected for permits issued under ORS 468B.050 to authorize the discharge of wastes
39 into the waters of the state may be used to pay the expenses of any of the programs associated with
40 the issuance of permits under ORS 468B.050 to authorize the discharge of wastes into the waters
41 of the state.

42 (c) The fees collected under a schedule of fees established pursuant to this section or ORS
43 468A.315 by a regional air pollution control authority pursuant to a permit program authorized by
44 the commission shall be retained by and shall be income to the regional authority except as provided
45 in ORS 468A.155 (2)(c). Such fees shall be accounted for and expended in the same manner as are

1 other funds of the regional authority. However, if the department finds after hearing that the permit
 2 program administered by the regional authority does not conform to the requirements of the permit
 3 program approved by the commission pursuant to ORS 468A.155, such fees shall be deposited and
 4 expended as are permit fees submitted to the department.

5 (7) As used in this section, "Title V" has the meaning given in ORS 468A.300.

6 **SECTION 7.** ORS 468.090 is amended to read:

7 468.090. [(1)] In case any written substantiated complaint is filed with the Department of Envi-
 8 ronmental Quality which it has cause to believe, or in case the department itself has cause to be-
 9 lieve, that any person is violating any rule or standard adopted by the Environmental Quality
 10 Commission or any permit issued by the department by causing or permitting water pollution or air
 11 pollution or air contamination, the department shall cause an investigation thereof to be made. If
 12 it finds after such investigation that such a violation of any rule or standard of the commission or
 13 of any permit issued by the department exists, it:

14 (1) Shall by conference, conciliation and persuasion endeavor to eliminate the source or cause
 15 of the pollution or contamination which resulted in such violation[.]; **and**

16 [(2) *In case of failure to remedy the violation, the department shall*]

17 (2)(a) **May** commence enforcement proceedings pursuant to the procedures set forth in ORS
 18 chapter 183 for a contested case and in ORS 468B.032; **or**

19 (b) **May commence civil action as provided in ORS 468.100.**

20 **SECTION 8.** ORS 468.095 is amended to read:

21 468.095. (1) The Department of Environmental Quality shall have the power to enter upon and
 22 inspect, at any reasonable time, any public or private property, premises or place for the purpose
 23 of investigating either an actual or suspected source of water pollution or air pollution or air con-
 24 tamination or to ascertain compliance or noncompliance with **any provision of or** any rule or
 25 standard adopted or **any order, [or] permit or certification** issued pursuant to ORS [448.305,]
 26 **448.410 to 448.430, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755,**
 27 **454.782 to 454.800, 459.900, 459A.552 to 459A.599, 459A.695, 468A.655, 468B.095 and 468B.165** and
 28 ORS chapters **459, 459A, 465, 466, 467,** 468, 468A and 468B. The Environmental Quality Commission
 29 shall also have access to any pertinent records relating to such property, including but not limited
 30 to blueprints, operation and maintenance records and logs, operating rules and procedures.

31 (2) Unless classified by the Director of the Department of Environmental Quality as confidential,
 32 any records, reports or information obtained under ORS [448.305,] **448.410 to 448.430, 454.010 to**
 33 **454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, 454.782 to 454.800, 459.900,**
 34 **459A.552 to 459A.599, 459A.695, 468A.655, 468B.095 and 468B.165** and ORS chapters **459, 459A,**
 35 **465, 466, 467,** 468, 468A and 468B shall be available to the public. Upon a showing satisfactory to
 36 the director by any person that records, reports or information, or particular parts thereof, other
 37 than emission data, if made public, would divulge a secret process, device or method of manufac-
 38 turing or production entitled to protection as trade secrets of such person, the director shall classify
 39 such record, report or information, or particular part thereof, other than emission data, confidential
 40 and such confidential record, report or information, or particular part thereof, other than emission
 41 data, shall not be made a part of any public record or used in any public hearing unless it is de-
 42 termined by a circuit court that evidence thereof is necessary to the determination of an issue or
 43 issues being decided at a public hearing.

44 **SECTION 9.** ORS 468.100 is amended to read:

45 468.100. (1) Whenever the [*Environmental Quality Commission*] **Department of Environmental**

1 **Quality** has good cause to believe that any person **has engaged**, is engaged or is about to engage
 2 in any acts or practices which constitute a violation of ORS [448.305,] **448.410 to 448.430**, 454.010
 3 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459.900,**
 4 **459A.552 to 459A.599, 459A.695, 459A.780, 468A.655, 468B.095, 468B.165 and 783.625 to 783.640**
 5 and ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B, or any rule, standard or order
 6 adopted or entered pursuant thereto, or of any permit **or certificate** issued pursuant to ORS
 7 [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
 8 454.755, **454.782 to 454.800, 459A.552 to 459A.599 and 468B.095** and ORS chapters **459, 459A, 465,**
 9 **466, 467**, 468, 468A and 468B, the [commission] **department** may institute a **civil action** [actions or
 10 proceedings] for legal or equitable remedies **and recover a penalty in amounts equal to those**
 11 **provided for under ORS 468.140 and 783.992** to enforce compliance thereto or to restrain further
 12 violations.

13 (2) The proceedings authorized by subsection (1) of this section may be instituted without the
 14 necessity of prior agency notice, hearing and order, or during said agency hearing if it has been
 15 initially commenced by the [commission] **department**.

16 (3) A regional authority formed under ORS 468A.105 may exercise the same functions as are
 17 vested in the [commission] **department** by this section insofar as such functions relate to air pol-
 18 lution control and are applicable to the conditions and situations of the territory within the regional
 19 authority. The regional authority shall carry out these functions in the manner provided for the
 20 [commission] **department** to carry out the same functions.

21 (4) The provisions of this section are in addition to and not in substitution of any other civil
 22 or criminal enforcement provisions available to the [commission] **department** or a regional author-
 23 ity. The provisions of this section shall not prevent the maintenance of actions for legal or equitable
 24 remedies relating to private or public nuisances brought by any other person, or by the state on
 25 relation of any person without prior order of the [commission] **department**.

26 **SECTION 10.** ORS 468.120 is amended to read:

27 468.120. (1) The Environmental Quality Commission, its members or a person designated by and
 28 acting for the commission may:

29 (a) Conduct public hearings.

30 (b) Issue subpoenas for the attendance of witnesses and the production of books, records and
 31 documents relating to matters before the commission.

32 (c) Administer oaths.

33 (d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may
 34 be considered necessary or proper to carry out duties of the commission and Department of Envi-
 35 ronmental Quality pursuant to ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to
 36 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459.900, 459A.552 to 459A.599,**
 37 **459A.695, 459A.780, 459A.785, 468A.655, 468B.095, 468B.165 and 783.625 to 783.640** and ORS
 38 chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B.

39 (2) Subpoenas authorized by this section may be served by any person authorized by the person
 40 issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in
 41 ORS 44.415 (2).

42 **SECTION 11.** ORS 468.135 is amended to read:

43 468.135. (1) Any civil penalty under ORS 468.140 shall be imposed in the manner provided in
 44 ORS 183.745 **or as provided in ORS 468.100**.

45 (2) **Except as otherwise provided by law**, all penalties recovered under ORS 468.140 shall be

1 paid into the State Treasury and credited to the General Fund, or in the event the penalty is re-
 2 covered by a regional air quality control authority, it shall be paid into the county treasury of the
 3 county in which the violation occurred.

4 **SECTION 12.** ORS 468.140, as amended by section 9, chapter 267, Oregon Laws 2009, is
 5 amended to read:

6 468.140. (1) In addition to any other penalty provided by law, any person who violates any of the
 7 following shall incur a civil penalty for each day of violation in the amount prescribed by the
 8 schedule adopted under ORS 468.130:

9 (a) The terms or conditions of any permit required or authorized by law and issued by the De-
 10 partment of Environmental Quality or a regional air quality control authority.

11 (b) Any provision of ORS 164.785, [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to
 12 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to 454.800, 459.900, 459A.552 to 459A.599,**
 13 **459A.695, 459A.780, 468A.655, 468B.095, 468B.165** and 783.625 to 783.640 and [ORS chapter 467
 14 and] ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B.

15 (c) Any rule or standard or order of the Environmental Quality Commission adopted or issued
 16 pursuant to ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
 17 454.535, 454.605 to 454.755, **454.782 to 454.800, 459A.552 to 459A.599, 459A.785, 468B.095, 468B.165**
 18 and 783.625 to 783.640 and [ORS chapter 467 and] ORS chapters **459, 459A, 465, 466, 467**, 468, 468A
 19 and 468B.

20 (d) Any term or condition of a variance granted by the commission or department pursuant to
 21 ORS 467.060.

22 (e) Any rule or standard or order of a regional authority adopted or issued under authority of
 23 ORS 468A.135.

24 (f) The financial assurance requirement under ORS 468B.390 and 468B.485 or any rule related
 25 to the financial assurance requirement under ORS 468B.390.

26 (2) Each day of violation under subsection (1) of this section constitutes a separate offense.

27 (3)(a) In addition to any other penalty provided by law, any person who intentionally or
 28 negligently causes or permits the discharge of oil or hazardous material into the waters of the state
 29 or intentionally or negligently fails to clean up a spill or release of oil or hazardous material into
 30 the waters of the state as required by ORS 466.645 shall incur a civil penalty not to exceed the
 31 amount of \$100,000 for each violation.

32 (b) In addition to any other penalty provided by law, the following persons shall incur a civil
 33 penalty not to exceed the amount of \$25,000 for each day of violation:

34 (A) Any person who violates the terms or conditions of a permit authorizing waste discharge
 35 into the air or waters of the state.

36 (B) Any person who violates any law, rule, order or standard in ORS [448.305,] **448.410 to**
 37 **448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, **454.782 to**
 38 **454.800, 459.900, 459A.552 to 459A.599, 459A.695, 459A.780, 468A.655, 468B.095, 468B.165** and
 39 783.625 to 783.640 and ORS chapters **459, 459A, 465, 466, 467**, 468, 468A and 468B relating to air
 40 or water pollution.

41 (C) Any person who violates the provisions of a rule adopted or an order issued under ORS
 42 459A.590.

43 (4) In addition to any other penalty provided by law, any person who violates the provisions of
 44 ORS 468B.130 shall incur a civil penalty not to exceed the amount of \$1,000 for each day of vio-
 45 lation.

1 (5) Subsection (1)(c) and (e) of this section does not apply to violations of motor vehicle emission
2 standards which are not violations of standards for control of noise emissions.

3 (6) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided
4 by law, any person who intentionally or negligently causes or permits open field burning contrary
5 to the provisions of ORS 468A.555 to 468A.620 and 468A.992, 476.380 and 478.960 shall be assessed
6 by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned.
7 Any fines collected by the department pursuant to this subsection shall be deposited with the State
8 Treasurer to the credit of the General Fund and shall be available for general governmental ex-
9 pense. As used in this subsection, "open field burning" does not include propane flaming of mint
10 stubble.

11 **SECTION 13.** ORS 468A.030 is amended to read:

12 468A.030. The several liabilities which may be imposed pursuant to ORS [448.305,] 454.010 to
13 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and
14 468B upon persons violating the provisions of any rule, standard or order of the Environmental
15 Quality Commission pertaining to air pollution shall not be so construed as to include any violation
16 which was caused by an act of God, war, strife, riot or other **similar** condition [*as to which any*
17 *negligence or willful misconduct on the part of such person was not the proximate cause*].

18 **SECTION 14.** ORS 468A.040 is amended to read:

19 468A.040. (1) By rule the Environmental Quality Commission may require permits for air con-
20 tamination sources classified by type of air contaminants, by type of air contamination source or
21 by area of the state. The permits shall be issued as provided in ORS 468.065. A permit subject to
22 the federal operating permit program shall be issued in accordance with the rules adopted under
23 ORS 468A.310.

24 (2) If a request for review of the final Department of Environmental Quality action, or any part
25 thereof, is made on an application for a permit issued under the federal operating permit program
26 established under ORS 468A.310 in accordance with the rules adopted by the commission, the effect
27 of the contested conditions and any conditions that are not severable from those contested shall be
28 stayed upon a showing that compliance with the contested conditions during the pendency of the
29 appeal would require substantial expenditures or losses that would not be incurred if the permittee
30 prevails on the merits of the review and there exists a reasonable likelihood of success on the
31 merits. The department may require that the contested conditions not be stayed if the department
32 finds that substantial endangerment of public health or welfare would result from the staying of the
33 conditions.

34 (3) Any source under an existing permit shall:

35 (a) Comply with the conditions of the existing permit **at all times including** during any mod-
36 ification or reissuance proceeding; and

37 (b) To the extent conditions of any new or modified permit are stayed under subsection (2) of
38 this section, comply with the conditions of the existing permit that correspond to the stayed condi-
39 tions, unless compliance would be technologically incompatible with compliance with other condi-
40 tions of the new or modified permit that have not been stayed.

41 (4) For purposes of this section, a small scale local energy project, as defined in ORS 470.050
42 (27)(a), located in a maintenance area or nonattainment area, and any infrastructure related to that
43 project located in the same area, is considered to provide a net air quality benefit to the extent
44 required by this chapter if the project provides reductions in each air contaminant in the mainte-
45 nance area or nonattainment area equal to the ratio specified in rules adopted by the commission,

1 unless the department determines that the project will pose a material threat to compliance with
 2 air quality standards in the maintenance area or nonattainment area.

3 (5) As used in this section:

4 (a) "Maintenance area" has the meaning given that term in rules adopted by the commission.

5 (b) "Nonattainment area" has the meaning given that term in rules adopted by the commission.

6 **SECTION 15. (1) ORS 465.992 is added to and made a part of ORS chapter 465.**

7 **(2) ORS 468A.550 is added to and made a part of ORS 468A.555 to 468A.620.**

8
 9 **WATER SYSTEMS AND SEWAGE TREATMENT WORKS**

10
 11 **SECTION 16.** ORS 222.900 is amended to read:

12 222.900. (1) Subject to subsection (2) of this section, upon receipt of the certified copy of the
 13 finding as provided in ORS 222.880 (2) or (3) and certification of approval of plans under ORS
 14 222.898, the city council shall adopt an ordinance which shall:

15 (a) Contain the legal description of the territory annexed;

16 (b) Contain the terms of the annexation, if any, made under ORS 222.111;

17 (c) Adopt the plans, specifications and time schedule as approved by the Oregon Health Au-
 18 thority or Environmental Quality Commission; and

19 (d) Declare the territory annexed to the city in accordance with ORS 222.840 to 222.915.

20 (2) An ordinance shall not be enacted as provided in subsection (1) of this section until the ex-
 21 piration of the time for appeal under the provisions of ORS 222.896 and, in the event an appeal is
 22 filed, following the determination of that appeal.

23 (3) If the authority makes its finding under ORS 222.880 (3), the city shall not annex a greater
 24 area than that described in the finding. The recorder, or other officer performing the duties of the
 25 recorder, shall transmit a transcript to the Secretary of State, including certified copies of the re-
 26 solution required in ORS 222.860, the finding of the Director of the Oregon Health Authority, and
 27 the ordinance proclaiming annexation of the territory.

28 (4) If the city council adopts the ordinance of annexation as provided in subsection (1) of this
 29 section, it shall within one year thereafter prepare plans and specifications for the sanitary, water
 30 or other facilities proposed to be provided in the annexed area, in compliance with ORS 448.115 to
 31 448.285 or 468B.055 and shall then proceed in accordance with the time schedule to construct or
 32 install these facilities. The commission shall use its powers of enforcement under ORS [448.305,]
 33 **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, and
 34 ORS chapters 468, 468A and 468B to insure that the facilities are constructed or installed in con-
 35 formance with the approved plans and schedule. The manner of financing the cost of the facilities
 36 shall be determined by the city council.

37 **SECTION 17.** ORS 454.505 is amended to read:

38 454.505. As used in ORS 454.505 to 454.535, unless the context requires otherwise:

39 (1) "Construction" means the erection, building, acquisition, alteration, reconstruction, im-
 40 provement or extension of sewage treatment works, preliminary planning to determine the economic
 41 and engineering feasibility of sewage treatment works, the engineering, architectural, legal, fiscal
 42 and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifi-
 43 cations, procedures, and other action necessary in the construction of sewage treatment works, and
 44 the inspection and supervision of the construction of sewage treatment works.

45 (2) "Eligible project" means a project for construction of sewage treatment works:

1 (a) For which the approval of the Department of Environmental Quality is required under ORS
 2 [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
 3 454.755 and ORS chapters 468, 468A and 468B;

4 (b) Which is, in the judgment of the Environmental Quality Commission eligible for federal pol-
 5 lution abatement assistance, whether or not federal funds are then available therefor;

6 (c) Which conforms with applicable rules of the commission; and

7 (d) Which is, in the judgment of the commission, necessary for the accomplishment of the state's
 8 policy of water purity as stated in ORS 468B.015.

9 (3) "Federal pollution abatement assistance" means funds available to a municipality, either di-
 10 rectly or through allocation by the state, from the federal government as grants for construction
 11 of sewage treatment works pursuant to the Federal Water Pollution Control Act of 1956 (P.L. 84-660)
 12 as amended, or pursuant to any other federal act or program.

13 (4) "Municipality" means any county, city, special service district or other governmental entity
 14 having authority to dispose of sewage, industrial wastes or other wastes, any Indian tribe or au-
 15 thorized Indian tribal organization, or any combination of two or more of the foregoing acting
 16 jointly, in connection with an eligible project.

17 (5) "Sewage treatment works" means any facility for the purpose of treating, neutralizing or
 18 stabilizing sewage or industrial wastes of a liquid nature, including treatment or disposal plants, the
 19 necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers,
 20 equipment and furnishings thereof and their appurtenances.

21 **SECTION 18.** ORS 454.525 is amended to read:

22 454.525. (1) The Environmental Quality Commission and any municipality may enter into con-
 23 tracts with each other concerning eligible projects. Any such contract may include such provisions
 24 as may be agreed upon by the parties thereto, and shall include the following provisions:

25 (a) An estimate of the reasonable cost of the eligible project as determined by the commission.

26 (b) An agreement by the municipality:

27 (A) To proceed expeditiously with, and complete, the project in accordance with plans approved
 28 by the Department of Environmental Quality;

29 (B) To commence operation of the sewage treatment works on completion of the project, and
 30 not to discontinue operation or dispose of the sewage treatment works without the approval of the
 31 commission;

32 (C) To operate and maintain the sewage treatment works in accordance with applicable pro-
 33 visions of ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
 34 454.605 to 454.755 and ORS chapters 468, 468A and 468B and with the rules of the commission;

35 (D) To secure approval of the commission before applying for federal assistance for pollution
 36 abatement, in order to maximize the amounts of such assistance received or to be received for all
 37 projects in Oregon; and

38 (E) To provide for the payment of the municipality's share of the cost of the project.

39 (2) The commission may adopt rules necessary for making and enforcing contracts hereunder
 40 and establishing procedures to be followed in applying for state grants authorized by ORS 454.515
 41 as shall be necessary for the effective administration of ORS 454.505 to 454.535.

42 (3) All contracts entered into pursuant to this section shall be subject to approval by the At-
 43 torney General as to form. All payments by the state pursuant to such contracts shall be made after
 44 audit and upon warrant on vouchers approved by the commission.

45 **SECTION 19.** ORS 468.005 is amended to read:

1 468.005. As used in ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
 2 454.605 to 454.755 and ORS chapters 468, 468A and 468B, unless the context requires otherwise:

3 (1) "Commission" means the Environmental Quality Commission.

4 (2) "Department" means the Department of Environmental Quality.

5 (3) "Director" means the Director of the Department of Environmental Quality.

6 (4) "Order" has the same meaning as given in ORS 183.310.

7 (5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock
 8 companies, public and municipal corporations, political subdivisions, the state and any agencies
 9 thereof, and the federal government and any agencies thereof.

10 (6) "Rule" has the same meaning as given in ORS 183.310.

11 (7) "Standard" or "standards" means such measure of quality or purity for air or for any waters
 12 in relation to their reasonable or necessary use as may be established by the commission pursuant
 13 to ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
 14 ORS chapters 468, 468A and 468B.

15 **SECTION 20.** ORS 468.015 is amended to read:

16 468.015. It is the function of the Environmental Quality Commission to establish the policies for
 17 the operation of the Department of Environmental Quality in a manner consistent with the policies
 18 and purposes of ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
 19 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. In addition, the commission shall
 20 perform any other duty vested in it by law.

21 **SECTION 21.** ORS 468.035 is amended to read:

22 468.035. (1) Subject to policy direction by the Environmental Quality Commission, the Depart-
 23 ment of Environmental Quality:

24 (a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries,
 25 agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the
 26 waters of the state in accordance with rules and standards established by the commission.

27 (b) May conduct and prepare, independently or in cooperation with others, studies, investi-
 28 gations, research and programs pertaining to the quality and purity of the air or the waters of the
 29 state and to the treatment and disposal of wastes.

30 (c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions,
 31 other states or the federal government, in respect to any proceedings and all matters pertaining to
 32 control of air or water pollution or for the formation and submission to the legislature of interstate
 33 pollution control compacts or agreements.

34 (d) May employ personnel, including specialists and consultants, purchase materials and sup-
 35 plies, and enter into contracts necessary to carry out the purposes set forth in ORS [448.305,]
 36 **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
 37 ORS chapters 468, 468A and 468B.

38 (e) Shall conduct and supervise programs of air and water pollution control education, including
 39 the preparation and distribution of information regarding air and water pollution sources and con-
 40 trol.

41 (f) Shall provide advisory technical consultation and services to units of local government and
 42 to state agencies.

43 (g) Shall develop and conduct demonstration programs in cooperation with units of local gov-
 44 ernment.

45 (h) Shall serve as the agency of the state for receipt of moneys from the federal government or

1 other public or private agencies for the purposes of air and water pollution control, studies or re-
2 search and to expend moneys after appropriation thereof for the purposes given.

3 (i) Shall make such determination of priority of air or water pollution control projects as may
4 be necessary under terms of statutes enacted by the Congress of the United States.

5 (j) Shall seek enforcement of the air and water pollution laws of the state.

6 (k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to
7 compel compliance with any rule or standard adopted or any order or permit **or certification**, or
8 condition thereof, issued pursuant to ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205
9 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

10 (L) Shall encourage the formulation and execution of plans in conjunction with air and water
11 pollution control agencies or with associations of counties, cities, industries and other persons who
12 severally or jointly are or may be the source of air or water pollution, for the prevention and
13 abatement of pollution.

14 (m) May determine, by means of field studies and sampling, the degree of air or water pollution
15 in various regions of the state.

16 (n) May perform such other and further acts as may be necessary, proper or desirable to carry
17 out effectively the duties, powers and responsibilities of the department as set forth in ORS
18 [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to
19 454.755 and ORS chapters 468, 468A and 468B.

20 (o) Shall coordinate any activities of the department related to a watershed enhancement project
21 approved by the Oregon Watershed Enhancement Board under ORS 541.375 with activities of other
22 cooperating state and federal agencies participating in the project.

23 (2) Nothing in this section shall affect the authority of the Oregon Health Authority to make
24 and enforce rules:

25 (a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115
26 to 448.325, 624.010 to 624.121 and 624.310 to 624.430; and

27 (b) Regarding the quality of water for public swimming places pursuant to ORS 431.110.

28 (3) Nothing in this section shall prevent the State Department of Agriculture or the State
29 Forestry Department from independently receiving moneys from a public or private agency for the
30 purposes of preventing or controlling air or water pollution resulting from agricultural or
31 silvicultural activities or soil erosion, or for research related to such purposes.

32 (4)(a) In awarding a public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B
33 or 279C for a removal or remedial action pursuant to ORS 465.200 to 465.545, a corrective action
34 or cleanup action pursuant to ORS 466.005 to 466.385, 466.605 to 466.680 or 466.706 to 466.882 or a
35 removal pursuant to ORS 468B.005 to 468B.030, 468B.035, 468B.048 to 468B.085, 468B.090, 468B.093,
36 468B.095 and 468B.300 to 468B.500, the department, and the Oregon Department of Administrative
37 Services, when administering the establishment of such a contract on behalf of the Department of
38 Environmental Quality under ORS 279A.050 and 279A.140, shall subtract from the amount of any bid
39 or proposal the hazardous waste management fees and solid waste fees that would be required by
40 law to be paid to the department for waste that would be disposed of at a solid waste disposal site
41 or a hazardous waste or PCB disposal facility, based on the bid or proposal. The amount to be
42 subtracted shall be established on the basis of reasonable preprocurement estimates of the amount
43 of waste that would be disposed of under the contract and that would be subject to those fees.

44 (b) The subtraction for fees under paragraph (a) of this subsection shall apply only to a contract
45 reasonably anticipated to involve the disposal of no less than 50 tons of hazardous waste or no less

1 than 500 tons of solid waste. The Legislative Assembly finds that making accurate advance estimates
 2 of amounts of waste that would be disposed of in projects of this character is technically challenging
 3 and requires the application of professional discretion. Therefore, no award of a contract under this
 4 subsection shall be subject to challenge, under ORS 279B.410, 279B.415 or 279C.460 or otherwise,
 5 on the ground of the inaccuracy or claimed inaccuracy of any such estimate.

6 (c) The subtraction for fees under paragraph (a) of this subsection shall not apply to the estab-
 7 lishment, by or on behalf of the department, of master contracts by which the department engages
 8 the services of a contractor over a period of time for the purpose of issuing work orders for the
 9 performance of environmental activities on a project or projects for which the amounts of waste to
 10 be disposed of were not reasonably identified at the inception of the master contracts. However, the
 11 department shall require any contractor under a master contract to apply the subtraction for fees
 12 under paragraph (a) of this subsection in the selection of any subcontractor to perform the removal
 13 of waste in amounts equaling or exceeding the amounts set forth in paragraph (b) of this subsection.
 14 Nothing in this subsection shall be construed to prohibit the department or the Oregon Department
 15 of Administrative Services from establishing contracts pursuant to this section through contracting
 16 procedures authorized by ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C that do
 17 not require the solicitation of bids or proposals.

18 **SECTION 22.** ORS 468.070 is amended to read:

19 468.070. (1) At any time, the Department of Environmental Quality may refuse to issue, modify,
 20 suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:

21 (a) A material misrepresentation or false statement in the application for the permit.

22 (b) Failure to comply with the conditions of the permit.

23 (c) Violation of any applicable provisions of ORS 466.605 to 466.680, 466.990 (3) and (4) and
 24 466.995 (2) or ORS chapters 468, 468A and 468B.

25 (d) Violation of any applicable rule, standard or order of the Environmental Quality Commission.

26 (2) The department may modify any permit **or certification** issued pursuant to ORS 468.065 if
 27 it finds that modification is necessary for the proper administration, implementation or enforcement
 28 of the provisions of ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.255, 454.505
 29 to 454.535, 454.605 to 454.755, 466.605 to 466.680 and ORS chapters 468, 468A and 468B.

30 (3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be
 31 the procedure for a contested case as provided in ORS chapter 183.

32 **SECTION 23.** ORS 468.956 is amended to read:

33 468.956. Refusal, without good cause, to produce books, papers or information subpoenaed by the
 34 Environmental Quality Commission, the Department of Environmental Quality or the regional air
 35 quality control authority or any report required by law or by the commission, the department or a
 36 regional authority pursuant to ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to
 37 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is a Class A
 38 misdemeanor.

39 **SECTION 24.** ORS 468.997 is amended to read:

40 468.997. Where any provision of ORS [448.305,] **448.410 to 448.430**, **448.992**, 454.010 to 454.040,
 41 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B
 42 provides that each day of violation of ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205
 43 to 454.255, 454.505 to 454.535, 454.605 to 454.755 or a section of ORS chapters 468, 468A and 468B
 44 constitutes a separate offense, violations of that section that occur within the same court jurisdic-
 45 tion may be joined in one indictment, or complaint, or information, in several counts.

1 **SECTION 25.** ORS 468A.015 is amended to read:

2 468A.015. It is the purpose of the air pollution laws contained in ORS [448.305,] 454.010 to
3 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and
4 468B to safeguard the air resources of the state by controlling, abating and preventing air pollution
5 under a program which shall be consistent with the declaration of policy in this section and with
6 ORS 468A.010.

7 **SECTION 26.** ORS 468A.055 is amended to read:

8 468A.055. (1) The Environmental Quality Commission may require notice prior to the con-
9 struction of new air contamination sources specified by class or classes in its rules or standards
10 relating to air pollution.

11 (2) Within 30 days of receipt of such notice, the commission may require, as a condition
12 precedent to approval of the construction, the submission of plans and specifications. After exam-
13 ination thereof, the commission may request corrections and revisions to the plans and specifica-
14 tions. The commission may also require any other information concerning air contaminant emissions
15 as is necessary to determine whether the proposed construction is in accordance with the provisions
16 of ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
17 ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto.

18 (3) If the commission determines that the proposed construction is in accordance with the pro-
19 visions of ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755
20 and ORS chapters 468, 468A and 468B and applicable rules or standards adopted pursuant thereto,
21 it shall enter an order approving such construction. If the commission determines that the con-
22 struction does not comply with the provisions of ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255,
23 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B and applicable rules or
24 standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the
25 construction.

26 (4) If within 60 days of the receipt of plans, specifications or any subsequently requested re-
27 visions or corrections to the plans and specifications or any other information required pursuant to
28 this section, the commission fails to issue an order, the failure shall be considered a determination
29 that the construction may proceed except where prohibited by federal law. The construction must
30 comply with the plans, specifications and any corrections or revisions thereto or other information,
31 if any, previously submitted.

32 (5) Any person against whom the order is directed may, within 20 days from the date of mailing
33 of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing
34 and shall be mailed to the Director of the Department of Environmental Quality. The hearing shall
35 be conducted pursuant to the applicable provisions of ORS chapter 183.

36 (6) The commission may delegate its duties under subsections (2) to (4) of this section to the
37 Director of the Department of Environmental Quality. If the commission delegates its duties under
38 this section, any person against whom an order of the director is directed may demand a hearing
39 before the commission as provided in subsection (5) of this section.

40 (7) For the purposes of this section, "construction" includes installation and establishment of
41 new air contamination sources. Addition to or enlargement or replacement of an air contamination
42 source, or any major alteration or modification therein that significantly affects the emission of air
43 contaminants shall be considered as construction of a new air contamination source.

44 **SECTION 27.** ORS 468A.165 is amended to read:

45 468A.165. (1) The Environmental Quality Commission may require that necessary corrective

1 measures be undertaken within a reasonable time if, after hearing, it finds that:

2 (a) A regional authority has failed to establish an adequate air quality control program within
3 a reasonable time after its formation; or

4 (b) An air quality control program in force in the territory of a regional authority is being ad-
5 ministered in a manner inconsistent with the requirements of ORS [448.305,] 454.010 to 454.040,
6 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

7 (2) Notice of the hearing required under subsection (1) of this section shall be sent to the re-
8 gional authority not less than 30 days prior to the hearing.

9 (3) If the regional authority fails to take the necessary corrective measures within the time re-
10 quired, the commission shall undertake a program of administration and enforcement of the air
11 quality control program in the territory of the regional authority. The program instituted by the
12 commission shall supersede all rules, standards and orders of the regional authority.

13 (4) If, in the judgment of the commission, a regional authority is able to requalify to exercise
14 the functions authorized in ORS 468A.135, the commission shall restore those functions to the re-
15 gional authority and shall not exercise the same functions in the territory of the regional authority.

16 **SECTION 28.** ORS 468A.405 is amended to read:

17 468A.405. The Environmental Quality Commission and regional air pollution control authorities
18 organized pursuant to ORS [448.305,] 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535,
19 454.605 to 454.755 and ORS chapters 468, 468A and 468B by rule may regulate, limit, control or
20 prohibit motor vehicle operation and traffic as necessary for the control of air pollution which pre-
21 sents an imminent and substantial endangerment to the health of persons.

22 **SECTION 29.** ORS 468B.005 is amended to read:

23 468B.005. As used in the laws relating to water pollution, unless the context requires otherwise:

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

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

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

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

36 (5) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological
37 properties of any waters of the state, including change in temperature, taste, color, turbidity, silt
38 or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance
39 into any waters of the state, which will or tends to, either by itself or in connection with any other
40 substance, create a public nuisance or which will or tends to render such waters harmful, detri-
41 mental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agri-
42 cultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other
43 aquatic life or the habitat thereof.

44 (6) "Sewage" means the water-carried human or animal waste from residences, buildings, indus-
45 trial establishments or other places, together with such ground water infiltration and surface water

1 as may be present. The admixture with sewage of wastes or industrial wastes shall also be consid-
 2 ered "sewage" within the meaning of ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205
 3 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

4 (7) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all
 5 other structures, devices, appurtenances and facilities used for collecting or conducting wastes to
 6 an ultimate point for treatment or disposal.

7 (8) "Treatment works" means any plant or other works used for the purpose of treating, stabi-
 8 lizing or holding wastes.

9 (9) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive
 10 or other substances which will or may cause pollution or tend to cause pollution of any waters of
 11 the state.

12 (10) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs,
 13 springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the
 14 territorial limits of the State of Oregon and all other bodies of surface or underground waters, nat-
 15 ural or artificial, inland or coastal, fresh or salt, public or private (except those private waters
 16 which do not combine or effect a junction with natural surface or underground waters), which are
 17 wholly or partially within or bordering the state or within its jurisdiction.

18 **SECTION 30.** ORS 468B.010 is amended to read:

19 468B.010. (1) Except as otherwise provided in ORS 469.300 to 469.563, 469.590 to 469.619 and
 20 469.930, insofar as the authority of the Environmental Quality Commission over water pollution
 21 granted by ORS [448.305,] **448.410 to 448.430**, 454.010 to 454.040, 454.205 to 454.225, 454.505 to
 22 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B is inconsistent with any other law,
 23 or authority granted to any other state agency, the authority of the commission shall be controlling.

24 (2) The water pollution control laws of this state shall be liberally construed for the accom-
 25 plishment of the purposes set forth in ORS 468B.015.

26 **SECTION 31.** ORS 468B.080 is amended to read:

27 468B.080. (1) No garbage or sewage shall be discharged into or in any other manner be allowed
 28 to enter the waters of the state from any building or structure unless such garbage or sewage has
 29 been treated or otherwise disposed of in a manner approved by the Department of Environmental
 30 Quality. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures
 31 from which waste water or sewage is or may be discharged, shall be connected to and all waste
 32 water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage
 33 system, septic tank system or other disposal system:

34 (a) Approved by the department pursuant to ORS [448.305,] 454.010 to 454.040, 454.205 to
 35 454.255, (1973 Replacement Part), 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A
 36 and 468B; or

37 (b) **That must be supervised by an operator certified pursuant to ORS 448.410.**

38 (2) The department may extend the time of compliance for any person, class of persons,
 39 municipalities or businesses upon such conditions as it may deem necessary to protect the public
 40 health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome
 41 or impractical due to special physical conditions or cause or because no other alternative facility
 42 or method of handling is yet available.

43 **SECTION 32.** ORS 448.405 is amended to read:

44 448.405. As used in ORS 448.405 to 448.465:

45 (1) "Commission" means the Environmental Quality Commission.

1 (2) "Department" means the Department of Environmental Quality.

2 (3) "Director" means the Director of the Department of Environmental Quality.

3 (4) "Operator" means a person responsible for the operation of a potable water treatment plant,
4 water distribution system or sewage treatment works.

5 (5) "Person" means any individual, partnership, firm, association, joint venture, public or private
6 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,
7 municipality or any other political subdivision of this state, any interstate body or any other legal
8 entity.

9 (6) "Potable water treatment plant" means that portion of a water system that in some way al-
10 ters the physical, chemical or bacteriological quality of the water being treated.

11 (7) "Sewage treatment works" means any structure, equipment or process required to collect,
12 carry away and treat domestic waste and dispose of sewage as defined in ORS [454.010] **468B.005**.

13 (8) "Supervise" means to operate or to be responsible for directing employees that are respon-
14 sible for the operation of a water system.

15 (9) "Water distribution system" means that portion of the water system in which water is stored
16 and conveyed from the potable water treatment plant or other supply point to the premises of a
17 consumer.

18 (10) "Water system" means potable water treatment plants and water distribution systems:

19 (a) That have 15 or more service connections used by year-round residents or that regularly
20 serve 25 or more year-round residents; or

21 (b) That regularly serve at least 25 of the same persons for more than six months per year.

22
23 **MISCELLANEOUS**
24

25 **SECTION 33. (1) The repeal of ORS 454.635 by section 1 of this 2011 Act applies to vio-**
26 **lations occurring on or after the effective date of this 2011 Act.**

27 **(2) The amendments to ORS 454.655 by section 2 of this 2011 Act apply to requests for**
28 **hearings made on or after the effective date of this 2011 Act.**

29 **(3) The amendments to ORS 465.992 by section 4 of this 2011 Act apply to failure to pay**
30 **fees that are required under ORS 465.517, 465.520 or 465.523 on or after the effective date of**
31 **this 2011 Act.**

32 **(4) The amendments to ORS 466.005 by section 5 of this 2011 Act apply to the provisions**
33 **of ORS 30.505, 459.415, 466.005 to 466.385 and 466.992 on and after the effective date of this**
34 **2011 Act.**

35 **(5) The amendments to ORS 468.090 by section 7 of this 2011 Act apply to complaints filed**
36 **with the Department of Environmental Quality on or after the effective date of this 2011 Act.**

37 **(6) Any enforcement actions taken by the Environmental Quality Commission or the**
38 **Department of Environmental Quality pursuant to ORS 468.065, 468.095, 468.100, 468.120 or**
39 **468.140 before the effective date of this 2011 Act related to ORS 448.410 to 448.430, 454.782 to**
40 **454.800, 459.900, 459A.552 to 459A.599, 459A.695, 459A.780, 468A.612, 468A.655, 468B.095, 468B.165**
41 **and 783.625 to 783.640 and ORS chapters 459, 459A, 465, 466 and 467 are validated.**

42 **(7) The amendments to ORS 468.135 and 468A.030 by sections 11 and 13 of this 2011 Act**
43 **apply to violations occurring on or after the effective date of this 2011 Act.**

44 **(8) The amendments to ORS 454.505 by section 17 of this 2011 Act apply to sewage treat-**
45 **ments works for which an operator was certified pursuant to ORS 448.410 before, on or after**

1 **the effective date of this 2011 Act.**

2 **(9) The amendments to ORS 468.956 by section 23 of this 2011 Act apply to acts or conduct**
3 **occurring on or after the effective date of this 2011 Act.**

4 **(10) The amendments to ORS 468.997 by section 24 of this 2011 Act apply to violations**
5 **occurring on or after the effective date of this 2011 Act.**

6 **(11) The amendments to ORS 468B.080 by section 31 of this 2011 Act apply to discharges**
7 **occurring on or after the effective date of this 2011 Act.**

8 **SECTION 34. The unit captions used in this 2011 Act are provided only for the conven-**
9 **ience of the reader and do not become part of the statutory law of this state or express any**
10 **legislative intent in the enactment of this 2011 Act.**

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